

## Genetically modified organisms (GMOs): possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory

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This communication accompanies the proposal aiming to amend Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory. It aims to specify the conditions according to which a certain amount of freedom is given to the Member States to decide on the cultivation of genetically modified crops.

The political guidelines for the new Commission set out by President Barroso in September 2009 and endorsed by the Commission in March 2010, indicated that it should be possible to combine a European Union authorisation system, based on science, with freedom for Member States to decide whether or not they wish to cultivate GM crops on their territory.

A more flexible approach under the existing legislation: in line with Article 26a of Directive 2001/18/EC, Member States are entitled to take appropriate measures to avoid the unintended presence of GMOs in other products. Given the diversity of national, regional and local conditions under which European farmers work, the Commission has always considered that measures to avoid the unintended presence of GMOs in conventional and organic crops should be developed and implemented by the Member States.

In an attempt to support Member States in the process of developing national measures to avoid that presence, the Commission published in 2003 Recommendation 2003/556/EC on guidelines for the development of national strategies and best practices to ensure the co-existence of genetically modified crops with conventional and organic farming. The purpose of such national measures is to avoid the potential economic impact of the admixture of GM and non-GM crops (conventional and organic).

Experience gained over the last years shows that the approach applied on the basis of Recommendation 2003/556/EC does not exhaust the provisions of Article 26a of Directive 2001/18/EC, notably as concerns the Member States' entitlement to set measures to avoid the unintended presence of GMOs in other products. At present some Member States have adopted national co-existence measures that aim at reaching levels of presence of GMOs in other crops lower than 0.9%. Other Member States have provided different isolation requirements for organic production. In concrete terms, experience with the implementation of the 2003 Recommendation shows that the potential loss of income for organic and (sometimes) conventional producers is not limited to exceeding 0.9%.

Since certain types of agriculture production such as organic production are often more costly, the possibility of losing the associated price premium due to unintended presence of GMOs may entail important economic damages to these types of production. It appears that it is appropriate to revise the 2003 Recommendation on co-existence and replace it with a new one to reflect the experience gained with national measures on GMO cultivation so far and make it more flexible.

To these ends, the new Recommendation on guidelines for the development of national co-existence measures (annexed) limits its content to the main general principles for the development of measures to avoid GMO admixture thereby recognising the flexibility for Member States to take into account their regional and national specificities and the particular local needs of organic, conventional and other types of crops. This Recommendation is adopted by the Commission together with this Communication. The Commission will continue to develop together with Member States best practices for co-existence (work of the European Coexistence Bureau).

Legislative amendment to introduce an 'opt-out' clause: a certain number of Member States want to have the possibility to opt-out from GM cultivation. So far, several of these Member States have banned the cultivation of GMOs on the basis of the safeguard clause set out in Article 23 of Directive 2001/18/EC or the emergency measures referred to in Article 34 of Regulation (EC) No 1829/2003.

The reasons for banning GMOs in a country or declaring a region GM-free appears to be diverse. These reasons vary from agronomic justifications related to difficulties of ensuring co-existence to political or economic motivations such as meeting the demand of GM-free markets.

The Netherlands submitted a declaration to the 23 March 2009 Agriculture and Environment Councils asking the Commission to come forward with a solution on cultivation while taking into account the socio-economic dimension of GMO cultivation and keeping the internal market for GM food and feed products. Austria, supported by twelve Member States, presented in the Environment Council of 25 June 2009 a paper that underlined the subsidiarity issue linked to cultivation and suggested an opt-out clause for cultivation to be introduced in the legislation.

In this context it appears appropriate to amend EU legislation in order to provide in the EU legislative framework on GMOs an explicit legal base to authorise Member States to restrict or prohibit the cultivation of all or particular authorised GMO in part or all of their territories on the basis of their specific conditions.

Therefore, and on the basis of the above principles, the Commission has decided to submit to the European Parliament and the Council a legislative proposal which takes the form of a Regulation amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory.

The Commission considers that this new approach - (i) to revise the existing Recommendation on co-existence (2003/556/EC); (ii) to adopt the legislative proposal providing the possibility for Member States to restrict or prohibit, under certain conditions, the cultivation of all or particular GMOs in part or all their territory - is necessary to achieve the right balance between maintaining the EU system of authorisations based on scientific assessment of health and environmental risks and the need to grant freedom to Member States to address specific national, regional or local issues raised by the cultivation of GMOs.