

Brussels, 23 FEB. 2011
C/2011/ 1019

Dear President,

The Commission would like to thank the Austrian Nationalrat for its opinion on the Commission proposal for a Regulation of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory {COM(2010) 375}.

The Commission appreciates the opinion of the Austrian Nationalrat that the proposal in question complies with the principle of subsidiarity. In particular, the Commission welcomes the fact that the Austrian Nationalrat supports the Commission's proposal to grant the Member States the freedom to decide on the cultivation of GMOs and would like to see its provisions entering into force as soon as possible. In this regard, the Commission would like to underline that this freedom will only be granted to Member States once the proposal is adopted through the ongoing ordinary legislative procedure with Council and Parliament and subsequently enters into force.

As regards the criteria that can be invoked by Member States to justify their decision, the Commission has carefully noted the requests by the Nationalrat to include arguments relating to the protection of health and the environment. In fact, under the existing legal framework, Member States have the possibility to invoke the special procedures of the safeguard clause of Directive 2001/18/EC (Article 23) or the emergency measure of Regulation (EC) No 1829/2003 (Article 34) in case they have serious grounds to consider that the authorised product is likely to constitute a serious risk to health and environment. Consequently, the Commission proposal stipulates that Member States cannot invoke protection of health and environment to justify a national ban of cultivation of GMOs outside these special procedures. This condition aims at preserving the authorisation system based on science and set in the EU legislation.

The Commission takes note of the request by the Nationalrat to allow Member States to take appropriate measures to avoid the presence of GMOs in their environment and in organic agriculture. In this regard, it is precisely the intention of the Commission's proposal to allow Member States to decide on GMO cultivation on their territory. In addition, and in order to protect the special needs of some types of production such as organic agriculture, the Commission adopted also on 13 July a Recommendation on co-existence, which refers to the possibility for Member States to restrict GMO cultivation from large areas of their territory to avoid the unintended presence of GMOs on conventional and organic crops.

Ms Barbara Prammer
President of the Austrian Nationalrat
Dr. Karl-Renner-Ring 3
A-1017 WIEN

Like the Austrian Nationalrat, the Commission believes that GMOs need to be assessed in line with the precautionary principle enshrined in the existing EU legislation, which has as a fundamental objective to prevent potential adverse effects of GMOs on human and animal health and the environment. To maintain this high level of protection, Member States' measures under the current proposal cannot be based on grounds related to the assessment of the adverse effects on health and environment which are already addressed by the harmonised set of EU rules. As part of the ongoing discussions with Council and Parliament, the Commission will prepare a non-exhaustive list of grounds, other than risk to health or the environment, which could be invoked by Member States to justify their national measures.

The Commission remains available to provide any further information on these issues if needed.

Yours faithfully,