

**COMMUNICATION**

**pursuant to Article 23 f (4) of the Austrian Constitutional Act  
to the European Commission, the Council and the European Parliament**

**1 July 2015**

**COM (2015) 177 final**

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1829/2003 as regards the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed on their territory**

**Communication pursuant to Article 23 f paragraph 4 of the Austrian Constitutional Act**

The proposal for a regulation tabled by the European Commission is intended to formally strengthen the role of the Member States in the authorisation procedure by allowing them to prohibit the use of authorised GMOs and genetically modified food and feed on their territory. This proposal is one of the rare cases in which the European Union intends to allow the Member States a higher degree of freedom in decision-making in an area that has already been harmonised. However, after an in-depth study of the proposal, the Federal Council has come to the conclusion that this merely appears to comply with the principle of subsidiarity, while in reality there is a risk of the position of the Member States being weakened.

The possibility for Member States to prohibit the use of GMOs and GM food and feed is extremely limited due to the wording of the proposed regulation. In their decisions, Member States are not allowed to use justifications linked to the assessment of risks to health or to the environment, as such risks – in the Commission's opinion – are comprehensively addressed in the authorisation procedure and in the risk assessment performed by EFSA. However, the protection of human and animal health is the main reason that speaks against the authorisation of GMOs and GM food and feed. In practical terms, the proposal tabled by the Commission substantially restricts the possibilities of justification open to the Member States. By requiring the Member States to justify the measures taken as being in accordance with Article 36 TFEU or based on the case law of the Court of Justice of the European Union, the Commission denies Member States the right to develop new justifications. This clearly

shows that the alleged extension of the rights of Member States is purely theoretical.

Moreover, in the Federal Council's opinion, the situation of Member States taking a critical attitude regarding the use of GMOs may be negatively affected in practice, and the number of GMOs and the range of GM food and feed authorised in Europe may even increase. The Federal Council is concerned over the fact that the procedure applied to assess the risk involved in GMOs may be handled more liberally in the future, as the interests of the Member States can be upheld, at least formally speaking, through the possibility of prohibition provided for in the proposed regulation. Thus, if the number of authorised GMOs increases, while the possibilities of prohibition allowed to the Member States remain ineffective and purely theoretical, this would result in more GMOs and more GM food and feed being authorised in Europe.

This danger is aggravated by the fact that, owing to the absence of controls of the movement of goods in Europe, it would not be possible in practice to prevent imports of GMOs into a Member State prohibiting the use of GMOs and GM food and feed (provided the Member State had succeeded in implementing such a prohibition for reasons other than the protection of health and of the environment). Even if a Member State had prohibited the use of GMOs, it would be almost impossible to prevent the placing on the market of GMOs authorised in other Member States on its own territory.

From the Federal Council's point of view, the proposed regulation is problematic as far as the principle of subsidiarity is concerned.

The Federal Council holds the opinion that the proposed regulation is not suited to attain the desired objective of broadening the degree of freedom allowed to the Member States. Therefore, the Federal Council tends to reject the proposal in its current form.