



EUROPEAN COMMISSION

Brussels, 11.08.2015
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Dear President,

The Commission would like to thank the Hrvatski sabor for its Opinion concerning the 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 {COM (2015) 177 final}. The Commission welcomes the support from the Hrvatski sabor for its initiative.

The Commission would like to stress that the objective of the proposal is to provide decisional power to Member States that so wish, to restrict or ban the use of genetically modified food and feed in a legally sound way.

To ensure that national measures adopted on the basis of the proposal are compatible with EU primary law and international obligations – and thus legally defensible – the proposal foresees that measures adopted by Member States have to respect a certain number of substantial conditions. In particular, these measures must be proportionate, non-discriminatory and have compelling grounds. It is important to note that the notion of compelling grounds or overriding reasons related to the public interest is recognised in Article 36 of the Treaty of the Functioning of the European Union (TFEU) and in the related case law of the Court of Justice, allowing derogations from the internal market rules. Since these compelling grounds or overriding reasons related to the public interest are a notion that is well defined by the Treaty and the case law, the Commission did not consider it necessary to include a list in the proposal.

The Hrvatski sabor considers that Member States should have the right to restrict or ban genetically modified food and feed without having to provide justifications. The Commission would however point to the Charter of Fundamental Rights of the European Union and in particular to its Articles 16 (freedom to conduct a business) and 41 (right to good administration). According to Article 52 of the Charter, any limitation of the exercise of the rights and freedoms recognised by the Charter must be provided for by law. Furthermore, any limitation must respect the essence of these rights and freedoms and may be made only if it is necessary and genuinely meets the objectives of general

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interest recognised by the Union or the need to protect the rights and freedoms of others. The Commission considers, in light of these different provisions, that any national measure restricting or banning the use of genetically modified food and feed without appropriate justification would not be legally defensible before national Courts or before the Court of Justice of the EU. It would also appear contradictory to providing legal certainty for national bans or restrictions adopted in this area, which the Hrvatski sabor has endorsed.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which your government is represented.

The Commission hopes that these clarifications address the issues raised by the Hrvatski sabor and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Neven Mimica
Member of the Commission*