



EUROPEAN COMMISSION

*Brussels, 17.09.2015
C(2015) 6374 final*

Dear President,

The Commission would like to thank the Senat 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 given to the initiative by the Senat, and would like to provide the following clarifications to the different issues raised in its letter.

The proposal will allow Member States that wish so, to restrict or ban the use of genetically modified food and feed on their territory. The absence of a definition of the notion of "use" provides Member States with some flexibility to define the scope of the measures they intend to adopt, which will need to be proportionate in the light of the compelling ground invoked to justify the measure.

Such a possibility is permitted by the Treaty on the Functioning of the European Union (TFEU) since its Article 36, and related case-law of the Court of Justice of the EU, allows for derogations to the single market rules if justified by compelling grounds or overriding reasons of public interest. The Commission considers that Member States are best placed to identify the compelling grounds or overriding reasons of public interest, which correspond to their specific national context. Member States may identify examples of relevant grounds in Article 36, related-case law or in secondary legislation.

Several provisions are included in the proposal to ensure that the possible adoption by Member States of restrictive measures will not affect products coming from other Member States or third countries. For instance, the proposal does not allow such measures to ban food and feed in which an adventitious presence of authorised genetically modified organisms (GMOs) below the labelling threshold is present. Moreover, the proposal does not authorise measures prohibiting or restricting the free circulation and imports of genetically modified food and feed.

*Mr Călin POPESCU-TĂRICEANU
President of the Senat
Calea 13 Septembrie nr. 1-3, sector 5
RO – 050711 BUCHAREST*

As to the procedure to be followed, based on the diversity of positions as regards GMOs expressed by Member States, the Commission considers that in line with the principle of subsidiarity, Member States are in this case the best placed to identify compelling grounds which best correspond to their national context. Similarly, the proposal does not impose a specific procedure to be followed at national level in order to carry out the above mentioned analysis but leaves, on the contrary, each Member State free to organise it in accordance with its own administrative rules and constitutional arrangements. The only procedural requirement in the proposal is that the Member States wishing to adopt a restriction or ban will have to notify the draft measure three months prior to its adoption so as to allow the Commission and the other Member States to highlight whether the draft measure raises any potential problems of compliance with the basic rules of the Treaty and the limits set by the proposal.

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 Senat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Vytenis Andriukaitis
Member of the Commission*