SPANISH PARLIAMENT

REASONED OPINION 1/2015 OF THE JOINT COMMITTEE FOR THE EUROPEAN UNION OF 16 JUNE 2015 ON INFRINGEMENT OF THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) N0 1829/2003 AS REGARDS THE POSSIBILITY FOR THE MEMBER STATES TO RESTRICT OR PROHIBIT THE USE OF GENETICALLY MODIFIED FOOD AND FEED IN THEIR TERRITORY (COM (2015) 177 FINAL) (2015/0093 (COD))

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty of Lisbon of 2007, which has been in force since 1 December 2009, set up a procedure whereby national parliaments can check whether draft European legislative acts comply with the principle of subsidiarity. This Protocol has been implemented in Spain by means of Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. In particular, new Articles 3(j), 5 and 6 of Law 8/1994 form the legal basis for this reasoned opinion.

B. 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 in their territory has been approved by the European Commission and forwarded to the national parliaments, which have a period of eight weeks, until 23 June 2015, to check whether the proposal complies with the principle of subsidiarity.

C. On 20 May 2015 the Bureau and the spokespersons of the Joint Committee for the European Union agreed to examine the proposal, appointed Senator Ángel Pintado Barbanoj as rapporteur and asked the Government for the report provided for in Article 3(j) of Law 8/1994.

D. The Government report has been received. It notes that this proposal to amend the Regulation affects the correct application of the principle of subsidiarity, in that responsibility is transferred to an administration that does not have sufficient capacity to achieve the objectives of the proposed action, for which reason it does not uphold the principle of subsidiarity.

E. At its meeting on 16 June 2015 the Joint Committee for the European Union approved the following

REASONED OPINION

1.- Article 5(1) of the Treaty on European Union states that 'the use of Union competences is governed by the principles of subsidiarity and proportionality'. According to Article 5(3) of the same Treaty, 'under the principle of subsidiarity the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can be better achieved, by reason of the scale or effects of the proposed action, at Union level'.

2.- The legislative proposal analysed is based on Article 114 of the Treaty on the Functioning of the European Union, which provides as follows:

'1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.
4. If, after the adoption by the European Parliament and the Council, by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36 or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.
6. The Commission undertakes to approve or reject, within six months of the notifications referred to in paragraphs 4 and 5, the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.
In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.
When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.
7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.
8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.
9. By way of derogation from the procedure laid down in Articles 258 and 259, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Union control procedure.'

3.- The European Union has in place a comprehensive legal framework for the authorisation, traceability and labelling of genetically modified food and feed. Regulation (EC) No 1829/2003 on genetically modified food and feed shall apply to foods, food ingredients, and feed containing, consisting of, or produced from GMOs. It also covers GMOs for other uses such as cultivation, if they are to be used as source material for the production of food and feed. These different products are designated in this document as 'GMOs and genetically modified food and feed'.

Regulation (EC) No 1829/2003 has put in place an authorisation procedure whose aim is to ensure that the placing on the market of the products concerned will not pose a risk to human and animal health and the environment. To that end, a scientific risk assessment is central to the procedure; every authorisation for placing on the market of a product has to be duly justified and the main ground on which such a justification can rely is scientific assessment. The legislation gives responsibility for scientific risk assessments to the European Food Safety Authority (EFSA), in cooperation with the Member States' scientific bodies.

Regulation (EC) No 1829/2003 contains provisions allowing the Commission or Member States to adopt emergency measures against the placing on the market/use of an authorised GMO where it appears that the product is likely to constitute a serious risk to health or to the environment. These measures require scientific evidence demonstrating that the product is likely to pose a serious risk to health or to the environment.

4.- The proposal for reform of Regulation (EC) No 1823/2003 on any restrictions or prohibitions on the use of products containing genetically modified organisms creates some confusion as to the objectives being pursued by the European Commission because they are not properly explained. We are aware of the difficulties faced within the Commission in determining an unambiguous policy that is supported by all the Member States. We understand that this does not prevent it attempting to maintain a balanced position that safeguards consumers, the sector producing raw materials, feed, livestock farmers and the meat processing sector. This proposed amendment of the Regulation causes legal uncertainty, unforeseen costs and disruption of the Single Market. It moves away from a system of scientific warranty to another in which political or ideological positions may win the day. Our dependence on raw materials (cereals, oilseeds and protein crops) is sufficiently great to ensure the future of the production sector.

The European Union is the world's largest importer of agricultural products. On average, the EU food sector uses 225 million tonnes of raw material for feed every year. Europe is heavily dependent on sources of genetically modified protein for its livestock production. The European Union would need to grow soybean on 15.5 million hectares to be self-sufficient. At present it plants 0.6 million of this crop.

After 19 years of growing genetically modified organisms, 18 million farmers are currently growing genetically modified organisms on 181 million ha, especially in 28 countries led by the United States, Brazil, Canada, Argentina and India.

The competitiveness of large-scale livestock farming in Europe clearly depends on maintaining Europe's sources of supply, along with guarantees and certainty on the rules to be put in place by the EU and the Member States. The continuous changes of direction in decision-making by the European authorities has the opposite effect to that desired: it creates confusion among consumers, uncertainties in the productive sector and causes economic harm that affects the development of research, development and innovation in a key sector of our economy.

The European Food Safety Authority assesses risk from a scientific point of view. At the same time, even while Regulation (EC) No 1829/2003 permits it to take 'other legitimate factors' into account in addition to the assessment of risks, the Commission has not been in a position to rely on those factors in justifying its refusal to authorise products that EFSA considers safe and, in any event, it could do only so for the EU as a whole. This argument leads us to conclude that it is endangering the Unity of the Market within the EU and may affect free trade and the transit of goods. Failing to exhaustively define the reasons that might justify adopting exclusion clauses (omission from a 'positive or negative list') and failing to provide legal mechanisms for the suspension of those national measures that may be considered abusive, insufficiently justified or discriminatory opens up a clear risk of legal uncertainty.

At the same time, it assumes that animal products derived from animals fed with GM feed do not need to be labelled as such: the re-nationalisation of GM authorisation may trigger this type of 'national' requests for labelling to protect the farmers in the Member States who have decided to prohibit the use of feed made from products derived from GMOs. Such a measure may represent a barrier to imports of animal products from Member States that have not opted for such a ban.

Some Member States may also extend the prohibition of the 'use' of GM products to operations such as 'transit, storage or processing' via their territory.

Another risk of multiple labelling or analyses becoming ever-more complex if each EU Member State implements certain specific national requirements will increase consumers' lack of trust in foreign products, creating a dual market on the basis of non-standard criteria within the Member States.

This may debase the concept of an open market and free movement of goods in the EU as established by Articles 34 and 36 TFEU. In our view decision-making must always be based on science.

5.- Assessing the compliance of the legislative proposal with the principle of subsidiarity, it should be noted that we are dealing with an area — the regulation of the use of genetically modified food and feed — which has recently been radically changed by Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory. The current proposal again changes the legal framework by means of which Member States can take measures to prohibit or restrict the use of certain genetically modified products just a few months after this sector has had its regulatory scenario rewritten Before going into the content of the proposal, it should be noted that the legal uncertainty generated by regulatory inconsistencies points to a breach of the principle of subsidiarity because, whatever objective the European Commission may claim, it is

obvious that it could have been achieved by means of a more stable regulatory framework.

Furthermore, it should be emphasised that, by transferring responsibility for the decision to restrict or ban the use of GMOs to the Member States, the proposal undermines its compatibility with the principle of subsidiarity, given that the Member States do not always have the capacity to take such decisions in a way that does not prejudice the functioning of the internal market. The disparities between the laws of the Member States which may arise threaten the functioning of the market for food and feed in the European Union and pose the risk that the effects of this proposal may be the opposite of those the Commission desires.

CONCLUSION

For the above reasons, the Joint Committee for the European Union is of the opinion that the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1829/2003 as regards the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed in their territory does not uphold the principle of subsidiarity established in the current Treaty on the European Union.

This reasoned opinion will be sent to the European Parliament, the Council and the European Commission, within the framework of political dialogue between the national parliaments and the institutions of the European Union.