

**EUROPEAN COMMISSION**

Directorate-General for Trade

Directorate D - Sustainable Development; Economic Partnership Agreements - African, Caribbean and Pacific; Agri-food and Fisheries
Agriculture, Fisheries, Sanitary and Phytosanitary Market Access, Biotechnology

Directorate F - WTO, Legal Affairs & Trade in Goods
Dispute Settlement and Legal Aspects of Trade Policy

Brussels, 24/03/2015

DG Trade [4.1 (b)]

Limited**NOTE FOR THE FILE**

Subject: **DG TRADE's preliminary position on the proposal for a review of the legislation applicable to the authorisation of GMOs for food and feed use**

Context:

In the political guidelines for the next EC, President - elect Juncker committed to review the legislation applicable to the authorisation of GMOs for food and feed use, import and processing. President Juncker is of the opinion that "the Commission should be in a position to give the majority view of democratically elected governments at least the same weight as scientific advice, notably when it comes to the safety of the food we eat and the environment in which we live". The review is expected to be finalised and adopted by the Commission by 30th April 2015.

DG TRADE has not been consulted on any draft legislative proposal so far. According to informal information gathered, the idea would be to propose a variation of the system of re-nationalisation adopted for GMO cultivation directive, which is reproduced for the ease of reference:

"Where no demand was made pursuant to paragraph 1 of this Article, or where the notifier/applicant has confirmed the geographical scope of its initial notification/application, a Member State may adopt measures restricting or prohibiting the cultivation in all or part of its territory of a GMO, or of a group of GMOs defined by crop or trait, once authorised in accordance with Part C of this Directive or with Regulation (EC) No 1829/2003, provided that such measures are in conformity with Union law, reasoned, proportional and non-discriminatory and, in addition, are based on compelling grounds such as those related to:

- (a) environmental policy objectives;
- (b) town and country planning;
- (c) land use;
- (d) socioeconomic impacts;
- (e) avoidance of GMO presence in other products without prejudice to Article 26a; (f) agricultural policy objectives;
- (g) public policy.

Those grounds may be invoked individually or in combination, with the exception of the ground set out in point (g) which cannot be used individually, depending on the particular circumstances of the Member State, region or area in which those measures will apply, but shall, in no case, conflict with the environmental risk assessment carried out pursuant to this Directive or to Regulation (EC) No 1829/2003."

The basic idea for GM food and feed appears to be to allow Member States (MS) to opt out from the use of EU authorised GM food and feed without restricting the placing on the market of such products, provided that such measures are in conformity with Union law, reasoned, proportional and non-discriminatory. Also, MS would not be allowed to state reasons that are in conflict with the risk assessment carried out by EFSA. It appears however that, unlike for the cultivation directive, it would not be envisaged to give MS a concrete list of reasons based on which they can opt out. It also appears that there would be no possibility to ask the applicant to reduce the territorial scope of the application, as is the case in the cultivation directive.

Analysis:

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Next steps:

There is a high probability that only a fast-track inter-service consultation on the review proposal will be launched, if at all. Therefore, it would be crucial to agree on a DG TRADE position in the coming days with the possibility to adjust it once we receive the

legislative text with details concerning the new approach on GM food and feed authorisation process.

[4.1(b)]

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