EuropaBio Position:
The proposal for Member States’ Restrictions or Prohibitions on the Use of Genetically Modified Food and Feed on Their Territory Should Be Rejected

EuropaBio urgently calls upon the EU institutions to reject the European Commission’s proposal on the use of GMOs. This demand is shared by the entire EU food and feed chain, including farmers, food and feed industries, grain traders and many other economic actors. The Commission’s proposal extends the negative precedent of banning safe innovative products set by the recently adopted EU Directive nationalising the cultivation of GMOs. This approach inevitably leads to arbitrary, ideology-based, disproportionate and discriminatory decision taking.

Choosing to allow individual Member States or regions to ban safe products based on undefined criteria is a clear signal that the EU Commission no longer stands by science and evidence-based decision-making, a critical precondition for growth, innovation, investment, as well as consumer confidence and safety.

This proposal:
1. denies choice to all European farmers and consumers
2. is a stop sign for innovation, growth and jobs
3. threatens the intra-EU and international trade flows of food and feed
4. contradicts the Better Regulation initiative
5. encourages legally questionable national measures

1. This proposal denies choice to consumers and farmers in Europe and worldwide
European livestock farmers should be allowed to use safe animal feed of their choice. At the same time, European consumers should have access to the latest products of agricultural biotechnology, some of which are also with health benefits. Farmers and consumers who choose to avoid GMOs are already being guaranteed their freedom of choice.

18 million farmers worldwide chose to grow biotech crops where they are allowed to do so. They outnumber all European farmers. By choosing the products which work best for them and their environment farmers can deliver high-quality products at competitive prices. Should this proposal be adopted, the image of the EU as an unreliable export market will limit the access of European livestock farmers to essential sources of raw materials.

1 European Commission, 22 April 2015: Proposal for a Regulation of the European Parliament and 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/2015/0177 final)
2 FFC position paper for a functioning evidence-based EU policy on GMOs, FFC position paper GMO review, Press release FFC and Joint Statement COCERAL/FEDIOL/FEFAC
2. This proposal is a stop sign for innovation, growth and jobs

Objective fact-based rules are the essential ingredients for just and predictable regulatory systems. On the contrary, the Commission’s proposal increases uncertainty by encouraging arbitrary national bans. The inability to predict the geographic coverage of an eventual authorisation heavy impacts a high tech industry which invests considerably in innovation in Europe. The further development of the EU’s Agri-Food Chain - the largest employer in Europe today, is therefore put at risk.

Furthermore, this proposal starkly contradicts the EU agenda on jobs and growth, as proposed by President Junker: “Jobs, growth and investment will only return to Europe if we create the right regulatory environment and promote a climate of entrepreneurship and job creation. We must not stifle innovation and competitiveness with too prescriptive and too detailed regulation”.

This is why various industry sectors, besides the Agri-Food’s, are alarmed by this proposal as there are increasing concerns that other safe regulated products might become in the future subject to legally questionable bans by the EU and/or its Member States.

3. This proposal threatens the intra-EU and international trade flows for food and feed

Allowing national or even regional bans on the use of GMO food and feed puts at risk the large and globally integrated food and feed supply chain.

In the EU, the implementation of this proposal will have an immediate effect on the internal market as it will result in national measures restricting or prohibiting the use of safety assessed products. These measures will without doubt have an equivalent effect to quantitative restrictions on imports which are prohibited by the EU’s founding treaties for distorting and partitioning the free movement of goods in the EU. This goes against the principles of the EU economic integration in a single market.

Trade-distorting restrictions on the use of safe products are also incompatible with the existing bilateral and multilateral international trade obligations of the EU and its Member States. Moreover, any national restrictions or prohibitions of the product use will influence the behaviour of traders, making them less interested in buying GM food and feed for sale to Europe. Any measure seeking to achieve such results modifies the conditions of competition to the detriment of the imported product and is illegal.

Therefore, this proposal also threatens the prospects for free trade agreements between the EU and third countries, including the successful conclusion of the TTIP negotiations.

4. This proposal contradicts the Better Regulation agenda

President Juncker’s commitments to Better Regulation and the Rule of Law also seem to have been overlooked. The flexibility which this proposal provides to Member States to generate a web of potentially illegal national measures is indeterminate due to the undefined concept of “use”. Rules must be clear and precise so that individuals may ascertain unequivocally what their rights and obligations are and may take steps accordingly.

The deviation from the core general principles of law in the case of this proposal ignores the Better Regulation agenda presented by the Commission’s First Vice-President Frans Timmermans which calls upon the EU legislature to “commit to better legal drafting so that EU laws are correct, comprehensible, clear, and consistent - so that everyone understands their rights and obligations easily and with certainty”.

Furthermore, this proposal was presented without any public consultation or impact assessment, again ignoring the aims of this Commission for better regulation.

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4 Applicants would continue to face an extraordinarily unpredictable and politicised EU authorisation system which currently takes 6 ½ years on average. In addition, applicants would not even know what size their effective market would be even if an authorisation for their product is granted.

5 Timelines from concept to market of over 13 years and costs of over € 120 million per product (CropLife International Factsheet)

6 “The combined agricultural and food sector accounts today for 30 million jobs (13.4% of total employment) and for 3.5% of total Gross Value Added in the EU-28”, Food for Thought, April 2014

7 “At a time when the U.S. and the EU are working to create further opportunities for growth and jobs through the Transatlantic Trade and Investment Partnership, proposing this kind of trade restrictive action is not constructive”, US Trade Representative Michael Froman; “It creates serious issues as to whether we will even get a TTIP”, U.S. Agriculture Secretary Tom Vilsack, Financial Times 07/02/2015

8 The EU Court of Justice has confirmed that any failure to comply with the principles of legal certainty and protection of legitimate expectations is an infringement of EU law. Cf. Case C-63/93, Fintan Duft, Liam Finlay, Thomas Julian, James Lyons, Catherine Moloney, Michael McCarthy, Patrick McCarthy, James O'Regan, Patrick O'Donovan v Minister for Agriculture and Food and Attorney General, judgment of 15 February 1996 [1996] ECR 1931, paragraph 20.

This being said, the impossibility for anyone to determine with legal certainty what their obligations are or what steps they must take to comply with the law, makes this proposal also impossible to enforce and irreconcilable with the Rule of Law. Hence, the Commission fails from the outset to adhere to its self-imposed commitment to make sure that "EU rules are properly implemented and enforced in all Member States, bringing legal certainty and allowing citizens and businesses to benefit from the opportunities of the single market"\(^{10}\).

5. This proposal encourages legally questionable national measures

Any step to implement this proposal will need to be carefully weighed and balanced against the feasibility of the European Commission and the EU Member States to enforce it in a legally sound manner.
- National measures affecting the use of imported products must not result in arbitrary and unjustifiable disguised restrictions on international trade and free movement of goods between the EU Member States.
- A Member State adopting a ban will bear a heavy burden of proof to demonstrate that the market-distorting measure is, first, justified by a legitimate and compelling public policy objective, and, second, remains proportional, i.e. necessary in order to achieve this objective which is at the same time impossible to achieve with a lesser distortionary effect on intra-EU trade.
- The Commission, the Guardian of the EU Treaties, is required to act, including by way of an infringement procedure, against incompatible with EU law national bans on the use of products in free circulation in the internal market.

WAY FORWARD: CORRECT IMPLEMENTATION OF EXISTING SYSTEM

EuropaBio fully supports the EU food and feed chain’s position paper for a functioning evidence-based EU policy on GMOs\(^{11}\) and its core principles with regard to the authorisation of GMOs for food and feed uses\(^{12}\). The Commission needs to implement properly the existing procedural provisions of the legislation on GM food and feed, so that the products which have been assessed as safe are authorised in a timely manner.

Regardless of its proposal providing for restrictions or prohibitions of the use of GM food and feed, the European Commission has a legal obligation to guarantee the functioning of the existing democratically agreed legal framework. Avoiding unreasonable delays in the approval process is a crucial component of these obligations. In particular, the European Commission must start to regularly put safety assessed products to the vote within the legally prescribed deadlines. As the Commission has clarified recently, “[i]f the result of the vote in the Appeal Committee is “No opinion”, the Commission is required by the GMO legal framework and by the Charter of Fundamental Rights to adopt a decision on the application”\(^{13}\).

These obligations are in no way reduced by the inconsistent voting behaviour of some Member States, which vote against the approval of biotech products assessed as safe by the European Food Safety Authority, despite importing them into their own countries\(^{14}\) in order to meet the demands of their livestock industries.

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\(^{10}\) Idem.

\(^{11}\) FFC position paper for a functioning evidence-based EU policy on GMOs (28 May 2015)

\(^{12}\) FFC position paper GMO review

\(^{13}\) European Commission Factsheet (22 April 2015)

\(^{14}\) Infographic EU Member States and GMOs