Last month, the Court of Justice of the European Union (CJEU) confirmed that Member States may restrict or prohibit by law the cultivation of authorized Genetically Modified Organism (GMO) crops, provided that the conditions set forth in Directive 2001/18/EC (on the deliberate release into the environment of GMOs) and Regulation (EC) No. 1829/2003 (on genetically modified food and feed) are met.

The case arose following the imposition of sanctions on a farmer for violation of a regional Italian law (No. 5/2011) prohibiting the cultivation of MON810, an authorized GMO maize. The farmer filed an opposition against the sanction with the national court, which halted the proceedings to request a preliminary ruling from the Court of Justice (a court within CJEU) on the correct interpretation of the EU regulatory framework on GMOs.

Citing to Article 26-bis(1) of Directive 2001/18/EC, which states that “Member
States may take appropriate measures to avoid the unintended presence of GMOs in other products,” the Court held that Member States may only adopt preventive measures to avoid the unintended presence of GMOs in other products. Consistent with the Commission Recommendation of 13 July 2010, this allows Members States to ensure that farmers and consumers have a choice between organic, conventional, and GMO production. However, these restrictive measures cannot be justified by the need to protect human health or the environment, since all authorized GMOs are already assessed for such risks according to the procedures laid out in Directive 2001/18/EC and Regulation No. 1829/2003. Furthermore, all such measures must be proportionate, insofar as they must minimize their restrictive effects to what is necessary to achieve their purpose.

- Therefore, consistent with this ruling, the national court must determine whether the regional law is necessary and proportionate to avoid cross-contamination between GMOs and conventional crops. The national court must base its decision on the degree of contamination and the likelihood of further contamination, taking into account specific geographic factors and the economic consequences for producers if a higher degree of contamination occurs.

- The ruling is based on Directive 2001/18/EC, which, although still in force, has subsequently been amended by Directive (EU) 2015/412 to provide a procedure (in new Article 26b) through which Member States may request that the geographic scope of a GMO notification be submitted or that an already granted authorization be adjusted to exclude all or part of the territory from cultivation.