Notification according to Article 95(5) of the EC Treaty

Request for authorisation to introduce national provisions incompatible with a Community Harmonisation Measure

(2003/C 126/03)

(Text with EEA relevance)

(Notification No 2003/A/2780)


Article 95(5) provides that 'if, after the adoption by the Council or by the Commission of a harmonisation measure, 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'.

According to Article 95(6), 'the Commission shall, within six months of the notification approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market'.

The draft Act (2) is primarily concerned with the protection of nature and the environment, natural biodiversity and organic production. It seeks to ban the cultivation of GM seed (including GM seed with Community authorisation) although it accepts adventitious traces of GM seeds in conventional stocks to a level of 0.1 %. It also seeks to ban the use of transgenic animals for breeding and in particular their release for hunting and fishing. Furthermore, it provides for compensatory mechanisms for monetary losses due to the presence of GMOs in conventional products. The Act is deemed to be a temporary measure, applicable for three years.

The Upper Austrian regional Government deems it necessary to introduce measures intended to protect organic and traditional agricultural production as well as plant and animal genetic resources from hybridisation with GMOs. These measures are based on account of alleged special circumstances in Upper Austria and on the fact that Upper Austria authorities consider that the issue of coexistence between GM and non-GM method of agricultural production is still largely unsettled. A study advocating a GMO ban for Upper Austria until all potential risks related to these types of organisms are clarified is joined to the notification (3).

The Commission reminds interested parties that possible observations on the Austrian notification will only be considered if received no later than one month after the publication of this Notice in the Official Journal of the European Union. Furthermore, the Commission reserves the right to communicate to the Republic of Austria any observations that may be submitted.

Further information regarding the notification can be obtained from:

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(2) Provincial Act, prohibiting the cultivation of genetically modified seed and planting material and the use of transgenic animals for breeding purposes as well as the release of transgenic animals especially for the purposes of hunting and fishing (Upper Austrian Act prohibiting genetic engineering 2002).
(3) 'GM-free areas of farming: conception and analysis of scenarios and steps for realisation', Werner Müller, 28 April 2002 (carried out on behalf of the department for environment of the region of Upper Austria and of the Federal Ministry for social security and generations).