

Action brought on 3 November 2003 by the Land Oberösterreich against the Commission of the European Communities

(Case T-366/03)

(2004/C 35/17)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 November 2003 by the Land Oberösterreich (Province of Upper Austria, Austria), represented by F. Mittendorfer, lawyer.

The applicant claims that the Court should:

- annul Commission Decision C(2003) 3117 final of 2 September 2003 by which national provisions on banning GMOs in Upper Austria, notified by Austria in accordance with Article 95(5) EC, were rejected;
- order the Commission to pay the costs of the case.

Pleas in law and main arguments

The subject matter of the action is the Commission Decision of 2 September 2003 by which the national provisions banning the use of genetically modified organisms in Upper Austria were rejected.

The applicant claims that the Commission by that decision infringes the right of the Province of Upper Austria to bring in, following the adoption by the Council or the Commission of harmonisation measures, national provisions based on new scientific knowledge for the protection of the environment or the working environment on grounds of a specific problem for Austria which arose following the adoption of the harmonisation measures.

The applicant submits that the Commission did not enable the Province of Upper Austria to be informed of the opinion of the European Food Safety Authority (EFSA) of 4 July 2003, on which the Commission's decision was based, and to comment thereon, during the hearing of the interested parties. The decision-making process did not comply with constitutional principles relating to proper procedure and therefore constituted an infringement of essential procedural requirements.

Furthermore, the applicant submits that the national provisions satisfy the requirements for Article 95(5) EC to apply. They constitute a measure to protect the conservation of the natural environment, of which biodiversity in a broad sense

forms a part. Moreover, agriculture in the Province of Upper Austria is almost exclusively based on small farms, and a further specific element is the constant increase in the area under organic farming and in farming businesses operating on an organic basis. The study carried out by Mr Werner Müller found that it was impossible for conventional, ecological, non-genetically modified crop production and natural flora to co-exist with wide-scale GMO cultivation, a set of circumstances which the Commission should have taken into account with regard to the specific structure of the agriculture of the region of Upper Austria.

Finally, the applicant claims that the provisions notified to the Commission constitute a precautionary or preventive measure in terms of Article 174(2) EC, and that because they will be in force for only three years the functioning of the internal market is affected — if at all — as little as possible; thus the national measures may be assumed to be proportionate. The result is that the conditions laid down in Article 95(5) EC are fulfilled, and so the Commission should have considered the national provisions notified to it to be in accordance with Community law.

Action brought on 14 November 2003 by Fachvereinigung Mineralfaserindustrie e. V. Deutsche Gruppe der EURIMA — European Insulation Manufacturers' Association against the Commission of the European Communities

(Case T-375/03)

(2004/C 35/18)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance on 14 November 2003 by Fachvereinigung Mineralfaserindustrie e. V. Deutsche Gruppe der EURIMA — European Insulation Manufacturers' Association, of Frankfurt am Main (Germany), represented by T. Schmidt-Kötters, lawyer.

The applicant claims that the Court should:

- annul Commission Decision C(2003) 1473 final of 9 July 2003 on State aid No N 694/2002 — Germany, measure to promote the use of insulating materials produced from renewable raw materials;
- order the Commission to pay the costs of the case.