

Joined Cases T-366/03 and T-235/04

Land Oberösterreich and Republic of Austria

v

Commission of the European Communities

(Approximation of laws — National provisions derogating from a harmonisation measure — Ban on the use of genetically modified organisms in Upper Austria — Conditions for application of Article 95(5) EC)

Judgment of the Court of First Instance (Fourth Chamber), 5 October 2005 II - 4009

Summary of the Judgment

- 1. Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision addressed to a Member State relating to national provisions on banning the use of genetically modified organisms in a region of that State — Action by the region which is the author of those provisions which were the subject of an application for derogation by that State from a Community harmonisation measure — Admissibility*

(Arts 95(5) EC and 230, fourth para., EC; Commission Decision 2003/653)

2. *Approximation of laws — Measures for establishing the single market — Introduction of new derogating national provisions — Supervision by the Commission — Procedure — Application of the principle of the right to be heard — None*
(Art. 95(4), (5) and (6) EC)
3. *Approximation of laws — Measures for establishing the single market — Introduction of new derogating national provisions — Supervision by the Commission — Decision — Duty to state reasons — Scope*
(Arts 95(5) EC and 253 EC)

1. Persons other than those to whom a decision is addressed may claim to be individually concerned within the meaning of the fourth paragraph of Article 230 EC only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as the addressee of that decision may be so distinguished. The purpose of that provision is to ensure that legal protection is also available to a person who, whilst not the person to whom the contested measure is addressed, is in fact affected by it as if he were the addressee.

the use of genetically modified organisms in a region of a Member State notified by that Member State pursuant to Article 95(5) EC. That decision therefore not only affects a measure of which the region is the author, but also prevents it from exercising, as it sees fit, its own powers conferred on it under the national constitutional system.

Furthermore, although that decision was addressed to the Member State concerned, the latter did not exercise any discretion when communicating it to that region, which therefore is also directly concerned by that decision for the purposes of the fourth paragraph of Article 230 EC.

In this respect, a region of a Member State which is the author of a draft law falling within its own competence and in respect of which the Member State concerned sought a derogation under Article 95(5) EC is individually concerned by a Commission decision relating to national provisions on banning

(see paras 27-29)

2. The right to be heard does not apply to the procedure laid down in Article 95(5) EC. Like the procedure referred to in Article 95(4) EC, the procedure in Article 95(5) EC is commenced at the request of a Member State seeking the approval of national provisions derogating from a harmonisation measure adopted at Community level. In both cases, the procedure is initiated by the notifying Member State, which is at liberty to comment on the decision it asks to have adopted. Likewise, both procedures must, in the interest of the applicant Member State and the proper functioning of the internal market, be concluded rapidly. In this respect, the fact that, unlike the procedure in Article 95(4) EC, the procedure laid down in Article 95(5) EC concerns national measures which are still in draft form does not enable the Commission to extend the six-month deadline laid down in Article 95(6) EC in order to have an exchange of arguments.

First, as regards the wording of that provision, it applies without distinction to requests for derogation concerning national measures in force, referred to in Article 95(4) EC, and to requests concerning measures in draft form, to which Article 95(5) EC is applicable. Also, given that the option, provided for in the third subparagraph of Article 95(6) EC, of extending the six-month deadline for making a decision may be exercised

by the Commission only if the complexity of the matter makes it necessary and in the absence of danger for human health, that provision does not allow the Commission to defer the end of the six-month period for making a decision only so that the Member State which has submitted a request for derogation under Article 95(5) EC to it can be given the opportunity to state its views.

Second, as regards the scheme of Article 95(5) EC, the fact that that provision relates to a national measure which is not yet in force does not diminish the interest in having the Commission rule quickly on the request for derogation which has been submitted to it. The authors of the Treaty intended that that procedure should be speedily concluded in order to safeguard the applicant State's interest in being certain of the applicable rules, and in the interest of the proper functioning of the internal market.

(see paras 41-44)

3. In order to comply with the obligation to state reasons laid down in Article 253 EC, a decision adopted by the Commission on the basis of Article 95(5) EC must contain a sufficient and relevant indication of the factors taken into consideration in determining whether the conditions laid down by that article for the grant to a Member State of a derogation from a Community harmonisation measure are met.

(see para. 53)