

V

(Announcements)

OTHER ACTS

COMMISSION

Notification pursuant to Article 95, paragraph 5 of the EC Treaty**Polish draft Act on Genetically Modified Organisms, including derogations from the provisions of Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms**

(Text with EEA relevance)

(2007/C 173/05)

1. On 13 April 2007, Poland notified the Commission, on the basis of Article 95(5) of the EC Treaty, of Articles 111 and 172 of a draft act entitled 'Law on Genetically Modified Organisms', containing national provisions derogating from Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 concerning the deliberate release into the environment of genetically modified organisms ⁽¹⁾.
2. The draft act aims at regulating in a comprehensive manner activities related to GMOs. Its objective is to implement Council Directive 90/219/EEC of 23 April 1990 on the contained use of GMOs ⁽²⁾ and Directive 2001/18/EC on the deliberate release into the environment of GMOs. In addition, it sets requirements for the cultivation of GM crops and their co-existence with conventional and organic farming.
3. Article 95(5) of EC Treaty stipulates that:

‘Moreover, without prejudice to paragraph 4, 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 constitute an obstacle to the functioning of the internal market.
4. Article 111(2), points 5 and 6 of the Polish draft act require that an application for a deliberate release is accompanied by:
 - (a) a certificate issued by the district or town mayor to the effect that provision has been made in the local spatial development plan for the possibility of introducing a GMO into the environment, taking into account the need to protect the local natural environment and the cultural landscape of the area in question; and
 - (b) written declarations from the holders of farms neighbouring the location of the deliberate release that they do not object to the release.

⁽¹⁾ OJ L 106, 17.4.2001, p. 1. Directive as last amended by Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p. 24).

⁽²⁾ OJ L 117, 8.5.1990, p. 1. Directive as last amended by Commission Decision 2005/174/EC (OJ L 59, 5.3.2005, p. 20).

5. According to Article 172, paragraph 1, of the Polish draft act, it shall be prohibited to cultivate genetically modified plants subject to the provisions of paragraph 2 of Article 172. Paragraph 2 of this article provides that upon request of an interested party, the minister for agriculture may issue a decision concerning the establishment of a zone for growing GMOs after consultation with the minister for environment and the council of the district authority (gmina) in the territory of which the GMOs are intended to be grown.
6. The notified provisions aim at introducing a general prohibition regarding the cultivation of GMOs with the possibility of obtaining an authorisation on a case-by-case basis. These provisions establish an additional authorisation procedure by the Polish authorities and make the cultivation of GMOs subject to neighbouring farmers' consent.
7. As such, these provisions constitute derogations from the provisions set out in Directive 2001/18/EC, particularly with regard to Article 22 which stipulates that 'Member States may not prohibit, restrict or impede the placing on the market of GMOs, as or in products, which comply with the requirements of this Directive', and Article 19, according to which 'only if a written consent has been given for the placing on the market of GMO as or in a product may that product be used without further notification throughout the Community in so far as the specific conditions of use and the environments and/or geographical areas stipulated in these conditions are strictly adhered to'.
8. Poland argues that:
 - (a) deliberate release of GMOs requires special safety measures in accordance with the EU precautionary principle, in view of the richness of biodiversity in Poland and the need to prevent serious disturbances to the functioning of the environment;
 - (b) the structure of Polish agriculture is among the most fragmented in the EU with almost 2 million farms with an average size of less than 8 hectares;
 - (c) domestic legislation concerning coexistence of three types of cultivations — GMOs, conventional and organic — does not exist, nor do regulations concerning the compensation for damage or loss of crops in case of uncontrolled cross-pollination.
9. The present notification will proceed taking due account of Directive 2001/18/EC on the deliberate release into the environment of GMOs and in accordance with Article 95(5) of the EC Treaty. The Commission has six months to examine the notified provisions derogating from Directive 2001/18/EC and may extend the period by a further period of up to six months if this is justified by the complexity of the facts of the case and no danger to human health exists.
10. Any comment on the present notification shall be sent to the Commission within 30 days from the publication of this notice. Any comment submitted after these 30 days will not be taken into account.
11. Further details about the Polish notification can be obtained from:

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