II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 March 2006

concerning national provisions imposing on supermarkets an obligation to place genetically modified foods on separate shelves from non-genetically modified foods, notified by Cyprus pursuant to Article 95(5) of the EC Treaty

(notified under document number C(2006) 797)

(Only the Greek version is authentic)

(2006/255/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(5) thereof,

Whereas:

I. FACTS

(1) By letter of 15 September 2005, the chairman of the Cypriot House of Representatives Committee on the Environment notified the European Union, pursuant to Article 95(5) of the EC Treaty, of a 2005 legislative bill (hereinafter 'the bill') amending the laws of 1996 to 2005 on foods (control and sale) (referred to as the 'basic law') imposing on supermarkets an obligation to place genetically modified foods in a specially designated place on their shelves separate from non-genetically modified foods, in derogation of the provisions of Regulations (EC) No 1829/2003 [1] and (EC) No 1830/2003 [2] of the European Parliament and of the Council.

1. Article 95(5) and (6) of the EC Treaty

(2) Article 95(5) and (6) of the Treaty provides:

'5. (…) 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.

6. The Commission shall, within six months of the notification as referred to in paragraphs (…) 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a Decision by the Commission within this period the national provisions referred to in paragraphs (…) 5 shall be deemed to have been approved.'

2. National provisions notified

(3) The legislative bill is to be referred to as 'the 2005 (Amendment) Law (Article 2) on Foods (Control and Sale)' and is to be read in conjunction with the laws of 1996 to 2005 on foods (control and sale) (hereinafter 'basic law'). The body of law comprising the basic law and this bill is to be referred to as 'the 1996 - 2005 (Article 2) laws on foods (control and sale)'.

[1] OJ L 268, 18.10.2003, p. 1.
[2] OJ L 268, 18.10.2003, p. 24.

(4) The purpose of this bill is to amend the basic law by adding a new Article 22(1), which reads as follows: 'in all supermarkets, genetically modified foods shall be kept in a specially designated place on shelves separate from those holding non-genetically modified foods'.

(5) Retailers who infringe the above provisions or fail to comply with them are guilty of a criminal offence punishable by a fine not exceeding 3 000 Cyprus pounds or, for a repeat offence, 6 000 Cyprus pounds, or imprisonment of up to six months, or both.

(6) The bill defines 'retailer' as 'any natural or legal person or public or private law body with responsibility for or who owns a supermarket, including the owner or main shareholder, managing director, general manager or any other person or persons supervising or managing a supermarket and having the authority to take decisions concerning the operation of the supermarket.

(7) The bill also specifies that the term 'genetically modified food' shall have the meaning given to it by Regulation (EC) No 1829/2003.

3. **Justifications put forward by Cyprus**

(8) According to the Cypriot authorities, the purpose of the bill is to protect consumers. They take the view that placing products containing GMOs on separate shelves would enable consumers to recognise and distinguish more easily between the various types of products and make a clear choice as to which goods they want to buy.

II. **PROCEDURE**

(9) By letter dated 15 September 2005, the Cypriot House of Representatives informed the Commission, in accordance with Article 95(5) of the Treaty, of the existence of a legislative bill seeking to impose an obligation on supermarkets to place genetically modified foods in a place specially designated for them on separate shelves from non-genetically modified goods, in derogation of the provisions of Regulations (EC) No 1829/2003 and (EC) No 1830/2003 and in the light of Articles 37, 95 and 152(4)(b) of the EC Treaty, which constitutes the legal base for the aforementioned Regulations.

(10) In a letter dated 11 November 2005, the Commission informed the Cypriot authorities that it had received their notification pursuant to Article 95(5) of the EC Treaty and that the six-month period for examining the provisions in question would run from 16 September 2005, i.e. the day following receipt of the notification.

(11) By letter of 20 December 2005, the Commission informed the other Member States of the request submitted by the Republic of Cyprus. The Commission also published a notification concerning the request in the *Official Journal of the European Union* so as to inform the other interested parties of the draft national measures the Republic of Cyprus intended to adopt.

III. **LEGAL ASSESSMENT**

(12) The derogation procedure provided for in Article 95(5) of the Treaty is intended only for the adoption of national provisions designed to achieve the objectives listed. A notification from a Member State which does not refer to one of these objectives must therefore be declared inadmissible under that provision of the Treaty.

(13) Under the legislative bill in question, supermarkets would be under an obligation to place genetically modified foods in a specially designated place on separate shelves from non-genetically modified goods. In the explanatory memorandum accompanying the bill, the Cypriot authorities considered that the content of the bill could conflict with the provisions on labelling in Regulations (EC) No 1829/2003 and (EC) No 1830/2003. They also indicated clearly that the purpose of the measure was to enable consumers to distinguish more easily between genetically modified and other foods, thereby allowing them to make an informed choice.

(14) The notification from Cyprus does not make any reference to either of the objectives mentioned in Article 95(5) of the EC Treaty. Under those circumstances, the Commission is not in a position to carry out the verification referred to in paragraph 6 of that Article. The Commission does not take a view on the matter if the notification concerns an area which has been harmonised under Community legislation, nor does it take a view on the compliance of the measure with Community law or the rules of the WTO.

IV. **CONCLUSION**

(15) The Commission therefore considers that the notification provided by the Cypriot authorities does not contain the information which would allow the measure to be examined under Article 95(5) and (6) of the EC Treaty. The Commission therefore takes the view that the notification is not admissible.

(16) In the light of the above considerations, and without prejudice to any subsequent examination by the Commission of the compatibility of the national measures notified with Community law, the Commission is of the opinion that the notification from the Republic of Cyprus concerning an obligation on supermarkets to place genetically modified foods in a specially designated place on separate shelves from non-genetically modified goods, as submitted on 15 September 2005 with reference to Article 95(5) of the Treaty, is not admissible,

HAS ADOPTED THIS DECISION:

Article 1

The notification concerning a legislative bill seeking to impose on supermarkets an obligation to place genetically modified foods in a place specially designated for them on separate shelves from non-genetically modified goods, submitted by the Republic of Cyprus on 15 September 2005 on the basis of Article 95(5) of the EC Treaty, is declared non-admissible.

Article 2

This decision is addressed to the Republic of Cyprus.

Done at Brussels, 14 March 2006.

For the Commission
Markos KYPRIANOU
Member of the Commission