



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-442/09  
Karl Heinz Bablok and Others v Freistaat Bayern

## **In Advocate General Bot's opinion, honey containing pollen from MON 810 maize requires authorisation to be placed on the market as a food produced from a GMO**

Directive 2001/18<sup>1</sup> provides that GMOs (genetically modified organisms) may only be deliberately released into the environment or placed on the market if they are covered by an authorisation.

Under Regulation No 1829/2003<sup>2</sup>, GMOs for food use or food containing or consisting of GMOs and food produced from or containing ingredients produced from GMOs require authorisation.

In 1998, Monsanto obtained authorisation to place genetically modified MON 810 maize on the market. In addition, various food products derived from the MON 810 strain were also authorised, namely maize flour, maize gluten, maize meal, maize starch, maize glucose and maize oil.

MON 810 maize contains a gene of a bacterium which causes the formation of toxins in maize plants, thus destroying the larvae of a butterfly parasite which weakens the plant's growth.

The Freistaat Bayern (State of Bavaria, Germany) owns various plots of land on which, in recent years, MON 810 maize has been grown for research purposes.

Mr Bablok is an amateur beekeeper who, nearby the plots of land owned by the Freistaat Bayern, produces honey for sale and for his own consumption. Previously, he also produced pollen for sale as a foodstuff, in the form of food supplements.

In 2005, in the maize pollen harvested by Mr Bablok from beehives situated 500 metres from the plots belonging to the Freistaat Bayern, both MON 810 DNA and genetically modified proteins were detected. Moreover, the presence of very small amounts of MON 810 DNA was also detected in certain samples of Mr Bablok's honey.

Since he considered that the residues of genetically modified maize rendered his apicultural products unfit for marketing or consumption, Mr Bablok started legal proceedings against the State of Bavaria before the German courts. The Bayerischer Verwaltungsgerichtshof (Higher Administrative Court of the Land of Bavaria, Germany) asks the Court of Justice whether the presence of genetically modified maize pollen in those apicultural products constitutes a 'material interference' with them so that their placement on the market should be subject to authorisation.

In his Opinion delivered today, Advocate General Yves Bot recalls, first of all, that GMOs, like any other living organism, are biological entities capable of replication or of transferring genetic material. As regards maize pollen, he states that, as a result of desiccation, it quickly loses its fertility and becomes inanimate material. Although that material may still contain genetic information, the simple presence in it of DNA and the possible incorporation of that DNA by other

<sup>1</sup> Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1), as amended by Regulation No 1829/2003 and Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 (OJ 2003 L 268, p. 24).

<sup>2</sup> Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1).

organisms does not thereby mean that the dead organism is still capable of actively transferring genetic material.

In those circumstances, the Advocate General concludes that **pollen from MON 810 maize** that is no longer viable and is thus infertile, **is not a living organism and, therefore, cannot be regarded as a GMO.**

On the other hand, Mr Bot takes the view that both honey in which pollen from MON 810 maize is detected and pollen-based food supplements containing pollen from that same variety of maize **are produced from GMOs.** He notes in that regard that such pollen is used, as an ingredient, in the manufacture of those apicultural products and that the finished products themselves contain traces of it.

Next, the Advocate General makes clear that food containing material from a genetically modified plant, **whether that material is included intentionally or not,** must always be regarded as food produced from a GMO. The risk that a genetically modified food can pose to human health is not dependent on whether the incorporation of that material from a genetically modified plant was intentional or unintentional.

Finally the Advocate General concludes that the unintentional presence in honey, even of a minute quantity of pollen from MON 810 maize, means that **such honey must be the subject of an authorisation to be placed on the market.** In that regard, the fact that the pollen in question comes from a GMO authorised for deliberate release into the environment and the fact that certain other products from that GMO may lawfully be marketed as food are not decisive because the honey containing that pollen is not covered by an authorisation issued under Regulation 1829/2003.

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NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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