Court of Justice of the European Union
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Press and Information

Judgment in Case C-442/09
Karl Heinz Bablok and Others v Freistaat Bayern

Honey and food supplements containing pollen derived from a GMO are foodstuffs produced from GMOs which cannot be marketed without prior authorisation

That pollen is itself no longer a GMO when it has lost its ability to reproduce and is totally incapable of transferring genetic material

The directive on genetically modified organisms (GMOs)[1] provides that such organisms may be released deliberately into the environment or placed on the market only when prior authorisation has been given.

Moreover, the regulation on genetically modified food[2] provides that GMOs for food use, foodstuffs containing or consisting of GMOs, or foodstuffs produced from ingredients produced using or containing GMOs must be authorised before being placed on the market.

In 1998 Monsanto obtained marketing for the genetically modified MON 810 maize. This contains the gene of a bacterium producing toxins which destroy the larvae of a parasitic butterfly, infestation with which constitutes a danger for the development of the maize plant.

A dispute has arisen between Mr Bablok, an amateur beekeeper, and Freistaat Bayern (State of Bavaria, Germany), which owns a number of plots of land on which MON 810 maize has been cultivated for research purposes in recent years. In the vicinity of those plots of land, Mr Bablok produces honey both for sale and for his own personal consumption. Up to 2005, he also produced pollen for sale as a foodstuff in the form of a food supplement. In 2005, MON 810 maize DNA and genetically modified proteins were detected in the maize pollen harvested by Mr Bablok in beehives situated 500 metres from the plots of land belonging to Freistaat Bayern. Very small amounts of MON 810 maize DNA were also detected in a number of samples of Mr Bablok's honey.

As he took the view that the presence of residues of genetically modified maize made his products unsuitable for marketing and for consumption, Mr Bablok brought legal proceedings against Freistaat Bayern before the German courts, in which four other amateur beekeepers joined.

The Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court, Germany) observed that, once the disputed pollen is incorporated into the honey or pollen-based food supplements, it loses its capability to fertilise. That court seeks clarification as to the consequences of that loss. It has asked the Court of Justice, primarily, whether the mere presence, in the apicultural products in question, of genetically modified maize pollen which has lost its ability to reproduce has the consequence that those products may not be placed on the market without authorisation.

[1] 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 by Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 (OJ 2003 L 268, p. 24).
[2] 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).

In its judgment delivered today, the Court observes, first, that the pollen in question may be classified as a GMO only if it is an ‘organism’ within the meaning of the directive and the regulation, that is to say, if it is a ‘biological entity capable’ either of ‘replication’ or of ‘transferring genetic material’. It holds in that regard that, since it is common ground that the pollen in question has lost all specific and individual ability to reproduce, it is for the referring court to determine whether that pollen is otherwise capable of ‘transferring genetic material’, taking due account of the scientific data available and considering all forms of scientifically-established transfer of genetic material.

The Court concludes that a substance such as **pollen derived from a variety of genetically modified maize, which has lost its ability to reproduce and is totally incapable of transferring the genetic material** which it contains**, no longer comes within the scope of that concept.**

The Court goes on to hold that, nevertheless, **products such as honey and food supplements containing such pollen constitute foodstuffs which contain ingredients produced from GMOs within the meaning of the regulation**. In that regard, it finds that the pollen in issue is ‘produced from GMOs’ and that it constitutes an ‘ingredient’ of the honey and pollen-based food supplements. As regards the honey, the Court observes that pollen is not a foreign substance or an impurity, but rather a normal component of honey, with the result that it must indeed be classified as an ‘ingredient’. The pollen in question consequently comes within the scope of the regulation and must be subject to the authorisation scheme provided for thereunder before being placed on the market.

The Court observes that that authorisation scheme for foodstuffs containing ingredients produced from GMOs applies irrespective of whether the pollen is introduced intentionally or adventitiously into the honey.

Lastly, the Court holds that the authorisation obligation exists irrespective of the proportion of genetically modified material contained in the product in question.

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