



The General Court dismisses the action brought by two Brazilian meat producers seeking the annulment of the regulation prohibiting, for public health reasons, the export to the European Union of certain products of animal origin from establishments belonging to those producers

Those producers are part of one of the largest Brazilian poultry meat exporters exporting to the EU market

The Brazilian companies BRF SA ('BRF') and SHB Comércio e Indústria de Alimentos SA ('SHB'), are part of the group BRF Capital, one of the largest producers and distributors of meat and meat products in the world. Approximately 38% of the total imports of poultry meat from Brazil into the EU market for 2017 were exported by that group through BRF and SHB. Twelve establishments belonging to those two companies appeared, until 2018, on the lists of establishments whose products of animal origin may be imported into the EU.¹

By an implementing regulation adopted by the Commission in May 2018,² those twelve establishments were delisted on the ground that the Brazilian authorities had not provided, in respect of those establishments, the requisite guarantees concerning compliance with public health rules on importing the products at issue. Indeed, according to that implementing regulation, checks had revealed the presence of *salmonella* in their poultry meat and poultry meat preparations. In addition, according to the same regulation, cases of fraud had also been detected in March 2018, in Brazil, during the laboratory certification of the meat and meat products exported to the EU.

BRF and SHB brought an action, before the General Court, seeking the annulment of the implementing regulation.

By today's judgment, the General Court **dismisses the action of BRF and SHB.**

The General Court considers inter alia that **the Commission sufficiently reasoned the implementing regulation.**

It highlights in that regard, first, that, unlike the operators of approved EU establishments, **the establishments that appear on the list of third-country establishments whose products of animal origin may be imported into the EU do not enjoy an individual right to export,**

¹ Those lists are drawn up in accordance with Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ 2004 L 139, p. 206). Pursuant to that regulation, the import of products of animal origin into the territory of the EU is subject to a two-tier system: a list by the Commission featuring third countries which it considers appropriate for providing certain guarantees in that regard and a list drawn up by the competent authority of the third country including establishments in respect of which that authority provides specific guarantees which include supervision by an official inspection service with the power to prevent export to the EU in the event of non-compliance with those requirements. The aim of that two-tier system is to enable the Commission to assess whether the competent authorities of third countries provide the guarantees required by EU law. The power of the Commission to modify the list of third-country establishments whose products of animal origin may be imported into the EU is a safeguard measure required by that division of tasks.

² Commission Implementing Regulation (EU) 2018/700 amending the lists of third-country establishments from which imports of specified products of animal origin are permitted, regarding certain establishments from Brazil (OJ 2018 L 118, p. 1).

conferred pursuant to EU law. Second, neither the Commission nor the Member States have enforcement powers against establishments outside the EU or countries not directly subject to obligations imposed by EU law. In view of those factors and, given that the objective of Regulation No 854/2004 is the safeguarding of public health, the Commission is free to establish the reliability threshold of the guarantees provided by the competent authorities of a third country at a particularly high level, and may thus go so far as to require practically irreproachable performance on the part of the competent authorities of third countries.

The General Court takes the view that the Commission set out to the requisite legal standard, in the implementing regulation, the reasons leading it to consider that the Brazilian authorities no longer provided, in respect of the establishments concerned, the guarantees provided for in Regulation No 854/2004. The Commission emphasised, inter alia, that **investigations into cases of fraud detected in Brazil in March 2018 indicated that there had been no sufficient guarantees that the establishments belonging to the applicants and removed from the lists at issue complied with EU requirements.** The Court finds that **the very nature of the fraud in question, concerning laboratory certification for meat, including poultry meat, and meat products exported to the EU, is such as to call into question the reliability of the guarantees which the Brazilian authorities are supposed to provide under Regulation No 854/2004, a circumstance which makes the products from those establishments liable to constitute a risk for human health.** The Court adds that, in view of the objective of safeguarding public health, **the Commission is entitled to respond to concrete suspicions of fraud** relating to the certification of products when those suspicions cast serious doubt on the systemic capacity of the authorities of the third country to provide the guarantees provided for in Regulation No 854/2004 **without awaiting the final outcome of the investigations.**

According to the General Court, **the Commission's assessments relating to the fraud case linked to the falsification of Brazilian laboratory certificates are sufficient to support its decision.** The Commission set out, in the implementing regulation, that **several factors indicated that there no sufficient guarantees that the establishments of the two applicant companies complied with EU requirements, with the result that the products from those establishments were liable to constitute a risk for human health.** Indeed, two audits carried out by the Commission in Brazil revealed **systemic deficiencies resulting from the dysfunction of the competent authorities.** In addition, documents from the national investigations suggest **extensive cases of fraud** involving the participation of high-ranking staff and the knowledge of members of the boards of directors of both applicant companies. Those documents mention **conduct within the group to which the two companies belong, aimed at frustrating the public health control system by means of falsified certificates. The Commission was thus not mistaken as to the scale of the threat posed by such conduct or, consequently, as to the unreliability of the guarantees provided by the Brazilian authorities specifically against that type of threat.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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

Press contact: Jacques René Zammit 📞 (+352) 4303 3355