

Action brought on 19 February 2015 — Binca Seafoods v Commission

(Case T-94/15)

(2015/C 155/35)

*Language of the case: German***Parties**

Applicant: Binca Seafoods GmbH (Munich, Germany) (represented by: H. Schmidt, Rechtsanwalt)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should annul Commission Implementing Regulation (EU) No 1358/2014 of 18 December 2014 amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 as regards the origin of organic aquaculture animals, aquaculture husbandry practices, feed for organic aquaculture animals and products and substances allowed for use in organic aquaculture (OJ 2014 L 365, p. 97).

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging an infringement of Article 16 (Freedom to conduct a business), Article 20 (Equality before the law) and Article 21 (Non-discrimination) of the Charter of Fundamental Rights of the European Union as a result of arbitrary difference in treatment

The applicant alleges that, although the European Commission provided for transitional measures and special rules for other types of organic aquaculture in the implementing regulation, it arbitrarily failed to extend the transitional period expiring on 1 January 2015 laid down in Article 95(11) of Regulation No 889/2008 ⁽¹⁾.

The European Commission was aware that, although the release of the eggs from the organically kept females needed to be triggered by means of hormones, iridescent sharks were, in fact, kept in wholly organic conditions from the time of spawning. Since this is not consistent with the prospective general rules of EU law on aquaculture and other methods of triggering spawning are still in the course of development, the transitional period must be extended.

2. Second plea in law, alleging an infringement of the implementing powers conferred on the Commission by the Council

The applicant claims that the Commission infringed the powers conferred on it by the Council cautiously to develop the regulatory framework of EU law for organic aquaculture so as to ensure that advances made in organic production methods are taken into account by the time of expiry of the transitional provisions without, however, the expiry of those provisions having the effect of forcing out of the market for organic products aquaculture certified as organic from 2009 onwards and in accordance with recognised rules.

3. Third plea in law, alleging an infringement of the right to engage freely in world trade

The European Commission intentionally opted not to take into account the jointly developed rules of the Codex Alimentarius, although it did not oppose the application of the general rule that juveniles from non-organic reproduction may be used in organic aquaculture if they cannot be reproduced through organic breeding, but rather adopted that formulation jointly with the other parties to the Codex Alimentarius. The European Union was therefore prevented from disburdening itself from the Codex without contravening its obligations under the WTO-Agreement on Technical Barriers to Trade.

⁽¹⁾ Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (JO 2008 L 250, p. 1).