

Judgment of the Court (Fifth Chamber) of 5 November 2014 (request for a preliminary ruling from the Bayerisches Verwaltungsgericht München — Germany) — Herbaria Kräuterparadies GmbH v Freistaat Bayern

(Case C-137/13) ⁽¹⁾

(Request for a preliminary ruling — Agriculture — Common agricultural policy — Organic production and labelling of organic products — Regulation (EC) No 889/2008 — Article 27(1)(f) — Use of certain products and certain substances in the processing of foodstuffs — Prohibition of the use of minerals, vitamins, amino acids and micronutrients where not legally required — Addition of ferrous gluconate and vitamins to an organic beverage — Use of minerals, vitamins, amino acids and micronutrients — Quantities required to allow sale as a food supplement, with a nutrition or health claim or as a foodstuff for a particular nutritional use)

(2015/C 007/07)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht München

Parties to the main proceedings

Applicant: Herbaria Kräuterparadies GmbH

Defendant: Freistaat Bayern

Operative part of the judgment

Article 27(1)(f) of 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 must be interpreted as meaning that the use of one of the substances referred to is legally required only when a provision of EU law or a provision of national law compatible therewith directly requires that that substance be added to a foodstuff in order for that foodstuff to be placed on the market. The use of such a substance is not legally required within the meaning of that provision where a foodstuff is marketed as a food supplement, with a nutrition or health claim or as a foodstuff for a particular nutritional use, although that implies that, in order to comply with the provisions governing the incorporation of substances into foodstuffs, included in:

- Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008;
- Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods and Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health; and
- Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses and Commission Regulation (EC) No 953/2009 of 13 October 2009 on substances that may be added for specific nutritional purposes in foods for particular nutritional uses;

that foodstuff must contain a determined quantity of the substance in question.

⁽¹⁾ OJ C 171, 15.6.2013.