



Reports of Cases

Case C-438/23

**Protéines France
and
Union végétarienne européenne (EVU)
and
Association végétarienne de France (AVF)
and
Beyond Meat Inc.**

v

Ministre de l'Économie, des Finances et de la Souveraineté industrielle et numérique

(Request for a preliminary ruling from the Conseil d'État (France))

Judgment of the Court (Second Chamber) of 4 October 2024

(Reference for a preliminary ruling – Regulation (EU) No 1169/2011 – Provision of food information to consumers – Article 2(2)(n) to (p), and Articles 7, 9 and 17 – Fair practices concerning the names of foods – Legal names, customary names and descriptive names – Substitution of components or ingredients of a food – Article 38(1) – Matters specifically harmonised – National measures prohibiting the use of meat-related names to designate a product containing vegetable proteins)

- 1. Approximation of laws – Provision of food information to consumers – Regulation No 1169/2011 – Mandatory food information – Mandatory indication of a legal name, customary name or descriptive name of the food – Marketing or promotion of foods containing vegetable proteins – Use of meat-related names which may mislead consumers – Matter specifically harmonised – Adoption of national measures which do not lay down any legal name but which prohibit the use of meat-related names to designate a product containing vegetable proteins – Not permissible
(European Parliament and Council Regulation No 1169/2011, Arts 2(2)(o) and (p), 7, 9(1)(a), 17, 38(1) and Annex VI)*

(see paragraphs 61-66, 68-73, 77, 78, 80-84, 90-96, operative part 1)

- 2. Approximation of laws – Provision of food information to consumers – Regulation No 1169/2011 – Adoption of national administrative penalties in the event of infringement of the regulation or of national measures which are in compliance with that regulation – Whether permissible – Adoption of a national measure setting maximum permitted levels of vegetable proteins allowing foods to be designated by customary or descriptive meat-related names – Not permissible
(European Parliament and Council Regulation No 1169/2011, Art. 38(1))*

(see paragraphs 104 and 105, operative part 2)

Résumé

Ruling on a request for a preliminary ruling from the Conseil d'État (Council of State, France), the Court of Justice develops its case-law relating to the concept of 'specific harmonisation' for the purposes of Article 38(1) of Regulation No 1169/2011,¹ which, in principle, precludes Member States from adopting national measures.

Protéines France, which represents the interests of undertakings active in the French market for vegetable proteins, the Union végétarienne européenne (EVU), the Association végétarienne de France (AVF), which promote vegetarianism, and Beyond Meat, which manufactures and markets vegetable protein-based products, have brought actions before the Conseil d'État (Council of State) seeking the annulment of the decree ('the decree at issue') on the use of certain names to designate foods containing vegetable proteins.²

By their actions, they argued that the decree at issue, which prohibits the use of names such as 'steak' or 'sausage' for the purpose of designating processed products containing vegetable proteins, without or even with the inclusion of additional indications, infringed a number of provisions of Regulation No 1169/2011.

In the course of the proceedings before the Court, the French authorities adopted a new decree³ which provides for the repeal of the decree at issue. Following a request for information addressed to it by the Court, the Conseil d'État (Council of State) confirmed that the answer to the questions which it referred for a preliminary ruling remained decisive for the outcome of the dispute pending before it.

Findings of the Court

As a preliminary point, in the light of the information provided by the referring court, according to which, inter alia, the scope of those two decrees is identical in part and a number of applicants in the main proceedings have demonstrated their intention to challenge the second decree as well, the Court declares admissible the request for a preliminary ruling, which has become neither devoid of purpose nor hypothetical.

As regards the substance, with respect to the first and second questions submitted by the referring court, in the first place, the Court reads the provisions of Article 7(1), (2) and (4), Article 9(1)(a), Article 17(1) and (5) and point 4 of Part A of Annex VI to Regulation No 1169/2011 together and summarises their content as follows. First, foods must bear a name. Second, that name must be a legal name or, in the absence of such a name, a customary name or, failing that, a descriptive name. Third, that name must be accurate, clear and easy to understand for the consumer. Fourth, that name must not mislead consumers, particularly as to the characteristics of the food

¹ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

² Decree No 2022-947 of 29 June 2022 on the use of certain names to designate foods containing vegetable proteins (JORF of 30 June 2022, Text No 3).

³ Decree No 2024-144 of 26 February 2024 on the use of certain names to designate foods containing vegetable proteins (JORF of 27 February 2024, Text No 15).

concerned, which include its nature and composition, and as to the substitution of components naturally present or ingredients normally used with different components or different ingredients. Fifth, such requirements must be complied with when marketing and promoting any food.

In the second place, as regards legal names more specifically, the Court notes that such names may be prescribed in provisions of EU law or, in the absence thereof, in national provisions.⁴ In the present case, the Court finds that there is no provision of EU law that requires the use of certain legal names for vegetable protein-based products or that prescribes the legal names applicable to products solely on account of the fact that they are defined as being of animal origin, without other indications. While observing that it is apparent from the file before it that the French authorities have rejected the premiss that the decree at issue lays down a legal name, the Court points out that the question whether those authorities adopted such a name must be assessed objectively by the referring court, to which the Court may nevertheless provide the points of interpretation of EU law which the referring court requires for that purpose.

In that regard, the Court finds that, in order to designate a food, legal names must be ‘prescribed’ or ‘provided for’. Thus, the adoption of a legal name consists in associating a specific expression with a particular food.

The adoption of measures providing that foods must comply with certain conditions, inter alia as regards their composition, in order to be designated by terms used as a legal name cannot be regarded as being equivalent to the adoption of measures prohibiting the use of certain terms, that are not legally defined therein, for the purpose of designating foods with certain characteristics, inter alia as regards their composition.

The first category of measures makes it possible to ensure the protection of the consumer, who must be able to proceed on the assumption that a food designated by specific terms constituting a given legal name complies with the conditions specifically laid down regarding the use of that name. By contrast, the second category of measures does not limit the use of terms that have been precisely defined, as a legal name, by an authority to the designation of foods with specific characteristics.

In the present case, EU law does not lay down any rule providing that the use of legal names containing terms derived from the butchery, charcuterie and fish sectors, which are covered by the decree at issue, is limited to foods defined as being of animal origin.⁵ Furthermore, the Court observes that this also appears to be the case under French law.

Accordingly, subject to verification by the referring court, the Court considers that the decree at issue does not contain any ‘legal name’, but rather concerns the question of which ‘customary names’ or ‘descriptive names’ may not be used to designate vegetable protein-based foods.

In the third place, the Court determines whether those two concepts have been specifically harmonised by Regulation No 1169/2011. It points out that Article 2(2)(o) and (p) of that regulation does not provide that Member States may adopt measures regulating the customary names or descriptive names of a particular food. In the light of the definitions adopted by the EU legislature in respect of such customary and descriptive names, their scope cannot be limited in a general and abstract manner by national authorities. Therefore, where it has not adopted a legal

⁴ Article 2(2)(n) of Regulation No 1169/2011.

⁵ That finding also applies to the terms set out in Annex I to Decree No 2024-144.

name, a Member State cannot, by means of a general and abstract prohibition, prevent producers of vegetable protein-based foods from fulfilling their obligation to indicate the name of those foods through the use of customary names or descriptive names.⁶

In particular, as regards the power of a Member State to adopt general and abstract measures in order to prevent the risk of consumers being misled as a result of the substitution of animal proteins with vegetable proteins, the Court notes that Article 7(1)(d) and point 4 of Part A of Annex VI to Regulation No 1169/2011 concern the substitution of components or ingredients of foods. Accordingly, that matter has also been specifically harmonised by that regulation.

In addition, the Court states that those provisions also cover the matter of the information which must be provided to consumers when the composition of the food concerned becomes completely different. The high level of consumer protection which that regulation aims to achieve⁷ would risk being undermined if, paradoxically, the provisions relating to the substitution, in a food, of a component or ingredient by a different component or ingredient did not apply where that substitution concerns a component or ingredient which is particularly important within a food, or which is the only component or ingredient of that food.

Accordingly, those provisions establish a rebuttable presumption that the information provided in accordance with the detailed rules laid down by them adequately protects consumers, including where the sole component or ingredient which they may expect to find in a food designated by a customary name or a descriptive name containing certain terms is wholly substituted.

However, where a national authority considers that the specific arrangements for the sale or promotion of a food mislead the consumer, it may prosecute the food business operator concerned – which is responsible⁸ for the information on that food and must ensure the presence and accuracy of that information – and demonstrate that the abovementioned presumption has been rebutted.

Consequently, in answer to the first two questions referred for a preliminary ruling, the Court rules that Articles 7 and 17 of, and point 4 of Part A of Annex VI to, Regulation No 1169/2011, read in the light of Article 2(2)(o) and (p) and Article 9(1)(a) thereof, must be interpreted as specifically harmonising, within the meaning of Article 38(1) of that regulation, the protection of consumers against the risk of being misled by the use of names, other than legal names, consisting of terms derived from the butchery, charcuterie and fish sectors for the purpose of describing, marketing or promoting foods containing vegetable proteins instead of proteins of animal origin, including in their entirety, and therefore as precluding a Member State from adopting national measures that regulate or prohibit the use of such names.

As regards the third question referred by the national court, the Court holds, first, that the specific harmonisation brought about by the abovementioned provisions does not preclude a Member State from imposing administrative penalties in the event of failure to comply with the requirements and prohibitions resulting from those provisions or from national measures that are in compliance with those provisions. Second, the setting of maximum permitted levels of vegetable proteins⁹ in order for foods to be designated by certain customary or descriptive names

⁶ Article 38(1) of Regulation No 1169/2011.

⁷ Article 1(1) of Regulation No 1169/2011, read in the light of recitals 1 and 3 thereof.

⁸ Article 8(1) and (2) of Regulation No 1169/2011.

⁹ Article 3(1) of Decree No 2022-947.

is tantamount to regulating the use of such names without adopting a legal name. Given that those provisions specifically harmonise the use of those names, a Member State cannot adopt any measure in that regard without jeopardising the uniformity of EU law.