Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 5 September 2024[1]

Case C-438/23

Association Protéines France,
Union végétarienne européenne,
Association végétarienne de France,
Beyond Meat Inc.
v
Ministre de l'Économie, des Finances et de la Souveraineté industrielle et numérique,
joined parties:
77 Foods SAS,
Les Nouveaux Fermiers SAS,
Umiami SAS,
NxtFood SAS,
Nutrition et santé SAS,
Olga SAS

(Request for a preliminary ruling from the Conseil d'État (Council of State, France))

(Reference for a preliminary ruling – Regulation (EU) No 1169/2011 – Provision of food information to consumers – Articles 7, 9, 17 and 38 and point 4 of Part A of Annex VI – Fair information practices – Name of the food – Matters specifically harmonised – Residual competence of the Member States – National measure prohibiting the use of names associated with animal products to designate foods containing vegetable proteins – Limitation to products manufactured in the national territory)

I. Introduction

1. 'Everything has one end, only the sausage has two'.

2. Can a sausage end up being classed both as meat and as vegetable? More precisely, can a Member State prohibit the use of the name 'sausage' and other names associated with animal products to designate foods based on vegetable proteins, or is it pre-empted from doing so under the relevant EU law?

[1] Original language: English.

3. That is the key issue arising in the present case, in which the Conseil d'État (Council of State, France) has referred several questions to the Court of Justice concerning the interpretation of Regulation (EU) No 1169/2011 on the provision of food information to consumers. [2]

II. The facts in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

4. In 2022, the French authorities adopted a decree on the use of certain names to designate foods containing vegetable proteins ('the 2022 decree'). [3]

5. That decree implements Article L. 412-10 of the Code de la consommation (French Consumer Code), as amended in 2020, which states: 'The names used to designate foods of animal origin cannot be used to describe, market or promote foods containing vegetable proteins. A decree shall determine the proportion of vegetable proteins beyond which such names cannot be used.' [4]

6. Three separate applications for annulment of the 2022 decree have been lodged by the following associations and companies that promote vegetable-protein-based foods: (i) the Association Protéines France ('Protéines France'); [5] (ii) the Union végétarienne européenne (European Vegetarian Union; 'EVU') and the Association végétarienne de France (Vegetarian Association of France; 'AVF'); [6] and (iii) Beyond Meat, Inc. ('Beyond Meat'), [7] before the Conseil d'État (Council of State), which is the referring court in the present case.

7. The relevant provisions of the 2022 decree are the following. First, in order to designate a processed product containing vegetable proteins, Article 2 prohibits, inter alia, names using the specific terminology of butchery, charcuterie or fish products, as well as names of foods of animal origin as used commercially. [8]

[2] Regulation 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) ('Regulation 1169/2011').

[3] Décret n° 2022-947 du 29 juin 2022 relatif à l'utilisation de certaines dénominations employées pour désigner des denrées comportant des protéines végétales (Decree No 2022-947 of 29 June 2022 on the use of certain names to designate foods containing vegetable proteins) (JORF No 150 of 30 June 2022, text No 3).

[4] Article L. 412-10 of the Consumer Code results from Article 5 of the Loi du 10 juin 2020 relative à la transparence de l'information sur les produits agricoles et alimentaires (Law of 10 June 2020 on the transparency of information on agricultural and food products) (JORF No 142 of 11 June 2020, text No 1).

[5] Protéines France is an association of undertakings in France's plant-based-protein market. A number of companies intervened in support of its application in the main proceedings, including the company Beyond Meat, Inc., as well as 77 Foods SAS, Les Nouveaux Fermiers SAS, Umiami SAS, NxtFood SAS, Nutrition et santé SAS and Olga SAS.

[6] The EVU is an umbrella organisation of vegan and vegetarian associations and societies throughout the European Union. As one of its members, the AVF is an association established in France whose aim is to promote vegetarianism.

[7] Beyond Meat is a producer of plant-based-protein foods, which is headquartered in the United States.

[8] See Article 2(3) and (4) of the 2022 decree.

8. Second, Article 3 of the 2022 decree authorises, by derogation from Article 2, the use of such names of foods of animal origin containing vegetable proteins, provided that they do not exceed a certain percentage.[9] The maximum proportion of vegetable proteins is laid down in the annex to the 2022 decree.[10]

9. Third, according to Article 1 thereof, the 2022 decree applies to foods containing vegetable proteins manufactured in the national territory. Article 5 adds that products legally manufactured or marketed in another Member State, a State party to the EEA Agreement or Türkiye are not subject to the requirements of that decree.

10. Thereafter, in 2024, the French authorities adopted a new decree with the same name as the 2022 decree ('the 2024 decree').[11] The 2024 decree repeals the 2022 decree[12] and maintains, with some modifications, the prohibition on the use of names associated with products of animal origin to describe, market or promote vegetable-protein-based foods. Actions challenging the legality of that new decree have also been lodged with the Conseil d'État (Council of State).

11. The relevant changes introduced by the 2024 decree are the following. First, Article 2 of that decree establishes a list of terms whose use is prohibited for the designation of foods containing vegetable proteins,[13] which is now set out in Annex I thereto.[14]

12. Second, Article 3 of the 2024 decree reiterates the authorisation to use certain terms, as now set out in Annex II thereto, for the designation of foods of animal origin containing vegetable proteins which do not exceed a certain proportion.[15]

13. Third, Article 5 of the 2024 decree is framed more broadly. It now provides that products legally manufactured or marketed in another Member State or in any third country are not subject to the requirements of that decree.

14. The present case arises from the proceedings involving the 2022 decree. By letters of 14 March and 6 May 2024, the Conseil d'État (Council of State) informed the Court that the questions referred have not become devoid of purpose following the adoption of the 2024 decree, and that the interpretation sought remains necessary to enable it to rule on the dispute in the main proceedings and on the actions against the 2024 decree.

15. To my mind, that settles any possible issue relating to the question whether the request for a preliminary ruling has become devoid of purpose.

9 See Article 3(1) of the 2022 decree.

10 The list of over 300 names in the annex is divided into five sections of animal products, next to which there is a maximum proportion of vegetable proteins that cannot be exceeded, generally ranging from 0.5% to 7%. For example, under Section III on names, derived from the code of practice, for charcuterie consisting of cured meat and preserved meat, 'bacon' 0.5%; 'chipolata' 0.5%, 'merguès/merguez' and 'salami' 1.0%. Under Section IV on names, derived from the code of good practice, for poultry products, 'nuggets (poultry)' 3.5%.

11 Décret n° 2024-144 du 26 février 2024 relatif à l'utilisation de certaines dénominations employées pour désigner des denrées comportant des protéines végétales (Decree No 2024-144 of 26 February 2024 on the use of certain names to designate foods containing vegetable proteins) (JORF No 48 of 27 February 2024, text No 15).

12 See Article 9 of the 2024 decree.

13 See Article 2(3) of the 2024 decree, which replaces Article 2(3) and (4) of the 2022 decree.

14 Annex I to the 2024 decree sets out the following list of 21 terms: 'filet; faux filet; rumsteck; entrecote; aiguillette baronne; bavette d'aloyau; onglet; hampe; bifteck; basse côte; paleron; flanchet; steak; escalope; tendron; grillade; longe; travers; jambon; boucher/bouchère; charcutier/charcutière'.

15 Annex II to the 2024 decree contains a consolidated list of terms, which is now presented in alphabetical order.

16. In the order for reference, the referring court explains that it reads the 2022 decree as expressing the intention of the French authorities to protect consumers against misleading names. The same court indicates that the 2022 decree applies in situations not only where names designating products of animal origin are used alone for vegetable-protein-based foods, but also where additional indications are provided in close proximity to those names in order to inform consumers of the partial or whole substitution with vegetable proteins in the composition of such foods. For example, the use of the names 'soya steak' and 'vegetable sausage' to designate foods in which the animal proteins are replaced by vegetable proteins is prohibited.

17. The referring court wishes to ascertain whether Regulation 1169/2011 pre-empts the national authorities from enacting the 2022 decree because the matters covered by that decree have been specifically harmonised within the meaning of Article 38(1) of that regulation. Depending on the answer to that question, the referring court poses some additional questions to enable it to rule on the compatibility of that decree with EU law.

18. Under those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the provisions of Article 7 of [Regulation 1169/2011], which require consumers to be provided with information that does not mislead them as to the identity, nature and properties of foods, be interpreted as meaning that they specifically harmonise, within the meaning of and for the application of Article 38(1) of that regulation, the matter of the use of names of products of animal origin from the butchery, charcuterie and fish sectors to describe, market or promote foods containing vegetable proteins which may mislead the consumer, thereby preventing a Member State from acting in that matter by adopting national measures regulating or prohibiting the use of such names?

(2) Must the provisions of Article 17 of [Regulation 1169/2011], which provide that the name by which the food is identified is, in the absence of a legal name, to be its customary name or a descriptive name, in conjunction with point 4 of Part A of Annex VI thereto, be interpreted as meaning that they specifically harmonise, within the meaning of and for the application of Article 38(1) of that regulation, the matter of the content and use of names, other than legal names, designating foods of animal origin to describe, market or promote foods containing vegetable proteins, including in the case of whole substitution of ingredients of vegetable origin for all the ingredients of animal origin constituting a food, thereby preventing a Member State from acting in that matter by adopting national measures regulating or prohibiting the use of such names?

(3) If Question 1 or Question 2 is answered in the affirmative, does the specific harmonisation carried out, within the meaning of and for the application of Article 38(1) of [Regulation 1169/2011], by the provisions of Articles 7 and 17 of that regulation, in conjunction with point 4 of Part A of Annex VI thereto, prevent:

(a) a Member State from adopting a national measure providing for the imposition of administrative penalties in the event of non-compliance with the requirements and prohibitions resulting from the provisions of that regulation?

(b) a Member State from adopting a national measure determining the proportions of vegetable proteins below which the use of names, other than legal names, designating foods of animal origin to describe, market or promote foods containing vegetable proteins would still be authorised?

(4) If Questions 1 and 2 are answered in the negative, do the provisions of Articles 9 and 17 of [Regulation 1169/2011] authorise a Member State:

(a) to adopt a national measure determining the proportions of vegetable proteins below which the use of names, other than legal names, designating foods of animal origin is permitted for the purpose of describing, marketing or promoting foods containing vegetable proteins?

(b) to adopt a national measure prohibiting the use of certain customary or descriptive names, including where they are accompanied by additional indications ensuring that the consumer is provided with information in good faith?

(c) to adopt the measures referred to in Question 4(a) and (b) only in respect of products manufactured in its territory, without, in that case, infringing the principle of proportionality of those measures?'

19. Written observations were submitted to the Court by Protéines France, the EVU and Beyond Meat, along with the French, Italian and Greek Governments and the European Commission. No hearing was held.

III. Analysis

A. Setting the scene

20. The present case arises in the context of the battle over the names of plant-based foods in France.

21. However, France is not alone. Recent reports indicate that other Member States, such as Italy, Poland and Romania,[16] have adopted, or are contemplating adopting, similar rules prohibiting the use of terminology associated with meat and fish products ('meaty names') for plant-based foods. Similar developments exist in other countries in the world, such as South Africa[17]

[16] See, for example, Carreño, I., 'France bans "meaty" terms for plant-based products: Will the European Union follow?', *European Journal of Risk Regulation*, Vol. 13, No 4, 2022, p. 665; Planchenstainer, F. '"*Meat* me in Italy": The Italian ban on meat-sounding names and cell-cultured meat', *European Food and Feed Law Review*, Vol. 19, No 2, 2024, p. 66, in particular p. 71.

[17] See, for example, Buxton, A., 'Plant-based labeling globally: Where consumers and companies currently stand', *Plant Based World Pulse*, 18 July 2023.

Switzerland [18] and the United States. [19] At the same time, certain Member States, such as Germany [20] and the Netherlands, [21] have adopted measures expressly allowing the use of such terms.

22. Different and complex interests lie behind these battles over the naming of foods. [22] However, when they are transferred from the political to the judicial arena, the actors have to choose legal weapons, whether it be the freedom of speech, [23] unfair commercial practices, [24] procedural errors [25] or the lack of competence to regulate, the latter being raised in the present case.

23. One set of arguments that is often used in the context of the European Union, as a multi-layered legal system, is the lack of regulatory competence of Member States to enact national rules because the relevant area has been occupied by EU rules. If such EU rules exist, Member States are pre-empted from acting at the national level. [26]

24. That was indeed one of the legal weapons used by the applicants in the proceedings before the referring court. They rely on Regulation 1169/2011 in order to dispute the competence of the French authorities to adopt the 2022 decree.

25. Article 38 of Regulation 1169/2011 expresses the principle of pre-emption in the particular area covered by that regulation. It provides:

'1. As regards the *matters specifically harmonised* by this Regulation, Member States may not adopt nor maintain national measures unless authorised by Union law. Those national measures shall not give rise to obstacles to free movement of goods, including discrimination as regards foods from other Member States.

2. Without prejudice to Article 39, Member States may adopt national measures concerning *matters not specifically harmonised* by this Regulation provided that they do not prohibit, impede or restrict the free movement of goods that are in conformity with this Regulation.' [27]

[18] See, for example, Polydor, S. and Strobel, E.-M., 'Switzerland: "No" to vegan salami, but "yes" to soy-based whipping cream? Labelling rules for plant-based alternatives to foods of animal origin', *European Food and Feed Law Review*, Vol. 16, No 3, 2021, p. 239.

[19] With regard to the United States, scholars note that about 30 states have attempted to pass legislation banning meat terminology for plant-based or laboratory-meat products. See, for example, Taylor, S., 'Meat wars: The unsettled intersection of federal and state food labeling regulations for plant-based meat alternatives', *University of Massachusetts Law Review*, Vol. 15, No 2, 2020, p. 269.

[20] See, as regards Germany, for example, Meisterernst, A., 'Leitsätze vegetarische Lebensmittel Vor 300. Leitsätze für vegane und vegetarische Lebensmittel mit Ähnlichkeit zu Lebensmitteln tierischen Ursprungs', in Sosnitza/Meisterernst, *Lebensmittelrecht*, Werkstand: 187. EL, August 2023, paragraphs 1 to 14; Horn, D., 'II. Grundlagen des Lebensmittelrecht', in Streinz/Kraus, *Lebensmittelrechts-Handbuch*, Werkstand: 46. EL January 2024, paragraphs 246a to 246m (read with the aid of machine translation).

[21] See, as regards the Netherlands, Nederlandse Voedsel- en Warenautoriteit, *Handboek Etikettering van levensmiddelen*, Version 8.0, 27 June 2022, point 22.10 (read with the aid of machine translation).

[22] See, for instance, Tai, S., 'Legalizing the meaning of meat', *Loyola University Chicago Law Journal*, Vol. 51, No 3, 2020, p. 743.

[23] This is one of the main arguments arising in a similar context in the United States. See, for example, Pitkoff, J., 'State bans on labeling for alternative meat products: Free speech and consumer protection', *NYU Environmental Law Journal*, Vol. 29, No 2, 2021, p. 297.

[24] For instance, in the context of the case giving rise to the judgment of 14 June 2017, *TofuTown.com* (C-422/16, EU:C:2017:458, paragraph 16), the applicant brought, on the basis of the national unfair competition law, an action for an injunction to prohibit the use of certain names for marketing plant-based products.

[25] In the present case, the applicants raised such an argument, claiming that the notification procedure under Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ 2015 L 241, p. 1) was infringed in the adoption of the 2022 decree. However, the referring court has explained that it rejected that argument, and did not refer any questions in that respect.

[26] See, for example, Gutman, K., *The Constitutional Foundations of Contract Law: A Comparative Analysis*, Oxford University Press, Oxford, 2014, pp. 31 to 36. See also Weatherill, S., 'The fundamental question of minimum or maximum harmonisation', in Garben, S. and Govaere, I. (eds.), *The Internal Market 2.0*, Hart Publishing, Oxford, 2020, p. 261.

[27] Emphasis added.

26. Based on that provision, the main question raised by this case is whether the French rules fall under Article 38(1) of Regulation 1169/2011, or rather under Article 38(2) thereof.

27. This boils down to the issue as to whether EU law already regulates the question whether meaty names can or cannot be used for plant-based foods.

28. Protéines France, the EVU and Beyond Meat claim that Articles 7 and 17 of Regulation 1169/2011, read in conjunction with point 4 of Part A of Annex VI thereto, specifically harmonise the possibility for operators to use meaty names for plant-based foods if they add additional indications that the product at issue contains plant-based, instead of meat-based, proteins. Thus, those parties argue that Member States can no longer regulate that issue. The Commission comes to the same conclusion.

29. The French, Italian and Greek Governments take the opposite position.

B. Have the matters covered by the French rules been specifically harmonised by Regulation 1169/2011?

1. The relevant provisions of Regulation 1169/2011

30. Regulation 1169/2011 goes back to Directive 79/112/EEC,[28] and, later, Directive 2000/13/EC.[29] Like its predecessors, Regulation 1169/2011, based on Article 114 TFEU, reflects the dual objectives of ensuring the smooth functioning of the internal market and a high level of consumer protection. It establishes a set of harmonised rules which ensure that consumers have adequate information about food and thus can make informed choices about whether to buy certain products, and which ones.[30]

31. The EU legislator made the choice about what kind of information (referred to as mandatory particulars) operators must provide to consumers when placing food products on the market. Among those, Article 9(1)(a) of Regulation 1169/2011 lists the name of the food.

32. Article 17(1) of Regulation 1169/2011 then imposes the obligation on operators to use the legal name of the food, if such a name exists. A legal name can be provided for by EU or Member State legislation.

[28] Council Directive of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1), based in particular on Article 100 EEC (now Article 115 TFEU).

[29] Directive of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29), based on Article 95 EC (now Article 114 TFEU).

[30] See, in particular, Article 1(1) and Article 3(1) and (2) of Regulation 1169/2011, along with recitals 1 to 3 and 37 thereof.

33. At the EU level, legal names are prescribed for different foods in different contexts. For example, there is EU legislation concerning chocolate,[31] honey,[32] coffee[33] and fruit juices,[34] to name a few. Some of those instruments are based on the internal market provisions, and others on the common agricultural policy ('CAP').

34. It follows clearly from Article 17(1) of Regulation 1169/2011 that Member States are not precluded from establishing legal names where such names are not laid down at the EU level. According to Article 2(2)(n) of that regulation, a 'legal name' means the name of a food prescribed in the EU provisions applicable to it or, in the absence of such EU provisions, the name provided for in the laws, regulations and administrative provisions applicable in the Member State in which the food is sold to the final consumer or to mass caterers.

35. If a legal name for a certain food does not exist, Article 17(1) of Regulation 1169/2011 indicates that operators can use either the customary name or the descriptive name.

36. Article 2(2)(o) of Regulation 1169/2011 explains that a 'customary name' means a name which is accepted as the name of the food by consumers in the Member State in which that food is sold, without that name needing further explanation, whereas Article 2(2)(p) thereof states that a 'descriptive name' means a name providing a description of the food, and if necessary of its use, which is sufficiently clear to enable consumers to know its true nature and distinguish it from other products with which it might be confused.

37. By providing that a descriptive name can be used if a customary name does not exist, or is not used, Article 17(1) of Regulation 1169/2011 allows, to my mind, operators to choose a different name even if a customary name exists. Such a choice, however, does not exist when the name is prescribed by law.

38. The name of the food, just as any other information provided to consumers, must be adequate[35] and not create confusion. In that respect, Article 7(1)(a) of Regulation 1169/2011 prohibits misleading food information, inter alia, as to its nature, identity, properties and composition.

39. Article 7(1)(d) of Regulation 1169/2011 further indicates that food information cannot be misleading 'by suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while in reality a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient'.

[31] Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption (OJ 2000 L 197, p. 19).

[32] Council Directive 2001/110/EC of 20 December 2001 relating to honey (OJ 2002 L 10, p. 47).

[33] Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts (OJ 1999 L 66, p. 26).

[34] Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption (OJ 2002 L 10, p. 58).

[35] According to Article 7(2) of Regulation 1169/2011, food information must be accurate, clear and easy to understand for the consumer.

40. Finally, relevant for the present case, point 4 of Part A of Annex VI to Regulation 1169/2011, entitled 'Name of the food and specific accompanying particulars', to which I will refer as 'the Annex VI rule', states the following:

'In the case of foods in which a component or ingredient that consumers expect to be normally used or naturally present has been substituted with a different component or ingredient, the labelling shall bear – in addition to the list of ingredients – a clear indication of the component or the ingredient that has been used for the partial or whole substitution:

(a) in close proximity to the name of the product; and

(b) using a font size which has an x-height of at least 75% of the x-height of the name of the product and which is not smaller than the minimum font size required in Article 13(2) of this Regulation.'

41. It should be recalled that the Court has clarified that the use of the expression 'name of the product' in point (a) of that rule does not differ in meaning from the expression 'name of the food'.[36]

2. The first question

42. By its first question, the referring court essentially asks whether the rule prohibiting misleading information set out in Article 7 of Regulation 1169/2011 covers the use of meaty names for plant-based foods, so that Member States are pre-empted from regulating that issue.

43. What is Article 7 of Regulation 1169/2011 about? On whom does it impose obligations and in relation to what? In answering those questions, there are several factors to be taken into account.

44. First, the EU act at issue is a regulation. Regulations do not need to be implemented by national law and indeed this is in principle prohibited. The rights and obligations arising from a regulation apply directly to addressees in the Member States,[37] including if the addressees are individuals. In other words, regulations are capable of having horizontal direct effect.

45. Second, to my mind, despite its general wording, Article 7 of Regulation 1169/2011, read in conjunction with Article 8 thereof,[38] imposes obligations on food business operators. One of those obligations is the requirement not to provide misleading information about their products. When applied to the name of a product, that means that the name of their product supplied to consumers must not be misleading.

46. Accordingly, that matter – that operators have the obligation to provide non-misleading names – is, as claimed by the Commission, specifically harmonised by Regulation 1169/2011. Member States are, therefore, precluded from adopting rules on the same matter in their own legislation. As the Court has held, a regulation 'precludes in principle the Member States from adopting or maintaining national provisions *in parallel*'.[39]

[36] See judgment of 1 December 2022, *LSI – Germany* (C-595/21, EU:C:2022:949, in particular paragraphs 24, 25 and 35).

[37] See, for example, judgments of 10 October 1973, *Variola* (34/73, EU:C:1973:101, paragraph 10); of 5 May 2015, *Spain* v *Parliament and Council*, C-146/13, EU:C:2015:298, paragraph 105); and of 21 March 2024, *Remia Com Impex* (C-10/23, EU:C:2024:259, paragraph 52).

[38] Article 8 of Regulation 1169/2011 lays down the responsibilities of food business operators regarding food information requirements.

[39] Judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa* (C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 85). Emphasis added.

47. Article 7 of Regulation 1169/2011, however, does not, and indeed cannot, prescribe which concrete names are misleading to consumers. Whether a certain name is misleading is a question of fact, which depends on the (gastronomic) culture and related expectations of consumers in the Member State where such a name is used. It may therefore differ from State to State. [40] Regulation 1169/2011 does not presuppose uniform EU food-related expectations. It allows for differences in Member States. [41] That is why the Court has considered that it is for national courts to rule on the question whether the labelling of certain products is likely to mislead the consumer. [42]

48. Can Member States decide in advance and by general regulation which names are misleading?

49. According to the referring court, the 2022 decree was adopted with the aim of protecting consumers against misleading names (see point 16 of this Opinion).

50. However, if the use of, for example, the name 'soya sausage' is indeed misleading to French consumers, its use is already precluded by Article 7 of Regulation 1169/2011 itself. Such a situation does not necessitate any additional legislation, but only the enforcement of that prohibition in particular situations. [43]

51. Generally applicable national law deciding which names are misleading and which are not would take away the right which Regulation 1169/2011 seems to bestow on operators. Unless there is a legal name for a particular food, operators can, according to Article 17 of Regulation 1169/2011, choose a customary or any other suitable descriptive name of a product.

52. That right to choose the name is limited by two obligations. One is prescribed by Article 7 of Regulation 1169/2011, which precludes operators from choosing a misleading name, and the other by Article 17 thereof, which obliges operators to use a legal name if such a name exists.

53. Legal names for certain types of food can, as already explained, be established by Member State legislation if there is no EU legislation for that food. However, Regulation 1169/2011 is silent as to the possible reasons why a legal name is established.

54. On the basis of the foregoing, I propose that the Court answer the first question in the following way. Regulation 1169/2011 precludes Member States from deciding by general rules which names are misleading. Member States are, however, not precluded from establishing legal names for certain foods by way of general rules, provided that such legal names are not established by EU law.

55. The pertinent question, which is ultimately to be answered by the referring court, is, therefore, what the French rules are really about. I will come back to that issue in points 82 to 98 of this Opinion.

[40] For difficulties that arise in that respect, see Nilsson, K.L., 'Misleading? To whom?', *European Food and Feed Law Review*, Vol. 7, No 1, 2012, p. 22.

[41] Article 1(1) of Regulation 1169/2011 states: 'This Regulation provides the basis for the assurance of a high level of consumer protection in relation to food information, *taking into account the differences in the perception of consumers and their information needs* …' (emphasis added). See also recital 16 thereof.

[42] See, for example, judgments of 10 September 2009, *Severi* (C-446/07, EU:C:2009:530, paragraph 60), and of 4 June 2015, *Teekanne* (C-195/14, EU:C:2015:361, paragraph 36).

[43] I further note that the French rules do not prohibit imports into France of products using meaty names for vegetable-protein-based foods. That makes it difficult to understand how those rules protect consumers from being misled, given that it leads to the coexistence of identical products marketed under different names.

3. The second question

56. By its second question, the referring court essentially asks whether the Annex VI rule, read in conjunction with Article 17 of Regulation 1169/2011, has specifically harmonised the possibility to use meaty names to describe, market or promote food in which meat is substituted with vegetable proteins ('substitute product').

57. To start with, the parties before the Court disagree about the applicability of the Annex VI rule to the situation of the substitution of meat with vegetable proteins in foods.

58. Protéines France, the EVU and Beyond Meat contend that the Annex VI rule does indeed relate to such substitutions. As I understand their argument, they are of the view that the EU legislator has allowed the use of meaty names in products in which meat is substituted with vegetable proteins, provided that consumers are properly informed by means of an additional indication accompanying the name of a food, and therefore are not misled. Accordingly, Member States cannot prohibit the use of a name for a substitute product which conforms to those requirements.

59. In contrast, the French, Italian and Greek Governments, along with the Commission, consider that the Annex VI rule is not applicable to the circumstances of this case. They essentially claim that that rule does not apply to food consisting of a single ingredient, [44] nor does it cover the case of a total substitution.

60. To my mind, the line of argument put forward by those Member States and the Commission is not convincing. Rather, I consider that the Annex VI rule covers the use of meaty names for plant-based substitute products. [45]

61. Before explaining why, one preliminary issue must be addressed. The application of the Annex VI rule presupposes that, when faced with the names contained in the French rules, consumers would expect that they contain meat.

62. To recall, the Annex VI rule applies where 'a component or ingredient *that consumers expect to be normally used or naturally present* has been substituted with a different component or ingredient'. [46]

63. There does not seem to be any dispute between the parties before the Court as to the fact that consumers do expect that a food designated only by the name 'sausage', 'steak' or any other expression referred to in the French rules would be a product of animal origin.

64. On the basis of such a premiss, I will continue with the analysis as to which kinds of substitutions the Annex VI rule applies to.

[44] In that respect, the Commission relies on its own guidance document, providing, as one of the examples, a pizza in which cheese has been substituted with another product. See Commission notice on questions and answers on the application of [Regulation 1169/2011] (OJ 2018 C 196, p. 1), point 2.1.

[45] See, in that respect, Oelrichs, C., 'Ersatzzutatenkennzeichnung und Irreführungseignung – Konsequenzen der EuGH-Rechtsprechung für die Gestaltung von Lebensmittelaufmachungen', *Zeitschrift für das gesamte Lebensmittelrecht*, 2023, part 2, p. 164 (read with the aid of machine translation).

[46] Emphasis added.

(a) Does the Annex VI rule cover the substitution of meat with vegetable proteins?

65. By its express terms, the Annex VI rule is relevant for situations where an ingredient that consumers expect in a given food is partially *or wholly* substituted by a different ingredient. Therefore, the wording of that rule covers a situation in which, for example, sausages do not contain any meat, but only vegetable proteins. Furthermore, nothing in that wording suggests that that rule applies only to food containing more than one ingredient.

66. Placing the Annex VI rule in the wider context of Regulation 1169/2011, Article 7(1)(d) thereof seems relevant. That provision implies that the use of the name of a food which suggests the presence of an ingredient usually present in the food (meat), but which was, in actual fact, replaced by another ingredient (vegetable protein), is in principle misleading and therefore prohibited.

67. In that respect, the Annex VI rule can be seen as offering a solution in which the name at issue can, however, be used even though the expected ingredient was replaced. The solution lies in adding an indication accompanying the name that clarifies the replacement ingredient. By way of example, even if the name 'sausage' creates the expectation of the presence of meat, the term 'vegetable sausage' might explain that meat was replaced by vegetable proteins in that product. [47]

68. The applicability of the Annex VI rule to the substitution of meat with vegetable proteins is also corroborated by the legislative history.

69. During the decision-making process, both the European Parliament and the Council of the European Union were in agreement that the use of the name of the original food whose ingredients were replaced would be possible to designate the replacement food as containing different ingredients. They disagreed, however, about how consumers were to be informed of this. Whereas the Parliament had proposed the use of certain designations, such as 'imitation food', [48] the Council opposed this and preferred a clear indication of the replacement ingredient in addition to the name of the food. [49] In the final version, a compromise was reached to the effect that that indication was to be placed in close proximity to the name and in a certain font size. [50]

70. Thus, the legislative history suggests that neither the Parliament nor the Council wanted to prevent the use of names customarily used for one type of food from also being used for a different type of food; they only differed in the proposed solution as to how to overcome the possible confusion for consumers.

[47] However, that does not mean that adding 'vegetable' to the name 'sausage' automatically removes a risk of confusion. Such a name may still be misleading. It might, for example, lead a consumer to believe that it is a sausage with added vegetables. Nevertheless, whether the chosen additional indication is misleading is a separate question from the question whether adding such an indication to a meaty name to designate a plant-based food is in principle permissible.

[48] See European Parliament Report on the proposal for a regulation of the European Parliament and of the Council on the provision of food information to consumers, A7-0109/2010, 19 April 2010, amendments 63, 78 and 230, pp. 40, 46, 47, 120 and 121.

[49] See Position (EU) No 7/2011 of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 and repealing Directives 87/250/EEC, 90/496/EEC, 1999/10/EC, 2000/13/EC, 2002/67/EC and 2008/5/EC and Regulation (EC) No 608/2004, adopted by the Council on 21 February 2011 (OJ 2011 C 102E, p. 1), Statement of the Council's Reasons, part III(A), point (b), p. 44. See also, for example, Communication from the Commission to the European Parliament pursuant to Article 294(6) [TFEU] concerning the position of the Council at first reading on the adoption of a Regulation of the European Parliament and of the Council on the provision of food information to consumers, COM(2011) 77 final, 22 February 2011, pp. 4 and 5; Council document 9426/11, 5 May 2011, in particular p. 4 and the annex, pp. 113 to 116.

[50] See, for example, Council document 11001/11, 6 June 2011, in particular p. 7 and the annex, pp. 46 to 50; Council document 11623/11, 20 June 2011; Council document 12512/11, 14 July 2011.

71. It follows from the foregoing that the Annex VI rule covers the substitution of meat with vegetable proteins.

(b) The relevance of the judgment in TofuTown.com *for the interpretation of the Annex VI rule*

72. The judgment in *TofuTown.com* [51] suggests that the application of the Annex VI rule can be excluded by the establishment of a legal name.

73. As explained (see points 32 to 37 of this Opinion), according to Article 17 of Regulation 1169/2011, operators must describe their food products by their legal name if it exists. If it does not, and given that they must give a name to their products, they may use a customary name or a descriptive name.

74. The *TofuTown.com* case concerned the question whether terms such as 'tofu butter', 'veggie cheese' and 'soya milk' could be used, given that Regulation (EU) No 1308/2013 [52] set out specific definitions of 'milk' and 'milk products', including 'butter' and 'cheese'. The Court held that those terms could not be used to designate purely plant-based products, even if there were additional indications of the replacement ingredient next to their names. The Court considered that those terms were reserved exclusively for milk products. [53]

75. Additionally, Regulation 1308/2013 reserved exclusively for milk products those names within the meaning of Article 17 of Regulation 1169/2011 actually used for milk products. That included customary names, such as the term 'Sahne' in German. Unlike the term 'Rahm', the term 'Sahne' was not included in Regulation 1308/2013. Nonetheless, the Court considered that that customary name also could not be used to designate a purely plant-based product. [54]

76. It seems to me that that judgment can be read in the following way: when a product has a legal name, it is not possible to use that legal name, even with an additional indication, in order to designate a product which contains substituted ingredients. That means, for example, if 'sausage' were a legal name, it could not be used to designate a product that contains purely vegetable proteins, even if there is an additional indication such as 'vegetable sausage'.

77. The conclusion one may draw from the judgment in *TofuTown.com* is that the Annex VI rule allows the use of meaty names for vegetable-protein-based foods with an additional indication accompanying the name of the food only if the meaty name is not a legal name. By establishing a legal name, the legislator may prohibit its use for any substitute product.

78. Such a legal name can be provided by EU law, as was the situation in *TofuTown.com*, or, in the absence of any EU legislation, by national law.

79. Consequently, Member States can prohibit the use of customary meaty names for vegetable-protein-based foods by turning such customary names into legal names.

[51] Judgment of 14 June 2017 (C-422/16, EU:C:2017:458).

[52] See Regulation of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671) ('Regulation 1308/2013'), in particular Article 78(1)(c) and points 1 and 2 of Part III of Annex VII thereto. That regulation was adopted in the context of CAP.

[53] See judgment of 14 June 2017, *TofuTown.com* (C-422/16, EU:C:2017:458, in particular paragraphs 25 to 27 and 40).

[54] See judgment of 14 June 2017, *TofuTown.com* (C-422/16, EU:C:2017:458, in particular paragraphs 28 to 30).

80. I therefore propose that the Court answer the second question in the following way. The Annex VI rule, read in conjunction with Article 17 of Regulation 1169/2011, has not specifically harmonised the use of names for substitute products. Those provisions leave to Member States the possibility to establish legal names, reserving those names in that way for particular foods.

81. As the legislator can exclude the Annex VI rule by establishing legal names, once again, the pertinent question that is ultimately to be answered by the referring court is what the French rules are really about. I will now turn to that issue.

4. Do the French rules establish legal names?

82. The parties before this Court seem to take varying positions as to whether the French rules establish legal names for products of animal origin.

83. The French Government did not take a position in its written observations submitted to the Court as to whether the French authorities intended to establish legal names. However, Protéines France claims that, in the context of the domestic proceedings, the French authorities rejected the hypothesis that the 2022 decree established legal names.[55] The context of such a contention was not explained.

84. In my view, the decision as to whether the French rules have regulated legal names has to be assessed objectively, on the basis of the effect that such rules have. The intention of the national authorities is not determinative for that assessment.

85. If the effect of national rules is that certain names are reserved for certain types of products, then it does set legal names. That is so even if, formally, such rules do not state that they regulate the names of foods.

86. Based on the information in the case file, it seems to me that the French rules do establish legal names of certain meat-based foods.

87. To begin with, it is evident that there is room to regulate names of meat products at the national level, given that such names are not established at the EU level, as they are, for instance, for milk products. To the best of my knowledge, apart from some exceptions,[56] no legal names for specific meat products exist in EU legislation.[57]

88. In that respect, in the context of EU legislation concerning CAP, the Parliament had proposed an amendment intended to restrict the use of certain terms to meat products. That amendment was the following: 'Names that fall under Article 17 of [Regulation 1169/2011] that are currently

[55] Protéines France invokes the ordonnance du juge des référés du Conseil d'État (order of the interim relief judge of the Council of State), 27 July 2022, paragraph 10.

[56] See Regulation 1308/2013, in particular Article 78(1)(a) and (d) and points I to III of Part I of Annex VII thereto (concerning beef and veal). See also Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55), points 1.1, 3.1 and 7.1 of Annex I thereto (concerning definitions of meat, fishery products and meat products), as referred to in Article 2(1)(f) of Regulation 1169/2011.

[57] See Carreño, I. and Dolle, T., 'Tofu steaks? Developments on the naming and marketing of plant-based foods in the aftermath of the *TofuTown* judgment', *European Journal of Risk Regulation*, Vol. 9, No 3, 2018, p. 575, in particular p. 576.

used for meat products and meat productions shall be reserved exclusively for products containing meat. These designations include, for example: Steak, Sausage, Escalope, Burger, Hamburger.' [58] Yet, that proposal was abandoned. [59]

89. If the EU legislator could have regulated those names at the EU level but did not, why could a Member State not do the same thing at the national level?

90. Like the abandoned EU legislation, the French rules reserve certain names for products of animal origin. As indicated by Beyond Meat, those rules make it impossible in practice to use any meaty names for vegetable-protein-based foods.

91. In effect, the French rules codify customary or descriptive names for meat, thus turning them into legal names. In that respect, the French rules are not much different from the EU legislation on milk and milk products, which was at issue in *TofuTown.com*. Just as Regulation 1308/2013 does not define the precise content of the milk products listed, such as butter and cheese, but requires that they contain milk, the French rules do not define the precise content of each product mentioned, but imply that they must contain meat.

92. Additionally, similar to Regulation 1308/2013 at issue in *TofuTown.com*, which referred to names actually used for milk products without expressly listing them, the French rules refer to names actually used for meat products – such as specific terms used for butchery and charcuterie – thereby turning them, in the same way as the Court recognised in *TofuTown.com*, into legal names reserved only for products containing meat.

93. Does it matter what motivated the national rules?

94. I am of the view that the reasons do not matter for determining whether certain rules have established legal names. Whether the French authorities indeed intended to protect consumers or the meat industry, or whether the reason behind such rules is the protection of national gastronomical heritage as suggested by the Italian Government, the preservation of linguistic diversity or any other reason, this does not influence the answer to the question as to whether the effect of the rules is to reserve certain names for certain products. That, in my opinion, is the only relevant question.

95. I am also inclined to agree with the arguments put forward by the Italian Government that the prohibition on the use, for certain foods, of a name customarily used for other foods is equivalent to reserving that name for the original food. It does not matter that they do not formally state that these are legal names.

96. Applied to the French rules, prohibiting the use of meaty names for vegetable-protein-based foods is equivalent to reserving those names for meat-based foods.

[58] European Parliament Report on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands ('the proposal'), A8-0198/2019, 7 May 2019, amendment 165, pp. 168 to 170.

[59] See European Parliament amendments adopted on 23 October 2020 on the proposal, cited in footnote 58 to this Opinion, P9-TA(2020)0289; see also European Parliament legislative resolution of 23 November 2021 on that proposal, P9_TA(2021)0458.

97. Consequently, to my mind, the French rules do set legal names. However, it is ultimately for the referring court to verify this.

98. To sum up, neither Article 7 of Regulation 1169/2011, nor the Annex VI rule, read in conjunction with Article 17 thereof, prevents Member States from establishing legal names (in the absence of legal names established at the EU level). Thus, if the French rules establish legal names, they fall within Article 38(2) of that regulation.

C. Additional questions

99. Given my proposal to treat the French rules as falling within the scope of Article 38(2) of Regulation 1169/2011, it is necessary to respond to the set of questions within the rubric of the fourth question.

1. The fourth question

100. The answer to parts (a) and (b) of the fourth question follow from the analysis of the second question.

101. Articles 9 and 17 of Regulation 1169/2011 do not preclude Member States from adopting a national measure determining the proportions of vegetable proteins below which the use of names designating foods of animal origin is permitted for the purpose of describing, marketing or promoting foods containing vegetable proteins. By establishing such proportions, Member States in effect establish legal names.

102. By adopting national measures prohibiting the use of certain customary and descriptive names, including when they are accompanied by additional indications, a Member State turns those customary and descriptive names into legal names, which they are entitled to do.

103. By part (c) of the fourth question, the referring court seems to ask for confirmation of a decision that it has already made. It follows, namely, from the order for reference that a claim that the 2022 decree breaches the Treaty rules relating to the free movement of goods was presented as a separate claim in the main proceedings and rejected by the referring court. That court explained that it considered that that decree does not create an obstacle either to imports of food from other Member States or to exports from France into other Member States.

104. To recall, if the French rules are classified as matters not specifically harmonised by Regulation 1169/2011, then by virtue of Article 38(2) of that regulation, those rules are permitted 'provided that they do not prohibit, impede or restrict the free movement of goods'.

105. The French Government submits that the French rules comply with Article 38(2) of Regulation 1169/2011 as they relate to a purely internal situation and thus are not covered by the free movement of goods. Such measures, which are not intended to govern trade in goods between Member States, cannot constitute an obstacle to the free movement of goods.

106. In contrast, the EVU and Beyond Meat take the position that the 2022 decree restricts the free movement of goods. They also contend that that decree does not meet any objective of general interest and is neither necessary nor proportionate.

107. In that respect, I recall that the French rules apply only to food produced in France for the French market. Those rules, therefore, regulate a purely internal situation, which is outside the scope of application of the Treaty rules governing market freedoms.

108. For instance, in *Mathot*,[60] the Court held that labelling rules on butter imposed only on Belgian producers, and not on producers from other Member States, did not restrict imports of butter or prejudice the marketing of imported butter (under what is now Article 34 TFEU). Therefore, it did not infringe the free movement rules.

109. More recently, in *Asociación Nacional de Productores de Ganado Porcino*,[61] the Court found that national legislation, which provided that a certain sales designation for Iberian pigs ('ibérico de cebo') may be granted only to products that complied with certain conditions imposed by that legislation confined to the national territory, was not precluded by either Article 34 TFEU, pertaining to restrictions on imports, or Article 35 TFEU, pertaining to restrictions on exports. That legislation contained a provision allowing products from other Member States under similar designations to be imported and marketed in Spain under such designations without satisfying the requirements laid down therein.

110. The French rules contain similar provisions.

111. National rules that are outside the scope of the free movement rules do not need to be justified.[62] Therefore, arguments that such rules are not proportionate are irrelevant as a matter of EU law, as they do not create an obstacle to trade.

112. Beyond Meat adds an argument as to why the 2022 decree might be seen as creating an obstacle to trade. It emphasises that operators manage complex supply chains that span multiple Member States and thus that decree creates significant legal risks for operators established in other Member States when they market their products in France, as they will have to demonstrate the origin of their products and compliance with the legislation of one of the other Member States.

113. I can agree that that argument has some force. The 2022 decree provides that it does not apply to products from other Member States, EEA States and Türkiye. Therefore, in order not to be caught by its rules, an importer would have to prove that the product originates from one of those States, which is liable to impose additional administrative burdens and costs.

114. However, that provision of the 2022 decree was amended. The 2024 decree now provides that its rules do not apply to any imported product, which means that importers do not need to prove the origin of the imported food to avoid the application of that decree.

115. Therefore, I propose that the Court answer part (c) of the fourth question as meaning that Regulation 1169/2011 does not preclude Member States from adopting rules that apply exclusively to purely internal situations and that such measures need not be justified.

60 See judgment of 18 February 1987 (98/86, EU:C:1987:89, paragraphs 6 to 9 and 12).

61 See judgment of 14 June 2018 (C-169/17, EU:C:2018:440, paragraphs 21 to 31).

62 See, in that respect, my Opinion in *Società Italiana Imprese Balneari* (C-598/22, EU:C:2024:129, in particular points 36 to 44), which discusses the distinction between, on the one hand, national measures representing at least some hindrance to free movement and which are not necessarily prohibited if they can be justified and, on the other hand, national measures that do not represent obstacles to trade and thus are excluded from the application of the Treaties.

116. A justification may, I might add, still be necessary as a matter of national law. Furthermore, debates about the reasons for introducing, or not, legislation establishing legal names are a matter of national political processes.

117. However, political battles can be brought to the EU arena, as the European Union can decide to establish legal names or to prevent their establishment. Arguments raised during these proceedings that the prohibition on the use of meaty names for vegetable-protein-based foods runs counter to EU policies, such as the Farm to Fork Strategy,[63] or the European Green Deal more generally, are important. Nevertheless, as long as the EU legislator does not intervene, judges of the Court, or myself, have no say about the justification of the prohibition on the use of meaty names for plant-based foods in France or any other Member State, whatever our personal views of the matter.

2. The third question

118. The third question is asked if the answer to the first or second question is that the Member States are pre-empted from adopting measures such as the 2022 decree. Should the Court follow my proposal, it is unnecessary to answer the third question. In the alternative, I will briefly address it.

119. The answer to part (b) of the third question is that, if Member States do not have residual competence to regulate, they cannot determine the proportions of vegetable proteins for the use of meaty names either.

120. As far as part (a) of the third question, relating to the imposition of administrative penalties, is concerned, it is clear that, even if there is specific harmonisation, Member States can, and indeed must, ensure the effective application of EU rules. If national authorities find that administrative penalties are an effective method for ensuring the effectiveness of EU rules, they are not prevented from imposing such penalties for failure to comply with the requirements set out in Regulation 1169/2011.

121. That is confirmed, as indicated by the Commission, by Regulation (EC) No 178/2002,[64] which entrusts the Member States with the responsibility to enforce food law. That includes laying down rules on penalties.[65]

122. Therefore, I propose that the Court answer part (a) of the third question as meaning that Regulation 1169/2011 does not prevent Member States from imposing administrative penalties in the event of non-compliance with that regulation.

[63] See, in that regard, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Farm to Fork Strategy for a fair, healthy and environmentally friendly food system', COM(2020) 381 final, 20 May 2020, in particular point 2.4.

[64] See Regulation of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1), in particular Article 17(2).

[65] See, with regard to the predecessor of Regulation 1169/2011, namely Directive 2000/13, judgment of 23 November 2006, *Lidl Italia* (C-315/05, EU:C:2006:736, paragraph 58); see also Opinion of Advocate General Stix-Hackl in *Lidl Italia* (C-315/05, EU:C:2006:553, point 35).

IV. Conclusion

123. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Conseil d'État (Council of State, France) as follows:

(1) In response to the first question, 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, precludes Member States from deciding by general rules which names are misleading. Member States are, however, not precluded from establishing legal names for certain foods by way of general rules, provided that such legal names are not established by EU law.

(2) In response to the second question, point 4 of Part A of Annex VI to Regulation 1169/2011, read in conjunction with Article 17 thereof, has not specifically harmonised the use of names for substitute products. Those provisions leave to Member States the possibility to establish legal names, reserving those names in that way for particular foods.

(3) In response to the fourth question, Articles 9 and 17 of Regulation 1169/2011 do not preclude Member States from adopting a national measure determining the proportions of vegetable proteins below which the use of names designating foods of animal origin is permitted for the purpose of describing, marketing or promoting foods containing vegetable proteins. By establishing such proportions, Member States in effect establish legal names.

    By adopting national measures prohibiting the use of certain customary and descriptive names, including when they are accompanied by additional indications, a Member State turns those customary and descriptive names into legal names, which they are entitled to do.

    Articles 9 and 17 of Regulation 1169/2011 do not preclude Member States from adopting rules that apply exclusively to purely internal situations and such measures need not be justified.

(4) It is not necessary to answer the third question. Alternatively, in response to the third question, Regulation 1169/2011 does not prevent Member States from imposing administrative penalties in the event of non-compliance with that regulation.

    If Member States do not have residual competence to regulate, they cannot determine the proportions of vegetable proteins for the use of meaty names either.