Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

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 naming 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)

In Case C-438/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 12 July 2023, received at the Court on 13 July 2023, in the proceedings

Protéines France,

Union végétarienne européenne (EVU),

Association végétarienne de France (AVF),

Beyond Meat Inc.

v

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

intervening parties:

77 Foods SAS,

Les Nouveaux Fermiers SAS,

Umiami SAS,

NxtFood SAS,

Nutrition et santé SAS,

Olga SAS,

* Language of the case: French.

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl (Rapporteur), J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Protéines France, 77 Foods SAS, Les Nouveaux Fermiers SAS, Umiami SAS, NxtFood SAS, Nutrition et santé SAS, and Olga SAS, by G. Hannotin, avocat,

– Union végétarienne européenne (EVU), by A. Aubert, avocate,

– Beyond Meat Inc., by C. Dupeyron, avocate, R. Oyarzabal Arigita, abogada, and B. Van Vooren, advocaat,

– the Greek Government, by V. Karra, E. Leftheriotou and A. Vasilopoulou, acting as Agents,

– the French Government, by G. Bain and B. Fodda, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by M. Cherubini and P. Gentili, avvocati dello Stato,

– the European Commission, by F. Clotuche-Duvieusart and B. Rous Demiri, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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), in particular Articles 7, 17 and 38 of, and point 4 of Part A of Annex VI to, that regulation.

2 The request has been made in the context of a dispute between Protéines France, the Union végétarienne européenne (European Vegetarian Union; 'the EVU'), the Association végétarienne de France ('the AVF') and Beyond Meat Inc., on the one hand, and the ministre de l'Économie, des Finances et de la Souveraineté industrielle et numérique (Minister for the Economy, Finance

and Industrial and Digital Sovereignty, France), on the other, concerning the legality of 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).

The legal framework

European Union law

Regulation (EC) No 178/2002

3 Article 2 of Regulation (EC) No 178/2002 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), entitled 'Definition of "food"', provides:

'For the purposes of this Regulation, "food" (or "foodstuff") means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

…'

4 Article 3(1) of that regulation defines 'food law' in the following manner:

'For the purposes of this Regulation:

1. "food law" means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level; …'

5 According to Article 8 of that regulation:

'… Food law shall aim at the protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume. It shall aim at the prevention of:

(a) fraudulent or deceptive practices;

(b) the adulteration of food; and

(c) any other practices which may mislead the consumer.'

6 Article 17(2) of that regulation provides:

'Member States shall enforce food law, and monitor and verify that the relevant requirements of food law are fulfilled by food and feed business operators at all stages of production, processing and distribution.

…

Member States shall also lay down the rules on measures and penalties applicable to infringements of food and feed law. The measures and penalties provided for shall be effective, proportionate and dissuasive.'

Regulation (EC) No 853/2004

7 Annex I to 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), provides:

'For the purpose of this Regulation:

1. Meat

1.1. "Meat" means edible parts of animals …

…

1.14. "Mechanically separated meat" or "MSM" means the product obtained by removing meat from flesh-bearing bones after boning or from poultry carcases, using mechanical means resulting in the loss or modification of the muscle fibre structure.

1.15. "Meat preparations" means fresh meat, including meat that has been reduced to fragments, which has had foodstuffs, seasonings or additives added to it or which has undergone processes insufficient to modify the internal muscle fibre structure of the meat and thus to eliminate the characteristics of fresh meat.

…

3. Fishery Products

3.1. "Fishery products" means all seawater or freshwater animals (except for live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods, and all mammals, reptiles and frogs) whether wild or farmed and including all edible forms, parts and products of such animals.

…

7. Processed products

7.1. "Meat products" means processed products resulting from the processing of meat or from the further processing of such processed products, so that the cut surface shows that the product no longer has the characteristics of fresh meat.

…'

Regulation No 1169/2011

8 Recitals 1 and 3 of Regulation No 1169/2011 state:

‘(1) Article 169 [TFEU] provides that the [European] Union is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 114 [TFEU].

…

(3) In order to achieve a high level of health protection for consumers and to guarantee their right to information, it should be ensured that consumers are appropriately informed as regards the food they consume. …’

9 Pursuant to Article 1(1) of that regulation:

‘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 whilst ensuring the smooth functioning of the internal market.’

10 Article 2 of that regulation reads as follows:

‘1. For the purposes of this Regulation, the following definitions shall apply:

(a) the definitions of “food”…in Article 2 …of Regulation [No 178/2002];

…

(f) the definitions of “meat”, “mechanically separated meat”, “meat preparations”, “fishery products” and “meat products” in points 1.1, 1.14, 1.15, 3.1 and 7.1 of Annex I to Regulation [No 853/2004];

…

2. The following definitions shall also apply:

…

(f) “ingredient” means any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form; …

…

(n) “legal name” means the name of a food prescribed in the Union provisions applicable to it or, in the absence of such Union 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;

(o) “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;

(p) “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;

(q) “primary ingredient” means an ingredient or ingredients of a food that represent more than 50% of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required;

…’

11 Article 7 of that regulation provides:

‘1. Food information shall not be misleading, particularly:

(a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production; …

(d) 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.

2. Food information shall be accurate, clear and easy to understand for the consumer.

…

4. Paragraphs 1, 2 and 3 shall also apply to:

(a) advertising;

(b) the presentation of foods, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are displayed.’

12 Under Article 8 of Regulation No 1169/2011:

‘1. The food business operator responsible for the food information shall be the operator under whose name or business name the food is marketed …

2. The food business operator responsible for the food information shall ensure the presence and accuracy of the food information in accordance with the applicable food information law and requirements of relevant national provisions.

…’

13 Article 9 of that regulation establishes, in accordance with its title, the 'list of mandatory particulars', which include, in paragraph 1(a), 'the name of the food' and, in paragraph 1(b), 'the list of ingredients'.

14 Article 17 of that regulation provides:

'1. The name of the food shall be its legal name. In the absence of such a name, the name of the food shall be its customary name, or, if there is no customary name or the customary name is not used, a descriptive name of the food shall be provided.

2. The use in the Member State of marketing of the name of the food under which the product is legally manufactured and marketed in the Member State of production shall be allowed. However, where the application of the other provisions of this Regulation, in particular those set out in Article 9, would not enable consumers in the Member State of marketing to know the true nature of the food and to distinguish it from foods with which they could confuse it, the name of the food shall be accompanied by other descriptive information which shall appear in proximity to the name of the food.

…

5. Specific provisions on the name of the food and particulars that shall accompany it are laid down in Annex VI.'

15 Article 38 of that regulation 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.'

16 Annex VI to Regulation No 1169/2011, entitled 'Name of the food and specific accompanying particulars' provides, in point 4 of Part A, entitled 'Mandatory particulars accompanying the name of the food':

'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.'

French law

Consumer Code

17 Article L. 412-10 of the code de la consommation (Consumer Code), inserted by Article 5 of loi nº 2020-699, du 10 juin 2020, relative à la transparence de l'information sur les produits agricoles et alimentaires (Law No 2020-699 of 10 June 2020 on the transparency of information on agricultural and food products) (JORF of 11 June 2020, Text No 1), provides:

'… 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. That decree shall also lay down the detailed rules for applying this Article and the penalties incurred in the event of non-compliance.'

Decree No 2022-947

18 On the basis of the provision referred to in the previous paragraph, the French authorities have adopted décret nº 2022-947 (Decree No 2022-947).

19 In accordance with the first paragraph of Article 1 of that decree, it applies to 'foods manufactured in the national territory containing vegetable proteins'.

20 Article 2 of that decree provides:

'It shall be prohibited to use, in order to designate a processed product containing vegetable proteins:

1° A legal name for which no addition of vegetable proteins is provided for by the rules defining the composition of the food concerned;

2° A name referring to the names of species and groups of animal species, or to the morphology or anatomy of an animal;

3° A name using the specific terminology of butchery, charcuterie or fish products;

4° A name of a food of animal origin as used commercially.'

21 Article 3 of that decree provides:

'By way of derogation from the provisions of Article 2, the name of a food of animal origin may be used:

1° For foods of animal origin containing vegetable proteins in a set proportion where the presence of such proteins is laid down by regulation or mentioned in the list annexed to this Decree;

…'

22 According to Article 5 of Decree No 2022-947:

'Products legally manufactured or marketed in another Member State of the European Union or in Turkey, or legally manufactured in another State which is a party to the Agreement on the European Economic Area[, of 2 May 1992 (OJ 1994 L 1, p. 3)], are not subject to the requirements of this Decree.'

23 Article 6 of that decree provides as follows:

'It is prohibited to hold for sale or free distribution, to offer for sale, to sell or to distribute free of charge food which does not comply with the rules set out in this Decree.'

24 Article 7 of that decree provides that:

'Any failure to comply with the provisions of Article 6 of this Decree shall be punishable by an administrative fine of up to EUR 1 500 in the case of a natural person and up to EUR 7 500 in the case of a legal person. …'

25 Pursuant to Article 8 thereof, that decree entered into force on 1 October 2022.

26 The annex to Decree No 2022-947 includes a list of the names of foods of animal origin which may contain vegetable proteins and the maximum proportion of vegetable proteins which may be contained in the foods for which those names are used.

Decree No 2024-144

27 Article 2 of décret n° 2024-144, du 26 février 2024, relatif à l'utilisation de certaines dénominations employées pour désigner les denrées alimentaires comportant des protéines végétales (Decree No 2024-144 of 26 February 2024 on the use of certain names used to designate foods containing vegetable proteins) (JORF of 27 February 2024, Text No 15) provides:

'…it shall be prohibited to use, in order to describe, market or promote a processed product containing vegetable proteins:

1° a legal name for which no addition of vegetable proteins is provided for by the rules defining the composition of the food concerned;

2° a name referring to the names of species and groups of animal species, or to the morphology or anatomy of an animal;

3° a name containing the terms mentioned in the list in Annex I.'

28 In accordance with Article 8 thereof, Decree No 2024-144 entered into force on 1 May 2024.

29 Under Article 9 of that decree:

'Decree No 2022-947 … is repealed'

30 The list in Annex I to Decree No 2024-144 contains the following names:

'– Filet [(Fillet)];

– Faux filet [(Sirloin)];

– Rumsteck [(Rump steak)];

– Entrecôte [(Rib eye)];

– Aiguillette baronne [(Tri-tip)];

– Bavette d'Aloyau [(Flank steak)];

– Onglet [(Hanger Steak)];

– Hampe [(Skirt steak)];

– Bifteck [(Steak)];

– Basse côte [(Chuck steak)];

– Paleron [(Flat iron steak)];

– Flanchet [(Flank)];

– Steak;

– Escalope;

– Tendron;

– Grillade [(Medallion)];

– Longe [(Loin)];

– Travers [(Ribs)];

– Jambon [(Ham)];

– Boucher/Bouchère [(Butcher's steak)];

– Charcutier/Charcutière [(Charcuterie)].'

31 Annex II to that decree contains a list of terms authorised for the naming of foods of animal origin which may contain vegetable proteins and the maximum proportion of plant proteins which may be contained in the foods for which those terms are used.

The dispute in the main proceedings and the questions referred for a preliminary ruling

32 On 18 July 2022, Protéines France, which represents the interests of companies in France's vegetable protein market, brought an action before the Conseil d'État (Council of State, France), which is the referring court, seeking the annulment of Decree No 2022-947.

33 By order of 27 July 2022, that court, acting as interim relief judge, suspended the enforcement of that decree as regards the measures provided for in Article 2(3) and (4) thereof.

34 It allowed several applications to intervene in support of Protéines France's claims.

35 On 30 August and 21 October 2022 respectively, the EVU and the AVF, which promote vegetarianism, the former in the European Union and the latter in France, and Beyond Meat, which manufactures and markets vegetable-based protein products, also applied to the same court for annulment of Decree No 2022-947.

36 The referring court joined the three cases seeking annulment of that decree.

37 In support of their actions, the applicants in the main proceedings argued, inter alia, that Decree No 2022-947, which prohibits, for the purposes of naming processed products containing vegetable proteins, the use of names such as 'steak' or 'sausage', without and even with the addition of further particulars such as 'vegetable' or 'soya', infringes several provisions of Regulation No 1169/2011.

38 The referring court takes the view that the pleas in law raised before it raise questions which are decisive for the outcome of the dispute which it must decide and that they pose a serious difficulty.

39 In 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 No 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 No 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 [the provisions] of point 4 of Part A of Annex VI, 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 No 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 No 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?'

Admissibility of the request for a preliminary ruling

40 As the applicants in the main proceedings, Protéines France and Beyond Meat, pointed out during the proceedings before the Court, the French authorities have adopted Decree No 2024-144, Article 9 of which provides for the repeal of Decree No 2022-947.

41 Accordingly, by a decision of the President of the Court of 1 March 2024, a request for information was addressed to the referring court with a view to obtaining clarification as to the possible consequences of the adoption of Decree No 2024-144 on the continued existence of the subject matter of the main proceedings and on the treatment of the reference for a preliminary ruling.

42 On 15 March 2024, the referring court lodged its response to that request for information and, on 7 May 2024, lodged a supplement to that response, which was admitted by a decision of the President of the Second Chamber of 8 May 2024.

43 The referring court considers that, despite the adoption of Decree No 2024-144, the questions raised remain decisive for the resolution of the dispute pending before it. In particular, in its response, that court points out, first, that the implementation of Decree No 2022-947 was only partially suspended by the order referred to in paragraph 33 above. Accordingly, some of the provisions of the latter decree were effectively applied between 1 October 2022, the date on which Decree No 2022-947 entered into force, pursuant to Article 8 thereof, and 30 April 2024, the date on which that decree was due to be repealed, pursuant to Article 9 of Decree No 2024-144, which entered into force on 1 May 2024, pursuant to Article 8 thereof. Furthermore, the referring court points out that several of the applicants in the main proceedings have expressed their intention to also challenge Decree No 2024-144 before it, on the same grounds as those already raised against Decree No 2022-947, since certain provisions of those two decrees are identical.

44 In addition, the referring court produced an order of 10 April 2024, by which, on the application of several French companies, it suspended the enforcement of Decree No 2024-144 in its capacity as the court hearing the application for interim measures. That court states that this suspension precludes the repeal of Decree No 2022-947.

45 It follows from the information thus provided in response to the Court's request for information that, despite the adoption of Decree No 2024-144, the actions before the referring court have not become devoid of purpose.

46 In the light of the foregoing, it must be held that the referring court has explained to the requisite legal standard the reasons why the adoption, in the course of the proceedings, of Decree No 2024-144 does not render the request for a preliminary ruling hypothetical, and that request must therefore be declared admissible.

Consideration of the questions referred

The first and second questions

47 As a preliminary point, it should be noted, first, that it follows from the case-law that the provisions of Article 17 of, and point 4 of Part A of Annex VI to, Regulation No 1169/2011 supplement those of Article 7 of that regulation with special labelling requirements, in order to protect the consumer against deception caused by inaccurate information (see, to that effect, judgment of 1 December 2022, *LSI – Germany*, C-595/21, EU:C:2022:949, paragraph 31).

48 Second, those provisions must be interpreted in the light of the definitions of 'legal name', 'customary name' and 'descriptive name' set out in Article 2(2)(n), Article 2(2)(o) and Article 2(2)(p), respectively, of that regulation, and of the obligation, laid down in Article 9(1)(a) of that regulation, to indicate on the food concerned its name.

49 Accordingly, by its first and second questions, which must be considered together, the referring court asks, in essence, whether 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)(n) to (p) and Article 9(1)(a) of that regulation, must be interpreted as specifically harmonising, within the meaning of Article 38(1) of that regulation, the protection of consumers from the risk of being misled by the use of names, other than legal names, consisting of terms from the butchery, charcuterie and fish sectors, to describe, market or promote foods containing vegetable proteins instead of proteins of animal origin, including in their entirety, and, accordingly, preclude a Member State from adopting national measures regulating or prohibiting the use of such names.

50 Pursuant to the first sentence of Article 38(1) of Regulation No 1169/2011, 'as regards the matters specifically harmonised by this Regulation, Member States may not adopt nor maintain national measures unless authorised by Union law.'

51 It follows from the case-law that no provision of Regulation No 1169/2011 lists the 'matters specifically harmonised' by that regulation, within the meaning of Article 38(1) thereof, and that the identification of those matters must be carried out in strict conformity with the wording of that regulation (see, in that regard, judgment of 1 October 2020, *Groupe Lactalis*, C-485/18, EU:C:2020:763, paragraph 25).

52 In the present case, it is necessary to determine whether the other provisions of Regulation No 1169/2011 referred to in paragraph 49 above specifically harmonise the issue which the French authorities sought to settle by adopting Decree No 2022-947.

53 Pursuant to Article 7(1) and (2) of Regulation No 1169/2011, food information must not mislead consumers and must be accurate, clear and easily understood by them.

54 In that regard, it follows in particular from Article 7(1)(a) and (d) of that regulation that the errors from which consumers must be protected concern, first, the characteristics of the food concerned, in particular its nature and composition, and, second, the possibility that, by means of its appearance, description or pictorial representation, it might suggest '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'.

55 Furthermore, it follows from Article 7(4) of that regulation that the obligations which that article imposes as regards consumer information also apply to the advertising and presentation of foods.

56 In accordance with Article 9(1)(a) of that regulation, foods must display their 'name'.

57 Article 17(1) of Regulation No 1169/2011 provides that the name of a food is its 'legal name'. In the absence of such a legal name, the name of that food is its 'customary name'. In the absence of such a customary name or if it is not used, a 'descriptive name' must be provided.

58 Article 2(2)(n) to (p) of that regulation provides definitions of the three concepts mentioned in the previous paragraph. First, the 'legal name' of a food is that 'prescribed in the Union provisions applicable to it or, in the absence of such Union provisions, the name provided for in the laws … applicable in the Member State in which the food is sold to the final consumer'. Second, the 'customary name' of a food is the one recognised by consumers in the Member State in which that food is sold, without that name needing further explanation. Third, the 'descriptive name' of a food is one that describes the food and is sufficiently clear to enable consumers to know its true nature and distinguish it from other products with which it might be confused.

59 In accordance with Article 17(5) of Regulation No 1169/2011, Annex VI to that regulation contains specific provisions on the name of a food and the particulars that must accompany it.

60 In that regard, point 4 of Part A of Annex VI to that regulation provides that, 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, in close proximity to 'the name of the product', in a font size that is sufficiently large against the name of the product.

61 Thus, a joint reading of the provisions of Article 7(1), (2) and (4), Article 9(1)(a), Article 17(1) and (5), as well as point 4 of Part A of Annex VI to Regulation No 1169/2011 can be summarised as follows.

62 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 precise, clear and easily understood by consumers. Fourth, the said name must not mislead consumers, in particular as regards the characteristics of the food concerned, which include its nature and

composition, and as regards the substitution of naturally occurring components or ingredients normally used with different components or ingredients. Fifth, such requirements must be complied with in the marketing and promotion of any food.

63 As regards legal names, according to the first scenario referred to in Article 2(2)(n) of Regulation No 1169/2011, they may be prescribed by provisions of EU law. Thus, for example, Article 2(1)(f) of that regulation refers to Annex I to Regulation No 853/2004 as regards the definitions of 'meat', 'mechanically separated meat', 'meat preparations', 'fishery products' and 'meat products'.

64 Since 'meat' is defined, in point 1.1 of Annex 1, as 'the edible parts of animals', a food not containing such parts cannot use the name 'meat', even if that name is accompanied by details of the substitution of components or ingredients.

65 According to the second scenario referred to in Article 2(2)(n) of Regulation No 1169/2011, in the absence of a legal name prescribed by EU law, Member States may adopt national provisions providing for such a name.

66 In the present case, first, there is no provision of EU law that would require the use of certain legal names for products based on vegetable proteins or that would prescribe the legal names applicable to products simply because they are defined as being of animal origin, without any other details.

67 Second, it is indeed clear from the order referred to in paragraph 33 above that, in the context of the dispute in the main proceedings, the French authorities ruled out the possibility that Decree No 2022-947 lays down a legal name.

68 However, as the Advocate General stated in point 84 of her Opinion, the question as to whether those authorities adopted such a designation must be assessed objectively.

69 While that assessment must be carried out by the national court, the Court may nevertheless provide that court with the points of interpretation of EU law which it requires for that purpose (see, to that effect, judgment of 4 July 2019, *Baltic Media Alliance*, C-622/17, EU:C:2019:566, paragraph 47).

70 In that regard, it follows from the wording of Article 2(2)(n) of Regulation No 1169/2011 that legal names must be 'prescribed' or 'provided for', that is to say, defined, by provisions of EU law or of the law of a Member State, for the purpose of designating a food. Thus, the adoption of a legal name consists in associating a specific expression with a given food.

71 It is in the light of the foregoing considerations that it is appropriate to examine the argument put forward by the Italian Government in its written observations to the effect that, since the Member States, in the absence of a legal name prescribed by provisions of EU law, may adopt measures to provide for legal names for certain foods, they must also be given the power to prohibit the use of certain names for certain foods. According to that government, a ban on the use of a given name for certain foods is equivalent to the imposition of a legal name for foods with characteristics different from those covered by the ban in question. In support of that argument, that government relies on the judgment of 14 June 2017, *TofuTown.com* (C-422/16, EU:C:2017:458), in which the Court ruled that the designations 'milk' and 'milk products' could not be used to designate food products not derived from mammary secretion.

72 However, it must be observed that, for the purposes of Regulation No 1169/2011, the adoption of measures providing that foods must comply with certain conditions, in particular as regards their composition, in order to be able to be designated by terms selected under those measures as a legal name, cannot be regarded as equivalent to the adoption of measures prohibiting the use of certain terms, not legally defined by those measures, to designate foods with certain characteristics, in particular as regards their composition.

73 The former measures make it possible to ensure the protection of consumers, who must be able to assume that a food designated by specific terms which constitute a given legal name meets the conditions specifically laid down for the use of that name. By contrast, the latter measures do not reserve the use of terms precisely defined, as a legal name, by an authority for the designation of foods with specific characteristics.

74 That lack of equivalence is not called into question by the case-law set out in the judgment of 14 June 2017, *TofuTown.com* (C-422/16, EU:C:2017:458).

75 It follows from paragraphs 5, 8, 20 to 22, 25 and 28 to 30 of that judgment that the provisions of Regulation (EU) No 1308/2013 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), which the Court was called upon to interpret in the case which gave rise to that judgment, define precisely the requirements which foods must meet in order to be able to use the name 'milk' and names specific to 'milk products'.

76 Under those provisions, first, the name 'milk' is reserved exclusively for the product of normal mammary secretion. Second, 'milk products' are those derived exclusively from milk and only such products may use the names on a list annexed to Regulation No 1308/2013 and the names, within the meaning of Article 17 of Regulation No 1169/2011, actually used for those products.

77 It was in the light of such a specific legal framework that, in the operative part of the judgment of 14 June 2017, *TofuTown.com* (C-422/16, EU:C:2017:458), the Court held, in essence, that those provisions preclude the use of name 'milk' and the names reserved exclusively for 'milk products' to designate a purely plant-based product, in marketing or in advertising, even if those terms are expanded upon by clarifying or descriptive terms indicating the vegetable origin of the product concerned, unless an exception is provided for by EU law.

78 It must be noted that EU law does not lay down any rule reserving for certain foods, specifically defined as being of animal origin, the use of legal names containing terms from the butchery, charcuterie and fish sectors covered by Decree No 2022-947 or by the names listed in Annex I to Decree No 2024-144. Furthermore, it is not apparent from the file before the Court that such rules exist in French law.

79 It follows that the lessons arising from the judgment of 14 June 2017, *TofuTown.com* (C-422/16, EU:C:2017:458) cannot be applied for the purposes of the examination of the first and second questions.

80 Therefore, subject to the verification which it will be for the referring court to carry out, in accordance with paragraphs 67 to 69 above, it must be held that Decree No 2022-947 does not contain a 'legal name', within the meaning of Regulation No 1169/2011, but rather relates to which

'customary names' or 'descriptive names' may not be used to designate foods based on vegetable proteins. It is therefore necessary to determine whether those concepts are specifically harmonised by that regulation, within the meaning of Article 38(1) thereof.

81 In that regard, it should be noted that Article 2(2)(o) and (p) of Regulation No 1169/2011 does not provide that the Member States may adopt measures regulating the customary names or descriptive names of a particular food, contrary to what is provided, in respect of legal names, by Article 2(2)(n) of that regulation.

82 That difference is explained by the fact that, in the light of the definitions adopted by the EU legislature for these customary and descriptive names, their scope cannot be circumscribed, in a general and abstract manner, by national authorities. Indeed, as Protéines France and the EVU argue, first, a name can be regarded as being a customary name for a food only if everyday language, usage, habit, tradition and custom are such that it may be considered that consumers recognise that name as specifically designating the product to which it is attached. Second, in order to qualify as a 'descriptive name', a designation must, when read, make it possible to understand the main characteristics of the food so designated.

83 Accordingly, in the absence of the adoption of a legal name, it follows from Article 38(1) of Regulation No 1169/2011 that a Member State may not prevent, by means of a general and abstract prohibition, producers of foods based on vegetable proteins from fulfilling their obligation to indicate the name of those foods by using customary names or descriptive names.

84 As for the question whether a Member State may adopt general and abstract measures to prevent the risk that the use of certain customary or descriptive names might mislead consumers because they are not correctly informed of the fact that, in foods designated by those names, animal proteins have been substituted with vegetable proteins, it should be borne in mind that, as is clear from paragraphs 54 and 60 above, Article 7(1)(d) and point 4 of Part A of Annex VI to Regulation No 1169/2011 relate specifically to the substitution of components or ingredients of foods. This issue is therefore also specifically harmonised by that regulation, within the meaning of Article 38(1) thereof.

85 However, the governments which have submitted written observations and the European Commission argue, in essence, that these provisions do not cover the situation relevant in the present case, in which the composition of the food concerned has become completely different.

86 According to settled case-law, it is necessary, when interpreting a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part (judgment of 12 May 2021, *Bundesrepublik Deutschland (Interpol red notice)*, C-505/19, EU:C:2021:376, paragraph 77 and the case-law cited).

87 From a literal perspective, it should be noted that the wording of Article 7(1)(d) and point 4 of Part A of Annex VI to Regulation No 1169/2011 refer to the substitution of a component or ingredient with a different component or ingredient. The fact that those provisions refer to a component or an ingredient is not sufficient to render them inapplicable where the component or ingredient substituted is the only component or ingredient of a food.

88 From a contextual perspective, it should be noted that Article 2(2)(f) of that regulation defines 'ingredient' as meaning 'any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation

of a food and still present in the finished product, even if in an altered form'. Article 2(2)(q) of that regulation provides that 'primary ingredient' must be understood as meaning 'an ingredient or ingredients of a food that represent more than 50% of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required'.

89 Article 7(1)(d) and point 4 of Part A of Annex VI to that regulation use the term 'ingredient' without excluding 'primary ingredients'. Therefore, the latter is capable of being substituted within the meaning of those provisions.

90 From a teleological perspective, it is apparent from Article 1(1) of Regulation No 1169/2011, read in the light of recitals 1 and 3 thereof, that that regulation aims to achieve a high level of consumer protection in the field of food information, while respecting the different perceptions of those consumers and their information needs, and ensuring the proper functioning of the internal market, by adopting basic provisions.

91 That high level of protection risks being compromised if the provisions relating to the substitution, in a food, of a component or ingredient with a different component or ingredient do not apply where that substitution concerns a component or ingredient which is particularly important within a food, or which constitutes its only component or ingredient. Paradoxically, the result would not be that the sale and promotion of that food would be prohibited by EU law, but that consumer protection in such cases would not be harmonised and therefore not ensured, whereas it would be where the substitution concerns a less important component or ingredient.

92 Therefore, Article 7(1)(d) and point 4 of Part A of Annex VI to Regulation No 1169/2011 should also be considered to cover the issue of the information to be provided to consumers where the composition of the food concerned becomes completely different.

93 Furthermore, it is clear from the case-law relating specifically to those provisions that providing the information relating to the substitution of a component or ingredient in close proximity to the name of the food is sufficient to protect the consumer from the risk of being misled (see, to that effect, judgment of 1 December 2022, *LSI – Germany*, C-595/21, EU:C:2022:949, paragraphs 32 and 34).

94 Accordingly, as Beyond Meat submits, those provisions establish a rebuttable presumption that the information provided in the manner prescribed by those provisions provides sufficient protection for consumers, including in the event of total substitution of the only component or ingredient that they can expect to find in a food designated by a customary name or a descriptive name containing certain terms.

95 The fact remains that, if a national authority considers that the actual manner in which a food is sold or promoted misleads the consumer, it may take action against the food business operator concerned – which, under Article 8(1) and (2) of Regulation No 1169/2011, is responsible for the information displayed on that food and must ensure that that information is present and accurate – and demonstrate that the aforementioned presumption is rebutted.

96 In the light of all the foregoing, the answer to the first and second questions must be that that Article 7 and Article 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

from the risk of being misled by the use of names, other than legal names, consisting of terms from the butchery, charcuterie and fish sectors to describe, market or promote foods containing vegetable proteins instead of proteins of animal origin, including in their entirety, and thereby preclude a Member State from adopting national measures regulating or prohibiting the use of such names.

The third question

97 By its third question, the referring court asks, in essence, whether, if the answer to the first or second question is in the affirmative, Article 38(1) of Regulation No 1169/2011 must be interpreted as meaning that the specific harmonisation effected by the provisions which are the subject of those questions precludes a Member State from adopting a national measure which, first, provides for the imposition of administrative penalties in the event of non-compliance with the requirements and prohibitions resulting from the provisions of that regulation and, second, sets the proportions of vegetable protein below which the use of names, other than legal names, consisting of terms from the butchery and charcuterie sectors to describe, market or promote foods containing vegetable proteins is still authorised.

98 With regard to the first part of the third question, concerning the prohibitions and penalties resulting from Articles 6 and 7 of Decree No 2022-947, it should be recalled that, under the third subparagraph of Article 17(2) of Regulation No 178/2002, the Member States are to lay down the rules on measures and penalties applicable to infringements of food law, which must be effective, proportionate and dissuasive.

99 Under Article 3(1) of that regulation, 'food law' means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether in EU law or in national law. In addition, food law covers all stages of production, processing and distribution of food.

100 It follows from Article 8 of that regulation that the purpose of food law is to protect the interests of consumers and in particular to prevent fraudulent or deceptive practices and any other practices which may mislead the consumer.

101 Those factors relating to Regulation No 178/2002 are also relevant to Regulation No 1169/2011.

102 Indeed, in accordance with Article 2(1)(a) of Regulation No 1169/2011, the definition of food law, for the purposes of that regulation, is that provided for in Article 3(1) of Regulation No 178/2002. Recital 4 of Regulation No 1169/2011 notes that, according to Regulation No 178/2002, one of the general principles of food law is to provide a basis for consumers to make informed choices in relation to food they consume and to prevent any practices that may mislead the consumer.

103 Since food law includes Regulation No 1169/2011 and since that regulation permits, under certain conditions, the adoption of national measures, the Member States are required to provide for effective, proportionate and dissuasive penalties for infringements of that regulation or of those measures.

104 Therefore, the specific harmonisation effected by the provisions referred to in the first and second questions does not preclude a Member State from laying down administrative penalties for failure to comply with the requirements and prohibitions resulting from those provisions or from national measures which are in conformity with those provisions.

105 As regards the second part of the third question, it should be noted that the setting of maximum permitted levels of vegetable protein, such as that resulting from Article 3(1) of Decree No 2022-947, in order for foods to be designated by certain customary or descriptive names, is tantamount to regulating the use of those names without adopting a legal name. Since the provisions which are the subject of the first and second questions specifically harmonise the use of those names, a Member State cannot adopt measures in that regard without jeopardising the uniformity of EU law.

106 Having regard to all of the foregoing, the answer to the third question must be that Article 38(1) of Regulation No 1169/2011 must be interpreted as meaning that the specific harmonisation referred to in the answer to the first and second questions does not preclude a Member State from laying down administrative penalties for failure to comply with the requirements and prohibitions resulting from the provisions of that regulation and from national measures which are in conformity with it. However, that specific harmonisation precludes a Member State from adopting a national measure setting the proportions of vegetable proteins below which the use of names, other than legal names, consisting of terms from the butchery and charcuterie sectors to describe, market or promote foods containing vegetable proteins is still authorised.

The fourth question

107 Since the referring court specifies that the fourth question is asked only if the answers to the first and second questions are negative, there is no need to answer the fourth question.

Costs

108 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Articles 7 and 17 of 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, and point 4 of Part A of Annex VI to Regulation No 1169/2011, read in conjunction with Article 2(2)(o) and (p) and Article 9(1)(a) thereof,**

   must be interpreted as meaning that they specifically harmonise, within the meaning of Article 38(1) of that regulation, the protection of consumers from the risk of being misled by the use of names, other than legal names, consisting of terms from the butchery, charcuterie and fish sectors to describe, market or promote foods containing vegetable proteins instead of proteins of animal origin, including in their entirety, and thereby preclude a Member State from adopting national measures regulating or prohibiting the use of such names.

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

must be interpreted as meaning that the specific harmonisation referred to in point 1 of this operative part does not prevent a Member State from laying down administrative penalties for non-compliance with the requirements and prohibitions resulting from that regulation and from national measures that are in conformity with that regulation. However, that specific harmonisation precludes a Member State from adopting a national measure setting the proportions of vegetable proteins below which the use of names, other than legal names, consisting of terms from the butchery and charcuterie sectors to describe, market or promote foods containing vegetable proteins is still authorised.

[Signatures]