



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

25 October 2018*

(Reference for a preliminary ruling — Approximation of laws — Regulation (EC) No 110/2008 — Spirit drinks — Definition, description, presentation, labelling and the protection of geographical indications — Category 41 of Annex II — Egg liqueur — Definition — Exhaustive nature of the permissible components)

In Case C-462/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Hamburg (Regional Court, Hamburg, Germany) made by decision of 27 June 2017, received at the Court on 1 August 2017, in the proceedings

Tänzer & Trasper GmbH

v

Altenweddinger Geflügelhof Kommanditgesellschaft,

THE COURT (Ninth Chamber),

composed of C. Lycourgos, President of the Tenth Chamber, acting as President of the Ninth Chamber, E. Juhász and C. Vajda (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- Tänzer & Trasper GmbH, by K. Krietsch, Rechtsanwältin,
- Altenweddinger Geflügelhof KG, by H.J. Omsels, Rechtsanwalt,
- the Greek Government, by G. Kanellopoulos, M. Tassopoulou and A. Vasilopoulou, acting as Agents,
- the European Commission, by B. Eggers and B. Hofstötter, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of category 41 of Annex II to Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ 2008 L 39, p. 16), as amended by Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 (OJ 2008 L 354, p. 34) ('Regulation No 110/2008').
- 2 The request has been made in proceedings between Tänzer & Trasper GmbH and Altenweddingener Geflügelhof KG with respect to the sales denomination 'egg liqueur' borne by the latter's products.

Legal context

- 3 Recitals 2, 4 and 9 of Regulation No 110/2008 state:
 - '(2) The spirit drinks sector is important for consumers, producers and the agricultural sector in the [European Union]. The measures applicable to the spirit drinks sector should contribute to the attainment of a high level of consumer protection, the prevention of deceptive practices and the attainment of market transparency and fair competition. By doing so, the measures should safeguard the reputation which [EU] spirit drinks have achieved in the [European Union] and on the world market by continuing to take into account the traditional practices used in the production of spirit drinks as well as increased demand for consumer protection and information. ...
 - ...
 - (4) To ensure a more systematic approach in the legislation governing spirit drinks, this Regulation should set out clearly defined criteria for the production, description, presentation and labelling of spirit drinks as well as on the protection of geographical indications.
 - ...
 - (9) Given the importance and complexity of the spirit drinks sector, it is appropriate to lay down specific measures on the description and presentation of spirit drinks going beyond the horizontal rules established in Directive 2000/13/EC 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]. Those specific measures should also prevent the misuse of the term "spirit drink" and the names of spirit drinks for products which do not meet the definitions set out in this Regulation.'
- 4 Article 1(1) of Regulation No 110/2008 provides that that regulation lays down rules on the definition, description, presentation and labelling of spirit drinks as well as on the protection of geographical indications.
- 5 Article 2(1) and (3) of that regulation reads as follows:
 - '1. For the purpose of this Regulation, "spirit drink" means an alcoholic beverage:
 - ...

(c) having a minimum alcoholic strength of 15% vol.;

...

3. The minimum alcoholic strength provided for in paragraph 1(c) shall be without prejudice to the definition for the product in category 41 of Annex II.'

6 Article 4 of Regulation No 110/2008 provides that spirit drinks are to be classified into categories according to the definitions set out in Annex II.

7 Article 5(2)(a) of that regulation states:

'Without prejudice to the specific rules laid down for each of the categories numbered 15 to 46 in Annex II, the spirit drinks defined therein may:

(a) be obtained from any agricultural raw material listed in Annex I to the Treaty'.

8 According to Article 9(1) and (2) of Regulation No 110/2008:

'1. Spirit drinks which meet the specifications for the products defined in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination assigned therein.

2. Spirit drinks which meet the definition laid down in Article 2 but which do not meet the requirements for inclusion in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination "spirit drink". Without prejudice to paragraph 5 of this Article, that sales denomination shall not be replaced or altered.'

9 Annex II to that regulation is entitled 'Spirit drinks'. In the section of that annex concerning 'Categories of spirit drinks', categories 41 and 42 are worded as follows:

'41. Egg liqueur or *advocaat* or *avocat* or *advokat*

(a) Egg liqueur or *advocaat* or *avocat* or *advokat* is a spirit drink, whether or not flavoured, obtained from ethyl alcohol of agricultural origin, distillate and/or spirit, the ingredients of which are quality egg yolk, egg white and sugar or honey. The minimum sugar or honey content must be 150 grams per litre expressed as invert sugar. The minimum content of pure egg yolk must be 140 grams per litre of the final product.

(b) By way of derogation from Article 2(1)(c), the minimum alcoholic strength by volume of egg liqueur or *advocaat* or *avocat* or *advokat* shall be 14%.

(c) Only flavouring substances as defined in Article 3(2)(b) of Regulation ... No 1334/2008 and flavouring preparations as defined in Article 3(2)(d) of that regulation may be used in the preparation of egg liqueur or *advocaat* or *avocat* or *advokat*.

42. Liqueur with egg

(a) Liqueur with egg is a spirit drink, whether or not flavoured, obtained from ethyl alcohol of agricultural origin, distillate and/or spirit, the characteristic ingredients of which are quality egg yolk, egg white and sugar or honey. ...

...'

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

- 10 Both Tänzer & Trasper and Altenweddinger Geflügelhof produce liqueurs which have eggs as one of their main components and which are sold under the sales denomination ‘egg liqueur’. The liqueurs sold under that name by Altenweddinger Geflügelhof include a range of products that contain a label on the back of the bottle featuring the indication ‘contains milk’. It is common ground that those products do in fact contain milk.
- 11 Before the referring court, the Landgericht Hamburg (Regional Court, Hamburg, Germany), Tänzer & Trasper requests, under the combined provisions of national and EU law, that Altenweddinger Geflügelhof should be ordered to desist from using the sales denomination ‘egg liqueur’ for that product range. According to Tänzer & Trasper, inasmuch as milk is not referred to in category 41 of Annex II to Regulation No 110/2008 as an ingredient of egg liqueur, a product containing milk cannot bear that sales denomination.
- 12 Against this, Geflügelhof Altenweddinger contends that the products in question correspond to the specifications of that provision as the ingredients listed are only minimum conditions to be met in order for a product to be capable of designation as ‘egg liqueur’.
- 13 In those circumstances, the Landgericht Hamburg (Regional Court, Hamburg) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Are the components listed in category 41 of Annex II to Regulation (EC) No 110/2008 the minimum components that a spirit drink must contain in order to be permitted to bear the sales denomination “egg liqueur” (a minimum specification) or is category 41 of Annex II to Regulation (EC) No 110/2008 an exhaustive list of the components that are permissible in a product seeking to bear the sales denomination “egg liqueur”?’

Consideration of the question referred

- 14 By its question, the referring court asks, in essence, whether category 41 of Annex II to Regulation No 110/2008 must be interpreted as meaning that, in order to be able to bear the sales denomination ‘egg liqueur’, a spirit drink cannot contain ingredients other than those mentioned in that provision.
- 15 Regulation No 110/2008 lays down, under Article 1(1) thereof, the rules applicable to the definition, description, presentation and labelling of spirit drinks as well as to the protection of their geographical indications. In accordance with Article 4 of that regulation, those spirit drinks are to be classified into categories according to the definitions laid down in Annex II to that regulation.
- 16 In the present case, the dispute in the main proceedings concerns the question whether Altenweddinger Geflügelhof, the defendant in the present dispute, is entitled to designate its products as ‘egg liqueur’, although, in addition to the ingredients mentioned in that provision, those products contain milk.
- 17 It should be pointed out that, in its versions in Spanish, English and French, the first sentence of category 41(a) of Annex II to Regulation No 110/2008 is drafted in such a way that it follows unequivocally that the list of ingredients mentioned therein is exhaustive.
- 18 However, the German version of that sentence provides that egg liqueur is a spirit drink ‘which contains’ egg yolk, egg white and sugar or honey as ingredients. As the European Commission has pointed out in its written observations, that wording does not preclude an interpretation under which the addition of ingredients other than those mentioned is permitted.

- 19 In addition, Altenweddinger Geflügelhof stresses, in its observations submitted to the Court, that the Italian version of that sentence describes the listed ingredients as ‘characteristic’ (*‘elementi caratteristici’*). Thus, in that language version, the wording of category 41 of Annex II to Regulation No 110/2008 corresponds to that of category 42 of the same annex, which defines the spirit drink named ‘liqueur with egg’.
- 20 In this context, it must be borne in mind that, according to the Court’s settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (see, to that effect, judgment of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 27 and the case-law cited).
- 21 As regards, first, the context of the provision at issue, it should be noted that it follows from Article 9(1) of Regulation No 110/2008 that the spirit drinks which meet the specifications for the products defined in the categories of Annex II of that regulation are to bear in their description, presentation and labelling the sales denomination assigned therein. Article 9(2) of that regulation specifies that, where spirit drinks which meet the definition of Article 2 of that regulation do not meet the requirements for inclusion in categories 1 to 46 of that annex, they are to come under the sales denomination ‘spirit drink’. It follows from the relationship between the first two paragraphs of Article 9 that the definitions of spirit drinks contained in Annex II to Regulation No 110/2008 are precise and exhaustive.
- 22 As regards, in the second place, the purpose of Regulation No 110/2008, it follows, first, from recital 4 thereof that that regulation seeks to ensure a more systematic approach in the legislation governing spirit drinks, by setting out clear criteria for the production, description, presentation and labelling of spirit drinks as well as for the protection of geographical indications. Moreover, recital 9 states that that regulation seeks also to lay down specific measures on the description and presentation of spirit drinks, inter alia to prevent misuse of the term ‘spirit drink’ and of the names of spirit drinks for products which do not meet the definitions set out in Annex II to that regulation.
- 23 The definitions contained in that annex are precisely specific measures on the description and presentation of spirit drinks, referred to in the preceding paragraph. As those definitions are therefore at the heart of the system established by Regulation No 110/2008, and as their accuracy must serve the aim, also set out in the preceding paragraph, of avoiding the misuse of names of spirit drinks, they must be interpreted restrictively, lest the scheme be weakened. In those circumstances, the possibility of adding other ingredients to those listed in those definitions could be permissible only if expressly provided for therein.
- 24 This is not the case with regard to category 41 of Annex II to Regulation No 110/2008, which does not mention the possibility of adding ingredients other than those listed under category 41(a) of that annex. Apart from those ingredients, only the use of certain flavouring substances and preparations is expressly provided for, in the circumstances set out in category 41(c) of that annex. Milk, however, cannot be classified as a flavouring ‘substance’ or ‘preparation’.
- 25 As is essentially argued by Tänzer & Trasper and by the Commission, an interpretation of the definition in category 41 of Annex II to Regulation No 110/2008 as meaning that the ingredients there listed are those that egg liqueur must contain as a minimum would allow the addition not only of milk but any other product, something which would undermine the objective of establishing clear criteria governing the production, description, presentation and labelling of the drinks defined in that annex.

- 26 Since Altenweddinger Geflügelhof maintains that milk is used in the traditional production of egg liqueur, with the result that such use corresponds to consumer expectations, it should be noted that the possibility of having recourse to traditional production methods, which is expressly provided for in the case of certain categories of spirit drinks listed in Annex II to Regulation No 110/2008, is not mentioned in category 41 of that annex.
- 27 With regard to the argument of Altenweddinger Geflügelhof that, under Article 5(2)(a) of that regulation, spirit drinks defined in Annex II can be obtained from any agricultural raw material listed in Annex I to the FEU Treaty, including milk, suffice it to observe that, according to the wording of that provision, that latitude is ‘without prejudice to the specific rules laid down for each of the categories numbered 15 to 46 in Annex II [to Regulation No 110/2008]’.
- 28 It is apparent, secondly, from recital 2 of Regulation No 110/2008 that that regulation refers generally to the attainment of a high level of consumer protection, the prevention of deceptive practices, the attainment of market transparency and fair competition and the protection of the reputation which EU spirit drinks have achieved in the European Union and on the world market.
- 29 The interpretation according to which the list of ingredients set out in category 41 of Annex II to Regulation No 110/2008 is not exhaustive would, however, risk undermining those objectives. The possibility of adding to egg liqueur ingredients other than those exhaustively provided for in that list would undermine transparency and might encourage producers to add less expensive materials, to the detriment of fair competition and consumer protection.
- 30 In the light of the foregoing, the answer to the question referred is that category 41 of Annex II to Regulation No 110/2008 must be interpreted as meaning that, in order to be able to bear the sales denomination ‘egg liqueur’, a spirit drink cannot contain ingredients other than those mentioned in that provision.

Costs

- 31 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Ninth Chamber) hereby rules:

Category 41 of Annex II to Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, as amended by Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008, must be interpreted as meaning that, in order to be able to bear the sales denomination ‘egg liqueur’, a spirit drink cannot contain ingredients other than those mentioned in that provision.

[Signatures]