



## Reports of Cases

### JUDGMENT OF THE COURT (Ninth Chamber)

8 May 2024\*

(Reference for a preliminary ruling – Approximation of laws – Agriculture – Definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products – Regulation (EU) No 251/2014 – Article 3(4) – Aromatised wine-product cocktail – Definition – Concepts of ‘alcohol’ and of ‘flavouring foodstuffs’)

In Case C-216/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court, Germany), made by decision of 23 March 2023, received at the Court on 4 April 2023, in the proceedings

**Hauser Weinimport GmbH**

v

**Freistaat Bayern,**

THE COURT (Ninth Chamber),

composed of O. Spineanu-Matei, President of the Chamber, S. Rodin and L.S. Rossi (Rapporteur), Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Hauser Weinimport GmbH, by A. Reinhart, Rechtsanwalt,
- Freistaat Bayern, by C. Diroll and J. Vogel, acting as Agents,
- the European Commission, by B. Hofstötter and B. Rechena, 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 Article 3(4)(c) and point 1(b)(ii) of Annex I to Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ 2014 L 84, p. 14 and Corrigendum OJ 2014 L 283, p. 77), as amended by Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 (OJ 2021 L 435, p. 262) ('Regulation No 251/2014').
- 2 The request has been made in proceedings between Hauser Weinimport GmbH and Freistaat Bayern (State of Bavaria, Germany) concerning the marketing of a drink which consists, essentially, of a mixture of wine and beer, described as an 'aromatised wine-product cocktail' within the meaning of Regulation No 251/2014.

### **Legal context**

#### ***Regulation No 251/2014***

- 3 Recitals 1, 4, 7, 9 and 11 of Regulation No 251/2014 are worded as follows:
  - '(1) Council Regulation (EEC) No 1601/91 [of 10 June 1991 laying down general rules on the definition, description and presentation of aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails (OJ 1991 L 149, p. 1)] and Commission Regulation (EC) No 122/94 [of 25 January 1994 laying down certain detailed rules for the application of Council Regulation (EEC) No 1601/91 on the definition, description and presentation of aromatised wines, aromatised wine-based drinks, and aromatised wine-product cocktails (OJ 1994 L 21, p. 7)] have proved successful in regulating aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails ('aromatised wine products'). However, in the light of technologic innovation, market developments and evolving consumer expectations it is necessary to update the rules applicable to the definition, description, presentation, labelling and protection of geographical indications of certain aromatised wine products, while taking into account traditional production methods.
- ...
- (4) Aromatised wine products are important for consumers, producers and the agricultural sector in the [European] Union. The measures applicable to aromatised wine products 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 will safeguard the reputation that the [European] Union's aromatised wine products have achieved in the internal market and on the world market by continuing to take into account the traditional practices used in the production of aromatised wine products as well as increased demand for consumer protection and

information. Technological innovation should also be taken into account in respect of the products for which such innovation serves to improve quality, without affecting the traditional character of the aromatised wine products concerned.

...

- (7) To ensure clarity and transparency in Union law governing aromatised wine products, it is necessary to clearly define the products covered by that law, the criteria for the production, description, presentation and labelling of aromatised wine products and in particular, the sales denomination. ...

...

- (9) Aromatised wine products should be produced in accordance with certain rules and restrictions, which guarantee that consumer expectations as regards quality and production methods are met. In order to meet the international standards in this field, the production methods should be established and the Commission should as a general rule take into account the standards recommended and published by the International Organisation of Vine and Wine (OIV).

...

- (11) Moreover, the ethyl alcohol used for the production of aromatised wine products should be exclusively of agricultural origin, so as to meet consumer expectations and conform to traditional quality practices. This will also ensure an outlet for basic agricultural products.'

- 4 Article 1 of Regulation No 251/2014 provides:

'1. This Regulation lays down rules on the definition, description, presentation and labelling of aromatised wine products.

...

3. This Regulation shall apply to all aromatised wine products placed on the market in the Union whether produced in the Member States or in third countries, as well as to those produced in the Union for export.'

- 5 Article 3 of that regulation, entitled 'Definition and classification of aromatised wine products', provides:

'1. Aromatised wine products are products obtained from products of the wine sector as referred to in 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)] that have been flavoured. They are classified into the following categories:

- (a) aromatised wines;
- (b) aromatised wine-based drinks;

(c) aromatised wine-product cocktails.

2. Aromatised wine is a drink:

- (a) obtained from one or more of the grapevine products defined in point 5 of Part IV of Annex II and in points 1 and 3 to 9 of Part II of Annex VII to Regulation (EU) No 1308/2013, with the exception of “Retsina” wine;
- (b) in which the grapevine products referred to in point (a) represent at least 75% of the total volume;
- (c) to which alcohol may have been added;
- (d) to which colours may have been added;
- (e) to which grape must, partially fermented grape must or both may have been added;
- (f) which may have been sweetened;
- (g) which has an actual alcoholic strength by volume of not less than 14,5% vol. and less than 22% vol. and a total alcoholic strength by volume of not less than 17,5% vol.

3. Aromatised wine-based drink is a drink:

- (a) obtained from one or more of the grapevine products defined in points 1, 2 and 4 to 9 of Part II of Annex VII to Regulation (EU) No 1308/2013, with the exception of wines produced with the addition of alcohol and “Retsina” wine;
- (b) in which the grapevine products referred to in point (a) represent at least 50% of the total volume;
- (c) to which no alcohol has been added, except where Annex II provides otherwise;
- (d) to which colours may have been added;
- (e) to which grape must, partially fermented grape must or both may have been added;
- (f) which may have been sweetened;
- (g) which has an actual alcoholic strength by volume of not less than 4,5% vol. and less than 14,5% vol.

4. Aromatised wine-product cocktail is a drink:

- (a) obtained from one or more of the grapevine products defined in points 1, 2 and 4 to 11 of Part II of Annex VII to Regulation (EU) No 1308/2013, with the exception of wines produced with the addition of alcohol and “Retsina” wine;
- (b) in which the grapevine products referred to in point (a) represent at least 50% of the total volume;

- (c) to which no alcohol has been added;
  - (d) to which colours may have been added;
  - (e) which may have been sweetened;
  - (f) which has an actual alcoholic strength by volume of more than 1,2% vol. and less than 10% vol.'
- 6 Article 4(1) of Regulation No 251/2014 states:
- 'Aromatised wine products shall be produced in accordance with the requirements, restrictions and descriptions laid down in Annexes I and II.'
- 7 Annex I to that regulation, entitled 'Technical definitions, requirements and restrictions', provides:
- '(1) Flavouring
- ...
- (b) The following products are authorised for the flavouring of aromatised wine-based drinks and aromatised wine-product cocktails:
- ...
- (ii) aromatic herbs and/or spices and/or flavouring foodstuffs.
- Addition of such substances confers on the final product organoleptic characteristics other than those of wine.
- ...
- (3) Addition of alcohol
- The following products are authorised for the preparation of some aromatised wines and, some aromatised wine-based drinks:
- (a) ethyl alcohol of agricultural origin, as defined in Annex I, point 1, 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)], including viticultural origin;
  - (b) wine alcohol or dried grape alcohol;
  - (c) wine distillate or dried grape distillate;
  - (d) distillate of agricultural origin, as defined in Annex I, point 2, to Regulation (EC) No 110/2008;
  - (e) wine spirit, as defined in Annex II, point 4, to Regulation (EC) No 110/2008;
  - (f) grape-marc spirit, as defined in Annex II, point 6, to Regulation (EC) No 110/2008;
  - (g) spirit drinks distilled from fermented dried grapes.

The ethyl alcohol used to dilute or dissolve colorants, flavourings or any other authorised additives used in the preparation of aromatised wine products must be of agricultural origin and must be used in the dose strictly necessary and is not considered as addition of alcohol for the purpose of production of an aromatised wine product.

...

(5) Addition of water

For the preparation of aromatised wine products, the addition of water is authorised provided that it is used in the dose necessary:

- to prepare flavouring essence,
- to dissolve colorants and sweeteners,
- to adjust the final composition of the product.

...

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

- 8 Hauser Weinimport manufactures and markets an alcoholic mixed drink which consists of 55% wine and 10% beer. That drink has an alcohol strength by volume of 5.5% and is flavoured with elderflower. It was marketed as an ‘aromatised wine-product cocktail’.
- 9 The Freistaat Bayern (State of Bavaria, Germany) objected to that designation on the ground that the beer added to the drink constitutes ‘alcohol’ within the meaning of Article 3(4)(c) of Regulation No 251/2014, which may not be added to a drink described as an ‘aromatised wine-product cocktail’. Consequently, the State of Bavaria prohibited Hauser Weinimport from marketing the same drink under that name.
- 10 In Weinimport’s view, only the products listed in point 3 of Annex I to Regulation No 251/2014 should be regarded as ‘alcohol’ within the meaning of Article 3(4)(c) of that regulation, since the addition of alcohol, within the meaning of Article 3 of that regulation, must result in an increase and not a reduction in the alcoholic strength. In the present case, the addition of a small quantity of beer, corresponding to 10% of the drink at issue and having a low alcoholic strength, does not increase that drink’s alcoholic strength. In any event, beer is a flavouring foodstuff, within the meaning of point 1(b)(ii) of Annex I to the same regulation, the addition of which is authorised.
- 11 By judgment of 21 September 2020, the Bayerisches Verwaltungsgericht Augsburg (Bavarian Administrative Court, Augsburg, Germany) dismissed Hauser Weinimport’s action on the ground that no alcohol, other than a grapevine product, may be added to a drink bearing the name ‘aromatised wine-product cocktail’.
- 12 Hearing the appeal against that judgment, the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court, Germany), which is the referring court, is uncertain regarding the interpretation of various provisions of Regulation No 251/2014. Although that court is inclined

to allow the appeal by upholding Hauser Weinimport's argument, summarised in paragraph 10 above, it admits that it is not able to identify the interpretation of EU law on which the outcome of the dispute before it depends with sufficient certainty.

- 13 In those circumstances the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Is Article 3(4)(c) of [Regulation No 251/2014] to be interpreted as meaning that the term "alcohol" also includes a drink which contains alcohol and is not a grapevine product within the meaning of Article 3(4)(a) of [that regulation]?
- (2) Does "added" within the meaning of Article 3(4)(c) of Regulation [No 251/2014] mean that the alcoholic strength of the end product must have increased by comparison with the grapevine product used in accordance with Article 3(4)(a) of Regulation [No 251/2014]?
- (3) If Question 1 is answered in the affirmative, is the first sentence of Article 3(1) of Regulation [No 251/2014], read in conjunction with Annex I(1)(b)(ii) thereto, to be interpreted as meaning that the term "flavouring foodstuff" includes an alcohol-containing drink within the meaning of Question 1?'

## **Consideration of the questions referred**

### ***The first and second questions***

- 14 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(4)(c) of Regulation No 251/2014 must be interpreted as meaning that the concept of 'alcohol', within the meaning of that provision, which cannot be added to a drink bearing the name 'aromatised wine-product cocktail', includes an alcoholic drink which, such as beer, is not a grapevine product, within the meaning of Article 3(4)(a) of that regulation, but the addition of which must nevertheless lead to an increase in the alcoholic strength of such a cocktail compared to that of the grapevine product or products referred to in the latter provision.
- 15 It should be noted that, under Article 1(1) and (3) thereof, Regulation No 251/2014 lays down the rules concerning the definition, description, presentation and labelling of 'aromatised wine products' and applies to all of those products placed on the market in the European Union. Those rules, as highlighted in recitals 4 and 9 of that regulation, must contribute to a high level of consumer protection, in particular with regard to informing those consumers, preventing practices likely to mislead them, and ensuring that consumer expectations are met as regards quality and production methods. Furthermore, as emphasised in recital 7 of that regulation, to ensure clarity and transparency, it is necessary to clearly define aromatised wine products, the criteria for the production, description, presentation and labelling of those products and, in particular, their sales denomination.
- 16 It is in view of those objectives that Article 3(1) of Regulation No 251/2014, entitled 'Definition and classification of aromatised wine products', classifies those products, obtained from the wine sector, into three categories, namely, (a) 'aromatised wines', (b) 'aromatised wine-based drinks' and (c) 'aromatised wine-product cocktails'.

- 17 Article 3(2) to (4) of Regulation No 251/2014 lists the characteristics that drinks falling within each of those categories must meet.
- 18 Thus, under Article 3(2)(a) to (c) of that regulation, an ‘aromatised wine’ must be obtained from one or more of the grapevine products, as they are referred to in that provision, which represent at least 75% of the total volume of that drink and ‘to which alcohol may have been added’.
- 19 Pursuant to Article 3(3)(a) to (c) of that regulation, an ‘aromatised wine-based drink’ must be obtained from one or more of the grapevine products, as they are referred to in that provision, which represent at least 50% of the total volume of that drink and ‘to which no alcohol has been added, except where Annex II provides otherwise’.
- 20 With regard to the name ‘aromatised wine-product cocktails’, which is the subject of the main proceedings, Article 3(4) of Regulation No 251/2014 provides that they must be obtained from one or more of the grapevine products, as referred to in point (a) of that provision, which are to represent at least 50% of the total volume of that drink but to which, under point (c) of that provision, ‘no alcohol has been added’. Point (f) of that same provision states that the actual alcoholic strength by volume is to be more than 1.2% vol. and less than 10% vol.
- 21 It follows that an ‘aromatised wine-product cocktail’ can validly be composed of wine, but cannot include drinks ‘to which ... alcohol has been added’, except in the case of the grapevine products referred to in Article 3(4)(a) of the Regulation No 251/2014.
- 22 It is important to note that Regulation No 251/2014 does not include a definition of the terms ‘to which alcohol has been added’.
- 23 It is true that, as submitted by Hauser Weinimport, Annex I to Regulation No 251/2014 lists, in point 3 thereof, entitled ‘Addition of alcohol’, seven products authorised ‘for the preparation of some aromatised wines and, some aromatised wine-based drinks’ among which beer does not appear.
- 24 However, that cannot mean that the concept of ‘alcohol’, within the meaning of that regulation, includes only the seven products listed in point 3 of Annex I to that regulation, and that, consequently, the category of drinks bearing the name ‘aromatised wine-product cocktail’ could be partially composed of alcoholic drinks which are not included there, as is the case with beer.
- 25 As is apparent from its wording, point 3 of Annex I to Regulation No 251/2014 merely authorises an exhaustive list of seven types of alcohol – namely ethyl alcohol of agricultural origin, including of viticultural origin, wine alcohol or dried grape alcohol, wine distillate or dried grape distillate, distillate of agricultural origin, wine spirit, grape-marc spirit, and spirit drinks distilled from fermented dried grapes – that may be incorporated in the preparation of some ‘aromatised wines’ or some ‘aromatised wine-based drinks’, which does not include the category of ‘aromatised wine-product cocktails’, referred to in Article 3(4) of that regulation.
- 26 Accordingly, not only can the alcohols listed in point 3 of Annex I to Regulation No 251/2014 not be added to a drink falling within the category of ‘aromatised wine-product cocktails’, but that provision cannot be interpreted as implicitly authorising, for that same category, the addition of an alcohol – other than a grapevine product referred to in Article 3(4)(a) of that regulation – which does not appear in the exhaustive list set out in that provision.



- 27 That interpretation is supported by the objective pursued by Regulation No 251/2014, which consists of defining, in a uniform manner, all aromatised wine products placed on the market in the European Union, with the aim of ensuring that consumer expectations are met, by preventing practices likely to mislead them.
- 28 By contrast, the interpretation of point 3 of Annex I to that regulation supported by Hauser Weinimport would lead to the paradoxical situation, contrary to the aforementioned objective of that regulation, that alcoholic drinks, such as whiskey, vodka or beer, the addition of which is prohibited for the categories of ‘aromatised wines’ and ‘aromatised wine-based drinks’, could be implicitly authorised for ‘aromatised wine-product cocktails’. In particular, such a situation would clearly be likely to mislead consumers as to the definition and scope of the name ‘aromatised wine-product cocktails’, even though under Article 3(4)(c) of Regulation No 251/2014 ‘no alcohol [may be] added’ to drinks falling under that name.
- 29 Furthermore, Hauser Weinimport’s argument that the criterion of the alcoholic strength of such a cocktail after the addition of an alcohol which should be taken into account as a parameter to determine whether or not ‘alcohol has been added’ faces the same pitfalls.
- 30 To allow such a criterion would lead to the application of the provisions of Regulation No 251/2014 in the European Union varying depending on incidental factors, namely the alcoholic strength of the alcohol incorporated in the drink falling within the description of ‘aromatised wine-product cocktail’ and the proportion of that drink represented by that alcohol. This would result in uncertainty as to the scope of that name and a risk that consumers may misunderstand its use.
- 31 In addition, the interpretation supported by Hauser Weinimport that the use of the term ‘addition’ in point 3 of Annex I to Regulation No 251/2014 should only mean an increase in the alcoholic strength of the final product – in the present case, an aromatised wine-product cocktail – which would not include the addition of a small quantity of beer, with a low alcoholic strength, cannot be accepted either. In that regard, it is sufficient to note that, in point 5 of Annex I to Regulation No 251/2014, that same term is used in relation to the authorisation of the ‘addition of water’ to all aromatised wine products, while it is common ground that such an addition reduces the alcoholic strength of the final product.
- 32 In the light of the foregoing considerations, the answer to the first and second questions is that Article 3(4)(c) of Regulation No 251/2014 must be interpreted as meaning that the concept of ‘alcohol’, within the meaning of that provision, which cannot be added to a drink bearing the name ‘aromatised wine-product cocktail’, includes an alcoholic drink which, like beer, is not a grapevine product, within the meaning of Article 3(4)(a) of that regulation, irrespectively of whether the addition of such alcoholic drink may not lead to an increase in the alcoholic strength of such a cocktail compared to that of the grapevine product or products referred to in the latter provision.

### *The third question*

- 33 By its third question, the referring court asks whether Article 3(4)(c) of Regulation No 251/2014 must be interpreted as meaning that the prohibition on adding alcohol to an ‘aromatised wine-product cocktail’, which that provision lays down, precludes an alcoholic drink which, like beer, is not one of the grapevine products referred to in that provision from being incorporated into such a cocktail, as a ‘flavouring foodstuff’ within the meaning of point 1(b)(ii) of Annex I to that regulation.

- 34 It should be pointed out that point 1 of Annex I to Regulation No 251/2014 lists the ingredients which are authorised for the ‘flavouring’ of the three categories of aromatised wine products referred to in Article 3 of that regulation. Under point 1(a) and (b) of Annex I to that regulation, those ingredients include, for each of those categories, ‘aromatic herbs and/or spices and/or flavouring foodstuffs’.
- 35 Since Regulation No 251/2014 does not provide any definition of a ‘flavouring foodstuff’, it cannot be ruled out, as the Commission admits, that an alcoholic drink could constitute a flavouring foodstuff.
- 36 However, it would be contrary to the letter, the scheme and the objectives of Regulation No 251/2014 if the addition of an alcoholic drink, such as beer, to an ‘aromatised wine-product cocktail’, which is prohibited under Article 3(4)(c) of that regulation, could ultimately be authorised, pursuant to point 1(b)(ii) of Annex I to that regulation, on the ground that such an alcoholic drink may constitute a flavouring foodstuff.
- 37 To adopt a different interpretation of Regulation No 251/2014 would render the prohibition set out in Article 3(4)(c) redundant and would undermine the objective pursued by that regulation, as recalled in paragraph 15 above, which consists of ensuring a high level of consumer protection, in particular, with regard to informing those consumers and preventing practices likely to mislead them.
- 38 In the light of the foregoing considerations, the answer to the third question is that Article 3(4)(c) of Regulation No 251/2014 must be interpreted as meaning that the prohibition on adding alcohol to an ‘aromatised wine-product cocktail’, laid down in that provision, precludes an alcoholic drink, which, like beer, is not one of the grapevine products referred to in that provision from being incorporated into such a cocktail as a ‘flavouring foodstuff’ within the meaning of point 1(b)(ii) of Annex I to that regulation.

### **Costs**

- 39 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 (Ninth Chamber) hereby rules:

- 1. Article 3(4)(c) of Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91, as amended by Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021,**

**must be interpreted as meaning that the concept of ‘alcohol’, within the meaning of that provision, which cannot be added to a drink bearing the name ‘aromatised wine-product cocktail’, includes an alcoholic drink which, like beer, is not a grapevine product, within the meaning of Article 3(4)(a) of that regulation, irrespective of whether the addition of such alcoholic drink may not lead to an increase in the alcoholic strength of such a**

**cocktail compared to that of the grapevine product or products referred to in the latter provision.**

**2. Article 3(4)(c) of Regulation No 251/2014, as amended by Regulation 2021/2117,**

**must be interpreted as meaning that the prohibition on adding alcohol to an ‘aromatised wine-product cocktail’, laid down in that provision lays down, precludes an alcoholic drink which, like beer, is not one of the grapevine products referred to in that provision from being incorporated into such a cocktail, as a ‘flavouring foodstuff’ within the meaning of point 1(b)(ii) of Annex I to that regulation.**

[Signatures]