



## Reports of Cases

### JUDGMENT OF THE COURT (Eighth Chamber)

1 December 2022\*

(Reference for a preliminary ruling – Consumer protection – Provision of food information to consumers – Regulation (EU) No 1169/2011 – Article 17 and point 4 of Part A of Annex VI – ‘Name of the food’ – ‘Name of the product’ – Mandatory particulars in food labelling – Component or ingredient used for the partial or whole substitution of the component or ingredient which consumers expect to see normally used or present in a food)

In Case C-595/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bayerisches Verwaltungsgericht Ansbach (Bavarian Administrative Court, Ansbach, Germany), made by decision of 22 September 2021, received at the Court on 27 September 2021, in the proceedings

**LSI – Germany GmbH**

v

**Freistaat Bayern,**

THE COURT (Eighth Chamber),

composed of N. Piçarra (Rapporteur), acting as President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- LSI – Germany GmbH, by G. Weyland, Rechtsanwalt,
- Freistaat Bayern, by J. Greim-Diroll, Landesanwältin,
- the German Government, by J. Möller and D. Klebs, acting as Agents,
- the European Commission, by C. Hödlmayr and B. Rous Demiri, acting as Agents,

\* Language of the case: German.

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

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 17 of and point 4 of Part A of Annex VI to Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).
- 2 The request has been made in proceedings between LSI – Germany GmbH ('LSI') and Freistaat Bayern (Land of Bavaria, Germany) concerning a decision to prohibit LSI from placing on the market foods which it produces without indicating, in close proximity to the name of those foods in the principal field of vision, that they contain certain components or ingredients.

### **Legal context**

#### ***Regulation No 1169/2011***

- 3 According to Article 1(1) of Regulation No 1169/2011, headed 'Subject matter and scope', that 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'.
- 4 Under the heading 'Definitions', Article 2 of that regulation provides as follows:
  1. For the purposes of this Regulation, the following definitions shall apply:
    - (a) the [definition] of "food" ... in 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)];

...

2. The following definitions shall also apply:

...

(l) “principal field of vision” means the field of vision of a package which is most likely to be seen at first glance by the consumer at the time of purchase and that enables the consumer to immediately identify a product in terms of its character or nature and, if applicable, its brand name. If a package has several identical principal fields of vision, the principal field of vision is the one chosen by the food business operator;

...

(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;

...’

5 Article 3 of that regulation, headed ‘General objectives’, provides, in paragraph 1:

‘The provision of food information shall pursue a high level of protection of consumers’ health and interests by providing a basis for final consumers to make informed choices and to make safe use of food, with particular regard to health, economic, environmental, social and ethical considerations.’

6 Article 7 of Regulation No 1169/2011, headed ‘Fair information practices’, is worded as follows:

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

(a) as to the characteristics of the food ...

...

(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.

...’

- 7 Article 9 of that regulation, headed ‘List of mandatory particulars’, provides, in paragraph 1:  
‘In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:  
(a) the name of the food;  
(b) the list of ingredients;  
...’
- 8 Article 17 of that regulation, headed ‘Name of the food’, is worded as follows:  
‘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.  
...  
4. The name of the food shall not be replaced with a name protected as intellectual property, brand name or fancy name.  
5. Specific provisions on the name of the food and particulars that shall accompany it are laid down in Annex VI.’
- 9 Annex VI to that regulation is headed ‘Name of the food and specific accompanying particulars’ and is subdivided into three parts. Part A, headed ‘Mandatory particulars accompanying the name of the food’, provides, in point 4:  
‘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.’

### ***Regulation No 178/2002***

- 10 Article 2 of Regulation No 178/2002 defines ‘food’ as ‘any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans’.

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

- 11 LSI produces a mini poultry salami, in which it replaces the animal fat with palm fat and rapeseed oil; it places the product on the market as a pre-packaged food via the retail trade under the name ‘BiFi The Original Turkey’ (‘the food at issue’). ‘BiFi The Original’ is both a word mark and a figurative mark under German law and is a figurative mark under EU law.

- 12 By decision of 7 January 2019, the competent supervisory authority prohibited LSI from placing the food at issue on the market without indicating the substitute ingredients in question, in close proximity to the business name ‘BiFi The Original Turkey’, which appears on the front of the packaging, using a font size which has an x-height of at least 75% of that name and which is not smaller than the minimum font size provided for in Article 13(2) of Regulation No 1169/2011.
- 13 It maintains that that labelling requirement is imposed by Article 17(5) in conjunction with point 4 of Part A of Annex VI to Regulation No 1169/2011, specifically by the expression ‘name of the product’ in the latter provision, which is not synonymous with ‘name of the food’. The first expression also encompasses, inter alia, the concepts of ‘brand name’ or ‘fancy name’, referred to in Article 17(4) of that regulation, and means that, in the present case, the indication of the business name ‘BiFi The Original Turkey’, appearing on the front of the packaging of the food at issue and which is in the principal field of vision of that packaging, must be accompanied by the words ‘with palm fat and rapeseed oil’, in accordance with the requirements of point 4 of Part A of Annex VI to that regulation.
- 14 LSI brought an action before the Bayerisches Verwaltungsgericht Ansbach (Bavarian Administrative Court, Ansbach), the referring court, seeking annulment of that decision. LSI submits that, since the expression ‘name of the product’ is synonymous with the expression ‘name of the food’, it fully met the labelling requirements imposed by Article 17(5) in conjunction with point 4 of Part A of Annex VI to Regulation No 1169/2011, since, on the back of the packaging of the food at issue, the words ‘mini poultry salami with palm fat and rapeseed oil’ appear. Therefore, those provisions do not require the front of that packaging, where the business name ‘BiFi The Original Turkey’ appears, also to feature the words ‘with palm fat and rapeseed oil’.
- 15 The referring court notes, as a preliminary point, that the specific way in which the food at issue should be labelled depends on the interpretation of the expression ‘name of the product’ in point 4 of Part A of Annex VI to Regulation No 1169/2011, the definition of which is not provided by that regulation, or by any provision of EU food legislation the precise content of which cannot be determined from the wording or scheme of that regulation. It also notes that the provisions of Article 17(5) in conjunction with point 4 of Part A of Annex VI to Regulation No 1169/2011, the objective of which is, in its view, to ensure that consumers are generally informed, do not permit the inference that they are intended to protect consumers from fraud, unlike other provisions of that regulation, such as Article 7 thereof.
- 16 In addition, that court observes that the use by food business operators of a name protected as intellectual property, a brand name or a fancy name within the meaning of Article 17(4) of Regulation No 1169/2011 is likely to divert the consumer’s attention away from the name of the food referred to in paragraph 1 of that article. It recalls that, in the present case, that name appears on the packaging of the food at issue in a much smaller font size than that of the brand name for that food and ‘is therefore also clearly less conspicuous’.
- 17 The referring court starts from the premiss that point 4 of Part A of Annex VI to that regulation is intended to ensure transparency and guarantee that the consumer is informed, by making sure, at least in the cases referred to therein, that information on the replacement components or ingredients present in the food appear on its packaging in close proximity to the names referred to in Article 17(4) of that regulation, in characters of a size comparable to those used for the name concerned. The expression ‘name of the product’ within the meaning of point 4 of Part A of Annex VI to Regulation No 1169/2011 is not synonymous with ‘name of the food’ within the

meaning of Article 17(1) of that regulation and has a broader meaning than the latter expression, since ‘name of the product’ also covers the ‘name protected as intellectual property’, the ‘brand name’ or the ‘fancy name’ which appear in Article 17(4). The same court observes that, if that interpretation is upheld by the Court, LSI’s action against the decision of 7 January 2019 referred to in paragraph 12 of the present judgment will have to be dismissed as unfounded, since that decision can legitimately require the food at issue to be labelled as described therein.

- 18 In those circumstances, the Bayerisches Verwaltungsgericht Ansbach (Bavarian Administrative Court, Ansbach) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the term “name of the product” in point 4 of Part A of Annex VI to Regulation (EU) No 1169/2011 to be interpreted as being synonymous with the “name of the food” within the meaning of Article 17(1) to (3) of that regulation?’

- (2) If Question 1 is answered in the negative:

Is the “name of the product” the name under which the food is offered in trade and in advertising and is generally known to consumers, even if it is not the name of the food but the protected name, brand name or fancy name within the meaning of Article 17(4) of Regulation (EU) No 1169/2011?

- (3) If Question 2 is answered in the affirmative:

Can the “name of the product” also consist of two components, one of which is a generic name or term protected under trade mark law which is not related to the individual food and is supplemented, for each of the individual products, by an additional element (as the second part of the name of the product) which specifies the food in question?

- (4) If Question 3 is answered in the affirmative:

Which of the two components of the name of the product is to be taken as the basis for the purposes of the additional indication pursuant to point 4(b) of Part A of Annex VI to Regulation (EU) No 1169/2011 where the two components of the name of the product are printed on the packaging in different sizes?’

## **Consideration of the questions referred**

### ***The first question***

- 19 By its first question, the referring court asks, in essence, whether Article 17(1), (4) and (5) of Regulation No 1169/2011 in conjunction with point 4 of Part A of Annex VI thereto must be interpreted as meaning that the expression ‘name of the product’ in point 4 of Part A of Annex VI has a separate meaning that is different from that of the expression ‘name of the food’, as referred to in Article 17(1) of that regulation, and can therefore cover not only a legal name, a customary name and a descriptive name, but also a ‘name protected as intellectual property’, a ‘brand name’ or a ‘fancy name’ as referred to in Article 17(4) of that regulation.

- 20 In that regard, it should be noted, in the first place, that, according to Article 17(1) of Regulation No 1169/2011, the ‘name of the food’ is to be its ‘legal name’, or, in the absence of such a name, its ‘customary name’ or, in the absence of such a name or if it is not used, a ‘descriptive name’, those three terms being defined in Article 2(2)(n), (o) and (p) of that regulation respectively. Article 17(4) of that regulation states that the ‘name of a food’, as referred to in paragraph 1 of that article, is not to be replaced with a ‘name protected as intellectual property’, a ‘brand name’ or a ‘fancy name’.
- 21 In the second place, under point 4 of Part A of Annex VI to Regulation No 1169/2011, where a component or ingredient that consumers expect to be normally used or naturally present in a food has been substituted with a different component or ingredient, the labelling must 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’ (subpoint (a)) using a font size which has an x-height of at least 75% of the x-height of the letters comprising the ‘name of the product’ (subpoint (b)).
- 22 In the third place, the expression ‘name of the product’ which is used only in subpoints (a) and (b) of point 4 of Part A of Annex VI to Regulation No 1169/2011 is not defined in that regulation. In certain language versions, such as the German version (*‘Produktname’*) and the French version (*‘nom du produit’*), that expression is even more different from the expression appearing in Article 17 of Regulation No 1169/2011, namely *‘Bezeichnung des Lebensmittels’* and *‘dénomination de la denrée alimentaire’* respectively, than it is in other language versions, such as Spanish (*‘denominación del producto’* and *‘denominación del alimento’*), Czech (*‘název produktu’* and *‘název potravin’*), English (*‘name of the product’* and *‘name of the food’*), Croatian (*‘naziv proizvoda’* and *‘naziv hrane’*), Italian (*‘denominazione del prodotto’* and *‘denominazione dell’alimento’*), Dutch (*‘benaming van het product’* and *‘benaming van het levensmiddel’*), Polish (*‘nazwa produktu’* and *‘nazwa środka spożywczego’*), Portuguese (*‘denominação do produto’* and *‘denominação do género alimentício’*), Romanian (*‘denumirea produsului’* and *‘denumirea produsului alimentar’*), Slovak (*‘názov výrobku’* and *‘názov potraviny’*), Slovenian (*‘ime proizvoda’* and *‘ime živila’*), Finnish (*‘tuotteen nimi’* and *‘elintarvikkeen nimi’*) and Swedish (*‘produktens beteckning’* and *‘livsmedlets beteckning’*).
- 23 Thus, even if, because the German and French language versions use terms that are less close, those versions allow the two expressions at issue to be interpreted as not having the same meaning, such an interpretation is not confirmed by the other language versions cited in the paragraph above. According to settled case-law, the terms 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 given priority over the other language versions (see, to that effect, judgments of 27 October 1977, *Bouchereau*, 30/77, EU:C:1977:172, paragraph 14, and of 25 February 2021, *Bartosch Airport Supply Services*, C-772/19, EU:C:2021:141, paragraph 26).
- 24 In any event, the definition of ‘food’ as ‘any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans’ in Article 2 of Regulation No 178/2002, to which Article 2(1)(a) of Regulation No 1169/2011 refers, is sufficient to allow the inference to be made from it that the difference between the expression ‘name of the food’ referred to in Article 17(1) of that regulation and the expression ‘name of the product’, referred to in point 4 of Part A of Annex VI to that regulation is purely terminological in nature. In the light of that definition of ‘food’, the ‘name of the product’ referred to in point 4 of Part A of Annex VI can only mean the ‘name of the food’.

- 25 It follows from the foregoing that the two expressions at issue, notwithstanding their variations in the different language versions, must be regarded as having the same content, and the expression ‘name of the product’ cannot be regarded as having a broader meaning than that of the expression ‘name of the food’.
- 26 That interpretation is supported by the context of point 4 of Part A of Annex VI to Regulation No 1169/2011.
- 27 In that regard, it should be noted, first, that that annex is headed ‘Name of the food and specific accompanying particulars’ and that Part A is headed ‘Mandatory particulars accompanying the name of the food’. They include specific provisions on labelling in that regard.
- 28 Second, Article 17 of that regulation, headed ‘Name of the food’, states, in paragraph 5, that ‘specific provisions on the name of the food and particulars that shall accompany it are laid down in Annex VI’. The term ‘it’ clearly refers to the name of the food, since there is nothing to indicate that those provisions may also extend to the other concepts listed in paragraph 4 of that article, namely the ‘name protected as intellectual property’, the ‘brand name’ or the ‘fancy name’.
- 29 In addition, as regards the objectives pursued by Regulation No 1169/2011, it is important to note that one of the objectives of that regulation is – as is apparent from a combined reading of Article 1(1) and Article 3(1) – inter alia, to ensure a high level of consumer protection in relation to food information, taking into account the differences in the perception of consumers, by providing a basis for them to make informed choices (see, to that effect, judgment of 24 March 2022, *Upfield Hungary*, C-533/20, EU:C:2022:211, paragraph 45 and the case-law cited). Under Article 9(1)(a) of that regulation, the ‘name of the food’ is one of the particulars that must appear on the labelling of foods.
- 30 Furthermore, in close connection with that objective of ensuring a high level of consumer protection as regards their right to information, Regulation No 1169/2011 also seeks to prevent consumers from being misled by food information. To that end, Article 7(1)(d) prohibits food information from being misleading by suggesting to the consumer, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient where a component naturally present or an ingredient normally used in that food has been replaced by a different component or a different ingredient.
- 31 Although, as the referring court observes, Article 7 of Regulation No 1169/2011, unlike Article 17(5) of that regulation, does not expressly refer to the provisions of point 4 of Part A of Annex VI to that regulation, the fact remains that the latter provisions, read in the light in particular of Article 7(1)(d) of that regulation, are intended, in essence, to supplement those of Article 7 by means of special labelling requirements, in order to protect consumers from being defrauded by incorrect information.
- 32 However, contrary to what the Land of Bavaria maintains, the objective of consumer protection underlying the prohibition on misleading consumers laid down in point 4 of Part A of Annex VI to Regulation No 1169/2011 can be achieved without it being necessary to draw the consumer’s attention specifically to the difference between the actual composition of a food as compared with the composition which he or she should in principle expect by means of particulars placed in the principal field of vision of the packaging of that food, which is normally on the front of that packaging. In order to achieve that objective, it is sufficient that the name of that food, within the

meaning of Article 17(1) and (5) of that regulation, and the list of the ingredients of which it is composed, appear on the back of such packaging, in accurate, clear and easy-to-understand terms, as is required by Article 7(2) of that regulation.

- 33 An average consumer who is reasonably well-informed and reasonably observant and circumspect, when his or her decision to purchase depends on the composition of the food at issue, will first read the list of ingredients of that food, the display of which is required by Article 9(1)(b) of Regulation No 1169/2011 (see, to that effect, judgments of 16 July 1998, *Gut Springenheide and Tusky*, C-210/96, EU:C:1998:369, paragraph 31, and of 4 June 2015, *Teekanne*, C-195/14, EU:C:2015:361, paragraph 37).
- 34 In those circumstances, as the Commission points out, an interpretation of the special labelling requirements laid down in point 4 of Part A of Annex VI to Regulation No 1169/2011 which would amount to requiring that the replacement components or ingredients be indicated on the packaging of the food at issue in close proximity to the ‘name protected as intellectual property’, the ‘brand name’ or the ‘fancy name’ of that food, referred to in Article 17(4) of that regulation – and not merely in close proximity to the ‘name of the food’ within the meaning of Article 17(1) of that regulation, which cannot be substituted by the ‘name protected as intellectual property’, the ‘brand name’ or the ‘fancy name’ of that food – would go beyond what is necessary to fulfil the purpose of those special requirements, as set out in paragraph 31 of the present judgment.
- 35 In the light of the grounds above, the answer to the first question is that Article 17(1), (4) and (5) of Regulation No 1169/2011 in conjunction with point 4 of Part A of Annex VI thereto must be interpreted as meaning that the expression ‘name of the product’ in point 4 of Part A of Annex VI does not have a separate meaning that is different from that of the expression ‘name of the food’, as referred to in Article 17(1) of that regulation, with the result that the special labelling requirements provided for in point 4 of Part A of Annex VI to that regulation do not apply to the ‘name protected as intellectual property’, the ‘brand name’ or the ‘fancy name’ as referred to in Article 17(4) of that regulation.

### *The second, third and fourth questions*

- 36 In view of the answer given to the first question, there is no need to answer the second, third and fourth questions.

### **Costs**

- 37 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 (Eighth Chamber) hereby rules:

**Article 17(1), (4) and (5) 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, in conjunction with point 4 of Part A of Annex VI to Regulation No 1169/2011,**

**must be interpreted as meaning that:**

**the expression ‘name of the product’ in point 4 of Part A of Annex VI does not have a separate meaning that is different from that of the expression ‘name of the food’, as referred to in Article 17(1) of that regulation, with the result that the special labelling requirements provided for in point 4 of Part A of Annex VI to that regulation do not apply to the ‘name protected as intellectual property’, the ‘brand name’ or the ‘fancy name’ as referred to in Article 17(4) of that regulation.**

[Signatures]