



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 December 2015*

(Reference for a preliminary ruling — Regulation (EC) No 1924/2006 — Directive 2009/54/EC — Articles 11(1) and 16 of the Charter of Fundamental Rights of the European Union — Consumer protection — Nutrition and health claims — Natural mineral waters — Sodium/salt content — Calculation — Sodium chloride (table salt) or total amount of sodium — Freedom of expression and information — Freedom to conduct a business)

In Case C-157/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 26 March 2014, received at the Court on 4 April 2014, in the proceedings

Neptune Distribution SNC

v

Ministre de l'Économie et des Finances (Minister for Economic Affairs and Finance),

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber acting as President of the Fourth Chamber, J. Malenovský, M. Safjan (Rapporteur), A. Prechal and K. Jürimäe, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 26 February 2015,

after considering the observations submitted on behalf of:

- Neptune Distribution SNC, by D. Bouthors, M. Fayat and A. Vermersch, avocats,
- the French Government, by S. Menez, D. Colas and S. Ghiandoni, acting as Agents,
- the Greek Government, by I. Chalkias, E. Leftheriotou and A. Vasilopoulou, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and M. Santoro, avvocato dello Stato,
- the European Parliament, by A. Tamás and J. Rodrigues, acting as Agents,
- the Council of the European Union, by J. Herrmann and O. Segnana, acting as Agents,

* Language of the case: French.

— the European Commission, by K. Herbout-Borczak and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 July 2015,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns, first, the interpretation of the annex to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9, and corrigendum OJ 2007 L 12, p. 3), as amended by Regulation (EC) No 107/2008 of the European Parliament and of the Council of 15 January 2008 (OJ 2008 L 39, p. 8) ('Regulation No 1924/2006') and, second, the validity of Article 2(1) of 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), Article 9(1) and (2) of Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (OJ 2009 L 164, p. 45), and Annex III thereto, read in the light of the annex to Regulation No 1924/2006.
- 2 The request has been made in proceedings between Neptune Distribution SNC ('Neptune Distribution') and the Minister for Economic Affairs and Finance concerning the legality of the implementing decision of 5 February 2009 taken by the Head of the Departmental Unit for Allier of the Regional Directorate for Competition, Consumption and Suppression of Fraud for the Auvergne, and the decision of the Minister for the Economy, Industry and Employment of 25 August 2009 rejecting the appeal through the appropriate channels brought by Neptune Distribution.

Legal context

The ECHR

- 3 Under the heading 'Freedom of expression', Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), provides:
 - '1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, for the protection of health ..., for the protection of the ... rights of others ...'

EU law

The Charter

- 4 Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Freedom of expression and information', states in paragraph 1:

'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.'

- 5 Under Article 16 of the Charter, entitled 'Freedom to conduct a business':

'The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.'

- 6 Article 52 of the Charter, entitled 'Scope and interpretation of rights and principles', provides:

'1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

...

3. In so far as this Charter contains rights which correspond to rights guaranteed by the [ECHR] the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

...

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.'

- 7 The Explanations Relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) ('the Explanations Relating to the Charter') state, as regards Article 11 of the Charter, that pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR.

Regulation No 1924/2006

- 8 Recitals 1 and 9 in the preamble to Regulation No 1924/2006 state:

'(1) An increasing number of foods labelled and advertised in the Community bear nutrition and health claims. In order to ensure a high level of protection for consumers and to facilitate their choice, products put on the market, including imported products, should be safe and adequately labelled. A varied and balanced diet is a prerequisite for good health and single products have a relative importance in the context of the total diet.

...

(9) There is a wide range of nutrients and other substances including, but not limited to ... minerals including trace elements ... with a nutritional or physiological effect that might be present in a food and be the subject of a claim. Therefore, general principles applicable to all claims made on foods should be established in order to ensure a high level of consumer protection, give the consumer the necessary information to make choices in full knowledge of the facts, as well as creating equal conditions of competition for the food industry.'

9 Article 1 of that regulation provides:

'1. This Regulation harmonises the provisions laid down by law, regulation or administrative action in Member States which relate to nutrition and health claims in order to ensure the effective functioning of the internal market whilst providing a high level of consumer protection.

2. This Regulation shall apply to nutrition and health claims made in commercial communications, whether in the labelling, presentation or advertising of foods to be delivered as such to the final consumer.

...

5. This Regulation shall apply without prejudice to the following Community provisions:

...

(b) Directive [2009/54]

...'

10 According to Article 2(2) of that regulation:

'The following definitions shall also apply:

...

4. "nutrition claim" means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:

...

(b) the nutrients or other substances it

(i) contains,

(ii) contains in reduced or increased proportions, or

(iii) does not contain;

5. "health claim" means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health;

...'

11 Article 8(1) of that regulation provides:

‘Nutrition claims shall only be permitted if they are listed in the Annex and are in conformity with the conditions set out in this Regulation.’

12 Article 13 of Regulation No 1924/2006 provides:

‘1. Health claims describing or referring to:

(a) the role of a nutrient or other substance in growth, development and the functions of the body ...

...

which are indicated in the list provided for in paragraph 3 may be made without undergoing the procedures laid down in Articles 15 to 19, if they are:

(i) based on generally accepted scientific evidence; and

(ii) well understood by the average consumer.

...

3. After consulting the [European Food Safety] Authority [EFSA], the Commission shall adopt, ... a Community list designed to amend non-essential elements of the Regulation by supplementing it, permitted claims as referred to in paragraph 1, and all necessary conditions for the use of these claims by 31 January 2010 at the latest.

...’

13 The annex to that regulation, entitled ‘Nutrition claims and conditions applying to them’, contains, inter alia, the following provisions:

‘Low sodium/salt

A claim that a food is low in sodium/salt, and any claim likely to have the same meaning for the consumer, may only be made where the product contains no more than 0.12 g of sodium, or the equivalent value for salt, per 100 g or per 100 ml. For waters, other than natural mineral waters falling within the scope of Directive [2009/54], this value should not exceed 2 mg of sodium per 100 ml.

Very low sodium/salt

A claim that a food is very low in sodium/salt, and any claim likely to have the same meaning for the consumer, may only be made where the product contains no more than 0.04 g of sodium, or the equivalent value for salt, per 100 g or per 100 ml. This claim shall not be used for natural mineral waters and other waters.’

Directive 2000/13

14 According to Article 2 of Directive 2000/13:

‘1. The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;

(ii) by attributing to the foodstuff effects or properties which it does not possess;

(iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics;

(b) subject to Community provisions applicable to natural mineral waters and foodstuffs for particular nutritional uses, attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties.

...

3. The prohibitions or restrictions referred to in paragraphs 1 and 2 shall also apply to:

(a) the presentation of foodstuffs, 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;

(b) advertising.’

Directive 2009/54

15 Recitals 5, 8 and 9 in the preamble to Directive 2009/54 state:

‘(5) The primary purposes of any rules on natural mineral waters should be to protect the health of consumers, to prevent consumers from being misled and to ensure fair trading.

...

(8) In respect of labelling, natural mineral waters are subject to the general rules laid down by [Directive 2000/13]. Accordingly, this Directive may be limited to laying down the additions and derogations which should be made to those general rules.

(9) The inclusion of the statement of the analytical composition of a natural mineral water should be compulsory in order to ensure that consumers are informed.’

16 According to Article 7(2)(a) of Directive 91/414:

‘Labels on natural mineral waters shall also give the following mandatory information:

(a) a statement of the analytical composition, giving its characteristic constituents.’

17 Article 9 of that directive provides:

‘1. It shall be prohibited, both on packaging or labels and in advertising in any form whatsoever, to use indications, designations, trade marks, brand names, pictures or other signs, whether figurative or not, which:

(a) in the case of a natural mineral water, suggest a characteristic which the water does not possess, in particular as regards its origin, the date of the authorisation to exploit it, the results of analyses or any similar references to guarantees of authenticity;

...

2. All indications attributing to a natural mineral water properties relating to the prevention, treatment or cure of a human illness shall be prohibited.

However, the indications listed in Annex III shall be authorised if they meet the relevant criteria laid down in that Annex or, in the absence thereof, criteria laid down in national provisions and provided that they have been drawn up on the basis of physico-chemical analyses and, where necessary, pharmacological, physiological and clinical examinations carried out according to recognised scientific methods, in accordance with Annex I, Section I, point 2.

Member States may authorise the indications “stimulates digestion”, “may facilitate the hepato-biliary functions” or similar indications. They may also authorise the inclusion of other indications, provided that the latter do not conflict with the principles provided for in the first subparagraph and are compatible with those provided for in the second subparagraph.

...’

18 Annex III to Directive 2009/54, entitled ‘Indications and Criteria laid down in Article 9(2)’, includes the indication ‘[s]uitable for a low-sodium diet’ accompanied by the criterion ‘[s]odium content less than 20 mg/l’.

French law

19 Under Article R. 112-7, first and final subparagraphs, of the Consumer Code, which is intended to transpose Article 2 of Directive 2000/13:

‘The labels and labelling methods used must not be such as to give rise to confusion in the mind of the purchaser or the consumer, particularly as to the characteristics of the foodstuff and, specifically, as to its nature, identity, properties, composition, quantity, durability, method of conservation, origin or provenance, method of manufacture or production.

...

The prohibitions or restrictions referred to above ... shall also apply to the presentation of foodstuffs and ... advertising.’

20 Articles R. 1322-44-13 and R. 1322-44-14 of the Public Health Code are intended to transpose Article 9 of Directive 2009/54.

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

- 21 Neptune Distribution sells and distributes the natural sparkling mineral waters denominated 'Saint-Yorre' and 'Vichy Célestins'.
- 22 By decision of 5 February 2009, the Head of the Departmental Unit of Allier of the Regional Directorate for Competition, Consumption and Suppression of Fraud for the Auvergne served formal notices on Neptune Distribution to remove the following indications from labels and advertising for those waters:
- 'The sodium in St-Yorre is essentially sodium bicarbonate. St-Yorre contains only 0.53 g of salt (or sodium chloride) per litre, that is to say less than a litre of milk!!!';
 - 'Salt and sodium must not be confused — the sodium in Vichy Célestins is essentially from sodium bicarbonate. Above all, it must not be confused with table salt (sodium chloride). Vichy Célestins contains only 0.39 g of salt per litre or 2 to 3 times less than is contained in a litre of milk!', and generally,
 - any statement leading the consumer to believe that the waters in question are low or very low in salt or in sodium.
- 23 By decision of 25 August 2009, the Minister for the Economy, Industry and Employment dismissed the appeal through appropriate channels brought by Neptune Distribution against that decision.
- 24 By judgment of 27 May 2010, the Tribunal administrative de Clermont-Ferrand (Administrative Court, Clermont-Ferrand) dismissed Neptune Distribution's application for the annulment of the formal notice and the decision.
- 25 The appeal brought by Neptune Distribution against that judgment was rejected by judgment of the Cour administrative d'appel de Lyon (Administrative Court of Appeal, Lyons) of 9 June 2011.
- 26 Neptune Distribution then brought an appeal against that judgment before the referring court. In support of that appeal, Neptune Distribution relied, inter alia, on a plea that the Cour administrative d'appel de Lyon (Administrative Court of Appeal, Lyons) had erred in law with regard to Articles R. 112-7 of the Consumer Code and Articles R. 1322-44-13 and R. 1322-44-14 of the Public Health Code.
- 27 The referring court states that the response to be given to that plea depends on whether the annex to Regulation No 1924/2006 provides, as a basis for calculation of the 'equivalent value for salt' of the amount of sodium present in a foodstuff, only that amount which, associated with chloride ions, forms sodium chloride or table salt or the total amount of sodium contained in that foodstuff in all its forms.
- 28 In the latter case, water rich in sodium bicarbonate cannot be regarded as being 'low in sodium or salt', even though it is low or very low in sodium chloride.
- 29 Thus, the distributor of a natural mineral water rich in sodium bicarbonate cannot display on its labels and in its advertising slogans an indication, even if correct, relating to the low salt or sodium chloride content, since that wording is likely to mislead the purchaser as to the total sodium content of the mineral water concerned.
- 30 In that context, the referring court adds that, as is clear in particular from the opinion of the EFSA of 21 April 2005, the increase in arterial tension is the main undesirable effect identified in relation to a high sodium intake. Although sodium is mainly responsible for this, chloride ions also play a role in

the increase in arterial tension. A number of studies show that a diet high in sodium bicarbonate does not have the same undesirable effect as a diet high in sodium chloride for persons suffering from high blood pressure. It is true that the EFSA, in an opinion published in June 2011, refused to include in the list of authorised health claims laid down in Article 13(3) of Regulation No 1924/2006, the claim that sodium bicarbonate does not have an undesirable effect on arterial tension, on the ground that the study produced in support of that claim did not present sufficient methodological guarantees that would permit definitive conclusions to be drawn from them. However, that circumstance alone does not support a claim that sodium bicarbonate must be regarded as capable of bringing about or aggravating arterial hypertension in the same way and in the same proportions as sodium chloride.

31 Thus, according to the referring court, there is uncertainty as to the equivalence, in terms of risks to the health of consumers, between the consumption of water high in sodium bicarbonate and water high in sodium chloride. Therefore, it must be determined whether the restrictions on the freedom of expression and advertising information and Neptune Distribution's freedom to conduct a business are necessary and proportionate, in particular, in the light of the requirement to ensure a high level of protection for the health of consumers.

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

(1) Is the basis for calculating the "equivalent value for salt" of the quantity of sodium present in a foodstuff, for the purposes of the annex to [Regulation No 1924/2006], constituted only by the quantity of sodium which, when associated with chloride ions, forms sodium chloride, or table salt, or does it include the total quantity of sodium in all its forms contained in the foodstuff?

(2) In the latter case, do Article 2(1) of [Directive 2000/13] and Article 9(1) and (2) of [Directive 2009/54], together with Annex III to the latter directive, read in the light of the equivalence established between sodium and salt in the annex to [Regulation No 1924/2006], infringe the first subparagraph of Article 6(1) [TEU], read with Article 11(1) (freedom of expression and information) and Article 16 (freedom to conduct a business) of the Charter and Article 10 of the ECHR, by prohibiting a distributor of mineral water from displaying on his labels and advertising slogans any indication as to the low salt content or sodium chloride content, which could be that of his product that is high in sodium bicarbonate, inasmuch as that indication would be likely to mislead the purchaser in regard to the total sodium content of the water?

Consideration of the questions referred for a preliminary ruling

The first question

33 It should be observed as a preliminary point that, in the context of the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (judgment in *Doc Generici*, C-452/14, EU:C:2015:644, paragraph 33 and the case-law cited).

34 Consequently, even if, formally, the referring court has limited its first question to the interpretation of the expression 'equivalent value for salt' in the annex to Regulation No 1924/2006, that does not prevent this Court from providing the referring court with all the elements for the interpretation of EU law that may be of assistance in adjudicating in the case pending before it, whether or not the

referring court has referred to them in the wording of its question. It is, in this regard, for the Court to extract from all the information provided by the national court, in particular from the grounds of the decisions to make the reference, the points of EU law which require interpretation in view of the subject-matter of the dispute (see, to that effect, judgment in *Doc Generici*, C-452/14, EU:C:2015:644, paragraph 34 and the case-law cited).

- 35 In the present case, it must be observed that, in the grounds for its request for a preliminary ruling, the referring court also mentions the provisions of Directive 2009/54.
- 36 Furthermore, it is apparent from those grounds that, in order to reach a decision on the appeal before it, the referring court wishes to know whether the packaging, labels or advertising of natural mineral waters may suggest that those waters have a low sodium or salt content, in particular by indicating the content of those waters of only one chemical compound containing sodium, in this case sodium chloride, or table salt, without stating the total sodium content of all the chemical forms present, if that total content may exceed the limits for the quantities of sodium or the equivalent in salt provided for in the EU legislation applicable to the claims and wording used with regard to natural mineral waters.
- 37 Therefore, the first question should be understood as asking essentially whether EU law must be interpreted as meaning that it precludes packaging, labels or advertising for natural mineral waters from containing claims or indications leading consumers to believe that the waters concerned are low or very low in sodium or salt, or are suitable for a low-sodium diet, where the total sodium content in all the chemical forms present exceeds the limits for the amounts of sodium or the equivalent value for salt laid down by the relevant EU legislation.
- 38 In order to provide a useful answer to that question, the provisions of Regulation No 1924/2006 and Directive 2009/54 must be examined.
- 39 According to Article 1(5) of Regulation No 1924/2006, the regulation is to apply without prejudice to the provisions of Directive 2009/54.
- 40 Whereas that regulation governs, in a general manner, the use of nutrition and health claims concerning foodstuffs, the directive lays down specific rules as to the indications which may appear on packaging, labels and in the advertising of natural mineral waters.
- 41 Article 8(1) of Regulation No 1924/2006 permits nutrition claims only if they are listed in the annex to that regulation and are in conformity with the conditions set out therein.
- 42 As regards nutrition claims referring to the sodium or salt content, that annex allows a foodstuff to be described as 'low in sodium/salt' or 'very low in sodium/salt' or the use of any claim likely to have the same meaning for the consumer, provided that that foodstuff does not contain more than 0.12 g of sodium or the equivalent value of salt per 100 g or by 100 ml, with respect to the first of those claims, or not more than 0.04 g of the same substances with respect to the second of those claims.
- 43 Waters are, however, subject to specific rules in that regard.
- 44 More specifically, in the first place, the annex to Regulation No 1924/2006 prohibits use of the claim 'very low in sodium/salt' and any claim likely to have the same meaning for the consumer as regards natural mineral waters and other waters.
- 45 In the second place, the claim 'low in sodium/salt', like any claim likely to have the same meaning for the consumer is permitted, in accordance with that annex, with respect to waters, other than natural mineral waters falling within the scope of Directive 2009/54, provided that the relevant value does not exceed 2 mg of sodium per 100 ml or 20 mg per litre.

- 46 Under Article 9(2), second subparagraph, of Directive 2009/54, the indications listed in Annex III thereto are authorised if they meet the relevant criteria laid down in that annex or, in the absence thereof, the criteria laid down in national provisions, provided that certain technical conditions are observed.
- 47 That annex contains an indication '[s]uitable for a low-sodium diet', accompanied by the criterion '[s]odium content less than 20 mg/l'.
- 48 By specifying, in Directive 2009/54, the maximum amount of sodium in cases in which the packaging, labels or advertising for natural mineral waters contain an indication referring to a low sodium content, the EU legislature does not differentiate according to the chemical compounds of which sodium is a component, or from which it originates.
- 49 As regards the objectives both of Regulation No 1924/2006 and of Directive 2009/54, it should be recalled, as Article 1 of that regulation states, that the latter aims to ensure the effective functioning of the internal market whilst providing a high level of consumer protection. In that regard, recitals 1 and 9 in the preamble to that regulation state that it is necessary, in particular, to give the consumer the necessary information to make choices in full knowledge of the facts (judgment in *Ehrmann*, C-609/12, EU:C:2014:252, paragraph 40).
- 50 Recital 5 in the preamble to Directive 2009/54 specifies that the primary purposes of any rules on natural mineral waters should be to protect the health of consumers, to prevent consumers from being misled and to ensure fair trading. Recital 9 thereto states that the inclusion of the statement of the analytical composition of a natural mineral water should be compulsory in order to ensure that consumers are informed (see judgment in *Hotel Sava Rogaška*, C-207/14, EU:C:2015:414, paragraph 40).
- 51 Thus, it must be held that, by adopting the provisions of Regulation No 1924/2006 and Directive 2009/54, the EU legislature deemed it necessary to ensure that the consumer receives appropriate and transparent information as to the sodium content of drinking waters.
- 52 Those guarantees must also be assessed in the light of the significance of the level of sodium consumption for human health.
- 53 Since it is common ground that sodium is a component of various chemical compounds, such as, inter alia, sodium chloride or table salt and sodium bicarbonate, the quantity present in natural mineral waters must be determined, in the light of the provisions of Directive 2009/54, by taking account of the total amount present in the natural mineral waters concerned, whatever its chemical form.
- 54 It is true that under Article 7(2)(a) of Directive 2009/54, it is mandatory for the labelling of natural mineral waters to provide a statement of the analytical composition, giving its characteristic constituents.
- 55 However, it must be observed that packaging, labels and advertising for natural mineral waters which, regardless of the indication of the total sodium content of those waters on the label, in accordance with the provision referred to in the preceding paragraph of the present judgment, contain an indication referring to a low sodium content of the waters may also mislead the consumer if they suggest that those waters are low in sodium or salt or are suitable for a low-sodium diet, whereas, in reality, they contain 20 mg/l or more of sodium (see, by analogy, judgment in *Teekanne*, C-195/14, EU:C:2015:361, paragraphs 38 to 41).

56 Having regard to the foregoing considerations, the answer to the first question is as follows:

- Article 8(1) of Regulation No 1924/2006, read in conjunction with the annex thereto, must be interpreted as meaning that it prohibits the use of the claim ‘very low in sodium/salt’ and any claim likely to have the same meaning for the consumer as regards natural mineral waters and other waters.
- Article 9(2) of Directive 2009/54, read in conjunction with Annex III thereto, must be interpreted as meaning that it precludes packaging, labels or advertising for natural mineral waters from displaying claims or indications suggesting to the consumer that the waters concerned are low in sodium or salt or are suitable for a low-sodium diet where the total sodium content, in all the chemical forms present, is equal to or more than 20 mg/l.

The second question

- 57 By its second question, the referring court asks essentially whether Article 2(1) of Directive 2000/13, and Article 9(1) and (2) of Directive 2009/54, read together with Annex III to the latter directive and the annex to Regulation No 1924/2006, are valid in so far as they prohibit the display on packaging, labels and in advertising for natural mineral waters of any claim or indication that those waters are low in sodium chloride or table salt which is likely to mislead the consumer as to the total sodium content of the waters in question.
- 58 The referring court asks the Court to determine the validity of those provisions in the light of Article 6(1), first paragraph, TEU, read together with Articles 11(1) and 16 of the Charter and with Article 10 of the ECHR.
- 59 As a preliminary point, it must be observed that, even though, by its second question, the referring court asks the Court to determine the validity of a provision of Directive 2000/13, that directive is not at issue in the case in the main proceedings.
- 60 Articles 2(1)(a) and 3 of Directive 2000/13 merely provide that labelling, presentation and advertising must not mislead the purchaser as to the characteristics of the foodstuff.
- 61 Thus, unlike the provisions of Regulation No 1924/2006 and Directive 2009/54, the provisions of Directive 2000/13 do not contain any specific requirements with respect to producers and distributors of natural mineral waters concerning the use of claims or indications which may suggest that the water concerned is low or very low in sodium or salt or is suitable for a low-sodium diet.
- 62 Consequently, only the validity of Article 9(1) and (2) of Directive 2009/54, read together with Annex III thereto and the annex to Regulation No 1924/2006 need to be examined in the present case.
- 63 In that regard, it must be recalled that the freedom of expression and information is enshrined in Article 11 of the Charter, which Article 6(1) TEU recognises as having the same legal value as the Treaties.
- 64 That freedom is also protected in accordance with Article 10 of the ECHR, which applies, inter alia, as is clear from the case-law of the European Court of Human Rights, to the circulation by an entrepreneur of commercial information in particular in the form of an advertising slogan (see European Court of Human Rights judgments in *Casado Coca v. Spain*, 24 February 1994, Series A no. 285-A, §§ 35 and 36, and *Krone Verlag GmbH & Co. KG (No. 3) v. Austria*, no. 39069/97, ECHR 2003-XII, §§ 19 and 20).

- 65 Since the freedom of expression and information laid down in Article 11 of the Charter has, as is clear from Article 52(3) thereof and the Explanations Relating to the Charter as regards Article 11, the same meaning and scope as the freedom guaranteed by the ECHR, it must be held that that freedom covers the use by a business, on packaging, labels and in advertising for natural mineral waters, of claims and indications referring to the sodium or salt content of such waters.
- 66 Furthermore, it must be observed that the freedom to conduct a business protected, in accordance with Article 16 of the Charter, must be considered in relation to its social function (see, to that effect, judgment in *Deutsches Weintor*, C-544/10, EU:C:2012:526, paragraph 54).
- 67 The prohibition on the displaying on the packaging, labels and in the advertising for natural mineral waters of any claim or indication referring to the fact that such waters have a low sodium content which may mislead the consumer as to that content is an interference with the freedom of expression and information of the person carrying on that business and with his freedom to conduct that business.
- 68 While those freedoms may nevertheless be limited, any limitation on their exercise must, in accordance with Article 52(1) of the Charter, be provided for by law and respect the essence of those rights and freedoms. Furthermore, as is clear from that provision, subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.
- 69 In that connection, it must be observed, first, that the interference referred to in paragraph 67 of the present judgment is provided for by law, namely by Article 8(1) of Regulation No 1924/2006, read together with the annex thereto and Article 9(2) of Directive 2009/54, read together with Annex III thereto.
- 70 Second, the actual content of the freedom of expression and information of the person carrying on the business is not affected by those provisions, since they merely make the information which may be communicated to the consumer regarding the sodium or salt content of natural mineral waters subject to certain conditions, such as those set out in paragraphs 44 to 56 of the present judgment.
- 71 Furthermore, far from prohibiting the production and marketing of natural mineral waters, the legislation at issue in the main proceedings merely controls, in a very clearly defined area, the associated labelling and advertising. Thus, it does not affect in any way the actual content of the freedom to conduct a business (see, to that effect, judgment in *Deutsches Weintor*, C-544/10, EU:C:2012:526, paragraphs 57 and 58).
- 72 Thus, as set out in paragraphs 49 to 52 of the present judgment, the provisions of Regulation No 1924/2006 and Directive 2009/54, in particular those which lay down limitations on the use of the claims and indications at issue in the main proceedings, aim to ensure a high level of consumer protection, to guarantee adequate and transparent information for the consumer relating to the sodium content of drinking water, to ensure fair trading and to protect human health.
- 73 As the Advocate General noted in point 46 of his Opinion, a high level of human health protection and consumer protection are legitimate objectives of general interest, the achievement of which is sought by the European Union, in accordance in particular with Articles 9 TFEU, 12 TFEU, 114(3) TFEU, 168(1) TFEU, 169(1) TFEU and Articles 35 and 38 of the Charter.
- 74 The need to ensure that the consumer has the most accurate and transparent information possible concerning the characteristics of goods is closely related to the protection of human health and is a question of general interest (see, to that effect, judgments of the European Court of Human Rights in *Hertel v. Switzerland*, 25 August 1998, *Reports of Judgments and Decisions* 1998-VI, § 47, and *Bergens*

Tidende and Others v. Norway, no. 26132/95, ECHR 2000-IV, § 51) which may justify limitations on the freedom of expression and information of a person carrying on a business or his freedom to conduct a business.

- 75 In those circumstances, the determination of the validity of the contested provisions must be carried out in accordance with the need to reconcile the requirements of the protection of those various fundamental rights protected by the EU legal order, and striking a fair balance between them (see, to that effect, judgment in *Deutsches Weintor*, C-544/10, EU:C:2012:526, paragraph 47).
- 76 With regard to judicial review of the conditions of the implementation of the principle of proportionality, the EU legislature must be allowed a broad discretion in an area such as that involved in the present case, which entails political, economic and social choices on its part, and in which it is called upon to undertake complex assessments (see, to that effect, judgments in *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraph 123, and *Alliance for Natural health and Others*, C-154/04 and C-155/04, EU:C:2005:449, paragraph 52).
- 77 In that connection, it must be observed, first, that, even if a claim or indication referring to the sodium content of natural mineral waters associated with chloride ions can be regarded as being substantively correct, the fact remains that it is incomplete if it suggests that the waters are low in sodium whereas, in reality, their total sodium content exceeds the limits provided for by EU legislation (see, to that effect, judgment in *Deutsches Weintor*, C-544/10, EU:C:2012:526, paragraph 51).
- 78 In such a situation, the information displayed on the packaging, labels and in advertising containing that claim or indication may mislead the consumer as to the sodium content of the mineral waters at issue in the main proceedings.
- 79 Second, Neptune Distribution's arguments, according to which the provisions under review go beyond what is necessary to protect the health of consumers, since they apply indiscriminately to sodium in all its chemical forms, including sodium bicarbonate, whereas the latter molecule is not dangerous to human health, as sodium chloride is the cause of arterial hypertension, cannot be accepted.
- 80 Without there being any need to decide the question whether the harmful nature, as regards the risk of developing arterial hypertension, of a high level of consumption of sodium associated with chloride ions is comparable to the risk related to the consumption of sodium present in another chemical compound, in particular sodium bicarbonate, it must be held that the risk is determined by the EU legislature in the light of the need to protect human health and, second, of the precautionary principle in that area.
- 81 As the Advocate General noted in point 49 of his Opinion, the EU legislature must take account of the precautionary principle, according to which, where there is uncertainty as to the existence or extent of risks to human health, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent (see judgment in *Acino v Commission*, C-269/13 P, EU:C:2014:255, paragraph 57).
- 82 Where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted, but the likelihood of real harm to public health persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures (see, to that effect, judgment in *Acino v Commission*, C-269/13 P, EU:C:2014:255, paragraph 58).
- 83 In the light of the documents before the Court and, in particular, the opinion of the EFSA of 21 April 2005 referred to in paragraph 30 of the present judgment, it does not appear that a risk for human health from a high level of consumption of sodium present in various chemical compounds, in particular sodium bicarbonate, may be excluded.

- 84 In those circumstances, it must be held that the EU legislature were legitimately entitled to consider that limitations and restrictions, such as those at issue in the provisions which are the subject of the first question, as regards the use of claims or indications referring to the low sodium content of natural mineral waters were appropriate and necessary to ensure the protection of human health in the European Union.
- 85 In the light of the foregoing considerations, it must be concluded that the interference with freedom of expression and information of a person carrying on a business and his freedom to conduct a business is, in the present case, proportionate to the objectives pursued.
- 86 Having regard to all of the foregoing considerations, it must be held that the examination of the second question has not revealed any information capable of affecting the validity of Article 9(1) and (2) of Directive 2009/54, read in conjunction with Annex III thereto and with the annex to Regulation No 1924/2006.

Costs

- 87 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 (Fourth Chamber) hereby rules:

- 1. Article 8(1) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, as amended by Regulation (EC) No 107/2008 of the European Parliament and of the Council of 15 January 2008, read in conjunction with the annex thereto, must be interpreted as meaning that it prohibits the use of the claim ‘very low in sodium/salt’ and any claim likely to have the same meaning for the consumer as regards natural mineral waters and other waters.**

Article 9(2) of Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters, read in conjunction with Annex III thereto, must be interpreted as meaning that it precludes packaging, labels or advertising for natural mineral waters from displaying claims or indications suggesting to the consumer that the waters concerned are low in sodium or salt or are suitable for a low-sodium diet where the total sodium content, in all the chemical forms present, is equal to or more than 20 mg/l.

- 2. The examination of the second question has not revealed any information capable of affecting the validity of Article 9(1) and (2) of Directive 2009/54, read in conjunction with Annex III thereto and with the annex to Regulation No 1924/2006.**

[Signatures]