



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

6 September 2012\*

(Reference for a preliminary ruling — Approximation of laws — Public health — Consumer information and protection — Labelling and presentation of foodstuffs — Concepts of ‘nutrition claims’ and ‘health claims’ — Regulation (EC) No 1924/2006 — Description of a wine as ‘easily digestible’ — Reference to reduced acidity levels — Beverages containing more than 1.2% by volume of alcohol — Prohibition of health claims — Charter of Fundamental Rights of the European Union — Article 15(1) — Freedom to choose an occupation — Article 16 — Freedom to conduct a business — Compatibility)

In Case C-544/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Germany), made by decision of 23 September 2010, received at the Court on 23 November 2010, in the proceedings

**Deutsches Weintor eG**

v

**Land Rheinland-Pfalz,**

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský (Rapporteur), R. Silva de Lapuerta, E. Juhász and D. Šváby, Judges,

Advocate General: J. Mazák,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 19 January 2012,

after considering the observations submitted on behalf of:

- Deutsches Weintor eG, by H. Eichele and B. Goebel, Rechtsanwälte,
- Land Rheinland-Pfalz, by C. Grewing, acting as Agent,
- the Czech Government, by M. Smolek and D. Hadroušek, acting as Agents,
- the Estonian Government, by M. Linntam, acting as Agent,

\* Language of the case: German.

— the French Government, by G. de Bergues, B. Cabouat and R. Loosli-Surrans, acting as Agents,  
— the Hungarian Government, by M.Z. Fehér and K. Szijjártó, acting as Agents,  
— the Finnish Government, by H. Leppo, acting as Agent,  
— the European Parliament, by I. Anagnostopoulou and E. Waldherr, acting as Agents,  
— the Council of the European Union, by M. Simm, acting as Agent,  
— the European Commission, by L. Pignataro-Nolin and S. Grünheid, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 29 March 2012,  
gives the following

### Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 2(2)(5) and the first subparagraph of Article 4(3) 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 (OJ 2006 L 404, p. 9), as last amended by Commission Regulation (EU) No 116/2010 of 9 February 2010 (OJ 2010 L 37, p. 16; ‘Regulation No 1924/2006’). The reference also concerns the validity of those provisions in the light of Articles 15(1) and 16 of the Charter of Fundamental Rights of the European Union (‘the Charter’).
- 2 The reference has been made in proceedings between Deutsches Weintor eG (‘Deutsches Weintor’), a German winegrowers’ cooperative, and the department responsible for supervising the marketing of alcoholic beverages in the *Land* of Rhineland-Palatinate concerning the description of a wine as ‘easily digestible’ (‘bekömmlich’), indicating reduced acidity levels.

### Legal context

- 3 Recitals 1 to 3, 5, 10, 14 to 16 and 18 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.
  - (2) Differences between national provisions relating to such claims may impede the free movement of foods and create unequal conditions of competition. They thus have a direct impact on the functioning of the internal market. It is therefore necessary to adopt Community rules on the use of nutrition and health claims on foods.
  - (3) General labelling provisions are contained in Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [(OJ 2000 L 109, p. 29)]. Directive 2000/13/EC generally prohibits the use of information that would mislead the purchaser or attribute medicinal properties to food. This Regulation should complement the general principles in Directive 2000/13/EC and lay down specific provisions concerning the use of nutrition and health claims concerning foods to be delivered as such to the consumer.

...

(5) Generic descriptors (denominations) which have traditionally been used to indicate a particularity of a class of foods or beverages which could imply an effect on human health, such as “digestive” or “cough drops”, should be exempted from the application of this Regulation.

...

(10) Foods promoted with claims may be perceived by consumers as having a nutritional, physiological or other health advantage over similar or other products to which such nutrients and other substances are not added. This may encourage consumers to make choices which directly influence their total intake of individual nutrients or other substances in a way which would run counter to scientific advice. To address this potential undesirable effect, it is appropriate to impose certain restrictions as regards the products bearing claims. ...

...

(14) There is a wide variety of claims currently used in the labelling and advertising of foods in some Member States relating to substances that have not been shown to be beneficial or for which at present there is not sufficient scientific agreement. It is necessary to ensure that the substances for which a claim is made have been shown to have a beneficial nutritional or physiological effect.

(15) In order to ensure that the claims made are truthful, it is necessary that the substance that is the subject of the claim is present in the final product in quantities that are sufficient, or that the substance is absent or present in suitably reduced quantities, to produce the nutritional or physiological effect claimed. The substance should also be available to be used by the body. ...

(16) It is important that claims on foods can be understood by the consumer and it is appropriate to protect all consumers from misleading claims. ...

...

(18) A nutrition or health claim should not be made if it is inconsistent with generally accepted nutrition and health principles or if it encourages or condones excessive consumption of any food or disparages good dietary practice.’

4 The subject-matter and scope of Regulation No 1924/2006 are set out in Article 1 as follows:

‘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 Article 2 of Regulation No 1924/2006 contains the following definitions:

‘1. For the purposes of this Regulation:

(a) the definitions of “food”, “food business operator”, “placing on the market”, and “final consumer” set out in Articles 2, 3(3), 3(8) and 3(18) 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)] shall apply;

...

2. The following definitions shall also apply:

(1) “claim” means any message or representation, which is not mandatory under Community or national legislation, including pictorial, graphic or symbolic representation, in any form, which states, suggests or implies that a food has particular characteristics;

...

(4) “nutrition claim” means any claim which states, suggests or implies that a food has particular beneficial nutritional properties ...

(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;

(6) “reduction of disease risk claim” means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease;

...’

6 Chapter II (Articles 3 to 7) of Regulation No 1924/2006 lays down the general conditions for the use of nutrition and health claims.

7 Article 3 of Regulation No 1924/2006, entitled ‘General principles for all claims’, is worded as follows:

‘Nutrition and health claims may be used in the labelling, presentation and advertising of foods placed on the market in the Community only if they comply with the provisions of this Regulation.

Without prejudice to Directives 2000/13/EC and 84/450/EEC, the use of nutrition and health claims shall not:

(a) be false, ambiguous or misleading;

(b) give rise to doubt about the safety and/or the nutritional adequacy of other foods;

(c) encourage or condone excess consumption of a food;

...’

8 Article 4 of Regulation No 1924/2006, entitled ‘Conditions for the use of nutrition and health claims’, provides in paragraph 3:

‘Beverages containing more than 1.2% by volume of alcohol shall not bear health claims.

As far as nutrition claims are concerned, only nutrition claims referring to low alcohol levels, or the reduction of the alcohol content, or the reduction of the energy content for beverages containing more than 1.2% by volume of alcohol, shall be permitted.’

9 Article 5(1)(a) of Regulation No 1924/2006, relating to general conditions, provides:

‘The use of nutrition and health claims shall only be permitted if the following conditions are fulfilled:

(a) the presence, absence or reduced content in a food or category of food of a nutrient or other substance in respect of which the claim is made has been shown to have a beneficial nutritional or physiological effect, as established by generally accepted scientific evidence’.

10 Article 6 of Regulation No 1924/2006, entitled ‘Scientific substantiation for claims’, provides in paragraph 1:

‘Nutrition and health claims shall be based on and substantiated by generally accepted scientific evidence.’

11 Articles 10 to 19 in Chapter IV of Regulation No 1924/2006 lay down particular provisions applicable to health claims.

12 Article 10(1) and (3) of that regulation, concerning specific conditions, provides:

‘1. Health claims shall be prohibited unless they comply with the general requirements in Chapter II and the specific requirements in this Chapter and are authorised in accordance with this Regulation and included in the lists of authorised claims provided for in Articles 13 and 14.

...

3. Reference to general, non-specific benefits of the nutrient or food for overall good health or health-related well-being may only be made if accompanied by a specific health claim included in the lists provided for in Article 13 or 14.’

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

13 Deutsches Weintor is a wine-growers’ cooperative established in Ilbesheim (Germany) in the *Land* of Rhineland-Palatinate. It markets wines of the Dornfelder and Grauer/Weißer Burgunder grape varieties using the description ‘Edition Mild’ (mild edition), accompanied by a reference to ‘gentle acidity’. The label states, in particular, the following: ‘It owes its mildness to the application of our special “LO3” protective process for the biological reduction of acidity (LO3 Schonverfahren zur biologischen Säurereduzierung)’. The labels on the necks of the bottles bear the inscription: ‘Edition Mild bekömmlich’ (mild edition, easily digestible). In the price catalogue, the wine is described in the following terms: ‘Edition Mild – sanfte Säure/bekömmlich’ (mild edition – gentle acidity/easily digestible).

14 The authority responsible for supervising the marketing of alcoholic beverages in the *Land* of Rhineland-Palatinate objected to the use of the description ‘easily digestible’ on the ground that it is a ‘health claim’ within the meaning of Article 2(2)(5) of Regulation No 1924/2006, which, pursuant to the first subparagraph of Article 4(3) of that regulation, is not permitted for alcoholic beverages.

15 The parties are therefore in dispute as to whether the fact that a wine is described as ‘easily digestible’, in conjunction with a reference to low acidity levels, constitutes a ‘health claim’ within the meaning of the first subparagraph of Article 4(3) of Regulation No 1924/2006, which is normally prohibited in relation to alcoholic beverages.

16 Deutsches Weintor brought an action before the Verwaltungsgericht (Administrative Court) (Germany) for a declaration that it is permitted to use the description ‘easily digestible’ in the labelling of the wines concerned and in their advertising.

17 In support of its application, Deutsches Weintor argued, in essence, that the description ‘easily digestible’ does not refer to health but only to general well-being. Moreover, it maintains that Regulation No 1924/2006 does not apply to descriptions which are traditionally used for foods or beverages and could imply an effect on general well-being, such as ‘digestive’ for a beverage which aids digestion. In its view, health claims should therefore be given a narrow construction, limited to the long-term effects produced by the foodstuff in question.

- 18 The Verwaltungsgericht dismissed that action by judgment of 23 April 2009. The appeal lodged against that judgment was dismissed by judgment of the Oberverwaltungsgericht Rheinland-Pfalz (Higher Administrative Court of the *Land* of Rhineland-Palatinate) of 19 August 2009.
- 19 The appeal court considered that, in any event, the concept of ‘health claim’ covered the effects of a food on the body and on the bodily functions of the consumer. Describing wine as ‘easily digestible’ establishes a link with bodily processes, and refers to general health-related well-being. Synonymous expressions such as ‘wholesome’, ‘easily digested’ or ‘gentle on the stomach’ might be associated with that description.
- 20 According to the appeal court, that aspect has a certain significance in connection with the consumption of wine, as that is frequently associated with head and stomach complaints. In some circumstances wine might even have a harmful effect on the human body and lead to addiction. The use of the expression ‘easily digestible’ in conjunction with the references to a particular process for the reduction of acidity and to low levels of acidity would, from the consumer’s point of view, establish a link between the wine and the absence in the digestive process of the adverse effects sometimes associated with the consumption of wine.
- 21 The applicant in the main proceedings lodged an appeal on a point of law against that decision before the Bundesverwaltungsgericht (Federal Administrative Court) (Germany).
- 22 The referring court has reservations about the broad interpretation of the concept of ‘health claims’ adopted by the lower courts. In its view, given the function common to all foods, which is to provide the human body with nutrients and other substances, a description relating to the merely temporary maintenance of bodily functions or to general health-related well-being cannot be sufficient to establish a link with health for the purposes of Article 2(2)(5) of Regulation No 1924/2006.
- 23 In the opinion of the Bundesverwaltungsgericht, certain factors appear, on the contrary, to indicate that the reference is to a ‘health claim’ only where longer-term, sustained effects on physical condition or well-being are referred to, not just fleeting effects on metabolic processes which leave the constitution and, therefore, the actual state of health unaffected.
- 24 The reference to the digestibility of the wines marketed by the applicant in the main proceedings merely amounts therefore, according to the referring court, to the assertion that, on being digested, the wine does not cause stomach complaints, or causes fewer than would normally be expected of a wine of that kind and quality. Furthermore, the Bundesverwaltungsgericht queries whether the mere fact that a food is less harmful than similar products of the same category is sufficient for a beneficial effect on health to be acknowledged.
- 25 Lastly, the Bundesverwaltungsgericht expresses doubts as to whether the prohibition of health claims in respect of wine is compatible with the fundamental rights of the freedom to choose an occupation and the freedom to conduct a business, in so far as producers or distributors of wine are prohibited from referring to their product as being easily digestible owing to its low acidity, even if that claim is correct.
- 26 In those circumstances the Bundesverwaltungsgericht decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does the reference to health in a claim within the meaning of the first sentence of Article 4(3) of [Regulation No 1924/2006], read in conjunction with Article 2(2)(5) or Article 10(3) thereof, require there to be a beneficial nutritional or physiological effect aimed at a sustained improvement of physical condition, or is a temporary effect, limited in particular to the time taken by the intake and digestion of the food, sufficient?’



- (2) If the assertion of a temporary beneficial effect may in itself be a reference to health:

In order for it to be assumed that such an effect is due to the absence or reduced content of a substance within the meaning of Article 5(1)(a) and recital 15 in the preamble to the Regulation, is it sufficient merely to assert in the claim that an effect generally derived from foods of this kind and frequently perceived as being adverse is limited in a particular case?

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

Is it compatible with the first subparagraph of Article 6(1) of the Treaty on European Union, as amended on 13 December 2007 (OJ 2008 C 115, p. [1]), read in conjunction with Article 15(1) (freedom to choose an occupation) and Article 16 (freedom to conduct a business) of the [Charter], as amended on 12 December 2007 (OJ 2007 C 303, p. 1), for a producer or marketer of wine to be prohibited, without exception, from making in its advertising a health claim of the kind at issue [in the main proceedings], even if that claim is correct?

### **Consideration of the questions referred**

#### *The first two questions*

- 27 By its first two questions, which it is appropriate to examine together, the referring court asks, in essence, whether the first subparagraph of Article 4(3) of Regulation No 1924/2006 must be interpreted as meaning that the words ‘health claim’ cover a description such as ‘easily digestible’ that is accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful.
- 28 Article 2(2)(5) of Regulation No 1924/2006 defines a ‘health claim’ as ‘any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health’.
- 29 In addition, Article 5(1)(a) of Regulation No 1924/2006 states that the use of health claims is only to be permitted if the presence, absence or reduced content in a food or category of food of a nutrient or other substance in respect of which the claim is made has been shown to have a beneficial nutritional or physiological effect, as established by generally accepted scientific evidence.
- 30 In the main proceedings, the questions referred for a preliminary ruling arise in relation to wine. Given that wine falls into the category of beverages containing more than 1.2% by volume of alcohol, it is important to emphasise at the outset that, under the first subparagraph of Article 4(3) of Regulation No 1924/2006, the European Union legislature intended to proscribe, without exception, all ‘health claims’ relating to that category of beverage.
- 31 In the present case, the claim at issue suggests that, in view of the reduced acidity, the wine in question is particularly easy or pleasant to digest. Accordingly, the wine is said to produce a beneficial nutritional or physiological effect.
- 32 It is common ground that, in so far as it is linked to the intake of a foodstuff in a specific instance, digestion can be regarded as a physiological process which, by definition, is limited in time, giving rise to only temporary or fleeting effects.
- 33 On the basis of that finding, the referring court queries whether a description such as ‘easily digestible’ can be described as a ‘health claim’ even if it does not imply that the beneficial nutritional or physiological effect which the wine in question could produce leads to a sustained improvement in physical condition.

- 34 In that regard it is apparent from the wording of Article 2(2)(5) of Regulation No 1924/2006 that the starting-point for the definition of a ‘health claim’ within the meaning of that regulation is the relationship that must exist between a food or one of its constituents and health. That being the case, it must be noted that that definition provides no information as to whether that relationship must be direct or indirect, or as to its intensity or duration. In those circumstances, the term ‘relationship’ must be understood in a broad sense.
- 35 Thus, the concept of a ‘health claim’ must cover not only a relationship implying an improvement in health as a result of the consumption of a food, but also any relationship which implies the absence or reduction of effects that are adverse or harmful to health and which would otherwise accompany or follow such consumption, and, therefore, the mere preservation of a good state of health despite that potentially harmful consumption.
- 36 Moreover, the concept of a ‘health claim’ is deemed to refer not only to the effects of the consumption – in a specific instance – of a precise quantity of a food which is likely, normally, to have only temporary or fleeting effects, but also to those of the repeated, regular, even frequent consumption of such a food, the effects of which are, by contrast, not necessarily only temporary and fleeting.
- 37 As is apparent from a reading of recital 1 in conjunction with recital 10 in the preamble to Regulation No 1924/2006, it is established that, by indicating a nutritional, physiological or any other health advantage over similar products, claims promoting the foods on which they appear guide the choices made by consumers. Those choices directly influence the total selected intake of individual nutrients or other substances, thereby warranting the restrictions imposed by that regulation in relation to the use of those claims.
- 38 Consequently, it is necessary for these purposes to take into account temporary and fleeting effects as well as the cumulative effects of the repeated and long-term consumption of a certain food on the physical condition.
- 39 In the present case the description at issue, which suggests that the wine is readily absorbed and digested, implies, *inter alia*, that the digestive system – and thus a part of the human body – will not suffer, or will suffer little as a result, and that the digestive system will remain relatively healthy and intact even after repeated consumption, and thus accumulated amounts, over an extended period of time, given that that wine is characterised by reduced acidity.
- 40 In that, the claim in question might suggest a sustained beneficial physiological effect consisting in the preservation of a healthy digestive system, contrary to other wines, which are presumed to result, after being consumed a number of times, in sustained adverse effects on the digestive system and, consequently, on health.
- 41 In the light of the foregoing considerations, the answer to the first two questions is that the first subparagraph of Article 4(3) of Regulation No 1924/2006 must be interpreted as meaning that the words ‘health claim’ cover a description such as ‘easily digestible’ that is accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful.

### *The third question*

- 42 By its third question, the referring court asks, in essence, whether the fact that a producer or distributor of wine is prohibited under Regulation No 1924/2006, without exception, from using a claim of the kind at issue in the main proceedings, even if that claim is inherently correct, is compatible with the first subparagraph of Article 6(1) TEU.
- 43 In accordance with the first subparagraph of Article 6(1) TEU, the European Union recognises the rights, freedoms and principles set out in the Charter, which is to have the same legal value as the Treaties.



- 44 With regard to the fundamental rights that are relevant to the prohibition concerned, the referring court refers to Article 15(1) of the Charter, according to which everyone has the right to engage in work and to pursue a freely chosen or accepted occupation, and to Article 16 of the Charter, which guarantees the freedom to conduct a business.
- 45 However, it is important also to take into account the second sentence of Article 35 of the Charter, which requires that a high level of human health protection be ensured in the definition and implementation of all the European Union's policies and activities. As is apparent from recitals 1 and 18 in the preamble to Regulation No 1924/2006, health protection is among the principal aims of that regulation.
- 46 In those circumstances, the compatibility of the prohibition, without exception, of a claim of the kind at issue in the main proceedings must be assessed in the light not only of the freedom to choose an occupation and the freedom to conduct a business, but also of the protection of health.
- 47 It follows from this that such an assessment must be carried out in accordance with the need to reconcile the requirements of the protection of those various fundamental rights protected by the Union legal order, and striking a fair balance between them (see, to that effect, Case C-275/06 *Promusicae* [2008] ECR I-271, paragraphs 65 and 66).
- 48 As regards, first of all, the protection of health, it must be pointed out that in view of the risks of addiction and abuse as well as the complex harmful effects known to be linked to the consumption of alcohol, in particular the development of serious diseases, alcoholic beverages represent a special category of foods that is subject to particularly strict regulation.
- 49 In that regard, the Court has already recognised on several occasions that measures restricting the advertising of alcoholic beverages in order to combat alcohol abuse reflect public health concerns and that the protection of public health constitutes, as follows also from Article 9 TFEU, an objective of general interest justifying, where appropriate, a restriction of a fundamental freedom (see, to that effect, Case 152/78 *Commission v France* [1980] ECR 2299, paragraph 17; Joined Cases C-1/90 and C-176/90 *Aragonesa de Publicidad Exterior and Publivia* [1991] ECR I-4151, paragraph 15; Case C-262/02 *Commission v France* [2004] ECR I-6569, paragraph 30; and Case C-429/02 *Bacardi France* [2004] ECR I-6613, paragraph 37).
- 50 Furthermore, while it is apparent from Article 3(a) of Regulation No 1924/2006 that nutrition and health claims in general must not be false, ambiguous or misleading, that requirement applies all the more with regard to alcoholic beverages. It is essential that all claims in relation to such beverages are entirely unambiguous, so that consumers are in a position to regulate their consumption while taking into account all the inherent dangers associated with such consumption, and in so doing to protect their health effectively.
- 51 However, in a case such as that in the main proceedings, even if the claim at issue can be regarded as being substantively inherently correct in that it indicates reduced acidity levels, the fact remains that it is incomplete. The claim highlights a certain quality that facilitates digestion, but is silent as to the fact that, regardless of a sound digestion, the dangers inherent in the consumption of alcoholic beverages are not in any way removed, or even limited.
- 52 Thus, the European Union legislature was fully entitled to take the view that claims such as that at issue in the main proceedings are ambiguous or even misleading where they relate to an alcoholic beverage. By highlighting only the easy digestion of the wine concerned, the claim at issue is likely to encourage its consumption and, ultimately, to increase the risks for consumers' health inherent in the immoderate consumption of any alcoholic beverage. Consequently, the prohibition of such claims is warranted in the light of the requirement to ensure a high level of health protection for consumers.

- 53 Having regard to the foregoing, the total prohibition of any claim of the kind at issue in the main proceedings may be regarded as being necessary to ensure compliance with the requirements that stem from Article 35 of the Charter.
- 54 As regards, secondly, the freedom to choose an occupation and the freedom to conduct a business, it must be borne in mind that, according to the case-law of the Court, the freedom to pursue a trade or profession, like the right to property, is not an absolute right but must be considered in relation to its social function (see, to that effect, Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 72). Consequently, restrictions may be imposed on the exercise of those freedoms, provided that those restrictions in fact correspond to objectives of general interest pursued by the European Union and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights (Case C-22/94 *Irish Farmers Association and Others* [1997] ECR I-1809, paragraph 27, and Joined Cases C-20/00 and C-64/00 *Booker Aquaculture and Hydro Seafood* [2003] ECR I-7411, paragraph 68).
- 55 So far as those objectives are concerned, it follows from paragraphs 48 to 53 of the present judgment that the legislation at issue is designed to protect health, which is an objective recognised by Article 35 of the Charter.
- 56 As regards compliance with the principle of proportionality, while it is true that the prohibition of the claims at issue imposes certain restrictions on the professional activity of the economic operators concerned in one specific respect, compliance with those freedoms is nevertheless assured in the essential respects.
- 57 Far from prohibiting the production and marketing of alcoholic beverages, the legislation at issue merely controls, in a very clearly defined area, the associated labelling and advertising.
- 58 Thus, in a case such as that in the main proceedings, the prohibition at issue does not in any way affect the actual substance of the freedom to choose an occupation or of the freedom to conduct a business.
- 59 It follows from the foregoing that the total prohibition in Regulation No 1924/2006 of any claim of the kind at issue in the main proceedings must be regarded as complying with the requirement that is intended to reconcile the various fundamental rights in this instance and to strike a fair balance between them.
- 60 In the light of all the foregoing considerations, the answer to the third question is that the fact that a producer or distributor of wine is prohibited under Regulation No 1924/2006, without exception, from using a claim of the kind at issue in the main proceedings, even if that claim is inherently correct, is compatible with the first subparagraph of Article 6(1) TEU.

### **Costs**

- 61 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 (Third Chamber) hereby rules:

- 1. The first subparagraph of Article 4(3) 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 last amended by Commission Regulation (EU) No 116/2010 of 9 February 2010, must be interpreted as meaning that the words ‘health claim’ cover a description such as ‘easily digestible’ that is accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful.**

2. **The fact that a producer or distributor of wine is prohibited under Regulation No 1924/2006, as amended by Regulation No 116/2010, without exception, from using a claim of the kind at issue in the main proceedings, even if that claim is inherently correct, is compatible with the first subparagraph of Article 6(1) TEU.**

[Signatures]