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Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

24 March 2022 (*)

(Reference for a preliminary ruling – Consumer protection – Regulation (EU) No 1169/2011 – Provision of food information to consumers – Labelling – Mandatory particulars – List of ingredients – Specific name of those ingredients – Addition of a vitamin to a food – Obligation to indicate the specific name of that vitamin – No obligation to indicate the vitamin formulation used)

In Case C-533/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 20 October 2020, received at the Court on 21 October 2020, in the proceedings

Somogy Megyei Kormányhivatal

v

Upfield Hungary Kft.,

THE COURT (Seventh Chamber),

composed of J. Passer (Rapporteur), President of the Chamber, F. Biltgen and N. Wahl, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Somogy Megyei Kormányhivatal, by Sz. Kovács-Tátrai, acting as Agent,
- Upfield Hungary Kft., by J. Kovács, ügyved,

- the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,
- the Croatian Government, by G. Vidović Mesarek, acting as Agent,
- the European Commission, by A. Sipos, B. Rous Demiri and K. Talabér-Ritz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 (OJ 2011 L 304, p. 18 and corrigendum OJ 2013 L 163, p. 32).

2 The request has been made in proceedings between the Somogy Megyei Kormányhivatal (Somogy Region Administrative Department, Hungary) and Upfield Hungary Kft. concerning a decision by which that authority ordered Upfield Hungary to amend the labelling of a product which it markets in Hungary.

Legal context

EU law

Regulation No 1169/2011

3 Article 1 of Regulation No 1169/2011, entitled ‘Subject matter and scope’, provides in paragraph 1:

‘This 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 Article 2(2)(f), (n), (o) and (s) of Regulation No 1169/2011 states that, for the purposes of that regulation, the term ‘ingredient’, the expression ‘legal name’, the expression ‘customary name’ and the term ‘nutrient’ shall, respectively, have the following meaning:

‘(f) “ingredient” means any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form; ...

...

(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;

...

(s) “nutrient” means protein, carbohydrate, fat, fibre, sodium, vitamins and minerals listed in point 1 of Part A of Annex XIII to this Regulation, and substances which belong to or are components of one of those categories’.

5 Article 3 of that regulation, entitled ‘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, entitled ‘Fair information practices’, provides, *inter alia*, in paragraph 2:

‘Food information shall be accurate, clear and easy to understand for the consumer.’

7 Article 9 of Regulation No 1169/2011, entitled ‘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:

...

(b) the list of ingredients;

...

(l) a nutrition declaration.’

8 Article 17 of that regulation, entitled ‘Name of the food’, provides in paragraph 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.’

9 Article 18 of Regulation No 1169/2011, entitled ‘List of ingredients’, provides in paragraphs 1 and 2:

‘1. The list of ingredients shall be headed or preceded by a suitable heading which consists of or includes the word “ingredients”. It shall include all the ingredients of the food, in descending order of weight, as recorded at the time of their use in the manufacture of the food.

2. Ingredients shall be designated by their specific name, where applicable, in accordance with the rules laid down in Article 17 ...'

10 Article 30 of that regulation, which relates to the content of the nutrition declaration referred to in Article 9(1)(l) thereof, provides in paragraphs 1 and 2:

'1. The mandatory nutrition declaration shall include the following:

(a) energy value; and

(b) the amounts of fat, saturates, carbohydrate, sugars, protein and salt.

...

2. The content of the mandatory nutrition declaration referred to in paragraph 1 may be supplemented with an indication of the amounts of one or more of the following:

...

(f) any of the vitamins or minerals listed in point 1 of Part A of Annex XIII, and present in significant amounts as defined in point 2 of Part A of Annex XIII.'

11 Annex XIII to Regulation No 1169/2011, entitled 'Reference intakes', contains Part A concerning daily reference intakes for vitamins and minerals for adults, point 1 of which lists vitamins and minerals which may be declared and their nutrient reference values. Those vitamins include Vitamin A and Vitamin D.

Regulation No 1925/2006

12 Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods (OJ 2006 L 404, p. 26), as amended by Regulation No 1169/2011 ('Regulation No 1925/2006'), contains Article 3, entitled 'Requirements for the addition of vitamins and minerals', paragraph 1 of which provides that 'only vitamins and/or minerals listed in Annex I, in the forms listed in Annex II, may be added to foods, subject to the rules laid down in this Regulation'.

13 Article 7 of that regulation, entitled 'Labelling, presentation and advertising', provides in paragraph 3:

'Nutrition labelling of products to which vitamins and minerals have been added and which are covered by this Regulation shall be compulsory. The information to be provided shall consist of that specified in Article 30(1) of Regulation [No 1169/2011] and of the total amounts present of the vitamins and minerals when added to the food.'

14 Annex I to Regulation No 1925/2006, entitled 'Vitamins and minerals which may be added to foods', refers, inter alia, to Vitamin A and Vitamin D.

15 Annex II to that regulation includes, amongst the vitamin formulations and mineral substances which may be added to foods, under the heading 'Vitamin A', four vitamin formulations, namely retinol, retinyl acetate, retinyl palmitate and beta-carotene. It also includes,

under the heading ‘Vitamin D’, two vitamin formulations, namely cholecalciferol and ergocalciferol.

Hungarian law

16 Pursuant to Paragraph 10(1) of the az élelmiszerláncról és hatósági felügyeletéről szóló 2008. évi XLVI. törvény (Law XLVI of 2008 on the food chain and the official supervision thereof), food may only be placed on the market if the labelling contains, in Hungarian, the information specified in the legislation implementing Law XLVI and in directly applicable EU law, and the information is comprehensible, clear and legible.

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

17 Upfield Hungary markets in Hungary a product known as ‘Flóra ProActiv, a 35% fat vegetable spread containing added plant sterols’. The labelling of that product refers in particular to ‘vitamins (A, D)’.

18 The Somogy Region Administrative Department, which is responsible, inter alia, for ensuring compliance with the rules applicable in the field of consumer protection, took the view that that reference did not comply with the provisions of Regulation No 1169/2011 on the ground that those provisions require the labelling of foods to include, as a general rule, the specific name of the various ingredients that are constituents thereof and, in the particular case where those ingredients are vitamins, the vitamin formulations that they contain. It therefore adopted a decision ordering Upfield Hungary to amend the labelling of the product in question.

19 Upfield Hungary brought an action against that decision and the court with jurisdiction annulled the latter on the basis of two sets of factors. First, that court took the view, in essence, that Regulation No 1169/2011 did not define what was to be regarded, in general, as the ‘specific name’ of ingredients which are constituents of foods. Secondly, it noted that, in addition, Regulation No 1925/2006 does not regulate the naming of the vitamins, minerals and other substances to which it refers, while listing, inter alia, in Annex II, the various vitamin formulations of Vitamin A and Vitamin D that may be added to foods. In the light of those factors, the court with jurisdiction concluded that neither of the two regulations in question nor any other provision of EU law prevented the use, for the purpose of labelling a food, of the names ‘Vitamin A’ and ‘Vitamin D’.

20 The Somogy Region Administrative Department then brought an appeal before the Kúria (Supreme Court, Hungary), in support of which it submits, in the first place, that Regulation No 1169/2011 requires, as a general rule, the labelling of foods to include the specific name of each of the ingredients included in their composition and, in the second place, that, as regards in particular ingredients such as vitamins A and D, that specific name corresponds to the vitamin formulation that has been added to a given food, which is itself necessarily required to be one of those the use of which is allowed under Annex II to Regulation No 1925/2006.

21 The referring court takes the view that those arguments raise the question of how the concept of ‘specific name’ contained in Article 18(2) of Regulation No 1169/2011 is to be understood in the case of ingredients such as vitamins. Since the position of the national courts in this regard is not uniform, it considers it necessary to refer a question to the Court of Justice on that subject.

22 In those circumstances, the Kúria (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must the provisions of Regulation [No 1169/2011], and specifically Article 18(2) thereof, be interpreted as meaning that, where vitamins are added to foods, the list of the ingredients of the food must include not only the names of the vitamins, but also their designation in accordance with the vitamin formulations which may be added to foods?’

The question referred for a preliminary ruling

23 By its question, the referring court asks, in essence, whether Regulation No 1169/2011 must be interpreted, having regard specifically to Article 18(2) thereof, as meaning that, where a vitamin has been added to a food, the list of the ingredients of that food must include not only the name of that vitamin, but also its designation in accordance with the vitamin formulation used.

24 In that regard and as a preliminary point, it should be noted, first, that Regulation No 1169/2011 distinguishes between the concepts of ‘ingredient’ and ‘nutrient’.

25 Article 2(2)(f) of that regulation states that the concept of ‘ingredient’ corresponds to ‘any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form’.

26 At the same time, Article 2(2)(s) of Regulation No 1169/2011 states that the concept of ‘nutrient’ includes ‘protein, carbohydrate, fat, fibre, sodium, vitamins and minerals listed in point 1 of Part A of Annex XIII’ to that regulation.

27 Secondly, Article 9(1)(b) and (l) of Regulation No 1169/2011 provides that the ingredients and nutrients present in foods produced or marketed in the European Union are to be included in two distinct mandatory particulars on those foods, namely a ‘list of ingredients’ and a ‘nutrition declaration’.

28 The first of those two mandatory particulars must, pursuant to Article 18(1) of that regulation, include all of the ingredients present in the food concerned.

29 The second of those mandatory particulars must, for its part, include, in accordance with Article 30(1) of Regulation No 1169/2011, the energy value and the amounts of fat, saturates, carbohydrate, sugars, protein and salt that are present in the food concerned. In addition, it may be supplemented, pursuant to paragraph 2 of that article, with an indication, inter alia, of the vitamins present in that food in significant amounts.

30 It follows that vitamins are, in principle, classified as nutrients under Regulation No 1169/2011 and that they may therefore be indicated in the nutrition declaration referred to in Article 9(1)(l) and in Article 30 of that regulation where they are present in a food in significant amounts, without however that indication being mandatory.

31 It must nonetheless be noted that, as the Advocate General observed in points 32 to 34 of her Opinion, that classification does not mean that vitamins cannot at the same time constitute ingredients within the meaning of Regulation No 1169/2011.

32 On the contrary, the concept of ‘ingredient’ includes, as is apparent from paragraph 25 of this judgment, any product, substance or constituent which has been ‘used’ in the manufacture or preparation of a food and which is ‘still present’ in the finished product, which may be the case for a vitamin.

33 It follows that, where a vitamin is added to a food, it must mandatorily be indicated in the list of ingredients provided for in Article 9(1)(b) and Article 18 of Regulation No 1169/2011. However, it does not necessarily have to be indicated and quantified in the nutrition declaration referred to in Article 9(1)(l) and Article 30 of that regulation.

34 As regards the name under which such a vitamin must be included in the list of ingredients that must appear on the food concerned, it should be observed that, under Article 18(2) of Regulation No 1169/2011, ingredients present in a food must be designated by their specific name, where applicable in accordance with the rules laid down in Article 17 of that regulation.

35 It should be noted in that regard that Article 17 of Regulation No 1169/2011 states in paragraph 1 that the name of ingredients is to be understood as the legal name of the ingredient concerned, or, in the absence of a legal name, the customary name of that ingredient, or, if there is no customary name or the customary name is not used, a descriptive name.

36 However, neither the reference to ‘specific name’ in Article 18(2) of Regulation No 1169/2011, nor the references to ‘legal name’, ‘customary name’ and ‘descriptive name’ in Article 17(1) of that regulation make it possible, in themselves and in the absence of additional textual information, to determine the name under which a vitamin which has been added to a food produced or marketed in the European Union must be designated in the list of ingredients relating to that food.

37 In those circumstances, it is appropriate, in accordance with the Court’s settled case-law, to interpret those provisions by taking into account, beyond their mere wording, the context in which they occur and the objectives pursued by the rules of which they form part (judgments of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41, and of 21 January 2021, *Germany v Esso Raffinage*, C-471/18 P, EU:C:2021:48, paragraph 81).

38 In that regard, so far as concerns, in the first place, the context in which the provisions in question occur, it must be observed, first, that Article 2(2) of Regulation No 1169/2011 defines the expressions ‘legal name’ and ‘customary name’ in points (n) and (o), respectively, stating that the former refers to ‘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’ and the latter to 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’.

39 Secondly, that regulation refers, in Article 30(2)(f) and in point 1 of Part A of Annex XIII, to vitamins which may be indicated and quantified in the nutrition declaration provided for in Article 9(1) where they are present in significant amounts in a food produced or marketed in the European Union. As the Advocate General stated in point 47 of her Opinion, point 1 of Part A of Annex XIII to Regulation No 1169/2011 lists the vitamins in question by designating them by names such as ‘Vitamin A’, ‘Vitamin D’ or ‘Vitamin E’, without however providing that those names constitute a legal name under EU law.

40 Thirdly, neither the provisions in question nor any other provision of Regulation No 1169/2011 refers to those vitamins under other names.

41 Fourthly, Regulation No 1925/2006, which harmonises national provisions relating to the addition of vitamins and minerals and of certain other substances to foods, provides, in Article 3(1), that ‘only vitamins and/or minerals listed in Annex I, in the forms listed in Annex II, may be added

to foods'. As is apparent from the first of those two annexes, the names of the various vitamins in question correspond to those referred to in point 1 of Part A of Annex XIII to Regulation No 1169/2011, as set out in paragraph 39 above, it being noted, however, that only the vitamin formulations expressly listed in the second of the annexes in question may be added to foods produced or marketed in the European Union.

42 Fifthly, the purpose of Regulation No 1925/2006 is not, however, to regulate nutrition labelling or, more broadly, the provision of information to consumers relating to the presence of vitamins in those foods; on the contrary, such a matter continues to be regulated exclusively, as is clear from Article 7(3) of that regulation and as the Advocate General noted in point 45 of her Opinion, by Regulation No 1169/2011. The vitamin formulations listed in Annex II to Regulation No 1925/2006 cannot therefore be regarded as names that are additional to those referred to in paragraph 39 above, especially since that annex states that they are only different 'forms' of each of the vitamins concerned.

43 It thus follows from all of the preceding provisions that it is under names such as 'Vitamin A', 'Vitamin D' or 'Vitamin E' that vitamins present in significant amounts in foods produced or marketed in the European Union are designated by Regulation No 1169/2011 for the purposes of their indication in the nutrition declaration provided for in Article 9(1)(l) and Article 30 and in Annex XIII.

44 In order to ensure consistent interpretation and application of the various provisions of that regulation, the view must be taken that it is under those same names that such vitamins should also be designated for the purpose of their indication in the list of ingredients provided for in Article 9(1)(b) and in Article 18 of Regulation No 1169/2011.

45 In the second place, it should be noted that one of the objectives of Regulation No 1169/2011 is, as is apparent from a combined reading of Article 1(1) and Article 3(1), 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 13 January 2022, *Tesco Stores ČR*, C-881/19, EU:C:2022:15, paragraphs 43 and 44 and the case-law cited).

46 That objective finds expression in particular in the requirement, laid down in Article 7(2) of Regulation No 1169/2011, that the information provided to consumers about foods produced or marketed in the European Union must be accurate, clear and easy to understand.

47 That requirement must itself be assessed not only by taking into account possible differences in the perception of consumers, as mentioned in paragraph 45 of this judgment, but also by taking as a point of reference an average consumer who is reasonably well-informed and reasonably observant and circumspect, as is apparent from the Court's settled case-law (judgments of 16 July 1998, *Gut Springenheide and Tusky*, C-210/96, EU:C:1998:369, paragraph 31, and of 10 September 2009, *Severi*, C-446/07, EU:C:2009:530, paragraph 61).

48 The objective and requirement referred to above support the interpretation adopted in paragraph 44 above. The designation, in a coherent and exclusive manner, of vitamins under names such as 'Vitamin A' or 'Vitamin D' in the nutrition declaration and in the list of ingredients provided for in Regulation No 1169/2011 is capable of ensuring that the information provided is accurate, clear and easy to understand for an average consumer who is reasonably well-informed and reasonably observant and circumspect.

49 Conversely, the use of those names alone in the nutrition declaration and the addition alongside those names of the relevant vitamin formulations set out in Annex II to Regulation No 1925/2006, such as ‘retinyl acetate’ or ‘cholecalciferol’, for the purposes of their inclusion in the list of ingredients, may, in the light of the fact that the majority of those vitamin formulations are relatively obscure or little known to the general public, have the effect of rendering such information more complex, more technical and, consequently, less clear and less easy to understand for an average consumer.

50 In the light of all the foregoing considerations, the answer to the question referred is that Regulation No 1169/2011 must be interpreted, having regard specifically to Article 18(2), as meaning that, where a vitamin has been added to a food, the list of the ingredients of that food does not have to include, in addition to the name of that vitamin, the name of the vitamin formulation used.

Costs

51 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 (Seventh Chamber) hereby rules:

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, must be interpreted, having regard specifically to Article 18(2), as meaning that, where a vitamin has been added to a food, the list of the ingredients of that food does not have to include, in addition to the name of that vitamin, the name of the vitamin formulation used.

[Signatures]

* Language of the case: Hungarian.