European Commission
Directorate General Internal Market, Industry, Entrepreneurship and SMEs
Unit B2 – Prevention of Technical Barriers
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By email: Grow-Notif-Infractions@ec.europa.eu

19 November 2021

RE: TRIS 2021/638/F: French draft "Decree on the use of Certain Denominations Used to Describe Foods Containing Vegetable Protein"

Dear Sir/Madam,

The EVU has issued comments on TRIS 2020/338/F on 16 June 2020 that we attach to the present communication. The statements made a year ago hold true today and we would reiterate the concerns we expressed therein.

The executive decree – the "Decree on the Use of Certain Denominations Used to Describe Foods Containing Vegetable Protein" – now is issued on the basis of the amended Consumer Code (Article L. 412-10 of the Consumer Code in its wording resulting from Article 5 of Law No 2020-699 of 10 June 2020 on the transparency of information on agricultural and food products) and must be assessed on its own merit in this second round of the TRIS procedure. As a formal point we consider it mandatory that the Decree should be subjected to separate scrutiny under Article 45 of Regulation (EU) No 1169/2011. The draft Decree makes reference to Article 38 of Regulation (EU) No 1169/2011, but it remains unclear whether a consultation process is taking place under the Regulation on Food Information to Consumers.

The draft decree is limited in scope to foodstuffs containing plant proteins manufactured in the French national territory. Its Article 6 provides for an internal market clause, relativises, however, importers' liberties by stating that such "products may be imported and marketed in France under one of the wordings provided for in this decree, or similar wording", hence forcing importers to abide to the labelling requirements of the decree. It is questionable whether this clause is compatible with the principle of mutual recognition.

Article 2 of the draft decree ("protected terms referring to food of animal origin") prohibits producers of processed food containing plant proteins to use any term encompassed in the below definitions to designate a product:

(1) a legal name for which no addition of plant protein is provided for by the rules defining the composition of the foodstuff concerned;
(2) a name referring to the names of animal species or groups of species or to animal morphology or anatomy;
(3) a name using the specific terminology of butchery, charcuterie or fishmongery;
(4) a name of a food of animal origin representative of commercial uses.

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We make reference to our critique expressed in our statements on the amendments to the Consumer Code 2020. Further, we note that Article 2(3) remains vague in its reference to “specific terminology” common to branches of the animal food trade. Article 2(4) is more open to interpretation still by making references to “commercial uses” made public, according to Article 4 of the draft Decree, by the Ministerial administration upon proposal from “professional organisations representing the sectors concerned”. Such a procedure risks to give *carte blanche* to one-sided interested parties to restrict terminology for plant-based foods further in a potentially untransparent procedure underneath the law and away from the scrutiny of TRIS and Regulation (EU) No 1169/2011.

Now, as in the first round of consultation under the TRIS-procedure, we suggest that the issue of the French initiative should be brought to the attention of the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) at the next possible opportunity.

We hope that these considerations reach you in time to inform the debate in the TRIS process.

Yours faithfully,

Ronja Berthold
Head of Public Affairs
European Vegetarian Union

About EVU: The European Vegetarian Union (www.euroveg.eu) represents the growing number of Europeans choosing vegetarian and vegan products over animal-based nutrition. Its aim is to make vegetarian and meat-reduced lifestyles appealing, available, and safe for consumers, producers, and traders, and to provide adequate information on related health issues, as well as on animal health and welfare and environmental protection, in relation to a vegetarian lifestyle. EVU also acts as an umbrella organisation for the ‘V-Label’ (www.v-label.eu), a voluntary certified labelling scheme. EVU is registered in the Register of Interest Representatives (No. 109356110578-03).

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16 June 2020

RE: TRIS notification 2020/338/F — French « Loi relative à la transparence de l'information sur les produits agricoles et alimentaires »

Dear Sir/Madam,

The European Vegetarian Union has taken note of the French 'Act on the transparency of information on agricultural and food products'. Article 5 thereof prohibits the use of names used to indicate foodstuffs of animal origin in order to describe, market, and promote foodstuffs containing vegetable proteins, beyond a threshold which will be set by decree. It reads:

Code de la consommation (as amended), Article L 412-10. – "The names used to indicate foodstuffs of animal origin shall not be used to describe, market, or promote foodstuffs containing vegetable proteins. A decree shall set the proportion of vegetable proteins beyond which this name is not possible. This decree shall also define the procedures for the application of this Article and the sanctions incurred in cases of non-compliance."

This law is of concern to European citizens, including French citizens, with preferences for vegetarian and vegan food products, but also to producers in the food sector who cater to their needs, thereby serving a growing market for such products.

Formal observations

The French Law was adopted on 27 May and published on 11 June in the J.O.R.F. as « Loi n° 2020-699 du 10 juin 2020 relative à la transparence de l'information sur les produits agricoles et alimentaires ». The Act was notified in the TRIS process on 5 June, with the standstill period running until 7 September. It has therefore become law within the standstill period, which makes it difficult for stakeholders, the European Commission, and other Member States to assess the law and table observations. We, therefore, object against what seems to be a procedural blunder.

While the Law was publicised during the TRIS process, it has to our knowledge not been notified according to Article 45 of Regulation (EU) No 1169/2011 on the provision of food information to consumers. This, we believe, would be necessary, as the Law falls within the ambit of Article 38 to 45 of Regulation (EU) No 1169/2011.

The Law was adopted while the reform of the Common Agricultural Policy (CAP) is considered in the EU legislature. The reform package includes considerations of establishing European rules for product denominations of plant-based foods that overlap with the provisions of Article L 412-10 *Code de la consommation* (as amended). We believe national solo efforts should be put on hold until such time as the *acquis communautaire* provides for solutions applicable across the internal market.

Article L 412-10 *Code de la consommation* (as amended) needs to be complemented by decree. We consider it mandatory that such a decree be subjected to scrutiny under Article 45 of Regulation (EU) No 1169/2011.

Observations in substance

The French Law will confuse consumers and producers alike. It is one-sided as it privileges conventional meat production to the disadvantage of all other stakeholders, and fails to take into account the trend towards sustainable food production.

Informative food labelling

Tradition is that plant-based meat alternatives can bear 'meaty' names as long as their non-animal origin is made plain. The French Law claims to defend tradition in food markets but in fact does the opposite: it breaks with tradition. The use of product denominations such as 'vegetarian schnitzel' and 'vegan tofu sausage' for food containing vegetable proteins is well established and has been used in the internal market for decades, and has not caused significant complaints from either consumers or traders. Because the vegetarian nature of meat alternatives is important in terms of generating sales, producers and retailers communicate it clearly on the packaging. Consumers are not misled by the use of 'meaty names' for vegetarian alternatives.

'Meaty names' for vegetarian alternatives to meat products convey important information about what consumers can expect from a product. These denominations guide consumers in their purchase decisions in a straightforward way. If meat alternatives needed to be given new, non-established names, customers would require information on appearance, taste, texture, preparation, etc. in the form of additional text and pictures on the packaging. This would – for no plausible reason – overcomplicate the purchase process for consumers and limit their ability to make their own purchase decisions.

Renaming established names and brands with 'non-meaty' fantasy denominations such as *galette* instead of *steak* or *disc* instead of *burger* would provide no further clarity for consumers of meat and would be unnecessarily confusing to consumers of non-meat products. Indeed, one can argue that it would instead undermine the EU's consumer protection agenda by needlessly introducing uncertainty around the naming of plant-based foods.

Better for the environment

Plant-based products provide more sustainable alternatives to meat products. The European Commission has stated in its Farm to Fork Strategy that "Moving to a more plant-based diet with less red and processed meat and with more fruits and vegetables will reduce not only risks of life-threatening diseases, but also the

environmental impact of the food system." The Commission has also expressed its wish to empower consumers "to choose sustainable food" and to make "it easier to choose healthy and sustainable diets". We are convinced that this can only be achieved if consumers are able to quickly and easily identify plant-based alternatives.

Free movement

Article L 412-10. C.Cons., by establishing insular French rules in the midst of the internal market, creates an obstacle to intra-community trade by obliging traders to change their labels in order to meet the requirements of the French market. Ever since the landmark ruling of *Cassis de Dijon* more than 40 years ago, this has been considered an infringement of the Free Movement of Goods provisions of the Treaty.

Given the importance of the French initiative and the consequences it has for the functioning of the internal market, we strongly advise considering the draft at the level of the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) at the next possible opportunity.

We hope that these considerations reach you in time to inform the debate in the TRIS process.

Yours faithfully,

Ronja Berthold
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