Message 201

Communication from the Commission - TRIS/(2024) 0886

Directive (EU) 2015/1535

Notification: 2023/0510/FR

Forwarding of the response of the Member State notifying a draft (France) to comments (5.2) of European Commission.

MSG: 20240886.EN

1. MSG 201 IND 2023 0510 FR EN 24-11-2023 28-03-2024 FR ANSWER 24-11-2023

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4. 2023/0510/FR - C00A - AGRICULTURE, FISHING AND FOODSTUFFS

5.

6. As part of the notification procedure pursuant to Directive (EU) 2015/1535, the French authorities notified the Commission on 23 August 2023 the draft Decree on the use of certain designations used to describe foodstuffs containing vegetable proteins (hereinafter the 'notified draft'). On 22 November 2023, the Commission issued written observations pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015.
The French authorities would like to respond to the Commission's observations below and inform the Commission of the publication of the relevant Decree for effective entry into force on 1 May 2024:
- On compatibility with Regulation (EU) No 1169/2011:
The Commission considers that the provisions of Regulation (EU) No 1169/2011 do not allow Member States to adopt national measures which, on the one hand, preclude the case-by-case determination of the misleading nature of the information provided to consumers and, on the other hand, define the content of the usual and descriptive names of certain foodstuffs.
However, in the opinion of the French authorities, neither the provisions of Article 7 of Regulation (EU) No 1169/2011 nor those of Article 17, read in conjunction with Annex VI(A)(4), expressly harmonise the issue of the use of designations of products of animal origin to describe, market or promote foodstuffs containing vegetable proteins, including in the event of a total substitution of ingredients of vegetable origin for all ingredients of animal origin constituting a foodstuff.
Article 7 merely lays down the main principles of fairness to which information on foodstuffs is subject, without expressly applying these main principles in a concrete way to all specific categories of foodstuffs, and without laying down precise prohibitions. Similarly, Article 17(1) lays down the general principle that the foodstuff must be identified by its legal designation or, failing that, by its usual name or a descriptive name, without the wording of this provision referring to

specific situations.
In so doing, these provisions only lay down minimum rules on the use and content of designations of foodstuffs. Consequently, in the absence of express harmonisation, within the meaning of Article 38(1) of the same Regulation, of the question of the use of designations of products of animal origin for foodstuffs containing vegetable proteins, those provisions do not preclude a Member State from intervening by enacting national measures regulating or prohibiting the use of such designations.

- On the impact of the notified draft on the marketing of vegetable protein-based foodstuffs:
The Commission notes that some of the terms listed in Annex I have already been used on the European market for several years to designate a variety of foods with different organoleptic properties, and that consumers have become familiar with these types of products and designations.
However, these products, while asserting their vegetable-based composition, are processed products that have a different nutritional profile from their counterparts of animal origin. In particular, products of animal original are major contributors to the intakes of certain nutrients that are naturally absent or present in smaller quantities in products of vegetable origin (haem iron, zinc, proteins, long-chain omega 3, vitamin B12, etc.).
These products often create ambiguity with those of animal origin that they aim to replace. They use claims borrowed from the register of traditional cuisine or designations that have been in use for several decades and attributed to foodstuffs defined in particular in commercial reference frameworks and on which the French authorities rely to verify the fairness of these foodstuffs and to combat misleading commercial practices. The French authorities would like to recall that an investigation conducted by the competent authorities in matters of competition, consumer affairs and fraud control revealed in January 2020 ‘the use of sales and presentation designations [for vegetarian and vegan products] which may mislead consumers when they make a purchase‘. Some designations even refer directly to meat, fish or delicatessen products, which contravenes uses and may mislead the consumer.
The purpose of this Decree is therefore to protect consumers from the use of sales and presentation designations that may mislead them when they make a purchase. This represents a challenge in terms of transparency and loyalty that meets the legitimate expectations of both consumers and producers. Beyond the protection of consumers, this Decree clarifies the Regulations with regard to professional practices and thus guarantees producers conditions of fair competition.
Indeed, faced with the proliferation of vegetable-based substitutes on the market, the demand for protection of terms related to products of animal origin has been increasingly raised by representatives of operators in these sectors in recent years. This demand is also part of a context where in France and Europe there is a decline in livestock farming activities, resulting in a decapitalisation of livestock and a greater specialisation of farms and territories.
Furthermore, the adoption of such a standard remains fully consistent with the support for the development of vegetable protein production provided by the French Government through its strategy for the development of vegetable proteins launched on 1 December 2020. Indeed, the French authorities consider that crops and livestock products are complementary and that the omnivorous diet is perfectly adapted to the official recommendations of the health authorities, which are all about balance in our diet. Indeed, the National Nutritional Health Programme recommends alternating meat, poultry, fish, eggs and dried vegetables throughout the week. The French authorities therefore encourage the development of foodstuffs based on vegetable proteins as long as the plant products do not use animal-related designations, which may create confusion in the consumer’s mind.

- Concerning the geographical scope of the notified draft:
The Commission is asking for clarification on the relationship between Article 5 (mutual recognition clause with other Member States and third countries) and Article 6 (ban on the possession, sale or distribution free of charge of foodstuffs that contravene the notified Decree) and stresses on ‘the difficulties that food business operators may encounter in adapting labelling and distribution when operating in different EU countries and France’.
The French authorities state that Article 5 of the notified draft is a mutual recognition clause designed to exclude from the scope of the notified draft products lawfully manufactured or marketed in another Member State of the European Union or in a third country, in order to ensure that this Decree does not create an obstacle to the free movement of goods within the European Union or an obstacle to international trade. Article 6 enables the national control services to implement the administrative penalties provided for in Article 7 within the scope of the Decree as set out in Article 5.
In the light of the responses to the Commission’s observations presented above, the French authorities wish to inform the

European Commission that the Decree, as notified to the European Commission on 23 August 2023, was officially published by the French authorities on 27 February 2024 (https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000049199307), for entry into force on the 1st day of the third month following its publication, i.e. on 1 May 2024.
The French authorities are at the disposal of the Commission to provide it with any additional information on the published Decree.

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