

ENSA statement – New French Decree on the use of certain denominations for foodstuffs containing vegetable proteins

20 November 2023

ENSA, the European Plant-Based Foods Association, welcomes the opportunity to share our views in relation to the new French Decree on the use of certain denominations for foodstuffs containing vegetable proteins, notified to the European Commission on 23 August 2023.

ENSA calls on the European Commission and Member States to oppose the new version of the French Decree and ensure consumer access to clear information on plant-based foods, while ensuring proper functioning of the single market and fair competition between the Member States.

ENSA strongly believes that in order to meet the French and EU ambitions for sustainable food and develop a competitive EU plant protein sector from farm to fork, the plant-based food sector needs a unified regulatory framework at the EU level, which takes into account the local specificities of culinary languages and traditions without hindering innovation and consumer information through disproportionate restrictions.

On 23 August, the European Commission was [notified](#) of a new version of the French Decree on the use of certain denominations to designate foodstuffs containing plant proteins. This new Decree would repeal the previous [2021](#) version, currently lying with the European Court of Justice (ECJ) for interpretation and legal clarification ([Case C-438/23](#)).

The new Decree continues to propose a ban on the use of terms directly or indirectly associated with foods of animal origin for describing and marketing plant-based protein foods. This means that denominations related to meat, meat cuts and butchery would be prohibited on any plant-based protein food product. Although the new Decree differs from the 2021 version, for example by allowing the use of terms such as “burger” and “nuggets”, there are still significant restrictions on other terms, such as “grilled” “fillet” and “steak”. Additionally, the new version of the Decree states that it would not apply to EU manufacturers not based in France, but all products marketed in France should comply with the rules. The Decree is expected to enter into force in early 2024, with food manufacturers and retailers being granted a one-year period to deplete any non-compliant existing stocks of foods produced or labelled before the effective date.

Therefore, ENSA would like to reiterate its strong opposition to the new Decree due to the challenges it would still pose for the plant-based food sector in the EU, as well as for consumers in general. Below you will find an extensive list of arguments that substantiate and illustrate the reasons for our opposition.

ENSA – the European Plant-Based Foods Association asbl

Rue du Luxembourg 22-24, 1000 Brussels

secretariat@enssa-eu.org; tel: +32 2 761 66 72

Transparency Register: 689045810852-79

1. The Decree violates the harmonisation intended and established by the FIC regulation

The revised French Decree continues to be incompatible with the harmonisation objectives established by [Regulation \(EU\) No 1169/2011](#) on the provision of food information to consumers – or the 'FIC Regulation.' According to the FIC Regulation, a food product's name can be its legal name, customary name, or descriptive name (Article 17).

Additionally, Article 36 of the FIC Regulation explicitly states that voluntary food information must not mislead or be ambiguous or confusing for consumers. The new decree violates the FIC regulation, considering it:

- Prohibits certain terms in the legal name of a product, thereby restricting the use of customary or descriptive names if they contain prohibited terms.
- The Decree goes further by limiting the use of specific terms in any voluntary food information, even when those terms are not misleading, ambiguous, or confusing to consumers. The FIC Regulation, on the other hand, allows for flexibility in voluntary food information as long as it adheres to clarity principles.

This conflict between the French Decree and the FIC Regulation has significant negative implications for food product labelling and consumer information, hindering the harmonisation objectives set by the EU for food labelling across member states.

2. The Decree hinders the free movement of goods in the EU single market and creates an uneven playing field for manufacturers

The new decree introduces contradictory provisions that will obstruct the free movement of goods within the EU. The Decree fails to adhere to the non-discrimination principle outlined in Article 35 of the [TFEU](#), acting as a protective measure that restricts market access and lacks clarity regarding approved marketing practices.

Furthermore, the new Decree contradicts regulations established in other EU Member States, such as the Netherlands, where meat-related terms are allowed to be used for vegetarian products with clear labelling guidelines. This creates a trade impediment, imposing extra expenses on producers. This inconsistency will make it hard for consumers to make informed choices and, if approved, will create an uneven playing field between animal-based and plant-based food producers.

Within the stipulations of the new Decree, while Article 5 suggests that products lawfully manufactured or marketed in other EU member states or third countries would be exempt, Article 6 contradicts this by prohibiting the sale or distribution of non-compliant foodstuffs. This inconsistency creates challenges in interpretation and potential trade barriers that will pose an obstacle to the internal market:

- Obstruction of Non-French Products: Article 6 could effectively prevent products manufactured outside France from entering the French market if they do not conform to the Decree's provisions.
- Negative Impact on Imports: The Decree affects imports from other EU member states, potentially requiring proof of origin and compliance, complicating market access.

- Sanctions and Compliance Burdens: Article 6's ambiguity exposes food manufacturers not based in France to potential sanctions, especially burdening for small and medium-sized companies (SMEs).

3. A general ban on meat-associated denominations of plant-based foods is harmful to consumers

Consumers actively seeking alternatives to meat and dairy products rely on clear and consumer-friendly names to identify suitable options quickly. These names are essential for helping consumers seamlessly integrate plant-based products into their dietary habits, facilitating the transition toward more sustainable eating practices.

A recent [study](#) carried out by the European Consumers' Organisation (BEUC) confirms that most consumers support the use of these terms, provided that they can clearly identify these products as plant-based, which is currently the case.

On the contrary, the Decree fails to provide substantiated evidence to indicate that consumers might be misled by these terms, with no prior study or impact assessment being carried out to justify the Decree's implementation.

Furthermore, the new Decree disregards the European Parliament's [vote](#) on Amendment 165 to the proposal for a Regulation for a common organisation of the markets for agricultural products ("CMO Regulation"), which unequivocally affirmed that using meat-related terms for plant-based products doesn't mislead consumers but aids in making informed choices.

In light of this, the Decree's restrictions on such names not only undermine consumers' ability to make informed choices but also conflict with the broader goals of promoting sustainable diets and addressing health and environmental challenges.

ENSA members always ensure that consumers are not misled about the plant-based nature of their products by choosing terms that always associate the shape of the product (e.g. steak, ham, fillet,) with its plant origin (e.g. vegetable, plant, soya) and using a design, font size and packaging colours that distinguish these products from comparable animal products.

However, meat products containing up to 7% of plant protein would be allowed under the draft Decree to use meat-related terms. Plant proteins would de facto become ingredients that are not immediately visible to consumers but are used for products that consumers clearly expect to be of animal origin: we believe that this practice is way more misleading for consumers than a properly labelled '100% plant-based burger' and should not be authorised.

4. The Decree is not in alignment with EU strategies and ambitions for sustainable diets

The new Decree limits consumers' access to essential information about plant-based foods, which goes against the EU's Farm to Fork Strategy, Europe's Beating Cancer Plan, and the need to promote plant-based diets for public health and environmental reasons. These strategies align with scientific recommendations advocating for increased consumption of non-animal protein sources.

It is important for consumers looking for non-animal protein sources to be able to quickly identify suitable alternatives to meat and dairy products with consumer-friendly names. These names allow

ENSA – the European Plant-Based Foods Association asbl

Rue du Luxembourg 22-24, 1000 Brussels

secretariat@ensa-eu.org; tel: +32 2 761 66 72

Transparency Register: 689045810852-79

them to easily and quickly know how to integrate these products into their established eating habits and are thus essential to provide useful information to consumers seeking to adopt a more sustainable diet.

5. The Decree puts unnecessary burdens on the plant-based sector and hinders innovation

To achieve Europe's sustainability goals, it's essential to establish a consistent EU framework for the plant-based food sector, one that respects regional culinary nuances and traditions while avoiding disproportionate restrictions that stifle innovation and consumer information.

The new Decree will hinder innovation in the food industry, with a disproportionate impact on the plant-based food sector. Such a move would be contrary to the European Union's goals of promoting research and innovation to discover novel food technologies and solutions, reduce the environmental footprint of agri-food systems, and enhance the overall resilience of the food supply chain.

Furthermore, the new Decree places undue and unjust pressure on the emerging plant-based food sector, which is still in its formative stages and requires support rather than further undue scrutiny. This unnecessary regulatory pressure in the plant-based sector contrasts strongly with the opposing situation within the meat industry sector, which although it has been established for many years, requires less regulatory oversight, and is not affected by these regulations. This underscores the need to prioritize the nurturing and growth of the emerging plant-based sector to align with Europe's sustainability objectives.

About ENSA

The European Plant-based Foods Association (ENSA) represents the interests of plant-based food manufacturers in Europe. ENSA is an association of internationally operating companies, ranging from large corporations to small, family-owned businesses with an annual turnover of around €1.8 billion. ENSA members produce high-quality plant-based alternatives to dairy and meat products. Since its establishment in 2003, ENSA has been raising awareness about the role of plant-based diet in moving towards more sustainable and healthier food consumption patterns.

ENSA – the European Plant-Based Foods Association asbl

Rue du Luxembourg 22-24, 1000 Brussels

secretariat@ensa-eu.org; tel: +32 2 761 66 72

Transparency Register: 689045810852-79