

Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

14 June 2017 (*)

(Reference for a preliminary ruling — Common organisation of the markets in agricultural products — Regulation (EU) No 1308/2013 — Article 78 and Annex VII, Part III — Decision 2010/791/EU — Definitions, designations and sales descriptions — ‘Milk’ and ‘milk products’ — Designations used for the promotion and marketing of purely plant-based products)

In Case C-422/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Trier (Regional Court, Trier, Germany), made by decision of 28 July 2016, received at the Court on 1 August 2016, in the proceedings

Verband Sozialer Wettbewerb eV

v

TofuTown.com GmbH,

THE COURT (Seventh Chamber),

composed of A. Prechal, President of the Chamber, A. Rosas and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- TofuTown.com GmbH, by M. Beuger, Rechtsanwalt,
- the German Government, by K. Stranz and T. Henze, acting as Agents,
- the Greek Government, by G. Kanellopoulos and O. Tsirkinidou, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent and P. Gentili, avvocato dello Stato,
- the European Commission, by A. X. P. Lewis and D. Triantafyllou, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 78(2) and Annex VII, Part III, points 1 and 2 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).
- 2 The request has been made in proceedings between the Verband Sozialer Wettbewerb eV ('the VSW') and TofuTown.com GmbH ('TofuTown') concerning an action for a prohibitory injunction.

Legal context

EU law

Regulation No 1308/2013

- 3 Recitals 64 and 76 of Regulation No 1308/2013 state:

'(64) The application of standards for the marketing of agricultural products can contribute to improving the economic conditions for the production and marketing as well as the quality of such products. The application of such standards is therefore in the interest of producers, traders and consumers.

...

(76) For some sectors and/or products, definitions, designations and/or sales descriptions are important elements for the determination of conditions of competition. Therefore, it is appropriate to lay down definitions, designations and sales descriptions for those sectors and/or products, which should only be used in the Union for the marketing of products which comply with the corresponding requirements.'

- 4 That regulation contains, in Part II thereof, on the internal market, Title II, which concerns the rules relating to marketing and producer organisations. Subsection 2 of Section 1 of Chapter I of Title II is headed 'Marketing standards by sectors or products' and consists of Articles 74 to 83 of that regulation.

- 5 Article 78 of Regulation No 1308/2013, entitled 'Definitions, designations and sales descriptions for certain sectors and products', provides:

'1. In addition, where relevant, to the applicable marketing standards, the definitions, designations and sales descriptions provided for in Annex VII shall apply to the following sectors or products:

...

(e) milk and milk products intended for human consumption;

...

2. The definitions, designations or sales descriptions provided for in Annex VII may be used in the Union only for the marketing of a product which conforms to the corresponding requirements laid down in that Annex.

3. The Commission shall be empowered to adopt delegated acts ... concerning the modifications, derogations or exemptions to the definitions and sales descriptions provided for in Annex VII. Those delegated acts shall be strictly limited to demonstrated needs resulting from evolving consumer demand, technical progress or the need for product innovation.

...

5. In order to take into account the expectations of consumers and the evolution of the milk products market, the Commission shall be empowered to adopt delegated acts ... to specify the milk products in respect of which the animal species from which the milk originates is to be stated, if it is not bovine, and to lay down the necessary rules.'

6 Subsection 5 of Part II, Title II, Chapter I, Section I of Regulation No 1308/2013, is headed 'Common provisions'. Article 91 of that regulation, in subsection 5, states:

'The Commission may adopt implementing acts for:

- (a) establishing the list of milk and milk products referred to in the second paragraph of point 5 of Part III of Annex VII and spreadable fats referred to in point (a) of the sixth paragraph of Section I of Part VII of Annex VII, on the basis of indicative lists of products which Member States regard as corresponding, in their territory, to those provisions and which Member States shall send to the Commission;

...'

7 Annex VII to that regulation is entitled 'Definitions, designations and sales description of products referred to in Article 78'. In its introductory paragraph, that annex states that, for the purposes of that annex, the 'sale description' refers in particular to the name of the food, within the meaning of Article 17 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)]'.

8 Part III of Annex VII is entitled 'Milk and milk products'. It provides:

- '1. The term "milk" shall mean exclusively the normal mammary secretion obtained from one or more milkings without either addition thereto or extraction therefrom.

However, the term "milk" may be used:

- (a) for milk treated without altering its composition or for milk the fat content of which is standardised ...;
 - (b) in association with a word or words to designate the type, grade, origin and/or intended use of such milk or to describe the physical treatment or the modification in composition to which it has been subjected, provided that the modification is restricted to an addition and/or withdrawal of natural milk constituents.
2. For the purposes of this Part, "milk products" means products derived exclusively from milk, on the understanding that substances necessary for their manufacture may be added provided that those substances are not used for the purpose of replacing, in whole or in part, any milk constituent.

The following shall be reserved exclusively for milk products.

- (a) the following names used at all stages of marketing:
 - (i) whey,
 - (ii) cream,

(iii) butter,

(iv) buttermilk,

...

(viii) cheese,

(ix) yogurt,

...

(b) names within the meaning of Article 5 of Directive 2000/13/EC or Article 17 of Regulation (EU) No 1169/2011 actually used for milk products.

3. The term “milk” and the designations used for milk products may also be used in association with a word or words to designate composite products of which no part takes or is intended to take the place of any milk constituent and of which milk or a milk product is an essential part either in terms of quantity or for characterisation of the product.
4. As regards milk, the animal species from which the milk originates shall be stated, if it is not bovine.
5. The designations referred to in point II of this Annex may not be used for any product other than those referred to in that point.

However, this provision shall not apply to the designation of products the exact nature of which is clear from traditional usage and/or when the designations are clearly used to describe a characteristic quality of the product.

6. In respect of a product other than those described in points 1, 2 and 3 of this Part, no label, commercial document, publicity material or any form of advertising ... or any form of presentation may be used which claims, implies or suggests that the product is a dairy product.

...’

- 9 The provisions of Annex VII, Part III, of Regulation No 1308/2013 reproduce, without making substantive changes, the provisions which were set out previously in Annex XII to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), which reproduced, without making substantive changes, the provisions of Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in marketing of milk and milk products (OJ 1987 L 182, p. 36).

Decision 2010/79/EU

- 10 Article 1 of Commission Decision 2010/791/EU of 20 December 2010 listing the products referred to in the second subparagraph of point III(1) of Annex XII to Council Regulation (EC) No 1234/2007 (OJ 2010 L 336, p. 55), lists in Annex I, the products in the European Union corresponding to those referred to in that provision.
- 11 Recital 3 of that decision states:

‘The Member States must notify to the Commission indicative lists of the products which they deem to meet, within their own territories, the criteria for the ... exception. ... That list should include the names of the relevant products according to their traditional use in the various languages of the Union, in order to render these names usable in all the Member States ...’

- 12 According to Article 230(1), first subparagraph, and (2) of Regulation No 1308/2013, Regulation No 1234/2007 was repealed by the former regulation and the references to Regulation No 1234/2007 must be understood as referring to Regulation No 1308/2013. Decision 2010/791 therefore now lists the products referred to in Annex VII, Part III, point 5, second paragraph, of the latter regulation.

Regulation No 1169/2011

- 13 Article 17(1) of Regulation No 1169/2011, entitled ‘Name of the food’, provides:

‘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.’

German law

- 14 The Gesetz gegen den unlauteren Wettbewerb (UWG; ‘the Law against Unfair Competition’), in the version applicable to the dispute in the main proceedings, provides in Paragraph 3a:

‘A person who infringes a statutory provision that is also intended to regulate market behaviour in the interests of market participants shall be regarded as acting unfairly [where] the infringement is liable to have a perceptible adverse effect on the interests of consumers, other market participants or competitors.’

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

- 15 The VSW is a German association whose responsibilities include combatting unfair competition. TofuTown is a company which produces and distributes vegetarian/vegan foodstuffs. It promotes and distributes, among others, pure plant-based products under the designations ‘Soyatoo tofu butter’, Plant cheese, ‘Veggie Cheese’, ‘Cream’ and other similar designations.
- 16 Taking the view that the promotion by TofuTown of those pure plant-based products infringes the competition rules, the VSW brought an action for a prohibitory injunction against that company before the Landgericht Trier (Regional Court, Trier, Germany), relying on an infringement of Paragraph 3a of the Law on Unfair Competition, in conjunction with Annex VII, Part III, points 1 and 2 and Article 78 of Regulation No 1308/2013.
- 17 TofuTown maintains, to the contrary, that its advertising of plant-based products with the designations at issue does not infringe those provisions of EU law, since the way in which consumers understand those designations has changed massively in recent years, and that it does not use terms such as ‘butter’ or ‘cream’ in isolation, but always in association with words referring to the plant-based origin of the products concerned, for example ‘Tofu butter’ or ‘Rice Spray Cream’.
- 18 The national court refers to the judgment of 16 December 1999, *UDL* (C-101/98, EU:C:1999:615), in which the Court of Justice held essentially that Regulation No 1898/87 precluded the use of the description ‘cheese’ for products in which the milk fat has been replaced by vegetable fat, even if that description is complemented by additional descriptive material. Nevertheless, it is still unsure as to the interpretation of Article 78 of Regulation No 1308/2013 in conjunction with Annex VII, Part III points 1 and 2 thereof, for the purpose of deciding the dispute before it.
- 19 In those circumstances, the Landgericht Trier decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Can Article 78(2) of Regulation No 1308/2013 be interpreted as meaning that the definitions, designations and sales descriptions set out in Annex VII need not satisfy the relevant requirements of this Annex if the relevant definitions, designations and sales descriptions are expanded upon by clarifying or descriptive additions (such as ‘tofu butter’ for a pure plant-based product)?

- (2) Is Annex VII, Part III, point 1, to Regulation (EU) No 1308/2013 to be interpreted as meaning that the term “milk” is exclusively the normal mammary secretion obtained from one or more milkings without either addition thereto or extraction therefrom, or may the term “milk” — where necessary with the addition of explanatory terms such as “soya-milk” — also be used in the marketing of plant-based (vegan) products?
- (3) Is Annex VII, Part III, point 2, to Regulation No 1308/2013, in conjunction with Article 78, to be interpreted as meaning that the names listed in detail in point 2(a), such as, in particular, “whey”, “cream”, “butter”, “buttermilk”, “cheese”, “yoghurt” or the term “cream” etc., are reserved exclusively for milk products, or can pure plant-based/vegan products, which are produced without (animal) milk, also fall within the scope of Annex VII, Part III, point 2, to Regulation (EU) No 1308/2013?

Consideration of the questions referred

- 20 By its three questions, which it is appropriate to examine together, the referring court asks essentially whether Article 78(2) and Annex VII, Part III of Regulation No 1308/2013 must be interpreted as meaning that they preclude the use of the term ‘milk’ and the designations that the regulation reserves exclusively for milk products being used to designate a purely plant-based product in marketing or advertising even if those terms are expanded upon by clarifying or descriptive terms indicating the plant-based origin of the products concerned.
- 21 According to Article 78(2) of that regulation, the definitions, designations or sales descriptions provided for in Annex VII may be used in the Union only for the marketing of a product which conforms to the corresponding requirements laid down in that annex.
- 22 Part III of Annex VII relates to milk and milk products. As regards milk, Part III, point 1, first subparagraph, states that the term ‘milk’ means ‘exclusively the normal mammary secretion obtained from one or more milkings without either addition thereto or extraction therefrom’. However, the second subparagraph states, in point (a), that the term ‘milk’ may be used for ‘milk treated without altering its composition or for milk the fat content of which is standardised ... and (b) that that description may be used in association with a word or words to designate the type, grade, origin and/or intended use of such milk or to describe the physical treatment or the modification in composition to which it has been subjected, provided that the modification is restricted to an addition and/or withdrawal of natural milk constituents’.
- 23 Thus, it is clear from the wording of point 1 that the term ‘milk’ cannot, in principle, be lawfully used to designate a purely plant-based product, since milk is, within the meaning of that provision, ‘an animal product’, which is also clear from Annex VII, Part III, point 4 to Regulation No 1308/2013, which provides that, as regards milk, the animal species from which the milk originates are to be stated, if it is not bovine, and Article 78(5) of that regulation, which empowers the Commission to adopt delegated acts to specify the milk products in respect of which the animal species from which the milk originates is to be stated, if it is not bovine.
- 24 Furthermore, it is clear from that wording that clarifying or descriptive terms indicating the plant-based origin of the product concerned, such as soya or tofu, at issue in the main proceedings, do not fall within the terms which may be used with the designation ‘milk,’ in accordance with point 1, second subparagraph (b), since the alterations to the composition of milk that the additional words may designate under that provision are those which are limited to the addition and/or subtraction of its natural constituents, which does not include a total replacement of milk by a purely plant-based product.
- 25 As regards milk products, Annex VII, Part III, paragraph 2 to Regulation No 1308/2013 states in its first subparagraph that ‘milk products’ means ‘products derived exclusively from milk, on the understanding that substances necessary for their manufacture may be added provided that those substances are not used

for the purpose of replacing, in whole or in part, any milk constituent'. The second subparagraph of that point further states that, first, the names used at all stages of marketing listed in point (a) of that provision including 'whey', 'cream', 'butter', 'buttermilk' and, second, in particular, names within the meaning of Article 17 of Regulation No 1169/2011 'actually used for milk products' are reserved 'exclusively for milk products'.

- 26 Therefore, it is clear from point 2 that since a 'milk product' is derived exclusively from milk, it must contain its constituents. In that connection, the Court has already held that a milk product, in which one or other constituent of milk has been replaced, if only partially, may not be designated by one of the descriptions referred to in the point (a) of the second subparagraph of point 2 of Part III of Annex VII to Regulation No 1308/2013 (see, to that effect, judgment of 16 December 1999, *UDL*, C-101/98, EU:C:1999:615, paragraphs 20 to 22). In principle, the same applies *a fortiori* for a purely plant-based product, of such product does not, by definition, contain any constituents of milk.
- 27 Accordingly, the names listed in Annex VII, Part III, point 2, second subparagraph (a) to that regulation such as whey, cream, butter, cheese and yogurt, mentioned by the referring court cannot, in principle, be lawfully used to designate a purely plant-based product.
- 28 An identical prohibition applies by virtue of Annex VII, Part III, point 2, second subparagraph, (b), of that regulation for the names within the meaning of Article 17 of Regulation No 1169/2011 actually used for milk products. In that connection, it must be recalled that, according to Article 17(1), in the absence of such a name, the name of the food is its customary name, or, if there is no customary name or its customary name is not used, a descriptive name of the food.
- 29 The term 'Sahn' in German — that the referring court in the reference for a preliminary ruling, distinguished from '*Rahm*', which is mentioned in Annex VII, Part III, point 2, second subparagraph, (a) (ii) of Regulation No 1308/2013 — like the term 'chantilly' in French does not appear among the designations of milk products listed in Annex VII, Part III, point 2, second subparagraph (a) of Regulation No 1308/2013, the fact remains that that term designates cream which can be whipped.
- 30 Thus, it is a name within the meaning of Article 17 of Regulation No 1169/2011, actually used for a milk product. Therefore, in principle, that name cannot also be lawfully used to designate a purely plant-based product.
- 31 As to the possible relevance, in order to determine the lawfulness of the use of the term 'milk' or designations reserved exclusively for milk products by Regulation No 1308/2013 to designate a purely plant-based product of the addition of clarifying or descriptive terms indicating the plant-based origin of the product concerned, such as 'soya' or 'tofu' mentioned by the referring court, it must be observed that Annex VII, Part III, point 3, of that regulation provides that 'the term 'milk' and the designations used for milk products may also be used in association with a word or words to designate composite products of which no part takes or is intended to take the place of any milk constituent and of which milk or a milk product is an essential part either in terms of quantity or for characterisation of the product'.
- 32 However, those conditions are not met by purely plant-based products, since such products do not contain milk or milk products. Point 3 cannot, therefore, be used as a basis, in order to designate purely plant-based product, for the lawful use of the term 'milk' or designations reserved exclusively for milk products associated with clarifying or descriptive terms indicating the plant-based origin of the product concerned.
- 33 Furthermore, although according to Annex VII, Part III, point 5, first subparagraph of Regulation No 1308/2013, the names referred to in points 1, 2 and 3 of Part III cannot be used for any other products than those which are set out therein, the second subparagraph of point 5 provides that the first subparagraph 'does not apply to the designation of products the exact nature of which is clear from traditional usage and/or when the designations are clearly used to describe a characteristic quality of the product'.

- 34 The list of products referred to by the latter provision has, by virtue of Article 121(b)(i) of Regulation No 1234/2007 (now, in substance, Article 91, first subparagraph (a) of Regulation No 1308/2013) been laid down in Annex I to Decision 2010/791. Therefore, only the products set out in that annex fall within the exception laid down in the second subparagraph.
- 35 In the present case, it must be observed that that list does not contain any reference to soya or tofu.
- 36 Moreover, although that list mentions ‘crème de riz’ in French, it does not mention ‘rice cream spray’ in English, indicated by the referring court as being one of the products at issue in the main proceedings, or even the product called ‘rice cream’. In that connection, it is clear, essentially, from recital 3 of Decision 2010/791, that the list drawn up by that decision contains products which have been identified by the Member States as meeting the criteria laid down in Annex VII, Part III, point 5, second subparagraph to Regulation No 1308/2013, and that the names of the products at issue are listed according to their traditional use in the various languages of the Union. Therefore, the fact that ‘crème de riz’ in French was recognised as meeting those criteria does not mean that ‘rice cream’ also meets them.
- 37 It must also be observed, although it is clear from that list that the use, in the name of a product, of the term ‘cream’ together with an additional term is permitted under certain conditions, in particular, in order to designate spirituous beverages or soups, none of those conditions appears to be satisfied by a designation such as ‘rice cream spray’, at issue in the main proceedings. Likewise, although the use of the term ‘creamed’ with the designation of a plant-based product is permitted, that is only where the term ‘creamed’ designates the characteristic texture of the product’.
- 38 Thus, it appears that none of the products mentioned by way of example by the referring court appear on that list and that, therefore, none of the designations that that court mentions are covered by the exception laid down in Annex VII, Part III, point 5, second subparagraph of Regulation No 1308/2013, which is, however, for that court to ascertain with regard to each of the products at issue in the main proceedings.
- 39 Furthermore, Article 78(3) of Regulation No 1308/2013 provides that, in order to satisfy demonstrated needs resulting from evolving consumer demand, technical progress or the need for product innovation, the Commission is empowered to adopt delegated acts regarding amendments, derogations or exemptions relating to the definitions and sales names laid down in Annex VII of that regulation. However, until today, such an act has not been adopted by the Commission as regards the definitions and designations for milk and milk products.
- 40 It follows from all of the foregoing that the term ‘milk’ and the designations reserved exclusively for milk products cannot be lawfully used to designate a purely plant-based product, unless that product appears on the list in Annex I to Decision 2010/791. The addition of descriptions or explanations indicating the plant origin of the product at issue, such as those at issue in the main proceedings, does not affect such a prohibition (see, to that effect, judgment of 16 December 1999, *UDL*, C-101/98, EU:C:1999:615, paragraphs 25 to 28).
- 41 Furthermore, it is clear from a reading of Article 78(2) and Annex VII, Part III, point 6, first subparagraph to Regulation No 1308/2013 that that prohibition applies equally to marketing and publicity.
- 42 Contrary to TofuTown’s submissions, the interpretation set out in paragraphs 40 and 41 of the present judgment is supported by the objectives of that regulation and does not run counter to the principle of equal treatment.
- 43 As is clear from recitals 64 and 76 of that regulation, the objectives pursued by the provisions at issue consist, in particular, in improving the economic conditions for the production and marketing as well as the quality of such products. The application of such standards is therefore in the interest of producers, traders and consumers, to protect consumers and to maintain conditions for allowing competition. Those provisions, in so far as they provide that only the products which comply with the requirements they lay down can be designated by the term ‘milk’ and the designations reserved exclusively for milk products

even if those designations are expanded upon by explanations or descriptions such as those at issue in the main proceedings, contribute to the attainment of those objectives.

- 44 In the absence of such limits, those designations would not enable products with the particular characteristics related to the natural composition of animal milk to be identified with certainty, which would be contrary to the protection of consumers because of the likelihood of confusion which would be created. That would also be contrary to the objective of improving the economic conditions for production and marketing and the quality of ‘milk’ and ‘milk products’.
- 45 As regards the principle of proportionality, it requires that measures adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, judgments of 16 December 1999, *UDL*, C-101/98, EU:C:1999:615, paragraph 30, and 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 79 and the case-law cited).
- 46 In matters concerning the common agricultural policy, the EU legislature has a broad discretion which corresponds to the political responsibilities given to it by Articles 40 TFEU and 43 TFEU; accordingly the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate, having regard to the objective which the competent institution is seeking to pursue (see, to that effect, judgments of 16 December 1999, *UDL*, C-101/98, EU:C:1999:615, paragraph 31, and 17 October 2013, *Schaible*, C-101/12, EU:C:2013:661, paragraph 48).
- 47 In the present case, as already stated in paragraph 43 of the present judgment, the provisions whose interpretation is requested by the referring court aim to improve the economic conditions for production and marketing of the products concerned and their quality, to protect consumers and to maintain the conditions for allowing competition.
- 48 The fact that, in marketing or advertising, the possibility to use the term ‘milk’ and the designations reserved exclusively for milk products is available only to products which meet the requirements laid down by Annex VII, Part III to Regulation No 1308/2013 is a guarantee, in particular, to the producers of those products of undistorted conditions for competition, and to consumers of those products, that the products designated by those designations meet all the same standards of quality, both protecting them against any confusion as to the composition of the products they intend to purchase. The provisions at issue are thus appropriate to achieve those objectives. Furthermore, they do not go beyond what is necessary to achieve them, since, as the Court has already held, the addition of descriptions or explanations to those designations to designate products which do not satisfy those requirements cannot prevent with certainty any likelihood of confusion in the mind of the consumer. Therefore, the provisions at issue, do not breach the principle of proportionality (see, to that effect, judgment of 16 December 1999, *UDL*, C-101/98, EU:C:1999:615, paragraphs 32 to 34).
- 49 As to the principle of non-discrimination, it requires comparable situations not to be treated differently and different situations not to be treated alike unless such treatment is objectively justified (see, to that effect, judgments of 6 December 2005, *ABNA and Others*, C-453/03, C-11/04, C-12/04 and C-194/04, EU:C:2005:741, paragraph 63, and 30 June 2016, *Lidl*, C-134/15, EU:C:2016:498, paragraph 46).
- 50 In the present case, that the fact that, as regards sales descriptions, producers of vegetarian or vegan substitutes for meat or fish are not, according to TofuTown, subject to restrictions comparable to those to which the producers of vegetarian or vegan substitutes for milk or milk products are subject, pursuant to Annex VII, Part III, of Regulation No 1308/2013, cannot be regarded as inconsistent with the principle of equal treatment.
- 51 Each sector of the common organisation of markets for agricultural products established by that regulation embodies features specific to it. As a result, a comparison of the technical rules and procedures adopted in order to regulate the various sectors of the market cannot constitute a valid basis for the purpose of proving

the complaint of discrimination between dissimilar products which are subject to different rules. (see, to that effect, judgments of 28 October 1982, *Lion and Others*, 292/81 and 293/81, EU:C:1982:375, paragraph 24, and 30 June 2016, *Lidl*, C-134/15, EU:C:2016:498, paragraph 49).

- 52 Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 78(2) and Annex VII, Part III to Regulation No 1308/2013 must be interpreted as precluding the term ‘milk’ and the designations reserved by that regulation exclusively for milk products from being used to designate a purely plant based product in marketing or advertising, even if those terms are expanded upon by clarifying or descriptive terms indicating the plant origin of the product at issue, unless that product is listed in Annex I to Decision 2010/791.

Costs

- 53 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 (Seventh Chamber) hereby rules:

Article 78(2) and Annex VII, Part III to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 must be interpreted as precluding the term ‘milk’ and the designations reserved by that regulation exclusively for milk products from being used to designate a purely plant based product in marketing or advertising, even if those terms are expanded upon by clarifying or descriptive terms indicating the plant origin of the product at issue, unless that product is listed in Annex I to Commission Decision 2010/791/EU of 20 December 2010 listing the products referred to in the second subparagraph of point III(1) of Annex XII to Council Regulation (EC) No 1234/2007.

[Signatures]

* Language of the case: German.