

Provisional text

## JUDGMENT OF THE COURT (Third Chamber)

1 October 2020 (\*)

(Reference for a preliminary ruling – Regulation (EU) No 1169/2011 – Provision of food information to consumers – Article 9(1)(i) and Article 26(2)(a) – Mandatory indication of the country of origin or place of provenance of foods – Failure to indicate which might mislead the consumer – Article 38(1) – Matters specifically covered by the harmonisation – Article 39(2) – Adoption of national measures providing for additional mandatory particulars concerning the country of origin or place of provenance of specific types or categories of foods – Conditions – Existence of a proven link between one or several qualities of the foods concerned and their origin or provenance – Concepts of ‘proven link’ and ‘qualities’ – Evidence that the majority of consumers attach significant value to the provision of that information – National measure providing for the mandatory indication of the national, European or non-European origin of milk)

In Case C-485/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d’État (Council of State, France), made by decision of 27 June 2018, received at the Court on 24 July 2018, in the proceedings

**Groupe Lactalis**

v

**Premier ministre,**

**Garde des Sceaux, ministre de la Justice,**

**Ministre de l’Agriculture et de l’Alimentation,**

**Ministre de l’Économie et des Finances,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, L.S. Rossi, J. Malenovský (Rapporteur), F. Biltgen and N. Wahl, Judges,

Advocate General: G. Hogan,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 3 June 2020,

after considering the observations submitted on behalf of:

- Groupe Lactalis, by F. Molinié and S. Bensusan, avocats,
- the French Government, by A.-L. Desjonquères and C. Mosser, acting as Agents,
- the Greek Government, by G. Kanellopoulos, I.E. Krompa and E. Leftheriotou, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,

- the Polish Government, by B. Majczyna, acting as Agent,
  - the European Commission, by M. Van Hoof and K. Herbout-Borczak, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 9 July 2020,  
gives the following

## **Judgment**

- 1 The request for a preliminary ruling concerns the interpretation of Articles 26, 38 and 39 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).
- 2 This request was made in the context of a dispute between, on the one hand, Groupe Lactalis ('Lactalis'), and, on the other, the Premier ministre (Prime Minister, France), the Garde des Sceaux, ministre de la Justice (Minister for Justice, France), the ministre de l'Agriculture et de l'Alimentation (Minister for Agriculture and Food, France) and the ministre de l'Économie et des Finances (Minister for the Economy and Finance, France) concerning the legality of Decree No 2016-1137 of 19 August 2016 on the indication of the origin of milk, and of milk and meat used as ingredients (JORF of 21 August 2016, text No 18, 'the decree at issue').

### **Legal context**

#### ***European Union law***

- 3 Recitals 1 to 4 and 29 of Regulation No 1169/2011 state:
  - '(1) Article 169 [TFEU] provides that the Union is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 114 [TFEU].
  - (2) The free movement of safe and wholesome food is an essential aspect of the internal market and contributes significantly to the health and well-being of citizens, and to their social and economic interests.
  - (3) In order to achieve a high level of health protection for consumers and to guarantee their right to information, it should be ensured that consumers are appropriately informed as regards the food they consume. Consumers' choices can be influenced by, inter alia, health, economic, environmental, social and ethical considerations.
  - (4) According to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [(OJ 2002 L 31, p. 1)] it is a general principle of food law to provide a basis for consumers to make informed choices in relation to food they consume and to prevent any practices that may mislead the consumer.

...

(29) The indication of the country of origin or of the place of provenance of a food should be provided whenever its absence is likely to mislead consumers as to the true country of origin or place of provenance of that product. In all cases, the indication of country of origin or place of provenance should be provided in a manner which does not deceive the consumer and on the basis of clearly defined criteria which ensure a level playing field for industry and improve consumers' understanding of the information related to the country of origin or place of provenance of a food. ...'

4 Article 1 of that regulation, 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.'

5 Article 3 of that regulation, entitled 'General objectives', provides, in paragraphs 1 and 2:

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.

2. Food information law shall aim to achieve in the Union the free movement of legally produced and marketed food, taking into account, where appropriate, the need to protect the legitimate interests of producers and to promote the production of quality products.'

6 Article 7 of that regulation, entitled 'Fair information practices', provides, in paragraph 1:

'Food information shall not be misleading, particularly:

(a) as to the characteristics of the food ...

(b) by attributing to the food effects or properties which it does not possess;

(c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics ...

...'

7 Chapter IV of Regulation No 1169/2011, entitled 'Mandatory food information', contains, inter alia, Articles 9 and 26 of that regulation.

8 Article 9 of that regulation, 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:

...

(i) the country of origin or place of provenance where provided for in Article 26;

...'

9 Under Article 26 of that regulation, entitled 'Country of origin or place of provenance':

'...

2. Indication of the country of origin or place of provenance shall be mandatory:

- (a) where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance;
- (b) for meat falling within the Combined Nomenclature (“CN”) codes listed in Annex XI. ...

...

5. By 13 December 2014, the Commission shall submit reports to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for the following foods:

...

- (b) milk;
- (c) milk used as an ingredient in dairy products;

...

7. The reports referred to in paragraphs 5 and 6 shall take into account the need for the consumer to be informed, the feasibility of providing the mandatory indication of the country of origin or place of provenance and an analysis of the costs and benefits of the introduction of such measures, including the legal impact on the internal market and the impact on international trade.

The Commission may accompany those reports with proposals to modify the relevant Union provisions.

...’

10 Chapter VI of the regulation, entitled ‘National measures’, includes, inter alia, Articles 38 and 39 of that regulation.

11 Article 38 of Regulation No 1169/2011, entitled ‘National measures’, states:

‘1. As regards the matters specifically harmonised by this Regulation, Member States may not adopt nor maintain national measures unless authorised by Union law. Those national measures shall not give rise to obstacles to free movement of goods, including discrimination as regards foods from other Member States.

2. Without prejudice to Article 39, Member States may adopt national measures concerning matters not specifically harmonised by this Regulation provided that they do not prohibit, impede or restrict the free movement of goods that are in conformity with this Regulation.’

12 Under Article 39 of that regulation, entitled ‘National measures on additional mandatory particulars’:

‘1. In addition to the mandatory particulars referred to in Article 9(1) ..., Member States may, in accordance with the procedure laid down in Article 45, adopt measures requiring additional mandatory particulars for specific types or categories of foods, justified on grounds of at least one of the following:

- (a) the protection of public health;
- (b) the protection of consumers;
- (c) the prevention of fraud;

(d) the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition.

2. By means of paragraph 1, Member States may introduce measures concerning the mandatory indication of the country of origin or place of provenance of foods only where there is a proven link between certain qualities of the food and its origin or provenance. When notifying such measures to the Commission, Member States shall provide evidence that the majority of consumers attach significant value to the provision of that information.'

*French law*

13 The decree at issue entered into force on 17 January 2017 and was to apply until 31 December 2018.

14 Article 1 of that decree includes point I, which reads as follows:

'The labelling of prepacked foods within the meaning of Article 2 of [Regulation No 1169/2011] shall comply with the provisions of this Decree where such foods contain:

1° milk;

2° as an ingredient, milk used in the milk products mentioned in the list in the Annex;

...

The labelling of prepacked foods shall indicate the origin of the ingredients mentioned in items 1 to 3. However, if these ingredients represent a percentage, expressed as a total weight of the ingredients used in the prepacked food, below a threshold, the labelling of that food shall not be subject to the provisions of this Decree.'

15 Article 3 of that decree provides:

I. The indication of the origin of the milk or of the milk used as an ingredient in the milk products referred to in Article 1 shall include the following particulars:

1° "Country of collection: (name of the country in which the milk was collected)";

2° "Country of packaging or processing: (name of the country in which the milk was packaged or processed)".

II. By way of derogation from I, where the milk or milk used as an ingredient in milk products has been collected, packaged or processed in the same country, the indication of origin may take the form: "Origin: (name of the country)".

III. By way of derogation from I and II, where the milk or milk used as an ingredient in milk products has been collected, packaged or processed in one or more Member States of the European Union, the indication of origin may take the form: "Origin: EU".

IV. By way of derogation from I and II, where the milk or milk used as an ingredient in milk products has been collected, packaged or processed in one or more States that are not members of the European Union, the indication of origin may take the form: "Origin: Non-EU".'

16 Article 6 of that decree provides that 'products legally manufactured or marketed in another Member State of the European Union or in a third country shall not be subject to the provisions of this Decree.'

17 By Decree No 2018-1239 of 24 December 2018 on the indication of the origin of milk, and of milk and meat used as an ingredient (JORF of 2 December 2018, text No 70), the application of the decree at issue

was extended.

### **The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court**

- 18 By an application registered on 24 October 2016, Lactalis brought, before the Conseil d'État (Council of State, France), an action seeking the annulment of the decree at issue. In support of its claim, it relied, *inter alia*, on two pleas in law alleging that that decree infringed Articles 26, 38 and 39 of Regulation No 1169/2011.
- 19 The referring court considers that the questions raised by the examination of those two pleas are decisive to the outcome of the proceedings pending before it and that they present a serious difficulty of interpretation.
- 20 It was in those circumstances that the Conseil d'État (Council of State, France) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Must Article 26 of Regulation [No 1169/2011], which provides, *inter alia*, for the Commission to submit reports to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for milk and milk used as an ingredient, be regarded as having specifically harmonised that matter within the meaning of Article 38(1) of that regulation and does it preclude Member States from adopting measures requiring additional mandatory particulars on the basis of Article 39 of that regulation?
  - (2) In the event that the national measures are justified on grounds of the protection of consumers in the light of Article 39(1) [of Regulation No 1169/2011], should the two criteria laid down in Article 39(2) concerning, first, the proven link between certain qualities of the food and its origin or provenance and, second, the evidence that the majority of consumers attach significant value to the provision of that information be read in combination, and, in particular, can the examination of the proven link be based solely on subjective elements relating to the value that the majority of consumers attach to the link between the qualities of the food and its origin or provenance?
  - (3) To the extent to which the qualities of the food appear to include all the factors contributing to the quality of the food, can considerations relating to the resilience of the food to transportation and the risk of deterioration during transit be taken into account when examining whether there is a proven link between certain qualities of the food and its origin or provenance for the purposes of the application of Article 39(2) [of Regulation No 1169/2011]?
  - (4) Does the assessment of the conditions laid down in Article 39 [of Regulation No 1169/2011] presuppose that the qualities of the food are regarded as being unique on account of its origin or provenance or as being guaranteed by reason of that origin or provenance and, in the latter case, notwithstanding the harmonisation of health and environmental standards applicable within the European Union, can the indication of origin or provenance be more precise than the indications “EU” or “Non-EU”?
- 21 By decision of the President of the Court of 27 February 2019, the proceedings were stayed pending delivery of the judgment in Case C-363/18, relating to a request for a preliminary ruling made on 4 June 2018 by the referring court and also concerning the interpretation of Regulation No 1169/2011. Following the delivery of the judgment of 12 October 2019, *Organisation juive européenne and Vignoble Psagot* (C-363/18, EU:C:2019:954), the proceedings in the present case were resumed by decision of the President of the Court of 13 November 2019.

### **Consideration of the questions referred**

### *The first question*

- 22 By its first question, the referring court asks, in essence, whether Article 26 of Regulation No 1169/2011 must be interpreted as meaning that the mandatory indication of the country of origin or place of provenance of milk or milk used as an ingredient must be regarded as a ‘matter specifically harmonised’ by that regulation, within the meaning of Article 38(1) of that regulation, and, if so, whether it precludes the Member States from adopting measures requiring additional mandatory particulars on the basis of Article 39 of that regulation.
- 23 It must be stated at the outset that Article 38 of Regulation No 1169/2011, which is entitled ‘National measures’, clearly distinguishes between the category of ‘matters’ that are ‘specifically harmonised’ by that regulation and that of matters that are not. As regards the former matters, paragraph 1 of that article states that Member States may not adopt nor maintain national measures unless authorised by EU law. As regards the latter matters, paragraph 2 of that article provides, on the other hand, that, without prejudice to Article 39, Member States may adopt national measures provided that they do not prohibit, impede or restrict the free movement of goods.
- 24 Furthermore, Article 39 of Regulation No 1169/2011, which is entitled ‘National measures on additional mandatory particulars’, provides, in paragraph 1, that Member States may adopt measures requiring additional mandatory particulars for specific types or categories of foods, on the condition that those measures are justified on one or several grounds relating to the protection of public health, the protection of consumers, the prevention of fraud, the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition. In addition, paragraph 2 of that article states that Member States may introduce measures concerning the mandatory indication of the country of origin or place of provenance of foods only where there is a proven link between certain qualities of the food and its origin or provenance, before adding that, when notifying such measures to the Commission, Member States are to provide evidence that the majority of consumers attach significant value to the provision of that information.
- 25 As regards, in the first place, whether Article 26 of Regulation No 1169/2011, which is entitled ‘Country of origin or place of provenance’, must be regarded, in so far as it makes it mandatory to indicate the country of origin or place of provenance of milk or milk used as an ingredient, as a ‘matter specifically harmonised’ by that regulation, it must be noted that those matters are not listed in any provision of that regulation. This being said, in the light of that expression, the identification of those matters must be carried out in strict conformity with the wording of Regulation No 1169/2011.
- 26 In that regard, Article 9 of Regulation No 1169/2011 establishes, as follows from its title, the list of particulars which must mandatorily appear on foods. In accordance with paragraph 1(i) of that article, the indication of the country of origin or place of provenance of a food is mandatory where provided for in Article 26 of that regulation.
- 27 Article 26 states, in its paragraph 2(a) and (b), that indication of the country of origin or place of provenance is to be mandatory, first, where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, and second, for meat falling within certain Combined Nomenclature codes, listed in Annex XI to that regulation.
- 28 It follows from that provision that Regulation No 1169/2011 specifically harmonises, within the meaning of Article 38(1), the matter of mandatory indication of the country of origin or place of provenance of foods, where failure to indicate this might mislead the consumer, and it does not, on the other hand, specifically provide for harmonisation as regards other circumstances or situations.
- 29 Furthermore, it follows from Article 26(2) of Regulation No 1169/2011 that, with the sole exception of meat falling within certain Combined Nomenclature codes, all foods are subject to that specific harmonisation, including milk and milk used as an ingredient.

- 30 As regards, in the second place, the question whether that specific harmonisation precludes the adoption of potential additional national measures, it is apparent from paragraph 24 above that the Member States may adopt such measures on the condition that they meet the requirements provided for in Article 39 of Regulation No 1169/2011.
- 31 In that regard, it follows from Article 39(1) of Regulation No 1169/2011 that, first, the particulars which the Member States may require must be ‘additional’ as compared with those provided for in Regulation No 1169/2011 itself, which include, as stated in paragraph 27 above, the indication of the country of origin or place of provenance of foods, where failure to indicate this might mislead the consumer. It follows that such indications must not only be compatible with the objective pursued by the EU legislature by means of the specific harmonisation of the matter of mandatory indication of the country of origin or place of provenance but also form one coherent whole with that indication.
- 32 Second, those additional mandatory particulars may apply only to ‘specific types or categories of foods’ and not indiscriminately to those foods. Consequently, they may relate to, inter alia, the country of origin or place of provenance of a type or category of foods, such as milk or milk used as an ingredient, provided that they concern circumstances or situations other than where a failure to indicate that country of origin or place of provenance might mislead the consumer.
- 33 In the light of all of the foregoing considerations, the answer to the first question is that Article 26 of Regulation No 1169/2011 must be interpreted as meaning that the mandatory indication of the country of origin or place of provenance of milk or milk used as an ingredient must be regarded as a ‘matter specifically harmonised’ by that regulation, within the meaning of Article 38(1) of that regulation, where failure to include that indication might mislead the consumer, and as not precluding the Member States from adopting measures requiring additional mandatory particulars on the basis of Article 39 of that regulation, on the condition that those particulars are compatible with the objective pursued by the EU legislature by means of the specific harmonisation of the matter of mandatory indication of the country of origin or place of provenance and that they form one coherent whole with that indication.

### *The second question*

- 34 By its second question, the referring court asks, in essence, whether Article 39 of Regulation No 1169/2011 must be interpreted as meaning that, in the event of national measures that are justified, in the light of paragraph 1 of that article, on grounds of the protection of consumers, the two criteria laid down in paragraph 2 of that article, that is to say, first, the existence of a ‘proven link between certain qualities of the food and its origin or provenance’, and, second, the ‘evidence that the majority of consumers attach significant value to the provision of that information’ must be considered in combination, so that the existence of that proven link can be examined solely on the basis of subjective elements relating to the importance of the association that the majority of consumers may make between certain qualities of the food and its origin or provenance.
- 35 In that regard, it must be noted that Article 39(2) of Regulation No 1169/2011 is characterised by a specific structure and wording. It states, in its first sentence, that Member States may introduce additional measures concerning the mandatory indication of the country of origin or place of provenance of foods only where there is a proven link between certain qualities of the food and its origin or provenance, before adding, in its second sentence, that, when notifying such measures to the European Commission, Member States are to provide evidence that the majority of consumers attach significant value to the provision of that information.
- 36 It follows from this that the EU legislature sought to distinguish clearly the two requirements for adopting additional national measures, by attributing to each of them a separate objective and a different role in the implementation of Article 39(2) of Regulation No 1169/2011.
- 37 The requirement relating to a ‘proven link’ between certain qualities of the foods at issue and their origin or their provenance is intended to establish, at an earlier stage, the existence of such a link in each



individual case.

- 38 As regards the requirement linked to the perception shared by the majority of consumers, it falls on the Member State concerned to prove that, for that majority, such information is of significant importance. That second requirement thus follows at a subsequent stage and applies in an ancillary and complementary manner in relation to the first.
- 39 Consequently, those two requirements must be examined successively, by verifying, as a first step and in any event, whether there is a proven link between certain qualities of the foods concerned in a given individual case and their origin or provenance, and subsequently, as a second step, and solely where the existence of such a link has been established, whether it has been proven that the majority of consumers attach a significant value to that information.
- 40 Such an interpretation is corroborated by both the context of Article 39(2) of Regulation No 1169/2011 and the objectives pursued by that regulation.
- 41 As regards the context of that provision, it follows from Article 7(1) of Regulation No 1169/2011 that the information relating to foods must not suggest that those foods possess special characteristics when in fact similar foods possess such characteristics.
- 42 A national measure which makes it mandatory to indicate the country of origin or place of provenance of a food on the sole basis of the subjective association that the majority of consumers may make between that origin or provenance and certain qualities of the food concerned may suggest that that food possesses special qualities linked to its origin or provenance, even though the existence of a proven link between such qualities and the origin or provenance has not been objectively established.
- 43 With regard to the objectives of Regulation No 1169/2011, as follows from Articles 1(1) and 3(1) of that regulation, read in the light of recitals 1, 3 and 4 of that regulation, they include the objective of ensuring a high level of consumer protection in relation to food information, taking into account the differences in perception of consumers (see, to that effect, judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot*, C-363/18, EU:C:2019:954, paragraphs 52 et 53).
- 44 Such an objective requires, as the Court has previously held, that the information relating to food is correct, neutral and objective (see, to that effect, judgment of 22 September 2016, *Breitsamer und Ulrich*, C-113/15, EU:C:2016:718, paragraph 69).
- 45 This would not be the case where the mandatory indication of the country of origin or place of provenance of foods may be required on the sole basis of the subjective association that a majority of the consumers make between the origin or provenance of those foods and certain qualities of those foods, even where the existence of a proven link between those qualities and the origin or provenance has not been objectively established.
- 46 In the light of all of the foregoing considerations, the answer to the second question is that Article 39 of Regulation No 1169/2011 must be interpreted as meaning that, in the event of national measures that are justified, in the light of paragraph 1 of that article, on grounds of the protection of consumers, the two criteria laid down in paragraph 2 of that article, that is to say, first, the existence of a ‘proven link between certain qualities of the food and its origin or provenance’, and, second, the ‘evidence that the majority of consumers attach significant value to the provision of that information’ must not be considered in combination, so that the existence of that proven link cannot be examined solely on the basis of subjective elements relating to the importance of the association that the majority of consumers may make between certain qualities of the food and its origin or provenance.

### ***The third and fourth questions***

- 47 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 39(2) of Regulation No 1169/2011 must be interpreted as meaning that the concept of ‘qualities of the food’ includes the resilience of the food to transport and the risk of deterioration during transit, so that that resilience can be taken into account when examining whether there is a possible ‘proven link between certain qualities of the food and its origin or provenance’, referred to in that provision.
- 48 In that regard, it follows from the actual wording of Article 39(2) of Regulation No 1169/2011 that the concept of ‘qualities’, which is preceded by the adjective ‘certain’, does not extend to all characteristics of foods, as referred to in Article 7(1)(a) and (c) of that regulation.
- 49 Unlike those characteristics, which reflect the various qualities of foods, including those resulting from their manufacture or treatment, the ‘qualities’ to which Article 39(2) of Regulation No 1169/2011 refers are only those involving a ‘proven link’ with the origin or provenance of foods that possess them.
- 50 It follows from this that the concept of ‘qualities’ mentioned in that provision refers only to the qualities which distinguish the foods that possess them from similar foods which, due to their different origin or different provenance, do not possess them.
- 51 The resilience of a food, such as milk or milk used as an ingredient, to transport and the risk of deterioration during transit cannot be classified as a ‘quality’ within the meaning of Article 39(2) of Regulation No 1169/2011, in so far as such resilience has not been proven to be linked to a specific origin or provenance, it can thus be possessed by similar foods that do not have that origin or provenance and it can therefore be guaranteed independently of that origin or provenance.
- 52 In the light of the aforementioned, the answer to the third and fourth questions is that Article 39(2) of Regulation No 1169/2011 must be interpreted as meaning that the concept of ‘qualities of the food’ does not include the resilience of the food to transport and the risk of deterioration during transit, so that that resilience cannot be taken into account when examining whether there is a possible ‘proven link between certain qualities of the food and its origin or provenance’, referred to in that provision.

### 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 (Third Chamber) hereby rules:

- 1. Article 26 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 must be interpreted as meaning that the mandatory indication of the country of origin or place of provenance of milk or milk used as an ingredient must be regarded as a ‘matter specifically harmonised’ by that regulation, within the meaning of Article 38(1) of that regulation, where failure to include that indication might mislead the consumer, and as not precluding the Member States from adopting measures requiring additional mandatory particulars on the basis of Article 39 of that regulation, on the condition that those particulars are compatible with the objective pursued by the EU legislature by means of the specific**

**harmonisation of the matter of mandatory indication of the country of origin or place of provenance and that they form one coherent whole with that indication.**

- 2. Article 39 of Regulation No 1169/2011 must be interpreted as meaning that, in the event of national measures that are justified, in the light of paragraph 1 of that article, on grounds of the protection of consumers, the two criteria laid down in paragraph 2 of that article, that is to say, first, the existence of a ‘proven link between certain qualities of the food and its origin or provenance’, and, second, the ‘evidence that the majority of consumers attach significant value to the provision of that information’ must not be considered in combination, so that the existence of that proven link cannot be examined solely on the basis of subjective elements relating to the importance of the association that the majority of consumers may make between certain qualities of the food and its origin or provenance.**
- 3. Article 39(2) of Regulation No 1169/2011 must be interpreted as meaning that the concept of ‘qualities of the food’ does not include the resilience of the food to transport and the risk of deterioration during transit, so that that resilience cannot be taken into account when examining whether there is a possible ‘proven link between certain qualities of the food and its origin or provenance’, referred to in that provision.**

[Signatures]

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\* Language of the case: French.