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CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Seventh Chamber)

13 November 2025 *

(Reference for a preliminary ruling – Definition, description, presentation, labelling and protection of spirit drinks – Regulation (EU) 2019/787 – Article 10(7) – Prohibition on using legal names for any beverage that does not comply with the requirements of the relevant categories – Gin – Beverage named ‘non-alcoholic gin’ – Article 12(1) – Allusions – Validity of Article 10(7) – Article 16 of the Charter of Fundamental Rights of the European Union – Freedom to conduct a business – Principle of proportionality)

In Case C-563/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Potsdam (Regional Court, Potsdam, Germany), made by decision of 6 August 2024, received at the Court on 20 August 2024, in the proceedings

Verband Sozialer Wettbewerb eV

v

PB Vi Goods GmbH,

THE COURT (Seventh Chamber),

composed of F. Schalin (Rapporteur), President of the Chamber, M. Gavalec and Z. Csehi, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

* Language of the case: German.

- Verband Sozialer Wettbewerb eV, by D. Marquardt, Rechtsanwalt,
- the German Government, by J. Möller and P.-L. Krüger, acting as Agents, and by C. Eggers, Rechtsanwalt,
- the Greek Government, by Z. Chatzipavlou and M. Tassopoulou, acting as Agents,
- the French Government, by P. Chansou and B. Travard, acting as Agents,
- the Italian Government, by S. Fiorentino, M. Maugeri and P. Passolunghi, acting as Agents,
- the European Parliament, by G.C. Bartram and W.D. Kuzmienko, acting as Agents,
- the Council of the European Union, by M. Alver, N. Brzezinski and L. Hamtcheva, acting as Agents,
- the European Commission, by B. Rechená and M. Zerwes, 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 10(7) and Article 12(1) of Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ 2019 L 130, p. 1), as amended by Commission Delegated Regulation (EU) 2021/1096 of 21 April 2021 (OJ 2021 L 238, p. 1) ('Regulation 2019/787'), and the validity of Article 10(7) of Regulation 2019/787 in the light of Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between Verband Sozialer Wettbewerb eV ('VSW') and PB Vi Goods GmbH ('PB') concerning the marketing and promotion, by PB, of a beverage named Virgin Gin Alkoholfrei.

Legal context

3 Recitals 2, 3 and 10 of Regulation 2019/787 state:

‘(2) The rules applicable to spirit drinks should contribute to attaining a high level of consumer protection, removing information asymmetry, preventing deceptive practices and attaining market transparency and fair competition. They should safeguard the reputation which the Union’s spirit drinks have achieved in the Union and on the world market by continuing to take into account the traditional practices used in the production of spirit drinks as well as increased demand for consumer protection and information. ...

(3) Spirit drinks represent a major outlet for the Union agricultural sector, and the production of spirit drinks is strongly linked to that sector. That link determines the quality, safety and reputation of the spirit drinks produced in the Union. ...

(10) Rules should be laid down regarding the legal names to be used for spirit drinks that are placed on the Union market, in order to ensure that such legal names are used in a harmonised manner throughout the Union and to safeguard the transparency of information to consumers.’

4 The first paragraph of Article 10(7) of the regulation provides:

‘Without prejudice to Articles 11 and 12 and Article 13(2), (3) and (4), the use of the legal names referred to in paragraph 2 of this Article or geographical indications in the description, presentation or labelling of any beverage not complying with the requirements of the relevant category set out in Annex I or of the relevant geographical indication shall be prohibited. That prohibition shall also apply where such legal names or geographical indications are used in conjunction with words or phrases such as “like”, “type”, “style”, “made”, “flavour” or any other similar terms.’

5 Article 12(1) of that regulation provides:

‘In the presentation and labelling of a foodstuff other than an alcoholic beverage, an allusion to legal names provided for in one or more categories of spirit drinks set out in Annex I, or to one or more geographical indications for spirit drinks, shall be authorised on condition that the alcohol used in the production of the foodstuff originates exclusively from the spirit drink or the spirit drinks referred to in the allusion, except as regards the alcohol that may be present in flavourings, colours or other authorised ingredients used for the production of that foodstuff.’

6 Annex I to that regulation is entitled ‘Categories of spirit drinks’. Point 20 of that annex, entitled ‘Gin’, is worded as follows:

‘(a) *Gin* is a juniper-flavoured spirit drink produced by flavouring ethyl alcohol of agricultural origin with juniper berries (*Juniperus communis* L.).

- (b) The minimum alcoholic strength by volume of *gin* shall be [37.5]%.
- (c) Only flavouring substances or flavouring preparations or both shall be used for the production of *gin* so that the taste is predominantly that of juniper.
- (d) The term “*gin*” may be supplemented by the term “*dry*” if it does not contain added sweetening exceeding [0.1] grams of sweetening products per litre of the final product, expressed as invert sugar.’

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

- 7 VSW is a German association the responsibilities of which include combating unfair competition. PB is a company which offers for sale and promotes, inter alia, a non-alcoholic beverage named Virgin Gin alkoholfrei (non-alcoholic Virgin Gin).
- 8 VSW, which is of the view that PB’s advertising for that beverage infringes Regulation 2019/787, brought an action against that company on 31 October 2023 before the Landgericht Potsdam (Regional Court, Potsdam, Germany), the referring court, for an order that the defendant cease offering that beverage for sale. To that effect, it submits that gin, as specified in point 20 of Annex I to Regulation 2019/787, must be produced by flavouring ethyl alcohol of agricultural origin with juniper berries and the minimum alcoholic strength by volume must be 37.5%. If these requirements are not complied with, VSW is of the view that PB must cease offering for sale the beverage in question under the name ‘gin’.
- 9 PB submits, however, that the advertising of that beverage does not infringe Regulation 2019/787, since it is obvious to any consumer that the beverage does not contain alcohol.
- 10 In that context, the referring court states that it has doubts as to the validity of Article 10(7) of Regulation 2019/787 on the ground of a possible infringement of the freedom to conduct a business enshrined in Article 16 of the Charter. The prohibition on the presentation and labelling of a non-alcoholic beverage as ‘non-alcoholic gin’ is, according to the referring court, disproportionate in so far as it does not appear to pursue a legitimate objective. That court is of the view that the term ‘non-alcoholic’ eliminates the risk of misleading the consumer. The prohibition is also disproportionate because, under Regulation 2019/787, it is not possible to refer to the beverage as, for example, ‘gin-flavoured’, which means that the product cannot be described in a way that is comprehensible to the consumer. Moreover, that situation gives a competitive advantage to producers which distribute both non-alcoholic beverages and gin, in comparison with producers marketing non-alcoholic beverages alone, which will not therefore be associated with gin.

- 11 Should the Court not consider Article 10(7) of Regulation 2019/787 to be invalid, the referring court wishes to know whether the provisions of that regulation can be interpreted as not prohibiting the presentation or labelling of non-alcoholic beverages as ‘non-alcoholic gin’. It considers, however, that those provisions reflect unequivocally an intention on the part of the EU legislature to prohibit this.
- 12 In those circumstances, the Landgericht Potsdam (Regional Court, Potsdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is Article 10(7) of Regulation ... 2019/787 invalid for infringement of Article 16 of the Charter ..., in so far as it prohibits the presentation or labelling of non-alcoholic beverages as “non-alcoholic gin”?’
- (2) In the alternative: is Article 10(7) or Article 12(1) of Regulation ... 2019/787 to be interpreted as meaning that, under those provisions, the presentation or labelling of a non-alcoholic beverage as “non-alcoholic gin” is not prohibited solely because the beverage does not reach the minimum alcoholic strength required for it to be named “gin” and has not been produced by flavouring, with juniper berries, ethyl alcohol of agricultural origin (but rather by flavouring water)?’

Consideration of the questions referred

Admissibility

- 13 The Italian Government submits that the questions referred are inadmissible. As regards the first question, that government submits that the referring court has not provided sufficient information to enable the Court to assess the validity of Article 10(7) of Regulation 2019/787. In the context of the second question, the referring court did not set out the reasons which prompted it to enquire about the interpretation of the provisions of EU law in question. On the contrary, it considered that those provisions clearly contain a prohibition on the presentation and labelling of non-alcoholic beverages as ‘non-alcoholic gin’.
- 14 In that regard, it should be noted that the referring court has set out in a sufficiently clear manner the context of the dispute in the main proceedings and the reasons why it considers that an interpretation of the provisions of EU law concerned is necessary to enable it to give judgment.
- 15 It should also be borne in mind that the Court has already held that the alleged clarity of the answers to the questions referred in no way prevents a national court from making a reference for a preliminary ruling to this Court and does not have the effect of depriving this Court of jurisdiction to rule on such questions (judgment of 21 December 2011, *Evroetil*, C-503/10, EU:C:2011:872, paragraph 36).

16 It follows that the two questions referred are admissible.

Substance

17 In so far as the first question, relating to the validity of Article 10(7) of Regulation 2019/787, will arise only in the event that that provision is interpreted as prohibiting the presentation and labelling of non-alcoholic beverages as ‘non-alcoholic gin’, it is appropriate to examine, in the first place, the second question referred for a preliminary ruling.

The second question

18 By that question, the referring court asks, in essence, whether Article 10(7) and Article 12(1) of Regulation 2019/787 must be interpreted as prohibiting the use of the name ‘non-alcoholic gin’ in the presentation and labelling of a non-alcoholic beverage on the ground that it does not comply with the requirements laid down in point 20(a) and (b) of Annex I to that regulation for the category of spirit drinks corresponding to the name ‘gin’.

19 It is apparent from Article 10(7) of Regulation 2019/787 that the use of legal names, that is, inter alia, ‘gin’, in the presentation or labelling of any beverage not complying with the requirements of the relevant category of beverages set out in Annex I to the regulation is prohibited. That prohibition also applies where legal names are used in conjunction with words or phrases such as ‘like’, ‘type’, ‘style’, ‘made’, ‘flavour’ or any other similar terms.

20 In accordance with point 20(a) and (b) of Annex I to Regulation 2019/787, gin is produced by flavouring ethyl alcohol of agricultural origin with juniper berries and the minimum alcoholic strength by volume must be 37.5%.

21 Article 10(7) of Regulation 2019/787 provides expressly that it applies without prejudice to certain provisions of Regulation 2019/787, which govern the use of a legal name in a compound term, allusions to such a name, its inclusion in a list of ingredients and spirit drinks regarded as mixtures or blends. Those provisions are not relevant to the case in the main proceedings, since they apply solely to products containing alcohol.

22 As regards Article 12(1) of Regulation 2019/787, mentioned by the referring court in its second question, it is clear that that provision is not relevant to the answer to that question. That provision is applicable solely to foodstuffs that are produced using alcohol. It cannot therefore be applied in the context of the main proceedings.

23 It is clear from the wording itself of Article 10(7) of Regulation 2019/787 that it is prohibited to present and label a beverage such as that in question in the main proceedings as ‘non-alcoholic gin’ due to the very fact that that beverage does not contain alcohol. It is therefore not produced by flavouring ethyl alcohol of

agricultural origin, which is at odds with one of the requirements for being able to use the legal name ‘gin’ to which Article 10(7) refers and which are laid down in point 20 of Annex I to that regulation.

- 24 Furthermore, it follows from Article 10(7) that the fact that the legal name ‘gin’ is accompanied by the term ‘non-alcoholic’ is irrelevant in so far as the prohibition also applies where terms are used for the purpose of indicating that a given beverage must not be confused with the spirit drink covered by that name.
- 25 In those circumstances, the answer to the second question is that Article 10(7) of Regulation 2019/787 must be interpreted as prohibiting the use of the name ‘non-alcoholic gin’ in the presentation and labelling of a non-alcoholic beverage on the ground that it does not comply with the requirements laid down in point 20(a) and (b) of Annex I to that regulation for the category of spirit drinks corresponding to the legal name ‘gin’.

The first question

- 26 By its first question, the referring court asks, in essence, whether Article 10(7) of Regulation 2019/787 is valid in the light of the freedom to conduct a business enshrined in Article 16 of the Charter in so far as it prohibits the presentation and labelling of a non-alcoholic beverage as ‘non-alcoholic gin’.
- 27 The freedom to conduct a business includes, inter alia, the right for any business to be able freely to use, within the limits of its liability for its own acts, the economic, technical and financial resources available to it. In addition, that freedom covers the freedom to exercise an economic or commercial activity, freedom of contract and free competition (see, to that effect, judgment of 30 June 2016, *Lidl*, C-134/15, EU:C:2016:498, paragraphs 27 and 28 and the case-law cited).
- 28 It should be borne in mind that, under Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and must respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.
- 29 According to the Court’s case-law, the freedom to pursue a trade or profession is not an absolute right but must be considered in relation to its social function. Consequently, restrictions may be imposed on the exercise of the freedom to conduct a business, provided that those restrictions in fact correspond to objectives of general interest pursued by the European Union and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of that right (see, to that effect, judgment of 6 September 2012, *Deutsches Weintor*, C-544/10, EU:C:2012:526, paragraph 54 and the case-law cited).

- 30 In addition, given the broad discretion of the EU legislature in matters concerning the common agricultural policy, which entails complex assessments, 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 14 June 2017, *TofuTown.com*, C-422/16, EU:C:2017:458, paragraph 46, and of 2 September 2021, *Irish Ferries*, C-570/19, EU:C:2021:664, paragraph 151).
- 31 It should be noted, first of all, that the prohibition on using legal names for any beverage which does not meet the requirements of the categories concerned is provided for by law, within the meaning of Article 52(1) of the Charter, in so far as it is set out in Article 10(7) of Regulation 2019/787.
- 32 Next, it should be noted that that prohibition concerns only the use of the legal names of spirit drinks without hindering the production or, in general, the distribution of beverages which do not comply with the requirements laid down by that regulation. Accordingly, it does not impair the very substance of the freedom to conduct a business (see, to that effect, judgments of 13 December 1994, *SMW Winzersekt*, C-306/93, EU:C:1994:407, paragraph 24, and of 6 September 2012, *Deutsches Weintor*, C-544/10, EU:C:2012:526, paragraphs 56 to 58). It must therefore be concluded that the prohibition at issue respects the essence of the freedom to conduct a business.
- 33 Lastly, as regards compliance with the principle of proportionality, although the referring court refers to Article 16 of the Charter, account must also be taken of Article 38 of the Charter, which seeks to ensure a high level of consumer protection. That protection is also referred to in recital 2 of Regulation 2019/787 as an objective pursued by that regulation. Similarly, it seeks, according to that recital and recital 10 of the regulation, to prevent deceptive practices and safeguard the transparency of the information provided to consumers. In addition, it is apparent from recitals 2 and 3 of that regulation that spirit drinks represent a major outlet for the EU agricultural sector and that that regulation seeks to ensure fair competition and to protect the reputation of those beverages. Those objectives constitute objectives of general interest (see, by analogy, judgments of 13 December 1994, *SMW Winzersekt*, C-306/93, EU:C:1994:407, paragraph 25; of 8 May 2014, *Assica and Kraft Foods Italia*, C-35/13, EU:C:2014:306, paragraph 37; and of 30 June 2016, *Lidl*, C-134/15, EU:C:2016:498, paragraph 37).
- 34 As regards the ability of the prohibition in question to ensure that the objectives thus pursued are attained, it must be held that compliance with the definitions of the beverages designated by the legal names and placed on the EU market guarantees consumers that those products all meet the same quality standards and protects them against any risk of confusion as to the composition of the products which they intend to purchase. Furthermore, that prohibition ensures that only beverages produced in a certain way and having the same properties may be marketed under the legal name concerned. Such a measure makes it possible to

prevent a producer of a beverage that does not comply with the requirements laid down in Regulation 2019/787 from being able to take advantage, for its own product, of the reputation acquired by producers of spirit drinks covered by a legal name. Therefore, the prohibition in question is suitable for attaining the objectives pursued by Regulation 2019/787.

- 35 Regarding the necessary nature of the prohibition in question in the light of the objectives of Regulation 2019/787, it should be noted that, if legal names could be accompanied by descriptive terms such as ‘non-alcoholic’ to designate products which do not comply with the requirements for obtaining such names, consumers could be misled as to the composition of the products that they intend to purchase (see, to that effect, judgments of 16 December 1999, *UDL*, C-101/98, EU:C:1999:615, paragraphs 33 and 34, and of 14 June 2017, *TofuTown.com*, C-422/16, EU:C:2017:458, paragraphs 47 and 48). If it is clear to a consumer that a product called ‘non-alcoholic gin’ does not contain alcohol, that consumer might be mistaken as to the other attributes of that product, since the requirements relating to the legal name ‘gin’ include elements other than the mere presence of alcohol, namely, in particular, the necessary production of ethyl alcohol of agricultural origin by flavouring that ethyl alcohol. Moreover, the reputation acquired by producers complying with the requirements laid down in Regulation 2019/787 for a given beverage would not be protected, which would lead to a risk of unfair competition (see, to that effect, judgments of 13 December 1994, *SMW Winzersekt*, C-306/93, EU:C:1994:407, paragraph 25, and of 14 June 2017, *TofuTown.com*, C-422/16, EU:C:2017:458, paragraphs 43 to 48). Consequently, the prohibition laid down in Article 10(7) of Regulation 2019/787 must be regarded as necessary.
- 36 It is also necessary to take account of the fact, recalled in paragraph 32 of the present judgment, that producers other than those entitled to use the legal names of spirit drinks are prevented only from using those names, but that they are not deprived of their right to market their products as long as they comply with the relevant legislation.
- 37 In those circumstances, the prohibition on using legal names for any beverage which does not comply with the requirements of the categories of beverages concerned, as laid down in Regulation 2019/787, is not in breach of the principle of proportionality.
- 38 It follows from the foregoing that consideration of the first question has not disclosed any factor of such a kind as to affect the validity of Article 10(7) of Regulation 2019/787 in the light of the freedom to conduct a business enshrined in Article 16 of the Charter.

Costs

- 39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

- 1. Article 10(7) of Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008, as amended by Commission Delegated Regulation (EU) 2021/1096 of 21 April 2021,**

must be interpreted as prohibiting the use of the name ‘non-alcoholic gin’ in the presentation and labelling of a non-alcoholic beverage on the ground that it does not comply with the requirements laid down in point 20(a) and (b) of Annex I to that regulation for the category of spirit drinks corresponding to the legal name ‘gin’.

- 2. Consideration of the first question referred has not disclosed any factor of such a kind as to affect the validity of Article 10(7) of Regulation 2019/787, as amended by Delegated Regulation 2021/1096, in the light of the freedom to conduct a business enshrined in Article 16 of the Charter of Fundamental Rights of the European Union.**

[Signatures]