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INTERPRETATIVE NOTE N° 2017-01

This interpretation does not prejudge any decision by the Court of Justice, which alone is competent to hand down legally binding rulings on the validity and interpretation of acts adopted by the institutions of the European Union

SECTOR: **Organic farming**

MEASURE: **List of ingredients in the labelling of organic products**

SUBJECT: **Mandatory use of the list of ingredients in the labelling of organic wine**

PROVISIONS CONCERNED: **Council Regulation (EC) No 834/2007 – Article 23(4)**

Question 1:

Is the list of ingredients a mandatory requirement in the case where the terms referring to organic production can be used in the "sales description" on the basis of Article 23(4)(a) of Regulation (EC) No 834/2007?

Answer:

Article 23(4) of Regulation (EC) No 834/2007 which lays out the rules on the use of the terms referring to organic production in processed food, reads as follows:

- "4. As regards processed food, the terms referred to in paragraph 1 may be used:
- (a) in the sales description, provided that:
 - (i) the processed food complies with Article 19;
 - (ii) at least 95 % by weight, of its ingredients of agricultural origin are organic;
 - (b) only in the list of ingredients, provided that the food complies with Article 19(1), 19(2)(a), 19(2)(b) and 19(2)(d);
 - (c) in the list of ingredients and in the same visual field as the sales description, provided that:
 - (i) the main ingredient is a product of hunting or fishing;
 - (ii) it contains other ingredients of agricultural origin that are all organic;
 - (iii) the food complies with Article 19(1), 19(2)(a), 19(2)(b) and 19(2)(d).

The list of ingredients shall indicate which ingredients are organic

In the case where points (b) and (c) of this paragraph apply, the references to the organic production method may only appear in relation to the organic ingredients and the list of ingredients shall include an indication of the total percentage of organic ingredients in proportion to the total quantity of ingredients of agricultural origin [...]"

The sentence "**The list of ingredients shall indicate which ingredients are organic**" clearly imposes an indication for the cases in (4) (b) and (c), since only in those cases, the indication organic is specifically related to the status of the ingredients used in the food. For the products falling under letter a) such an indication could be considered unnecessary as the product as a whole can be called organic.

However, the position of the sentence rather speaks for the argument that this sentence applies to all cases of (4), including (a). Even if the whole product can be labelled as organic, the product composition is not necessarily 100% organic. Therefore it could still be important information for the consumer to indicate which ingredients are organic. In consequence it could be still considered necessary to oblige operators to identify the ingredients which are organic.

Question 2:

Does the obligation to indicate in the list of ingredients which ingredients are organic also apply to products that fall under Article 23(4)(a) of Regulation (EC) No 834/2007 and that do not have a mandatory ingredients list according to specific or horizontal EU legislation (i.e. wine) and does this mean that these products, when sold as organic, would have to have an ingredient list?

Answer:

Horizontal rules on food labelling set out in Article 16(4) of Regulation (EU) No 1169/2011 state that:

"4. Without prejudice to other Union provisions requiring a list of ingredients or a mandatory nutrition declaration, the particulars referred to in points (b) [the list of ingredients;] and (l) [a nutrition declaration] of Article 9(1) **shall not be mandatory for beverages containing more than 1,2 % by volume of alcohol.**"

In addition, the second paragraph of Article 118 of Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products establishes the following:

" The labelling of the products referred to in points 1 to 11, 13, 15 and 16 [wine products] of Part II of Annex VII **may not be supplemented** by any particulars other than those provided for in this Regulation unless those particulars satisfy the requirements of Directive 2000/13/EC or Regulation (EU) No 1169/2011."

Along the same lines, the sector specific legislation on wine labelling sets out in Article 49 of Regulation (EC) No 607/2009 the following:

"Save as otherwise provided for in this Regulation, the labelling of the products referred to in paragraphs 1 to 11, 13, 15 and 16 [wine products] of Annex IV to Regulation (EC) No 479/2008 (hereinafter 'products') **may not be supplemented by any particulars** other than those provided for in Article 58 and those regulated in Article 59(1) and 60(1) of that Regulation, unless they satisfy the requirements of Article 2(1)(a) of Directive 2000/13/EC."

In consequence it is clear from the horizontal and specific EU legislation that the legislator did not intend to impose a mandatory list of ingredients on the labelling of all foodstuffs. In particular, the legislator decided not to impose such particular on wine products.

Even if the second subparagraph of Art. 23(4) of Regulation (EC) No 834/2007, states that "The list of ingredients shall indicate which ingredients are organic", this wording does not impose the mandatory indication of the list of ingredients, it seems rather to be based on the presumption that

there is *always* a list of ingredients which, as illustrated above, is not the case for all foodstuffs labelled in the EU.

More particularly, Recital (20) of Regulation (EC) No 834/2007 points out the legislator's intention with regards labelling of organic processed food and provides that *"Processed food should be labelled as organic only where all or almost all the ingredients of agricultural origin are organic. However, special labelling provisions should be laid down for processed foods which include agricultural ingredients that cannot be obtained organically, as it is the case for products of hunting and fishing. Moreover, for the purpose of consumer information, transparency in the market and to stimulate the use of organic ingredients, it should also be made possible to refer to organic production in the ingredients list under certain conditions."*

Nothing in the recital indicates that the legislator sought to impose the use of the list of ingredients in the marketing of all organic processed food, even less on those products for which the legislator has explicitly decided that there is no list of ingredients, such as wine products.

The Commission services are therefore of the opinion that the EU legislator did not intend, when providing in Article 23(4) of Regulation (EC) No 834/2007 for the obligation to identify the organic ingredient as organic, to impose on organic wine operators a mandatory list of ingredients, a particular which is not mandatory for wine products according to the horizontal and sector rules applicable to the wine sector today.

Therefore, the sentence "The list of ingredients shall indicate which ingredients are organic" of Article 23(4) of Regulation (EC) No 834/2007 does not intend to impose a mandatory list of ingredients on all products marketed as organic, but rather an obligation to indicate which ingredients are organic in the list of ingredients, when such a list is a mandatory particular for the processed food concerned according to EU legislation.