



EDA Guidelines on the principles and enforcement of the Protection of Dairy Terms

State of play and legal principles for the Protection of Dairy Terms

These dairy industry guidelines intend to address the use and misuse of protected definitions, designations and sales descriptions of milk and milk products within the European Single Market and to serve as a tool to facilitate their enforcement at national level. The five main points below constitute the structure of the document:

- (I) The international protection of dairy terms has been translated into EU food law and the EU has safeguarded this very same protection for over 30 years.
- (II) The specific provisions on the protection of dairy terms are rooted in the current EU Common Market Organisation Regulation.
- (III) The European Court of Justice (ECJ) has repeatedly reaffirmed the coherence of these specific rules with the objectives pursued by the legislation.
- (IV) EDA has gathered some examples of presumed misuse of protected definitions, designations and sales descriptions of milk and milk products so as to illustrate the issues arising on the EU market.
- (V) The EU dairy industry calls for the strict enforcement of the rules in order to preserve all across Europe the protection of dairy terms and their vital importance for the EU dairy sector.

This analysis of the legislative architecture and of the legal conclusions of the ECJ draws a clear picture of the objectives and the rules that form the basis of the protection of dairy terms. The examples provided in the document of presumed misuse aim to complement the legal framework with the present state of play in the EU Single Market.

With these Guidelines, the European dairy industry asks national authorities and the EU Commission:

- A. To respect the sound and multiple rulings of the ECJ on the application of the rules laid down in Article 78 and Annex VII, Part III, Part IV and Part VII of Regulation (EU) No 1308/2013. Specifically, regarding the concrete market situation as described in paragraph IV of this document.
- B. To find the use of dairy terms for non-dairy products unacceptable under any circumstance. In particular:
 - a. Even if, those terms are expanded upon by clarifying or descriptive terms indicating the plant-based origin of the products.
 - b. Including cases where products are designated as x-based alternative to a dairy product.
- C. To allow the designations of products with terms exempted from the rules on dairy protected terms only if those terms (different in each language of the Union) are included in EU Commission Decision 2010/791/EU because of their traditional usage in each Members States and/or when the terms are clearly used to describe a characteristic quality of the product.
- D. To allow the use of the term milk and milk products in association with word or words to designate composite products only when milk and milk products are an essential part either in terms of quantity or for characterisation of the product.
- E. To enforce the rules on protected dairy terms both for on-pack information (product name, trademark, brand, ingredients list, etc) and for product advertisement (information on website and any other advertising/marketing material).
- F. These considerations also apply to product placement within the retail environment. Dairy alternatives should not be placed within the dairy section of a retail environment because they are not dairy and this practice goes against the fundamental principles of the rules around the protection of dairy denominations.
- G. In coherence with the interpretation of the ECJ, to integrate the same level of protection guaranteed by Article 13 point 1 of Regulation (EU) No 1151/2012 as to geographical indications to the provision of Annex VII, Part III, point 6, subparagraph 1 of Regulation (EU) No 1308/2013 on the protection of dairy protected terms.
- H. To find the use of slightly amended dairy terms (which are clearly understood as such by the consumer) unacceptable.
- I. To enforce and implement Regulation (EC) No 882/2004 and then, subsequently, the multiple tools provided by the new Official Controls Regulation (EU) No 2017/6251, in particular the Administrative Assistance and Cooperation system (AAC), so as to ensure the correct use of protected definitions, designations and sales descriptions of milk and milk products ex Article 78 and Annex VII, Part III of the last (CMO) Regulation (EU) No 1308/2013.



I. 30 years of protection of dairy terms under the Common Market Organisation Regulations

For 30 years the specific EU legislative framework on the protection of dairy terms has provided European citizens a clear knowledge of what milk and milk products are and has protected them from being misled. Considering the specificity of milk qualities, the Council of the European Communities adopted on 2 July 1987 a specific protection of dairy terms with Regulation (EEC) No 1898/87 on the protection of designations used in marketing of milk and milk products. This Regulation first established a clear EU definition of "milk and milk products", as well as conditions for fair competition between milk and competing products in the field of product designation, labelling and advertising.

The protection introduced in the European Union by the above Regulation directly reflected the recommendations adopted by the joint FAO/WHO Committee of Government Experts on the "*Code of Principles Concerning Milk and Milk Products*". The Code was redrafted in 1999 and finalised as the "*Codex General Standard on the Use of Dairy Terms*" (hereafter GSUDT) 206-1999.

The Codex GSUDT 206-1999 is now globally recognised and has been implemented within the various EU Common Market Organisation (also known as CMO) Regulations¹ in accordance with the rule laid down in Article 5(3) of Regulation (EC) No 178/2002² on the implementation of international standards in EU food law. This has guaranteed continuity and global harmonisation of the protection of dairy terms.

II. The protection of dairy terms within the EU food law

The Treaty on the Functioning of the European Union (hereafter TFEU or Treaty) and, in particular, its Articles 39, 40 and 43 lay down the legal framework on which CMO rules, and therefore marketing standards, have been conceived.

For the sake of clarity, it is worth differentiating the protection of dairy terms from the protection of consumers from being misled (Article 7 Regulation (EU) No 1169/2011³). The specific rules regarding the protection of dairy terms are based on Articles 39, 40 and 43 of the TFEU, whereas the provisions of Regulation (EU) No 1169/2011 are based on Article 114 of the Treaty. According to their different legal basis in the TFEU the *lex specialis* on the protection of dairy terms overrides the *legi generali* on food information to consumers.

Today, the purpose and the rules for the definitions, designations and sales descriptions of milk and milk products intended for human consumption are contained in Recitals 64 to 76, Article 78 and Annex VII, Part III, Part IV and Part VII of the last (CMO) Regulation (EU) No 1308/2013.

Annex VII, Part III of Regulation (EU) N° 1308/2013 contains a number of detailed provisions:

General rule:

- According to point 5 first subparagraph: the designations for milk and milk products may not be used for any product other than those referred to in Annex VII, Part III of Regulation (EU) No 1308/2013 (Annex I to this document)
- According to point 6 first subparagraph: "no label, commercial document, publicity material, any form of advertising⁴ or any form of presentation may be used which claims, implies or suggests that the product is a dairy product if it is not "milk" or a "milk product"⁵.

Specific provision for composite products:

- According to point 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*".

¹ **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) and Regulation (EU) No 1308/2013 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.**

² 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.

³ 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

⁴ As defined in Article 2 of Council Directive 2006/114/EC.

⁵ As those described in Annex VII, Part III, points 1,2 and 3 of Regulation (EU) No 1308/2013 (Annex I to this document).

Exception:

- According to point 5 second subparagraph: [These provisions] “[...]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”.
- The exception foreseen in point 5, which has to be read together and not in two alternatives, has been further detailed by the Commission through the adoption of a final and exhaustive⁶ list of exceptions laid down in EU Commission Decision 2010/791/EU of 20 December 2010⁷.

III. The legal conclusions of the European Court of Justice

The European Court of Justice (hereafter ECJ or the Court) rulings have repeatedly confirmed the legal protection of the definitions, designations and sales descriptions of milk and milk products. Before recalling those judgments, we deem important to extrapolate the fundamental legal principles expressed by the ECJ on the protection of dairy terms.

In summary:

- A. The EU **principle of proportionality** 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.

In the cases C-101/98 and C-422/16 (described below) the ECJ stressed that the possibility to use the term “milk” and the designations reserved exclusively for milk products is permitted only for products which meet the requirements laid down by Annex VII, Part III, of Regulation No 1308/2013.

The Court noted how those requirements met the objectives pursued (under recitals 64 to 76 of Regulation (EU) No 1308/2013):

- a) Undistorted conditions of competition for FBOs
- b) Same standards of quality protecting the consumers against any confusion as to the composition of the products they intend to purchase

The Court added that in the absence of the rules on protected dairy terms, it would not be possible to identify with certainty the particular characteristics related to the natural composition of dairy products. This would be contrary on one side, to the protection of consumers because of the likelihood of confusion which would be created, and on another, to the objective of improving the economic conditions for production and marketing and the quality of milk and milk products. The ECJ concluded that the rules on protected dairy terms are appropriate to achieve the objectives pursued.

Furthermore, the requirements do not go beyond what is necessary to achieve them. The Court stressed that the addition of descriptions or explanations to dairy designations for products which do not comply with the CMO rules cannot prevent with certainty any likelihood of confusion in the mind of the consumer.

Therefore, according to the Court, the CMO Regulation provisions on protected dairy terms do not breach the principle of proportionality.⁸

- B. The EU **principle of equal treatment** and the **principle of non-discrimination** require that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified.

We read in the “Tofu Town” ruling that each sector of the CMO has different characteristics. Thus, the different requirements for producers of vegetarian or vegan substitutes for meat or fish and for producers of vegetarian or vegan substitutes for milk or milk products are not inconsistent with the principle of equal treatment⁹.

⁶ Points 33, 34, 38 and 40 of the “Tofu Town” judgment (C-422/16) recall the final and exhaustive character of the list of exceptions laid down in EU Commission Decision 2010/791/EU. Specifically, the Court underlined that only the products set out in the Annex of EU Commission Decision 2010/791/EU fall within the exceptions laid down in Annex VII, Part III, point 5, second subparagraph of Regulation (EU) No 1308/2013.

⁷ This possibility is laid down in art. 91 par. 1a) of Regulation (EU) No 1308/2013 (Article 121 point. (b) subparagraph (i) and point (c) subparagraph (i) of the previous CMO Regulation, Regulation (EU) No 1234/2007).

⁸ Points 43 to 48, case C-422/16 and points 30 to 34, case C-101/98.

⁹ Point 50, case C-422/16.



Moreover, the comparison of the technical rules 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 rules¹⁰.

i. “Diät-Käse” (December 16, 1999; C-101/98)¹¹

In the case “Diät-Käse” (“diet-cheese”) of 16 December 1999 (C-101/98) the ECJ was asked whether a product derived from milk, in which, for dietary purposes, the natural milk fat has been replaced with vegetable fat, may nonetheless be marketed under the designation “cheese”, with the inclusion on the label of additional information on the product’s composition and specific use.

The ECJ was asked:

- a) Whether the rules laid down in Regulation (EEC) No 1898/87 applied to the specific legislation for products for particular nutritional uses (dietetic products).

We understand from the ECJ judgment that protected dairy terms, including “cheese”, may be used only for products derived exclusively from milk and provided that no milk constituent has been replaced, even partially, during the manufacturing process¹². We note that in this case, the Court considered the need to protect consumers and to avoid any confusion between milk products and other food products, including those consisting partly of milk components.¹³

- b) Whether it is significant that the designation “*dietary cheese containing vegetable oil for a fat-modified diet*” is completed by additional descriptive material on the packaging¹⁴.

In this ECJ judgment we read that further written explanations do not change the requirements of Regulation (EEC) No 1898/87 aimed at protecting consumers with respect to any changes in the product’s composition. **The EU judges ruled that no additional explanation relating to the product name can have an effect on the scope of the protection contained in Regulation (EEC) No 1898/87.**

ii. “Pomazánkové máslo”¹⁵ (May 12, 2015; T-51/14)¹⁶

On 12 May 2015 the General Court of the European Union ruled in favour of the European Commission Decision (2013/658/EU) concerning the rejection of the application submitted by Czech Republic for the registration of the name “Pomazánkové máslo” (spreadable butter) on the register for traditional specialities guaranteed (i.e. TSG) under Regulation No 1151/2012¹⁷.

In the ruling, the Court re-iterated the fundamental role of the protection of dairy terms in ensuring fair competition between spreadable fats of milk and non-milk origin and protection of producers and consumers¹⁸.

¹⁰ Point 51, case C-422/16.

¹¹ Case C-101/98: Judgment of the Court (Sixth Chamber) of 16 December 1999. Union Deutsche Lebensmittelwerke GmbH v Schutzverband gegen Unwesen in der Wirtschaft eV. Reference for a preliminary ruling: Bundesgerichtshof - Germany. Protection of designations used in marketing of milk and milk products - Regulation (EEC) No 1898/87 - Directive 89/398/EEC - Use of the designation “cheese” to describe a dietary product in which the natural fat has been replaced by vegetable fat.

¹² Point 20, case C-101/98.

¹³ Point 32, case C-101/98.

¹⁴ [i.e.] ‘This dietary cheese is rich in polyunsaturated fats ...’ or ‘This dietary cheese is ideal for a cholesterol-conscious lifestyle?’ Point 35 case C-101/98.

¹⁵ ‘Pomazánkové máslo’ (butter spread) is a product similar to butter, which is used as a spread and also for making creams, spreads and pastry. The product has a minimum fat content of 31% by weight, a minimum dry material content of 42%, and a water content of up to 58%. Point 11 and 12, case C 37/11.

¹⁶ Case T-51/14 Judgment of the General Court (Second Chamber) of 12 May 2015 Czech Republic v European Commission System of traditional specialities guaranteed - Regulation (EU) No 1151/2012 - Rejection of the request for registration of the name ‘pomazánkové máslo’ (spreadable butter) as a traditional speciality guaranteed - Relationship with the provisions of Regulation (EC) No 1234/2007 specifying the conditions for the use of the sales description ‘butter’.

¹⁷ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

¹⁸ The General Court explicitly refers to Recital 51 in the preamble to Regulation (EU) No 1234/2007 – Point 33, case T-51/14.



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The Judges referred specifically to the appendix to Annex XV of Regulation No 1234/2007 which provides that the sale designation “butter” is reserved for the “product with a milk-fat content of not less than 80% but less than 90%, a maximum water content of 16% and a maximum dry non-fat milk-material content of 2%”.

Exceptions¹⁹

The ECJ stressed **that, in this specific case, the only exceptions to this rule were set out in the third Paragraph of point I(2) in Annex XV** of Regulation No 1234/2007 (now Annex VII, Part VII, point I Regulation (EU) No 1308/2013) and concern²⁰:

- a) 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. These exceptions are listed in EU legislation.
- b) Concentrated products (butter, margarine, blends) with a fat content of 90% or more

iii. “Tofu Town” (June 14, 2017; C-422/16)²¹

In the case C-422/162, Verband Sozialer Wettbewerb eV vs TofuTown.com, a German court asked the European Court of Justice 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 Regulation²² reserves exclusively for milk products from being used to designate a purely plant-based product in marketing or advertising. This, even if those terms are expanded upon by clarifying or descriptive terms indicating the plant-based origin of the products concerned.

The ECJ stated that:

- a) According to Article 78(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.^{23,24}
- b) According to point 1, Part III, Annex VII, the term “milk” cannot be lawfully used to designate a purely plant-based product, since milk is, within the meaning of that provision, “an animal product”. Therefore, the EU judges concluded that clarifying or descriptive terms indicating the plant-based origin of the product concerned, such as soya or tofu do not fall within the list of terms which may be used with the designation “milk”.²⁵
- c) According to Annex VII, Part III, point 2 and as ruled in the ECJ judgment of 16 December 1999 (C 101/98), a “milk product” is derived exclusively from milk and it must contain its constituents. Therefore, a product, in which one or other constituent of milk has been replaced, even if only partially, may not be designated by one of the descriptions referred to in point 2, subparagraph a) of Part III of Annex VII to Regulation No 1308/2013. Accordingly, the names²⁶ listed in Annex VII, Part III, point 2, subparagraph a), to that regulation such as whey, cream, butter, cheese and yogurt, cannot be lawfully used to designate a purely plant-based product.^{27,28}

Exceptions

The judges stressed then the exceptions laid down in Annex VII, Part III, point 3 and point 5, subparagraph 2. The Court identified two situations in which the term “milk” and the designations used for milk products may also be used:

¹⁹ Point 39, case T-51/14.

²⁰ As originally foresaw by Article 2 point 2 of Council Regulation (EC) No 2991/94 of 5 December 1994 laying down standards for spreadable fats.

²¹ Case C-422/16 Judgment of the Court (Seventh Chamber) of 14 June 2017 Verband Sozialer Wettbewerb eV v TofuTown.com GmbH Request for a preliminary ruling from the Landgericht Trier 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.

²² Regulation (EU) No 1308/2013.

²³ **The ECJ recalled that ex Article 78(2) and Annex VII, Part III, point 6, first subparagraph, to Regulation No 1308/2013 this rule apply equally to marketing and publicity.**

²⁴ Point 21, case C-422/16.

²⁵ Point 23, case C-422/16.

²⁶ Within the meaning of Article 17 of Regulation (EU) No 1169/2011.

²⁷ As well as according to Annex VII, Part III, point 2 subparagraph (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”.

²⁸ Point 27, case C-422/16.



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- a) 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 product²⁹ (Annex VII, Part III, point 3 Regulation No 1308/2013).
- b) For 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^{30,31} (Annex VII, Part III, point 5, second subparagraph Regulation No 1308/2013). These exceptions are listed in EU legislation.

Although it is clear from the *final and exhaustive list*³² of products laid down in Annex I to Decision 2010/791 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 proceedings.³³

The list in Annex I to Decision 2010/791 mentions “crème de riz” in French but it does not mention “rice cream spray” nor “rice cream” in English. The names of the exempted products 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 the term “rice cream” also meets them.³⁴

Conclusion

On 14 June 2017, the ECJ ruled 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. This, 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.

²⁹ Point 31, case C-422/16.

³⁰ The final and exhaustive list of products referred to by the latter provision has been laid down in Annex I to Decision 2010/791 [according to Article 121(b)(i) of Regulation No 1234/2007 (now, in substance, Article 91, first subparagraph, (a), of Regulation No 1308/2013). **Therefore, only the products set out in that annex fall within the exception laid down in the second subparagraph of Annex VII, Part III point 5 second subparagraph of Regulation No 1308/2013.**

³¹ Point 33, case C-422/16.

³² See footnote 6.

³³ Point 37, case C-422/16.

³⁴ Point 36, case C-422/16.



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IV. The present state of play and the future protection of dairy terms

The protection of dairy terms remains of utmost importance as the plant-based sector is increasingly designating and marketing its products using dairy terms in direct and indirect ways.

i. **Examples³⁵ of commercial misuse of definitions, designations and sales descriptions of milk and milk products within the EU market**

a) **Direct misuse of dairy protected terms**

 Germany

Examples: Frischkase and Vegankrauter-frischkase³⁶

Ingredients: Sojazubereitung (Wasser, Sojabohnen), Kokosfett*, Maltodextrin*, Reismehl*, Meersalz, Säuerungsmittel Zitronensäure, Verdickungsmittel (Johannisbrotkernmehl*, Xanthan), Antioxidationsmittel Ascorbinsäure. *Aus kontrolliert ökologischer Erzeugung.*



Ingredients: Wasser, kokosfett, lupinenproteinisolat, zucker, dextrose, citrusfasern, modifizierte stärke, salz, schnittlauch, petersille, dill, vegane starterkultur.



³⁵ The pictures and explanations below represent examples of products sold today (May 2018) or in the recent past in different European Members States.

³⁶ Products sold in Germany in 2016.



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 France
Example: Flavoured Goat Cheese

Ingredients: Water, coconut oil, starch* (corn*, tapioca*), canola oil*, proteini, sea salt thickener (carrageenan & locust bean gum), natural flavourings (0,8%), antioxidant (citric acid), turmeric. *organic agriculture - EU Non Agriculture - May contain gluten, soye nuts, celery and mustard.*



The products use the term “Cheese” in their names³⁷, even though they are not milk products.

The German product “Frischkase” uses “dairy free” wording at the bottom of the front-of-pack. As concluded by the ECJ, descriptive or clarifying additions indicating the plant origin of the product concerned do not affect the rules on protected dairy terms.

 Germany
Examples: Coconut milk yoghurt alternative and Yoghurt alternative

Ingredients: Kokosmilch, Stärke, Joghurtkulturen (vegan).



Ingredients: Live Cultured Coconut Milk Yoghurt (85%) (Coconut Milk (50%), Coconut Water (45%), Cornflour, Potato Starch, Pectin (from Fruit), Selected Dairy-Free Cultures (S. Thermophilus + L. Bulgaricus, Lactobacillus Acidophilus, Bifidobacterium Lactis)), Blueberry Compote (15%) (Grape Juice Concentrate, Blueberries (39%), Water, Starch (Cornflour), Lemon Juice Concentrate, Natural Flavourings)



³⁷ With the meaning of Article 17 Regulation (EU) No 1169/2011.



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 United Kingdom

Example: Coconut yogurt

Ingredients: Young coconut meat (54%), Coconut water, Spring water, Coconut cream, Coconut butter, Live vegan yogurt cultures



The products use the terms “yoghurt” or “Joghurt” in their names, even though they do not contain milk.

The products use the words “Coconut milk yoghurt alternative” or “Coconut yoghurt” – None of these are included in the final and exhaustive list of derogations permitted in the English or German language (as per EU Commission Decision 2010/791/EU of 20 December 2010).

As concluded by the ECJ ruling C422/16, descriptive or clarifying additions indicating the plant origin of the product concerned (such as “dairy free” or “coconut”) have no influence on the rules on protected dairy terms.

b) Misuse of dairy protected terms to designate a composite product

 France

Example : Riz au lait³⁸

Ingredients: Coconut milk (33%) (coconut extract, water), sugar, rice (10%), rice flour, stabilizers: potato starch and locust bean gum; salt, vanilla extract (<1%), vanilla pod (<1%)



The product used the terms “Riz au lait” and the wording “dairy free”. The product went against the rules related to the use of dairy terms in composite products. Such products could use the term milk and the designations used for milk products when milk or milk products are an essential part either in terms of quantity or for characterisation of the product. As underlined in the front-of-pack this product did not contain milk or milk products and therefore went against the above-mentioned rule on protected dairy terms according to Regulation (EU) No 1308/2013.

³⁸ Product sold in France in June 2017.



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c) Misuse of dairy protected terms in combination with authorised exceptions

 France

Example : 'Lait de coco' & 'lait végétal naturel'

Ingredients : Eau de coco (60%), eau, crème de coco (10%), calcium (phosphate de calcium), magnésium (sulfate de magnésium), vitamine A, zinc (sulfate de zinc), stabilisants (gel de cellulose (E460), gomme de cellulose (E466)). Sans gluten. Sans lactose. Sans soja. Sans conservateur. Sans colorants.



The product refers to "Lait végétal naturel" clearly misusing the term "Lait" (milk) to indicate a plant-based product and therefore breaching the rules on protected dairy denominations. The wording on the product ignores the rulings of the ECJ that clarifying additions indicating the plant origin of the product concerned do not constitute an exemption on the rules on protected dairy terms.

d) Intentionally misspelt dairy terms

 United Kingdom

Example: "Whole mylk"

Ingredients: Spring Water, Coconut Cream, Brown Rice, Cashew, Himalayan Salt, Nutritional Yeast



The product uses a slightly modified dairy term (mylk instead of milk) which is clearly understood by the consumer as referring to milk. Although the word has been misspelt. We consider this to go against the intentions of the rules on protected dairy denominations. If the use of the word "milk" is not allowed, then the use of the word "mylk" should not be allowed either.

The product uses the wording "dairy free" at the bottom of the front-of-pack. As concluded by the ECJ, descriptive or clarifying additions indicating the plant origin of the product concerned have no influence on the rules on protected dairy terms.



e) Misuse of dairy protected terms in advertisement of dairy products

 Germany

Example: Reference to “Vegan Butter” in product advertisement



The product advertisement uses the term “butter”, even though it is not a milk product.

As concluded by the ECJ in the rulings C-101/98 and C422/16 descriptive or clarifying additions indicating the plant origin of the product concerned have no influence on the rules on protected dairy terms.

 Denmark

Example: Reference to “Milk” in product advertisement



The product advertisement uses the term “milk”, even though it is not milk.

As concluded by the ECJ, descriptive or clarifying additions indicating the plant origin of the product concerned (such as “dairy free”) have no influence on rules on protected dairy denominations.



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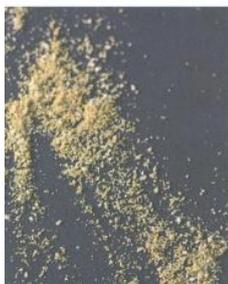
ii. The non-commercial misuse of definitions, designations and sales descriptions of milk and milk products in the EU

The misuse of dairy terms is getting frequent on social media, but also in recipe books and newspapers. Even though the rules on protected dairy denominations are meant to apply only to commercial practices, EDA considers as essential the coherent and accurate use of the definitions and designations of dairy products in order to guarantee an appropriate perception for consumers of the notable differences between dairy and non-dairy products.

 France

Example of a recipe book

Fromage végétal



Ricotta
Dans un robot ménager, mixer 250 g de tofu ferme (égoutté et séché avec du papier absorbant), 2 c. à c. de jus de citron, 2 c. à c. d'huile d'olive, ½ gousse d'ail émincée, ½ c. à c. de gros sel de mer et du poivre fraîchement moulu. Ne pas trop mixer, sinon le mélange finira en purée : il faut garder un peu de texture.
Pour environ 250 g



Fromage de chèvre
Faire tremper 160 g de noix de cajou dans l'eau pendant au moins 4 h. Egoutter et rincer soigneusement. Mixer dans un blender avec 2 c. à s. d'eau, 4 g de probiotiques en poudre et 1 pincée de sel de mer fin, jusqu'à obtenir une pâte lisse. Transvaser dans un bol, couvrir de film alimentaire et maintenir au chaud pendant 12 h. Ajouter 2 c. à s. de vinaigre de vin blanc et 2 c. à s. de levure alimentaire. Réserver 24 à 48 heures au réfrigérateur, jusqu'à ce que le mélange soit ferme.
Pour environ 200 g





V. Conclusions

So as to continue preserving the necessary consumer protection and conditions of competition among food business operators, EDA and its members request national enforcement authorities in coordination with EU Commission services:

- A. To respect the sound and multiple rulings of the ECJ on the application of the rules laid down in Article 78 and Annex VII, Part III, Part IV and Part VII of Regulation (EU) No 1308/2013. Specifically, regarding the concrete market situation as described in paragraph IV of this document.
- B. To find the use of dairy terms for non-dairy products unacceptable under any circumstance³⁹. In particular:
 - a. Even if, those terms are expanded upon by clarifying or descriptive terms indicating the plant-based origin of the products.
 - b. Including cases where products are designated as x-based alternative to a dairy product.
- C. To allow the designations of products with terms exempted from the rules on dairy protected terms only if those terms (different in each language of the Union) are included in EU Commission Decision 2010/791/EU because of their traditional usage in each Members States and/or when the terms are clearly used to describe a characteristic quality of the product.
- D. To allow the use of the term milk and milk products in association with word or words to designate composite products only when milk and milk products are an essential part either in terms of quantity or for characterisation of the product.
- E. To enforce the rules on protected dairy terms both for on-pack information (product name, trademark, brand, ingredients list, etc) and for product advertisement (information on website and any other advertising/marketing material).
- F. These considerations also apply to product placement within the retail environment. Dairy alternatives should not be placed within the dairy section of a retail environment because they are not dairy and this practice goes against the fundamental principles of the rules around the protection of dairy denominations.
- G. In coherence with the interpretation of the ECJ, to integrate the same level of protection guaranteed by Article 13 point 1 of Regulation (EU) No 1151/2012 as to geographical indications to the provision of Annex VII, Part III, point 6, subparagraph 1 of Regulation (EU) No 1308/2013 on the protection of dairy protected terms.
- H. To find the use of slightly amended dairy terms (which are clearly understood as such by the consumer) unacceptable.
- I. To enforce and implement Regulation (EC) No 882/2004 and then, subsequently, the multiple tools provided by the new Official Controls Regulation (EU) No 2017/62540, in particular the Administrative Assistance and Cooperation system (AAC), so as to ensure the correct use of protected definitions, designations and sales descriptions of milk and milk products ex Article 78 and Annex VII, Part III of the last (CMO) Regulation (EU) No 1308/2013.

³⁹ As referred in point 2.1.1 and footnote 1 of “Commission notice on questions and answers on the application of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers” (2018/C 196/01)

⁴⁰ Applicable as of December 2019.



Annex I

ANNEX VII, PART III Regulation (EU) NO 1308/2013**Milk and milk products**

1. **"Milk"** means 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 under Part IV;

(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,**

(v) **butteroil,**

(vi) **caseins,**

(vii) **anhydrous milk fat (AMF),**

(viii) **cheese,**

(ix) **yogurt,**

(x) **kephir,**

(xi) **koumiss,**

(xii) **viiili/fil,**

(xiii) **smetana,**

(xiv) **fil;**

(xv) **rjaženka,**

(xvi) **rūgušpiens;**

(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 points 1, 2 and 3 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 as defined in Article 2 of Council Directive 2006/114/EC or any form of presentation may be used which claims, implies or suggests that the product is a dairy product.

However, in respect of a product which contains milk or milk products, the designation 'milk' or the designations referred to in the second subparagraph of points 2 of this Part may be used only to describe the basic raw materials and to list the ingredients in accordance with Directive 2000/13/EC or Regulation (EU) No 1169/2011.