

EDA Guidelines – July 2020

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 on the EU market aim to complement the legal framework with the present state of play in the EU Single Market.

Therefore, with these guidelines, the European dairy industry asks that national authorities and the EU Commission agree to strictly enforce the rules on protected dairy terms in coherence with the rulings of the European Court of Justice so as to guarantee in the future, as in the past, the consistency of the objectives pursued by the legislation.

They have been first published in 2018 and now re-issued in an amended version, including spreadable fats.

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 VII of the last (CMO) Regulation (EU) N° 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) N° 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*”.

Exception(s):

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”.

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)



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 exhaustive list of exceptions laid down in EU Commission Decision 2010/791/EU of 20 December 2010⁶.

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 N° 1308/2013.

The Court noted how those requirements meet 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.⁷

- 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 treatment⁸.

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 rules⁹.

i. "Diät-Käse" (C-101/98)¹⁰

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.

⁶ 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) in the previous CMO Regulation, Regulation EU 1234/2007).

⁷ Points 43 to 48 case C-422/16 and point 30 to 34 case C-101/98

⁸ Point 50 Case C-422/16

⁹ Point 51 Case C-422/16

¹⁰ 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

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 process¹¹. 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.¹²

- 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 packaging¹³.

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”¹⁴ (T-51/14)¹⁵**

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 registration of the name “Pomazánkové máslo” (spreadable butter) on the register for traditional specialities guaranteed (i.e. TSG) under Regulation No 1151/2012¹⁶.

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 consumers¹⁷.

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%”.

Exceptions

The ECJ stressed **that, in this specific case, the only exceptions to this rule are set out in the third Paragraph of point I(2) in the Annex XV** of Regulation No 1234/2007 (now Annex VII, Part VII, Point I Regulation (EU) No 1308/2013) and concern^{18,19}:

- 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

¹¹ (C-101/98) point 20

¹² (C-101/98) point 32

¹³ [i.e.] ‘This dietary cheese is rich in polyunsaturated fats ...’ or ‘This dietary cheese is ideal for a cholesterol-conscious lifestyle?’ (C-101/98) point 35

¹⁴ ‘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).

¹⁵ 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’

¹⁶ 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

¹⁷ The General Court explicitly refers to recital 51 in the preamble to Regulation No 1234/2007 – point 33 Case T-51/14

¹⁸ Point 39 Case T-51/14

¹⁹ 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

iii. “Tofu Town” (June 14, 2017; C-422/16)²⁰

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 Regulation²¹ reserves exclusively for milk products from being used to designate a purely plant-based product in marketing or advertising, even if, those terms are expanded upon by clarifying or descriptive terms indicating the plant-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 Annex²²²³.
- 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 tofudo not fall within the list of terms which may be used with the designation “milk”.²⁴²⁵
- c) According to Annex VII, Part III, point 2 and as ruled in the 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 product²⁷.²⁸

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:

- 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 product³⁰³¹ (Annex VII, Part III, point 5, second subparagraph Regulation No 1308/2013). These exceptions are listed in EU legislation.

²⁰ 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

²¹ Regulation No 1308/2013

²² **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**

²³ Point 21, Case C-422/16

²⁴ Point 23 Case C-422/16

²⁵ Point 23, Case C-422/16

²⁶ Within the meaning of Article 17 of Regulation 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

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

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 proceedings³³.

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.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, 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.

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-frischkase

Ingredients:



Ingredients:



France

Example: Flavoured Goat Cheese

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

³² See footnote 6

³³ Point 37 Case C-422/16

³⁴ Point 36, Case C-422/16

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



The products use the term “Cheese” in their names³⁶, 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)



United Kingdom

Example: Coconut yogurt

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



³⁶ With the meaning of Article 17 Regulation (EU) No 1169/2011

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 lait³⁷

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.

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.

³⁷ Product sold in France in June 2017



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.

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

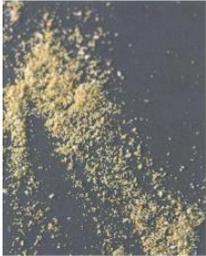
The misuse of dairy terms is getting frequent on social media, but also in recipe books and newspapers. Even though the rules on protected dairy denominations are meant to apply only to commercial practices, EDA considers as essential the coherent and accurate use of the definitions and designations 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. Égoutter 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 c. de levure alimentaire. Réserver 24 à 48 heures au réfrigérateur, jusqu'à ce que le mélange soit ferme.
Pour environ 200 g.



EDA Guidelines Addendum

The document is meant to be an addendum to the “EDA Guidelines on the principles and enforcement of the protection of dairy terms” (hereafter main guidance document or guidance document). With this addendum, EDA wishes to I) further clarify some provisions concerning the protection of dairy terms within the EU food law and II) to build on our main guidance document and further inform on the rules on the protection of dairy terms and the definitions, designations and sales descriptions of spreadable fats.

I. The protection of dairy terms within the EU food law³⁸

Adding to what already detailed in the Chapter II³⁹ of the EDA main guidance document, specific rules on the definitions, designations and sales descriptions of dairy products used in labelling and advertising are laid down in Annex VII, Appendix II of Regulation (EU) No 1308/2013⁴⁰ and in Commission Regulation (EC) No 445/2007⁴¹. Moreover, other dairy products definitions are contained in Council Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption and Directive (EU) 2015/2203 on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption.

Dairy definitions, designations or sales descriptions within EU food legislation

- Milk and milk products - Regulation (EU) No 1308/2013, Annex VII, Part III
- Milk for human consumption - Regulation (EU) No 1308/2013, Annex VII, Part IV
- Dehydrated preserved milk for human consumption - Directive 2001/114/EC
- Spreadable fats (e.g. butter) - Regulation (EU) No 1308/2013, Annex VII, Part VII and Appendix II
- Caseins and caseinates intended for human consumption - Directive (EU) 2015/2203

Having detailed the legal framework which relates to the definitions, designations or sales descriptions of dairy products, we wish to further clarify the legal meaning of “**designation**” and “**sales description**” under EU food law:

▪ The “designation”:

The term “designation” has been initially defined by Regulation (EEC) No 1898/87⁴² and transposed then in Council Regulation (EC) No 1234/2007⁴³. Both Regulations referred to the term “designation” as “[...] *the name used at all stages of marketing*”⁴⁴.

The term is not defined in the sCMO Regulation (EU) No 1308/2013. EDA considers the previous definition of “designation” as the one currently applicable.

▪ The “sales description”:

The first paragraph of Annex VII, Part III of Regulation (EU) No 1308/2013 defines the sales description as **the name under which a food product is sold within the meaning of Article 17 of Regulation (EU) No 1169/2011**.

According to article 9 of the FIC Regulation the **name of the food** (as defined in Article 17 of Regulation (EU) No 1169/2011) is one of the mandatory particulars for the labelling of a foodstuff. It can consist of:

³⁸ Refer to Chapter II “The protection of dairy terms within the EU food law” of the EDA Guidelines on the principles and enforcement of the protection of dairy terms

³⁹ “The protection of dairy terms within the EU food law”

⁴⁰ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products

⁴¹ Commission Regulation (EC) No 445/2007 of 23 April 2007 laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products. These prescriptions are aimed to avoid any possible confusion in the mind of the consumer as to the true nature of their purchase of spreadable fats. This objective is enshrined in whereas 3 of Commission Regulation (EC) No 445/2007.

⁴² Article 1 of Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in marketing of milk and milk products

⁴³ Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

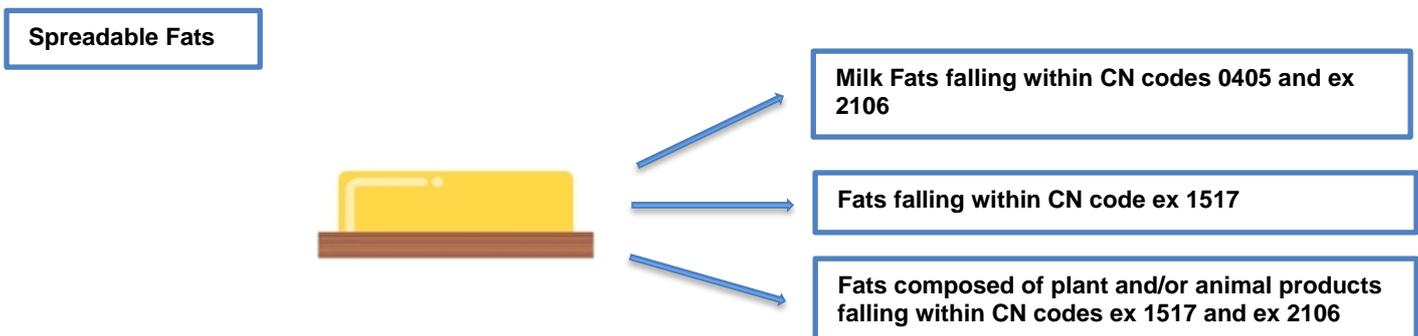
⁴⁴ Annex XII, point I (b) of Council Regulation (EC) No 1234/2007

- a) its **legal name**⁴⁵;
- b) In the absence of such legal name, the name of the food shall be its **customary name**⁴⁶;
- c) or, if there is no customary name or the customary name is not used, a **descriptive name**⁴⁷ of the food shall be provided.

II. The definitions designations and sales descriptions of spreadable fats and the protection of dairy terms

i. Introduction

Spreadable fats include **milk fats** (butter and dairy spread), **fats** (margarine and fat spread) and **fats composed of plant and/or animal products** (blends and blended spread). They can consist either of milk fat, exclusively or in part, or vegetable and/or animal fat with no milk fat therein.⁴⁸



ii. The definitions designations and sales descriptions of spreadable fats within the EU food law

- General rule:

The definitions and sales descriptions of spreadable fats are specified in Appendix II of Regulation (EU) No 1308/2013 and, according to Point I, shall be reserved for spreadable fats products:

- with the CN codes as below
- with a fat content of at least 10 % but less than 90 % by weight and
- the fat content excluding salt shall be at least two-thirds of the dry matter, and finally
- those sales descriptions shall only apply to products which remain solid at a temperature of 20 °C and which are suitable for use as spreads.

They are as follow:

Fat group	Sales description	Product categories
Definitions		Additional description of the category with an indication of the % fat content by weight

⁴⁵ As defined in Article 2.2 (n) Regulation (EU) No 1169/2011 which states: “‘legal name’ means the name of a food prescribed in the Union provisions applicable to it or, in the absence of such Union provisions, the name provided for in the laws, regulations and administrative provisions applicable in the Member State in which the food is sold to the final consumer or to mass caterers”.

⁴⁶ As defined in Article 2.2 (o) Regulation (EU) No 1169/2011 which states: “‘customary name’ means a name which is accepted as the name of the food by consumers in the Member State in which that food is sold, without that name needing further explanation”.

⁴⁷ As defined in Article 2.2 (p) Regulation (EU) No 1169/2011 which states: “‘descriptive name’ means a name providing a description of the food, and if necessary of its use, which is sufficiently clear to enable consumers to know its true nature and distinguish it from other products with which it might be confused”.

⁴⁸ As defined in Annex VII, Part VII of Regulation (EU) No 1308/2013



<p>A. Milk fats (CN codes 0405 and ex 2106)</p> <p>Products in the form of a solid, malleable emulsion, principally of the water-in-oil type, derived exclusively from milk and/or certain milk products, for which the fat is the essential constituent of value. However, other substances necessary for their manufacture may be added, provided those substances are not used for the purpose of replacing, either in whole or in part, any milk constituents.</p>	<p>1. <i>Butter</i></p>	<p>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 %.</p>
	<p>2. <i>Three-quarter fat butter</i>⁴⁹</p>	<p>The product with a milk-fat content of not less than 60 % but not more than 62 %.</p>
	<p>3. <i>Half fat butter</i>⁵⁰</p>	<p>The product with a milk-fat content of not less than 39 % but not more than 41 %.</p>
	<p>4. <i>Dairy spread X %</i></p>	<p>The product with the following milk-fat contents:</p> <ul style="list-style-type: none"> - less than 39 %, - more than 41 % but less than 60 %, - more than 62 % but less than 80 %.
<p>B. Fats (CN code ex 1517)</p> <p>Products in the form of a solid, malleable emulsion, principally of the water-in-oil type, derived from solid and/or liquid vegetable and/or animal fats suitable for human consumption, with a milk-fat content of not more than 3 % or the fat content.</p>	<p>1. <i>Margarine</i></p>	<p>The product obtained from vegetable and/or animal fats with a fat content of not less than 80 % but less than 90 %.</p>
	<p>2. <i>Three-quarter-fat margarine</i>⁵¹</p>	<p>The product obtained from vegetable and/or animal fats with a fat content of not less than 60 % but nor more than 62 %.</p>
	<p>3. <i>Half-fat margarine</i>⁵²</p>	<p>The product obtained from vegetable and/or animal fats with a fat content of not less than 39 % but not more than 41 %.</p>
	<p>4. <i>Fat spreads X %</i></p>	<p>The product obtained from vegetable and/or animal fats with the following fat contents:</p> <ul style="list-style-type: none"> — less than 39 %, — more than 41 % but less than 60 %, — more than 62 % but less than 80 %.
<p>C. Fats composed of plant and/or animal products (CN codes ex 1517 and ex 2106)</p> <p>Products in the form of a solid, malleable emulsion principally of the water-in-oil type, derived from solid and/or liquid vegetable and/or animals fats suitable for human consumption, with a milk-fat content of between 10 % and 80 % of the fat content.</p>	<p>1. <i>Blend</i></p>	<p>The product obtained from a mixture of vegetable and/or animal fats with a fat content of not less than 80 % but less than 90 %.</p>
	<p>2. <i>Three-quarter-fat blend</i>⁵³</p>	<p>The product obtained from a mixture of vegetable and/or animal fats with a fat content of not less than 60 % but not more than 62 %.</p>

⁴⁹ corresponding to 'smør 60' in Danish.

⁵⁰ corresponding to 'smør 40' in Danish

⁵¹ corresponding to 'margarine 60' in Danish

⁵² corresponding to 'margarine 40' in Danish

⁵³ corresponding to 'blandingsprodukt 60' in Danish.

	3. Half-fat blend ⁵⁴	The product obtained from a mixture of vegetable and/or animal fats with a fat content of not less than 39 % but not more than 41 %.
	4. Blended spread X %	The product obtained from a mixture of vegetable and/or animal fats with the following fat contents: — less than 39 %, — more than 41 % but less than 60 %, — more than 62 % but less than 80 %.

The sales descriptions laid down in Appendix II apply in parallel of the prescriptions included in Annex VII, Part III⁵⁵ and Part VII, Point II, Paragraphs 2, 3 and 4 which states:

2. “Terms for products referred to in Appendix II which state, imply or suggest fat content other than those referred to in that Appendix shall be prohibited”.

3. “By way of derogation from paragraph 2 and in addition, the term “reduced-fat” or “light” may be used for products referred to in Appendix II with a fat content of not more than 62 %. The term “reduced-fat” and the term “light” may, however, replace the terms “three-quarter-fat” or “half-fat” used in Appendix II”.

4. “The sales descriptions “minarine” or “halvarine” may be used for products referred to in point 3 of Part B of Appendix II”.

▪ Additional rules:

In addition to what detailed above, Annex VII, Part VII, Point II, Paragraphs 1 and 5 prescribe that:

1. “The term “traditional” may be used together with the name “butter” provided for in point 1 of part A of Appendix II, where the product is obtained directly from milk or cream. For the purposes of this point, “cream” means the product obtained from milk in the form of an emulsion of the oil-in-water type with a milk-fat content of at least 10 %.”

5. “The term “vegetable” may be used together with the sales descriptions in Part B of Appendix II, provided that the product contains only fat of vegetable origin with a tolerance of 2 % of the fat content for animal fats. This tolerance shall also apply where reference is made to a vegetable species.”

▪ Derogations for all spreadable fat products:

As laid down in Annex VII, Part VII, Point I, paragraph 6, the definitions of Appendix II of Regulation (EU) No 1308/2013 shall not apply to:

(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;⁵⁶



For example, “Peanut butter” is one of the exceptions included in Commission Decision 2010/791/EU

(a) concentrated products (butter, margarine, blends) with a fat content of 90 % or more”.

⁵⁴ corresponding to ‘blandingsprodukt 40’ in Danish

⁵⁶ As further detailed in Annex VII, Part III, paragraph 5 of Regulation (EU) 1308/2013 and in Article 1, Paragraph 2 of Commission Regulation (EC) No 445/2007 the vertical rules on the designations of milk products and spreadable fats [...] “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”. **Products falling within the scope of this derogation are listed in Commission Decision 2010/791/EU and in Annex I of Commission Regulation (EC) No 445/2007.**



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Ingédients: Huile de tournesol 90%, beurre concentré 10%, antioxydant: extraits riches en tocophérols, arômes.



An example of derogation under Annex VII, Part VII, Point I, paragraph 6 of Regulation (EU) No 1308/2013 is the product: *Lesieur Duo Huile et Beurre*

Name of the food: Préparation à base d'huile de tournesol et de beurre concentré.

- Specific derogations relating to the use of the designation 'butter' in composite products:

According to Article 3 paragraph 1 of Commission Regulation (EC) No 445/2007 the designation 'butter' may be used for composite products of which a) an **essential part is butter**⁵⁷ b) if **the end product contains at least 75 % milk fat and has been manufactured solely from butter**⁵⁸ and the other added ingredient(s) mentioned in the description.

Paragraph 2 adds that "***the designation 'butter' may be used for composite products containing less than 75 % but at least 62 % milk fat if the other requirements specified in paragraph 1 are met and if the product designation includes the term 'butter preparation'.***"

Paragraph 3 states that "*by derogation from paragraphs 1 and 2, the designation 'butter' may be used in association with a word or words to designate the products listed in Annex III⁵⁹ containing at least 34 % milk fat*".

Paragraph 4 foresees that "*the use of the designation 'butter' under paragraphs 1, 2 and 3 shall be subject to the requirement to indicate in the labelling and presentation of the products the milk fat content and, if the other added ingredients contain fat, the total fat content*".

5. The term 'butter preparation' in paragraph 2 and the indications in paragraph 4 must appear in a conspicuous place and be easily visible and clearly legible.

iii. The relation between definitions, designations, sales descriptions of spreadable fats and the protection of dairy terms

The specific rules on the definitions, designations and sales descriptions of spreadable fats shall be read in conjunction with the general rule on the protection of dairy terms and specifically with Annex VII, Part III, Paragraph 6 of Regulation (EU) 1308/2013.

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

Therefore, **any label, commercial document, publicity material or any form of advertising or any form of presentation of spreadable fats products** (if not part of the milk fats category or if not part of the derogations outlined above) **shall not claim, imply or suggest that the product is a dairy product.**

References to milk fats products (e.g. butter) or the use of derived or slightly modified terms have become a feature on the packaging and advertising of several products, some of which are not milk fats or do not contain any milk constituent.

⁵⁷ Within the meaning of Article 2(3) of Regulation (EEC) No 1898/87 (repealed by Annex VII, Part III, Paragraph 3 of of Regulation (EU) 1308/2013)

⁵⁸ Within the meaning of Part A(1) of the Annex to Regulation (EC) No 2991/94 (repealed by Appendix II (A) of Regulation (EU) 1308/2013)

⁵⁹Annex III Commission Regulation (EC) No 445/2007 is in Annex to the EDA Guidelines on the principles and enforcement of the Protection of Dairy Terms

The inappropriate use of the designations reserved for milk products on the labelling and advertising of spreadable fats shall be considered a breach either of the vertical or the horizontal rules related to spreadable fats products.

Below some examples:



'Brandname' with dairy butter and olive oil

Name of the food : produit avec 36% de matières grasses dont 20% d'huile d'olive).

Ingredients: Butter (MILK, BUTTERMILK) 22%, olive oil 21% (consisting of refined olive oils and virgin olive oils), palm oil, water, rapeseed oil, BUTTERMILK, salt (0.5%), flavouring (containing MILK), food acid: lactic acid, emulsifier: sunflower lecithin, preservative: potassium sorbate, color: carotene, vitamins A and D.

The Name of the food is "produit avec 36% de matières grasses dont 20% d'huile d'olive". The word butter is used as a voluntary information. The product does not breach the rules on protected dairy terms nor the rules on food information to consumers.



Die Streichzarte

Name of the food: Milchstreichfett 75%

It is a blended spread containing butter, rapeseed oil and buttermilk.

Ingredients: 73% butter, 15% rapeseed oil, buttermilk.

On the packaging: Die Streichzarte ('tender to spread'); ingredient list (see above) shows 'butter' with an asterix, that explains: 'original BRAND butter, freshly buttered'. The label of the product complies with EU rules.





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“WIE BUTTER”

(Product sold in Switzerland and in Germany)

Name of the food: Matière grasse végétale à tartiner 72%, à base de babeurre

Ingredients: 72% huiles végétales (palme, colza), eau, 10% BABEURRE, émulsifiants (lécithine de tournesol, mono- et diglycérides d'acides gras), sel comestible, arôme naturel (dont LAIT), acidifiant (acide citrique), arôme naturel de BEURRE, vitamines (A, D).

The label of the product indicate in a different bold font : “to be used as butter”. Therefore the product does not comply with Article 78 and Annex VII, Part III of Regulation (EU) 1308/2013.



“National” Spreadable Butter With rapeseed oil

Name of the food: “National” Spreadable 250g slightly salted

Ingredients: Salted butter (milk), rapeseed oil, water, milk mineral salt (milk)

We can read on the packaging: “*spreadable butter*” in capital letters (“*with rapeseed oil*” in small print below). The product is therefore misleading for consumers under Article 7 of Regulation (EU) No 1169/2011 and does not comply with the rules laid down in paragraph 6, Part III, Annex VII of Regulation (EU) 1308/2013.

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 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 “x dairy product”.
- C. To allow the designations of products with terms which are exempt 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 2017/625⁶⁰, 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.

⁶⁰ Applicable as of December 2019



Annex

ANNEX VII, PART III Regulation (EU) N° 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) **vili/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.



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