



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

4 September 2019\*

(Reference for a preliminary ruling — Common organisation of the markets in agricultural products — Fruit and vegetables — Marketing rules — Concept of ‘country of origin’ — Regulation (EC) No 1234/2007 — Article 113a(1) — Regulation (EU) No 1308/2013 — Article 76(1) — Definitions relating to the non-preferential origin of goods — Regulation (EEC) No 2913/92 — Article 23(1) and (2)(b) — Regulation (EU) No 952/2013 — Article 60(1) — Delegated Regulation (EU) 2015/2446 — Article 31(b) — Stages of production carried out in another Member State — Labelling of foodstuffs — Prohibition on labelling which could mislead the consumer — Directive 2000/13/EC — Article 2(1)(a)(i) — Regulation (EU) No 1169/2011 — Article 7(1)(a) — Article 1(4) — Article 2(3) — Explanatory elements)

In Case C-686/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 21 September 2017, received at the Court on 7 December 2017, in the proceedings

**Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV**

v

**Prime Champ Deutschland Pilzkulturen GmbH,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader, A. Rosas (Rapporteur), L. Bay Larsen and M. Safjan, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 23 January 2019,

after considering the observations submitted on behalf of:

- Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV, by C. Rohnke, Rechtsanwalt,
- Prime Champ Deutschland Pilzkulturen GmbH, by C. Filippitsch, Rechtsanwalt,

\* Language of the case: German.

- the German Government, by T. Henze, D. Klebs and R. Kanitz, and subsequently by D. Klebs and R. Kanitz, acting as Agents,
- the French Government, by A.-L. Desjonquères, D. Colas and S. Horrenberger, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and A. Collabолletta, avvocato dello Stato,
- the European Commission, by B. Hofstötter, C. Hödlmayr and K. Herbout-Borczak, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 April 2019,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of provisions relating to agricultural policy, of provisions of the Customs Code that relate to the origin of goods and of provisions relating to the giving of food information to consumers.
- 2 The request has been made in proceedings brought by Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV (Centre for Protection against Unfair Competition, Frankfurt am Main; ‘the Zentrale’) against Prime Champ Deutschland Pilzkulturen GmbH (‘Prime Champ’) for an order that the latter cease the marketing of cultivated mushrooms with the indication ‘Origin: Germany’ without additional explanatory elements.

### **Legal framework**

#### ***EU law***

#### ***Agricultural provisions***

##### ***– Regulation No 1234/2007***

- 3 Recital 49 of 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 (OJ 2007 L 299, p. 1), as amended by Council Regulation (EC) No 361/2008 of 14 April 2008 (OJ 2008 L 121, p. 1) (‘Regulation No 1234/2007’), is worded as follows:

‘The application of standards for the marketing of agricultural products can contribute to improving the economic conditions for the production and marketing as well as the quality of such products. The application of such standards is therefore in the interest of producers, traders and consumers. ...’

- 4 Article 113a of Regulation No 1234/2007, entitled ‘Additional requirements for the marketing of the products of the fruit and vegetables sector’, provides in paragraph 1:

‘The products of the fruit and vegetables sector which are intended to be sold fresh to the consumer, may only be marketed if they are sound, fair and of marketable quality and if the country of origin is indicated.’

– *Implementing Regulation (EU) No 543/2011*

- 5 Under Article 3(1) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Regulation No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1), which has applied since 22 June 2011, the requirements of Article 113a(1) of Regulation No 1234/2007 are to be the general marketing standard, the details of which are set out in Part A of Annex I to Implementing Regulation No 543/2011.
- 6 Part A of Annex I to that implementing regulation states in point 4, which is devoted to marking the origin of produce:

‘Full name of the country of origin. For products originating in a Member State this shall be in the language of the country of origin or any other language understandable by the consumers of the country of destination. For other products, this shall be in any language understandable by the consumers of the country of destination.’

– *Regulation (EU) No 1308/2013*

- 7 Regulation No 1234/2007 was replaced by 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 and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).
- 8 Recital 74 of Regulation No 1308/2013 is worded as follows:

‘Products of the fruit and vegetables sector intended to be sold fresh to the consumer should be marketed only if they are sound, fair and of marketable quality and if the country of origin is indicated. In order to ensure the proper application of that requirement and to take into account certain specific situations, the power to adopt certain acts should be delegated to the Commission in respect of specific derogations from that requirement.’

- 9 Article 75 of Regulation No 1308/2013 provides:

‘1. Marketing standards may apply to one or more of the following sectors and products:

...

(b) fruit and vegetables;

...

6. In order to take into account the expectations of consumers and the need to improve the quality and the economic conditions for the production and marketing of agricultural products, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 to modify the list of sectors in paragraph 1. Such delegated acts shall be strictly limited to demonstrated needs resulting from evolving consumer demand, technical progress or the need for product innovation, and shall be subject to a Commission report to the European Parliament and to the Council evaluating, in particular, the needs of the consumer, the costs and administrative burdens for operators, including the impact on the internal market and on international trade, and the benefits offered to producers and to the end consumer.’

10 Article 76(1) and (4) of Regulation No 1308/2013 is worded as follows:

‘1. In addition, where relevant, to the applicable marketing standards referred to in Article 75, products of the fruit and vegetables sector which are intended to be sold fresh to the consumer may only be marketed if they are sound, fair and of marketable quality and if the country of origin is indicated.

...

4. In order to ensure the proper application of requirements set out in paragraph 1 of this Article and to take into account certain specific situations, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning specific derogations to this Article which are necessary for its proper application.’

#### *Customs regulations*

##### *– The Community Customs Code*

11 Article 23 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; ‘the Community Customs Code’) provides:

‘1. Goods originating in a country shall be those wholly obtained or produced in that country.

2. The expression “goods wholly obtained in a country” means:

(a) mineral products extracted within that country;

(b) vegetable products harvested therein;

...’

12 Article 24 of the Community Customs Code states:

‘Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.’

##### *– The Union Customs Code*

13 The Community Customs Code was replaced by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; ‘the Union Customs Code’).

14 Article 59 of the Union Customs Code, which defines its scope, provides:

‘Articles 60 and 61 shall lay down rules for the determination of the non-preferential origin of goods for the purposes of applying the following:

(a) the Common Customs Tariff, with the exception of the measures referred to in points (d) and (e) of Article 56(2);

- (b) measures, other than tariff measures, established by Union provisions governing specific fields relating to trade in goods; and
- (c) other Union measures relating to the origin of goods’.

15 Article 60 of the Union Customs Code, entitled ‘Acquisition of origin’, provides:

‘1. Goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory.

2. Goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.’

– *Delegated Regulation (EU) 2015/2446*

16 Article 31 of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation No 952/2013 (OJ 2015 L 343, p. 1) states:

‘The following goods shall be considered as wholly obtained in a single country or territory:

(a) mineral products extracted within that country or territory;

(b) vegetable products harvested there;

...’

17 Article 32 of that regulation provides:

‘Goods listed in Annex 22-01 shall be considered to have undergone their last substantial processing or working, resulting in the manufacture of a new product or representing an important stage of manufacture, in the country or territory in which the rules set out in that Annex are fulfilled or which is identified by those rules.’

18 Annex 22-01 to Delegated Regulation 2015/2446 is entitled ‘Introductory notes and list of substantial processing or working operations conferring non-preferential origin’. It contains no specific provision for the determination of the origin of cultivated mushrooms.

*Consumer protection provisions*

– *Directive 2000/13/EC*

- 19 Article 2(1)(a) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29) provides:

‘The labelling and methods used must not:

- (a) be such as could mislead the purchaser to a material degree, particularly:
  - (i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;
  - (ii) by attributing to the foodstuff effects or properties which it does not possess;
  - (iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics’.

- 20 Article 3(1)(8) of Directive 2000/13 provides:

‘In accordance with Articles 4 to 17 and subject to the exceptions contained therein, indication of the following particulars alone shall be compulsory on the labelling of foodstuffs:

...

- (8) particulars of the place of origin or provenance where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff’.

– *Regulation (EU) No 1169/2011*

- 21 Directive 2000/13 was replaced by Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

- 22 Recitals 29 and 33 of Regulation No 1169/2011 state:

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

...

- (33) The Union’s non-preferential rules of origin are laid down in ... Regulation (EEC) No 2913/92 ... and its implementing provisions in Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of ... Regulation (EEC) No 2913/92 [(OJ 1993

L 253, p. 1)]. Determination of the country of origin of foods will be based on those rules, which are well known to food business operators and administrations and should ease their implementation.’

23 Article 1(1) and (4) of Regulation No 1169/2011 states:

‘1. This Regulation provides the basis for the assurance of a high level of consumer protection in relation to food information, taking into account the differences in the perception of consumers and their information needs whilst ensuring the smooth functioning of the internal market.

...

4. This Regulation shall apply without prejudice to labelling requirements provided for in specific Union provisions applicable to particular foods.’

24 Article 2(3) of Regulation No 1169/2011 provides:

‘For the purposes of this Regulation the country of origin of a food shall refer to the origin of a food as determined in accordance with Articles 23 to 26 of Regulation (EEC) No 2913/92.’

25 Article 7(1)(a) of that regulation is worded as follows:

‘Food information shall not be misleading, particularly:

(a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production’.

26 Article 8(1) of Regulation No 1169/2011 provides:

‘The food business operator responsible for the food information shall be the operator under whose name or business name the food is marketed or, if that operator is not established in the Union, the importer into the Union market.’

27 Article 26 of that regulation, entitled ‘Country of origin or place of provenance’, states:

‘...

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

(a) where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance;

(b) for meat falling within the Combined Nomenclature (“CN”) codes listed in Annex XI. The application of this point shall be subject to the adoption of implementing acts referred to in paragraph 8.

3. Where the country of origin or the place of provenance of a food is given and where it is not the same as that of its primary ingredient:

(a) the country of origin or place of provenance of the primary ingredient in question shall also be given; or



- (b) the country of origin or place of provenance of the primary ingredient shall be indicated as being different to that of the food.

The application of this paragraph shall be subject to the adoption of the implementing acts referred to in paragraph 8.

...

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

- (a) types of meat other than beef and those referred to in point (b) of paragraph 2;
- (b) milk;
- (c) milk used as an ingredient in dairy products;
- (d) unprocessed foods;
- (e) single ingredient products;
- (f) ingredients that represent more than 50% of a food.

6. By 13 December 2013, the Commission shall submit a report to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for meat used as an ingredient.

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

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

8. By 13 December 2013, following impact assessments, the Commission shall adopt implementing acts concerning the application of point (b) of paragraph 2 of this Article and the application of paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

...'

- <sup>28</sup> Article 39 of Regulation No 1169/2011 provides for the possibility for Member States to adopt measures requiring additional mandatory particulars and prescribes the conditions for the adoption of such measures.



– *Implementing Regulation (EU) No 1337/2013*

- 29 The Commission adopted Implementing Regulation (EU) No 1337/2013 of 13 December 2013 laying down rules for the application of Regulation No 1169/2011 as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry (OJ 2013 L 335, p. 19). That regulation lays down rules on the indication of the country of origin or place of provenance on the label of fresh, chilled and frozen meat of swine, sheep, goats and poultry.
- 30 The final sentence of recital 3 of that implementing regulation states:
- ‘The term “origin” should be reserved for meat obtained from animals born, reared and slaughtered, and therefore wholly obtained, in one single Member State or third country.’

– *Implementing Regulation (EU) 2018/775*

- 31 The Commission also adopted Implementing Regulation (EU) 2018/775 of 28 May 2018 laying down rules for the application of Article 26(3) of Regulation No 1169/2011 on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food (OJ 2018 L 131, p. 8).

***German law***

- 32 The Bundesgerichtshof (Federal Court of Justice, Germany) states that, during 2013, the first sentence and point 1 of the second sentence of Paragraph 11(1) of the Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch (Code on Foodstuffs, Consumer Items and Animal Feed, BGBl. 2005 I, p. 2618; ‘the LFGB’), in the version applicable prior to the material time, prohibited the marketing of foodstuffs and the advertising thereof under a misleading name or using misleading information or presentation, in particular the use of claims liable to mislead the consumer as to origin or provenance. Article 2(1)(a)(i) of Directive 2000/13 formed the basis in EU law for that provision.
- 33 Paragraph 11(1), point 1, of the LFGB, in the version in force since 13 December 2014, published on 3 June 2013 (BGBl. I, p. 1426), prohibits the food business operator responsible or the importer, within the meaning of Article 8(1) of Regulation No 1169/2011, from marketing or advertising food with information about that food which does not satisfy the requirements of Article 7(1) of Regulation No 1169/2011, read in conjunction with Article 7(4) thereof. In accordance with Article 7(1)(a) of Regulation No 1169/2011, food information is not to mislead the consumer, particularly as to the characteristics of the food, such as its country of origin or place of provenance.
- 34 The Bundesgerichtshof (Federal Court of Justice) concludes that, in accordance with those provisions, a finding that consumers are misled is possible both on the basis of Paragraph 11(1), first and second sentences, point 1, of the LFGB, in the version applicable prior to the material time, and on the basis of Paragraph 11(1), point 1, of the LFGB in conjunction with Article 7(1)(a) of Regulation No 1169/2011.

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

- 35 The Zentrale, the applicant in the main proceedings, complains that Prime Champ is producing and marketing cultivated mushrooms with the indication ‘Origin: Germany’ although, without additional particulars, that declaration of the country of origin is misleading.
- 36 The referring court describes the process for growing cultivated mushrooms which is at issue in the main proceedings as follows. In the first stage, the raw materials for the compost are blended and mixed together for a period of 7 to 11 days in Belgium and the Netherlands. The second stage of

production is pasteurisation, which lasts five to six days, and preparation of the compost in the Netherlands. In the third stage of production, the mycelium (mushroom spores) is injected into the compost over a period of 15 days. During the fourth stage, the formation of fruiting bodies begins in cultivation boxes in the Netherlands, on a layer of peat and lime; the mushrooms may reach 3 mm in size in 10 to 11 days. After a fortnight, the cultivation boxes are transported to Germany, where, at Prime Champ's premises, the first mushrooms are harvested after 1 to 5 days and the second harvest takes place after 10 to 15 days.

- 37 During the pre-litigation procedure, the Zentrale sent a letter of formal notice to Prime Champ in December 2013. It subsequently brought an action before the Landgericht (regional court, Germany), seeking that Prime Champ be enjoined, on pain of penalty payments, to cease offering and/or using in the course of trade cultivated mushrooms with the indication 'Origin: Germany', on the ground that substantial stages of production and cultivation did not take place in Germany.
- 38 The Landgericht dismissed the action and the appeal was also dismissed. The Zentrale has brought an appeal on a point of law before the Bundesgerichtshof (Federal Court of Justice).
- 39 The referring court states that, according to the findings of the appeal court, the indication used by Prime Champ when marketing the mushrooms, namely 'Origin: Germany', is capable of misleading consumers since the public concerned infers from this that not only the harvesting, but also the entire production process, has taken place in Germany. As a court of review on points of law, the Bundesgerichtshof (Federal Court of Justice) is bound by those findings of fact.
- 40 The Bundesgerichtshof (Federal Court of Justice) also states that, since the Zentrale bases its claim for cessation on the risk of recurrence (first sentence of Paragraph 8(1) of the Gesetz gegen den unlauteren Wettbewerb (Law on Unfair Competition)), the action is well founded only if the conduct of which Prime Champ is accused not only was unlawful at the material time, during 2013, but also is unlawful on the date of the decision on the appeal on a point of law. Moreover, entitlement to reimbursement of costs associated with the formal notice, provided for in the second sentence of Paragraph 12(1) of that law, is dependent on the legal situation at the time when that formal notice was sent, in December 2013.
- 41 According to the referring court, it is clear from examination of the customs regulations that the country of origin of the mushrooms should be Germany. Nevertheless, that court is unsure about the relationship between the various instruments of EU law regarding the country of origin of fruit and vegetables intended to be sold fresh to consumers which have been adopted in the fields of customs, agriculture and consumer protection and wishes to ascertain whether specific labelling provisions, such as those laid down in the agricultural sector by Implementing Regulation No 543/2011, take precedence over the legal rules in Regulation No 1169/2011 on the provision of food information to consumers.
- 42 The referring court also asks whether, in order to avoid a prohibitory injunction issued on grounds of misleading indications as to the country of origin, a producer may supplement the indication of the country of origin with information regarding the stages of production carried out in other Member States.
- 43 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) For the purposes of the definition of the term "country of origin" in Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013, are the definitions in Article 23 et seq. of the Community Customs Code and Article 60 of the Union Customs Code decisive?

- (2) Do cultivated mushrooms which are harvested in national territory have their origin in that territory pursuant to Article 23 of [the Community Customs Code] and Article 60(1) of [the Union Customs Code] if substantial production steps take place in other Member States of the European Union and the cultivated mushrooms have been transported to the relevant national territory only three days or less prior to the first harvest?
- (3) Is the prohibition on the making of misleading statements under Article 2(1)(a)(i) of Directive 2000/13 and Article 7(1)(a) of Regulation No 1169/2011 to be applied to the indication of origin that is required under Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013?
- (4) Is it permitted to append additional, explanatory elements to the indication of origin prescribed under Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013 in order to counteract a misleading statement prohibited under Article 2(1)(a)(i) of Directive 2000/13 and Article 7(1)(a) of Regulation No 1169/2011?

## Consideration of the questions referred

### *The first question*

- 44 By its first question, the referring court asks, in essence, whether Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013 must be interpreted as meaning that, in order to define the concept of ‘country of origin’, referred to in those agricultural provisions, reference should be made to the definitions set out in Article 23 et seq. of the Community Customs Code and Article 60 of the Union Customs Code.
- 45 According to the Zentrale, the provisions of the FEU Treaty relating to agriculture do not create a close relationship between the secondary legislation founded on that basis and customs legislation. However, it submits that the concept of ‘country of origin’, referred to in Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013, must be interpreted in the light of the meaning and purpose of those provisions. Consumers must be protected and be given the opportunity to make an informed purchasing decision. It cites the example of animal products, in respect of which Implementing Regulation No 1337/2013 provides for various labelling particulars in order sufficiently to inform consumers about the origin of the meat.
- 46 It must be stated that Regulations No 1234/2007 and No 1308/2013 do not provide a definition of ‘country of origin’ for the purposes of their provisions. However, customs legislation establishes an explicit link with those agricultural provisions mentioned by the referring court. In accordance with Article 59(c) of the Union Customs Code, the rules laid down in Articles 60 and 61 of that code for the determination of the non-preferential origin of goods apply to other EU measures relating to the origin of goods such as Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013.
- 47 It is true that a provision corresponding to Article 59(c) of the Union Customs Code was not contained in the Community Customs Code. However, nor did the Community Customs Code contain a provision that would have precluded application of the rules for the determination of the non-preferential origin of vegetables in relation to Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013.

- 48 Moreover, both Regulation No 1234/2007 and Regulation No 1308/2013, and in particular Annex I to those regulations regarding the products concerned by them, refer to the Combined Nomenclature. Furthermore, Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013, which provide in identical terms for the need to indicate the country of origin, must, in the absence of any indication to the contrary, be construed in the same way.
- 49 Such an interpretation is confirmed by Regulation No 1169/2011, which seeks to ensure a high level of consumer protection in relation to food information, Article 2(3) of which refers, for the purpose of determining the country of origin of a food, to the rules for the determination of non-preferential origin, namely Articles 23 to 26 of the Community Customs Code. In recital 33 of Regulation No 1169/2011, that decision by the EU legislature is justified by the fact that those rules are ‘well known to food business operators and administrations, [which] should ease their implementation’.
- 50 The reason given in recital 33 of Regulation No 1169/2011 is also valid in respect of Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013. The mandatory indication of the country of origin must, in order to make the corresponding provisions fully effective and in the interest of consistency, be based on the same definitions, whether in the field of customs, agriculture or consumer protection.
- 51 Therefore, the answer to the first question is that Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013 must be interpreted as meaning that, in order to define the concept of ‘country of origin’, referred to in those agricultural provisions, reference should be made to the customs regulations for the determination of the non-preferential origin of goods, namely to Article 23 et seq. of the Community Customs Code and Article 60 of the Union Customs Code.

### *The second question*

- 52 By its second question, the referring court asks whether cultivated mushrooms harvested in national territory originate in a ‘country’, for the purposes of Article 23 of the Community Customs Code and Article 60(1) of the Union Customs Code, if substantial stages of production took place in other EU Member States and the cultivated mushrooms were transported into the national territory only three days or less prior to the first harvest.
- 53 The Zentrale submits that the application of Article 23 of the Community Customs Code is subject to the condition that the goods concerned are wholly obtained in a country. It also notes that Article 24 of that code addresses the situation where more than one country is involved in the production of the goods. It contends that the legislature has assumed that a plant may be ‘harvested’ only in the country in which it was also planted and in the soil in which it is bound. However, that assumption is not true in respect of the mushrooms in the main proceedings, since the mushrooms were planted in one country in a transportable container filled with soil and were extracted from that soil in another country.
- 54 Contrary to the Zentrale’s submissions, the rules laid down in Article 24 of the Community Customs Code and Article 60(2) of the Union Customs Code, read in conjunction with Article 32 of Delegated Regulation 2015/2446 concerning the origin of goods the production of which involves more than one country or territory, cannot apply.
- 55 In accordance with Article 23(1) of the Community Customs Code and Article 60(1) of the Union Customs Code, goods wholly obtained in one country are to be regarded as having their origin in that country. Article 23(2)(b) of the Community Customs Code states that the expression ‘goods wholly obtained in a country’ covers ‘vegetable products harvested therein’. Similarly, Article 31(b) of Delegated Regulation 2015/2446 provides that ‘vegetable products harvested there’ are goods which are considered to be wholly obtained in a single country or territory.



- 56 As the Commission points out, the customs regulations cited do not provide any definition of the term 'harvest' in relation to vegetable products. To define that term, account must be taken of the fact that cultivated mushrooms become 'fresh' vegetables, within the meaning of tariff heading 0709 of the Combined Nomenclature, contained in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 (OJ 2013 L 290, p. 1), on the date on which they are separated from the substrate. Tariff heading 0709 covers 'other vegetables, fresh or chilled', mentioned in Part IX of Annex I to Regulation No 1234/2007 and Part IX of Annex I to Regulation No 1308/2013, and contains the subheading 0709 51 entitled 'Mushrooms'.
- 57 Although Implementing Regulation No 1337/2013, which is founded on Article 26(2)(b) of Regulation No 1169/2011, has provided for various labelling particulars in order sufficiently to inform consumers about the origin of fresh, chilled and frozen meat of swine, sheep, goats and poultry, it must be pointed out that no implementing regulation has laid down similar rules, which could have been founded on Article 26(2)(a) of that regulation, so far as concerns the country of origin of mushrooms.
- 58 Consequently, the answer to the second question is that Article 23(1) and (2)(b) of the Community Customs Code and Article 60(1) of the Union Customs Code, read in conjunction with Article 31(b) of Delegated Regulation 2015/2446, must be interpreted as meaning that the country of origin of cultivated mushrooms is their country of harvesting for the purpose of those provisions, irrespective of the fact that substantial stages of production took place in other EU Member States and the cultivated mushrooms were transported into the territory of harvesting only three days or less prior to the first harvest.

### *The third question*

- 59 By its third question, the referring court asks, in essence, how the application of Article 2(1)(a)(i) of Directive 2000/13 and Article 7(1)(a) of Regulation No 1169/2011, which provide for the prohibition on misleading consumers, integrates with the application of Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013, concerning the indication of the country of origin.
- 60 As the referring court has stated, answering this question requires an interpretation of Article 1(4) of Regulation No 1169/2011, in accordance with which that regulation is to apply without prejudice to labelling requirements provided for in specific EU provisions applicable to particular foods. The referring court asks whether the term 'without prejudice' means that specific labelling requirements take precedence, which would mean that the general prohibition on being misleading, laid down inter alia in Article 7 of Regulation No 1169/2011, would not apply, or whether the rules concerned apply together.
- 61 As is apparent from the answer to the first question, the determination of the origin of fresh vegetables, for the purpose of the rules on agriculture, namely Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013, is based on the provisions of the customs regulations, namely Article 23 et seq. of the Community Customs Code and Article 60 of the Union Customs Code.
- 62 Similarly, Article 2(3) of Regulation No 1169/2011 provides that, for the purposes of that regulation, the country of origin of a food is to refer to the origin of a food as determined in accordance with Articles 23 to 26 of the Community Customs Code.

- 63 Several provisions allow the Commission to adopt specific rules. With regard to agricultural provisions, it is apparent *inter alia* from Article 76(4) of Regulation No 1308/2013 that the Commission is empowered to adopt delegated acts concerning additional requirements for the marketing of products in the fruit and vegetables sector. However, the Commission acknowledged at the hearing that no delegated acts have been adopted in respect of information regarding cultivated mushrooms.
- 64 Article 26 of Regulation No 1169/2011 also provides for the possibility of adopting specific rules on the indication of the country of origin or place of provenance of a food. The Commission has thus adopted Implementing Regulation No 1337/2013 concerning meat and Implementing Regulation 2018/775 concerning the primary ingredient of a food. However, the Commission also acknowledged that it has not adopted any specific rules concerning the origin of mushrooms.
- 65 The Commission submitted that it takes as its starting point the joint and supplementary application of Article 7(1)(a) of Regulation No 1169/2011, to the effect that that provision takes precedence over the agricultural provisions and the customs regulations. While agricultural legislation also attaches importance to consumer protection, it is Regulation No 1169/2011 in particular whose objective is to better inform and to protect consumers. Consequently, in its submission, the supplementary application of the prohibition on misleading consumers laid down in Regulation No 1169/2011 is necessary in order to meet the objective of a high level of consumer protection, which is enshrined in primary EU law, in Article 38 of the Charter of Fundamental Rights of the European Union. According to the Commission, where a consumer is misled, only a national court is able to determine which additional or corrective particulars from the producer are necessary and appropriate in order to eliminate the deception.
- 66 First, it must be noted that Regulation No 1169/2011, like Directive 2000/13 which it repealed, establishes, as is clear from the wording of Article 1(1) thereof, ‘the basis’ in relation to the provision of food information to consumers. In that regard, it lays down, *inter alia*, in Chapter III, ‘general ... requirements’ on the matter, as the heading of that chapter states, which include the requirement that ‘food information shall not be misleading, particularly ... as to [the] ... country of origin’ of a food.
- 67 Regulation No 1169/2011 also lays down, in Chapter IV, more detailed rules imposing obligations to indicate certain particulars. Those particulars include the country of origin ‘where provided for in Article 26 [of that regulation]’, as is clear from Article 9(1)(i) thereof. Under Article 26, indication of the country of origin is mandatory, *inter alia*, ‘where failure to indicate this might mislead the consumer as to the ... country of origin’.
- 68 Second, the EU legislature expressly laid down, in Article 1(4) of Regulation No 1169/2011, the proviso that that basic enactment is to apply without prejudice to other specific EU rules regarding food labelling. Likewise, in Article 26 of that regulation, the EU legislature reiterated, in respect of the specific labelling requirements laid down in that article, the proviso established in general in Article 1(4) of the regulation that other food labelling requirements provided for in specific EU provisions are not prejudiced.
- 69 Article 1(4) of Regulation No 1169/2011 must be interpreted as meaning that the wording ‘without prejudice to labelling requirements provided for in specific Union provisions applicable to particular food’ refers to the uniform provisions adopted by the EU legislature or the Commission, such as customs and agricultural legislation. Such legislation does not fall within the scope of Article 7(1)(a) of that regulation.
- 70 As the Advocate General has observed in point 75 of his Opinion, Directive 2000/13 must be interpreted to the same effect as Regulation No 1169/2011.

- 71 Although that directive makes no reference to customs legislation for the purposes of determining the origin of foodstuffs, the fact remains that, under the legislation which otherwise applies to fruit and vegetables, and in particular Article 113a of Regulation No 1234/2007, those products may be marketed only if the country of origin is indicated, that country being defined, as is clear from paragraph 51 of the present judgment, by reference to customs legislation.
- 72 If, by means of the indication of the country of origin by reference to customs legislation, it is permissible to market the product concerned, that indication cannot at the same time be regarded, in itself, as being such as could mislead the purchaser to a material degree, within the meaning of Article 2(1)(a) of Directive 2000/13.
- 73 Consequently, the answer to the third question is that the general prohibition on misleading the consumer as to the country of origin of foods, laid down in Article 2(1)(a)(i) of Directive 2000/13 and in Article 7(1)(a) of Regulation No 1169/2011, is not applicable, so far as concerns fresh fruit and vegetables, to the indication of origin that is required under Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013.

#### *The fourth question*

- 74 By its fourth question, the referring court asks whether explanatory elements may be added to the indication of origin prescribed under Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013 in order to avoid misleading the consumer, in accordance with the prohibition laid down in Article 2(1)(a)(i) of Directive 2000/13 and Article 7(1)(a) of Regulation No 1169/2011.
- 75 As is apparent from the order for reference and the observations of the parties to the main proceedings, the German Government and the Commission, the fourth question concerns the possibility of imposing on producers, pursuant to rules concerning unfair commercial practices, a specific obligation to provide information where the indication of the country of origin as defined in Article 23 of the Community Customs Code and Article 60 of the Union Customs Code would be regarded as misleading by the consumer.
- 76 In that regard, it must be found, as the Advocate General has also observed in point 82 of his Opinion, that, in Article 2(3) of Regulation No 1169/2011, the EU legislature has clearly and precisely determined the country of origin of a food by reference to Articles 23 to 26 of the Community Customs Code. In respect of vegetable products, including mushrooms, the legislature has therefore established that the country of origin of those products is the country in which they are harvested, irrespective of their place of production.
- 77 It follows from all of the foregoing considerations that explanatory elements may not be prescribed in addition to the indication of the country of origin prescribed under Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013 in order to avoid misleading the consumer, in accordance with the prohibition laid down in Article 7(1)(a) of Regulation No 1169/2011. As the Advocate General has observed in point 87 of his Opinion, Article 2(1)(a)(i) of Directive 2000/13 must be interpreted in the same way.
- 78 Therefore, the answer to the fourth question is that EU law must be interpreted as meaning that explanatory elements may not be prescribed in addition to the indication of the country of origin prescribed under Article 113a(1) of Regulation No 1234/2007 and Article 76(1) of Regulation No 1308/2013 in order to avoid misleading the consumer in accordance with the prohibition laid down in Article 2(1)(a)(i) of Directive 2000/13 and Article 7(1)(a) of Regulation No 1169/2011.



## Costs

- 79 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. Article 113a(1) of 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, as amended by Council Regulation (EC) No 361/2008 of 14 April 2008, and Article 76(1) of 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 and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 must be interpreted as meaning that, in order to define the concept of ‘country of origin’, referred to in those provisions, reference should be made to the customs regulations for the determination of the non-preferential origin of goods, namely Article 23 et seq. of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.
2. Article 23(1) and (2)(b) of Regulation No 2913/92 and Article 60(1) of Regulation No 952/2013, read in conjunction with Article 31(b) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation No 952/2013 as regards detailed rules concerning certain provisions of the Union Customs Code, must be interpreted as meaning that the country of origin of cultivated mushrooms is their country of harvesting for the purpose of those provisions, irrespective of the fact that substantial stages of production took place in other EU Member States and the cultivated mushrooms were transported into the territory of harvesting only three days or less prior to the first harvest.
3. The general prohibition on misleading the consumer as to the country of origin of foods, laid down in Article 2(1)(a)(i) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs and in Article 7(1)(a) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, is not applicable, so far as concerns fresh fruit and vegetables, to the indication of origin that is required under Article 113a(1) of Regulation No 1234/2007, as amended by Regulation No 361/2008, and Article 76(1) of Regulation No 1308/2013.
4. EU law must be interpreted as meaning that explanatory elements may not be prescribed in addition to the indication of the country of origin prescribed under Article 113a(1) of Regulation No 1234/2007, as amended by Regulation No 361/2008, and Article 76(1) of Regulation No 1308/2013 in order to avoid misleading the consumer in accordance with the prohibition laid down in Article 2(1)(a)(i) of Directive 2000/13 and Article 7(1)(a) of Regulation No 1169/2011.

[Signatures]