



## “Easy digestible” wine?

### *Charter Articles of relevance*

- Article 15 – Freedom to choose an occupation and right to engage in work
- Article 16 - Freedom to conduct a business
- Article 35 – Health care
- Article 38 – Consumer protection
- Article 52 para. 1 – Scope and interpretation of rights and principles

### *Findings of the Court of Justice of the European Union*

The CJEU was asked to answer the following questions:

- must the first subparagraph of Article 4(3) of Regulation No 1924/2006 be interpreted as meaning that the word ‘health claim’ covers a description such as ‘easily digestible’ that is accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful.
- Is it compatible with the first subparagraph of Article 6(1) of the Treaty on European Union read in conjunction with Article 15(1) (freedom to choose an occupation) and Article 16 (freedom to conduct a business) of the Charter for a producer or marketer of wine to be prohibited, without exception, from making in its advertising a health claim, even if that claim is correct?’

The Court in its reasoning stated that

- a “health claim” refers to a relationship that must exist between a food or one of its constituents and health.
- this relationship must be understood broadly.
- “easily digestible” implies that the digestive system will remain relatively healthy and intact even after repeated consumption over an extended period, given that the wine is characterised by reduced acidity.

Hence, Regulation No 1924/2006 must be interpreted as meaning that the words ‘health claim’ cover a description such as ‘easily digestible’ that is accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful.

Addressing the second question, the court stressed that Article 6 para. 1 TEU recognises the rights, freedoms and principles set out in the Charter to have the same legal value as the Treaties. Account is to be taken of Article 15 para. 1 and Article 16 of the Charter, but it is important also to take into account the second sentence of Article 35 of the Charter, which requires a high level of human health protection to be ensured in the definition and implementation of all the European Union’s



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policies and activities. As is apparent from the preamble to Regulation No. 1924/2006 that health, protection is among the principal aims of that regulation. As a result, the court found that the fact that a producer or distributor of wine is prohibited under this regulation, without exception, from using a claim of the kind at issue in the main proceedings, even if that claim is inherently correct, is compatible with the first subparagraph of Article 6(1) TEU.

## Check of proportionality

When several rights protected by the EU legal order clash, there is a need to reconcile the requirements of the protection of those various rights and to strike a fair balance between them. The Court stressed that alcoholic beverages in view of the risks of addiction and abuse as well as in view of its complex harmful effects, represent a special category of foods that is subject to particularly strict regulation. The protection of public health constitutes an objective of general interest justifying, where appropriate, a restriction of a fundamental freedom.

In addition, the Court stressed that neither the freedom to conduct a business (Article 16) nor the right to property (Article 17 CFR) are absolute rights. They must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those freedoms, provided that those restrictions in fact correspond to objectives of general interest pursued by the EU and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, which impairs the very substance of those rights. As the legislation at issue only *controls* but does not prohibit the production and marketing of alcoholic beverages, it does not in any way affect the actual substance of freedom to choose an occupation or of the freedom to conduct a business.

## Referral to prior case law

- C-210/03, *Swedish Match*, Judgment of 14 December 2004, para. 72: Freedom to pursue a trade or profession, like the right to property, is not an absolute right but must be considered in relation to its social function.
- C-22/94, *Irish Farmers Association and Others*, Judgment of 15 April 1997, para. 27; C-64/00, *Booker Aquaculture and Hydro Seafood*, Judgment of 10 July 2003, para. 68: Restrictions may be imposed on the exercise of the freedom to pursue a trade or profession, provided that those restrictions in fact correspond to objectives of general interest pursued by the EU and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights.

See: *Deutsches Weintor eG v Land Rheinland-Pfalz*, Case C-544/10, Judgement of 06.09.2012