Reports of Cases

OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 16 December 2021 [1]

Case C-533/20

Upfield Hungary Kft.
v
Somogy Megyei Kormányhivatal

(Request for a preliminary ruling from the Kúria (Supreme Court, Hungary))

(Reference for a preliminary ruling – Consumer protection – Regulation (EU) No 1169/2011 – Provision of food information to consumers – Mandatory particulars – List of ingredients – Specific name – Regulation (EC) No 1925/2006 – Addition of vitamins to foods – Obligation to indicate vitamins' generic name and vitamin formulations)

I. Introduction

1. This request for a preliminary ruling concerns the interpretation of Regulation (EU) No 1169/2011, [2] which lays down general rules in relation to the provision of food information to consumers, in conjunction with Regulation (EC) No 1925/2006, [3] which concerns the addition of vitamins, minerals and other substances to foods.

2. The request has been made in proceedings between Upfield Hungary Kft. ('Upfield') and the Somogy Megyei Kormányhivatal (Somogy Region Administrative Department, Hungary) concerning a decision by which that authority ordered Upfield to amend the labelling of a food product containing added vitamins marketed in Hungary.

[1] Original language: English.

[2] Regulation 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/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

[3] Regulation of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods (OJ 2006 L 404, p. 26).

II. Legal framework

A. EU law

1. Regulation No 1169/2011

3. Regulation No 1169/2011 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. Article 2(2)(f), (h), (n), (o) and (s) of Regulation No 1169/2011 states that, for the purposes of that regulation, the following definitions of the terms 'ingredient', 'compound ingredient', 'legal name', 'customary name' and 'nutrient' are to apply:

'…

(f) "ingredient" means any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form; residues shall not be considered as "ingredients";

…

(h) "compound ingredient" means an ingredient that is itself the product of more than one ingredient;

…

(n) "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;

(o) "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;

…

(s) "nutrient" means protein, carbohydrate, fat, fibre, sodium, vitamins and minerals listed in point 1 of Part A of Annex XIII to this Regulation, and substances which belong to or are components of one of those categories;

…'

5. Article 3 of Regulation No 1169/2011, entitled 'General objectives', provides in paragraph (1), (2) and (4):

'1. The provision of food information shall pursue a high level of protection of consumers' health and interests by providing a basis for final consumers to make informed choices and to make safe use of food, with particular regard to health, economic, environmental, social and ethical considerations.

2. Food information law shall aim to achieve in the Union the free movement of legally produced and marketed food, taking into account, where appropriate, the need to protect the legitimate interests of producers and to promote the production of quality products.

…

4. An open and transparent public consultation shall be conducted, including with stakeholders, directly or through representative bodies, during the preparation, evaluation and revision of food information law, except where the urgency of the matter does not allow it.'

6. Article 4(2) of Regulation No 1169/2011, under the heading 'Principles governing mandatory food information', provides:

'When considering the need for mandatory food information and to enable consumers to make informed choices, account shall be taken of a widespread need on the part of the majority of consumers for certain information to which they attach significant value or of any generally accepted benefits to the consumer.'

7. Article 7(1) and (2) of Regulation No 1169/2011, under the heading 'Fair information practices', states:

'1. 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, …;

…

(c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients;

…

2. Food information shall be accurate, clear and easy to understand for the consumer.'

8. Article 9 of that regulation, entitled 'List of mandatory particulars', provides in paragraph (1):

'In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

…

(b) the list of ingredients;

…

(l) a nutrition declaration.'

9. Article 17(1) of Regulation No 1169/2011, under the heading 'Name of the food', states:

'The name of the food shall be its legal name. In the absence of such a name, the name of the food shall be its customary name, or, if there is no customary name or the customary name is not used, a descriptive name of the food shall be provided.'

10. Article 18(1) and (2) of that regulation, under the heading 'List of ingredients', provides:

'1. The list of ingredients shall be headed or preceded by a suitable heading which consists of or includes the word "ingredients". It shall include all the ingredients of the food, in descending order of weight, as recorded at the time of their use in the manufacture of the food.

2. Ingredients shall be designated by their specific name, where applicable, in accordance with the rules laid down in Article 17 and in Annex VI.'

11. Article 30(1) and (2) of Regulation No 1169/2011, which relates to the content of the nutrition declaration referred to in Article 9(1)(l) thereof, provides:

'1. The mandatory nutrition declaration shall include the following:

(a) energy value; and

(b) the amounts of fat, saturates, carbohydrate, sugars, protein and salt.

…

2. The content of the mandatory nutrition declaration referred to in paragraph 1 may be supplemented with an indication of the amounts of one or more of the following:

…

(f) any of the vitamins or minerals listed in point 1 of Part A of Annex XIII, and present in significant amounts as defined in point 2 of Part A of Annex XIII.'

12. Annex XIII to Regulation No 1169/2011, headed 'Reference intakes', contains Part A, entitled 'Daily reference intakes for vitamins and minerals (adults)'. Point 1 thereof lists the 'vitamins and minerals which may be declared and their nutrient reference values (NRVs)'. Those vitamins include vitamin A and vitamin D.

2. Regulation No 1925/2006

13. Regulation No 1925/2006 harmonises the provisions laid down by law, regulation or administrative action in Member States which relate to the addition of vitamins and minerals and of certain other substances to foods, with the purpose of ensuring the effective functioning of the internal market, whilst providing a high level of consumer protection.

14. Article 3(1) of that regulation, under the heading 'Requirements for the addition of vitamins and minerals', provides:

'Only vitamins and/or minerals listed in Annex I, in the forms listed in Annex II, may be added to foods, subject to the rules laid down in this Regulation.'

15. Article 7(2) and (3) of Regulation No 1925/2006, relating to labelling, presentation and advertising, provides:

'2. The labelling, presentation and advertising of foods to which vitamins and minerals have been added shall not mislead or deceive the consumer as to the nutritional merit of a food that may result from the addition of these nutrients.

3. Nutrition labelling of products to which vitamins and minerals have been added and which are covered by this Regulation shall be compulsory. The information to be provided shall consist of that specified in Article 30(1) of Regulation [No 1169/2011] and of the total amounts present of the vitamins and minerals when added to the food.'

16. Annex I to Regulation No 1925/2006, which lists the 'vitamins and minerals which may be added to foods', refers in particular to 'vitamin A' and 'vitamin D'.

17. Annex II to that regulation, which lists the 'vitamin formulations and mineral substances which may be added to foods', includes, inter alia, under the heading 'Vitamin A', four vitamin formulations, namely 'retinol', 'retinyl acetate', 'retinyl palmitate' and 'beta-carotene'. It also includes, under the heading 'Vitamin D', two vitamin formulations, known as 'cholecalciferol' and 'ergocalciferol'.

III. Facts, procedure and the question referred

18. Upfield markets margarines in Hungary, including a product known as 'Flóra ProActiv', a 35% fat vegetable spread containing added plant sterols. The list of ingredients of that product includes the terms 'vitamins (A, D)' in order to indicate that the product contains added vitamins A and D.

19. The Somogy Region Administrative Department, competent in the field of consumer protection, considered that the labelling of Upfield's product had failed to comply with Regulation No 1169/2011 and adopted a decision ordering Upfield to cease the infringement with immediate effect. In essence, it took the view that, according to Regulation No 1169/2011, read in conjunction with Regulation No 1925/2006, the labelling of foodstuffs requires the various ingredients included in their composition to be displayed in addition to, where those ingredients are vitamins, the names of the vitamin formulations used in the manufacturing process.

20. In a judicial action brought against that decision, the court of first instance annulled the decision on two grounds. First, it found that Regulation No 1169/2011 does not define the concept of the 'specific name' of the ingredients of the food, within the meaning of Article 18(2) of that regulation, nor does it contain further provisions on that matter. Secondly, it observed that Regulation No 1925/2006 lays down rules on the labelling, presentation and advertising of products containing added vitamins, but does not govern the naming of ingredients. In that regard, the court concluded that no provision prevented the names 'vitamin A' and 'vitamin D' from being included in the list of the product's ingredients.

21. The Hungarian authority has lodged an appeal against the judgment of the court of first instance before the Kúria (Supreme Court, Hungary). In its appeal, it claims, on the one hand, that Regulation No 1169/2011 requires the labelling of foodstuffs to indicate the 'specific name' of each of the ingredients included in their composition and, on the other hand, that, as regards ingredients such as vitamins A and D, the 'specific name' corresponds to the vitamin formulation indicated in Regulation No 1925/2006. That same authority also emphasises that the formulations used in the composition of food are important for measurement methodology and technology reasons in connection with the analytical testing of food.

22. The Kúria (Supreme Court) considers that, in the present proceedings, an answer is needed to the question of what is meant by the term 'specific name' for the purposes of the application of Article 18(2) of Regulation No 1169/2011, especially in the case of vitamins added to foods. According to that court, the absence of definition of 'specific name' in the applicable legislation gives rise to a problem of interpretation, which is borne out by the lack of uniformity in the practice followed by producers and distributors, administrative authorities and the courts.

23. In those circumstances, the Kúria (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must the provisions of Regulation [No 1169/2011], and specifically Article 18(2) thereof, be interpreted as meaning that, where vitamins are added to foods, the list of the ingredients of the food must include not only the name of the vitamins, but also their designation in accordance with the vitamin formulations which may be added to foods?'

24. The request for a preliminary ruling was lodged at the Court Registry on 21 October 2020. Written observations have been submitted by the Republic of Croatia, Hungary and the European Commission. No hearing has been held in the case. However, the parties and interveners have replied in writing to the Court's questions of 29 June 2021.

IV. Analysis

25. By its question, the referring court seeks to ascertain whether Regulation No 1169/2011 and, in particular, Article 18(2) thereof must be interpreted as meaning that, where vitamins are added to a food, the list of ingredients needs to include, in addition to the vitamins' generic name [4] – for instance, vitamin A and vitamin D – the vitamin formulation used, as listed in Annex II to Regulation No 1925/2006.

[4] In the absence of a precise term in the applicable legislation, the term 'generic name' shall be used in this Opinion to refer to the name of vitamins under their generic form.

26. As a preliminary point, to the extent that, by its question, the referring court asks about the interpretation of Article 18(2) of Regulation No 1169/2011, which concerns the manner in which ingredients of foods must be mentioned in the labelling, that court assumes that vitamins fall within the concept of 'ingredient', as defined in Article 2(2)(f) of that regulation.

27. I shall therefore first briefly examine whether vitamins fall within the concept of 'ingredient', within the meaning of Article 2(2)(f) of Regulation No 1169/2011. I shall then analyse whether Article 18(2) of Regulation No 1169/2011 must be interpreted as meaning that, where a vitamin is added to a food, the list of ingredients must also include, in addition to the generic name of that vitamin, the name of its vitamin formulation.

A. Vitamins as ingredients within the meaning of Article 2(2)(f) of Regulation No 1169/2011

28. According to Article 2(2)(f) of Regulation No 1169/2011, 'ingredient' means, in essence, any substance or product, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product. By contrast, Article 2(2)(s) of Regulation No 1169/2011 provides that 'nutrient' means proteins, carbohydrates, fat, fibres, sodium, vitamins and minerals listed in point 1 of Part A of Annex XIII to that regulation, as well as substances which belong to one of those categories.

29. It follows that, whilst vitamins are explicitly defined as nutrients in Regulation No 1169/2011, the question remains as to whether they can also be considered as ingredients for the purposes of that same regulation.

30. In that respect, I observe that the Court has already interpreted the concept of 'ingredient' in the area of EU food information law. In *Bablok and Others*,[5] the Court held that pollen contained in pollen-based food supplements had to be classified as an 'ingredient' within the meaning of Article 6(4)(a) of Directive 2000/13/EC,[6] 'since it [was] introduced into those products in the course of their manufacture or production'. Thus, the standard used by the Court to determine whether a substance could be considered an 'ingredient' of a food relied on the second part of Article 6(4)(a) of Directive 2000/13, which referred to the use of that substance in the manufacture or preparation of a foodstuff.

31. The definition of the term 'ingredient' under Article 6(4)(a) of Directive 2000/13 is, with certain addenda, the same as that in Article 2(2)(f) of Regulation No 1169/2011, which replaced the former directive. Therefore, in my view, the same interpretative approach should apply in the present case.[7]

32. As the Commission explains in its observations, it is possible for a nutrient to be used in the manufacture of a foodstuff and also to be present in the finished product. This is mainly the case when substances used in the preparation of foodstuffs are pure or almost pure nutrients, such as sugars, salt or even vitamins, which might then fall under the concept of 'ingredient' within the meaning of Regulation No 1169/2011.

5 Judgment of 6 September 2011 (C-442/09, EU:C:2011:541, paragraph 74).

6 Directive 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).

7 See also Article 18(1) of Regulation No 1169/2011, which states that the list of ingredients 'shall include all the ingredients of the food, in descending order of weight, as recorded at the time of *their use in the manufacture of the food*' (emphasis added).

33. After all, the singular feature of the products concerned by the present case, which are foods with added vitamins, is that the vitamins are introduced as separate substances during the manufacturing process of the food in order to enrich it or fortify its nutritional characteristics. [8] This is even more so in the case of food supplements, which, according to Directive 2002/46/EC, [9] are foodstuffs that are essentially concentrated sources of nutrients, either alone or in combination. That directive provides that only vitamins and minerals listed in Annex I thereto may be 'used for the *manufacture* of food supplements', [10] which demonstrates that both types of substance fall under the concept of ingredient as interpreted by the Court.

34. It follows that the scope of the terms 'ingredient' and 'nutrient', as defined respectively in Article 2(2)(f) and (s) of Regulation No 1169/2011, are not mutually exclusive.

35. It is worth noting that only Article 7(1)(c) of Regulation No 1169/2011 appears to establish a distinction between ingredients, on the one hand, and nutrients, on the other, by stating that food information is not to be misleading 'in particular by specifically emphasising the presence or absence of certain *ingredients and/or nutrients*'. [11] However, that distinction can be explained as indicating that not all ingredients are nutrients, the first of those two categories being wider that the second, but as not precluding nutrients themselves from, in certain cases, constituting ingredients.

36. Indeed, where a nutrient, such as a vitamin, is also a food ingredient, its indication as a nutrient and as an ingredient on the product label provides different information to consumers. The list of ingredients informs the consumer of the presence of the vitamin in the final food, whereas the nutrition declaration enables the consumer to understand the specific vitamin content of a food according to the reference intake.

37. In the light of the above, I must conclude that, even if nutrients are not always ingredients, they may be such when they are used in the manufacture or preparation of a food. An assessment should therefore be carried out on a case-by-case basis. Yet, in circumstances such as those of the present case, which concerns foods with added vitamins, those vitamins must be considered to be ingredients within the meaning of Article 2(2)(f) of Regulation No 1169/2011.

B. Vitamin formulations as a mandatory reference in the list of ingredients

38. The Kúria (Supreme Court) asks the Court about the interpretation of Article 18(2) of Regulation No 1169/2011. In particular, it seeks to ascertain whether the term 'specific name' used in that provision must be understood, in the case of an added vitamin used as an ingredient of a food, as referring solely to its generic name or rather to a combination of its generic name and its vitamin formulation, as listed in Annex II to Regulation No 1925/2006.

39. I must recall, first of all, the hermeneutical canons that must be used when interpreting a provision of EU law. According to settled case-law, it is necessary to consider not only the wording of such provision, but also its context and the objectives of the rules of which it is part. [12]

[8] See, to that effect, Article 3(2) of Regulation No 1925/2006.

[9] Directive of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ 2002 L 183, p. 51). See, in particular, Article 2(a) thereof.

[10] Article 4 of Directive 2002/46. Emphasis added.

[11] Emphasis added.

[12] Judgment of 16 November 2016, *Hemming and Others* (C-316/15, EU:C:2016:879 paragraph 27 and the case-law cited).

In the present case, the textual, contextual and teleological interpretation of Regulation No 1169/2011 leads me to consider that, in the case of a food with added vitamins, a reference to the vitamin formulation specifically defined by Regulation No 1925/2006 does not need to be indicated in the list of ingredients together with the vitamin's generic name.

1. Textual interpretation

40. The question raised by the referring court requires taking into account the wording not only of the provisions of Regulation No 1169/2011, but also of Regulation No 1925/2006, which lists, in Annexes I and II thereto, respectively, the name of the vitamins that can be added to foods under their generic form and the concrete formulations which can be used as a source of those vitamins.

41. Article 18(2) of Regulation No 1169/2011 states that ingredients are to be designated in the list of ingredients by their 'specific name' in accordance with the rules established in Article 17 of that regulation.[13] Article 17(1) of Regulation No 1169/2011, which applies then by analogy to ingredients, provides, in essence, that the name of the ingredient of a food is to be its 'legal name' or, in the absence thereof, its 'customary name'. The question remains, then, as to whether vitamin formulations, as listed in Annex II to Regulation No 1925/2006, represent the 'legal' or 'customary' name of such a vitamin.

42. There is no literal definition of those two categories of name in Article 17(1) of Regulation No 1169/2011. Yet that provision is concerned with the definitions that apply by virtue of Article 2(2)(n) and (o) of that regulation, which establishes the meaning of the terms 'legal name' and 'customary name'. Even though, within that article, both definitions refer to names pertinent for food, they must be understood as being applicable also to names pertinent for ingredients when read in the light of Article 17(1) and Article 18(2) of Regulation No 1169/2011.

(a) Vitamin formulations as vitamins' legal name

43. According to Article 2(2)(n) of Regulation No 1169/2011, as applied by analogy to ingredients, the term 'legal name' refers essentially to the name prescribed in the Union provisions applicable to them. Only in the absence of such Union provisions is 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.

44. The fact that Annex II to Regulation No 1925/2006 provides the list of vitamin formulations that may be added to foods appears to support the argument that those formulations constitute the prescribed name for those vitamins in EU legislation and, therefore, their legal name. In my view, however, such an interpretation does not follow from the wording of Regulation No 1925/2006.

45. Regulation No 1925/2006, according to Article 1 thereof, harmonises the provisions laid down in Member States which relate to the addition of vitamins, minerals and other substances to foods. In particular, Article 7 of that regulation defines the rules relating to the labelling, presentation

[13] Article 18(2) of Regulation No 1169/2011 also refers to Annex VI to that same regulation. However, that annex is not relevant for the present case.

and advertising of foods to which vitamins and minerals have been added. That said, that article does not regulate the naming of ingredients, which falls exclusively under the scope of Regulation No 1169/2011.[14]

46. I must note that the present case differs from *Tesco Stores ČR* (C-881/19), pending before the Court. That case concerns the use of the name of a compound ingredient in the labelling of a foodstuff, in accordance with Regulation No 1169/2011, in the form specifically defined in Directive 2000/36/EC,[15] relating to chocolate products. In his recent Opinion,[16] Advocate General Tanchev concluded that the compound ingredient included in the food product in question has a legal name, as referred to in Article 2(2)(n) of Regulation No 1169/2011. In reaching that conclusion, he rightly observes that Article 3 of Directive 2000/36 explicitly requires that, when applying Regulation No 1169/2011,[17] the 'sales names [of the products] listed in Annex I [thereto] … must be used in trade to designate them'. Consequently, in the Advocate General's view, that name has to be used in the mandatory list of ingredients.

47. By contrast, as has been acknowledged by the Commission in the present proceedings, neither Regulation No 1925/2006 nor Regulation No 1169/2011 states that the names appearing in Annexes I and II to the first of those regulations are to be understood as a prescription for the labelling of products with added vitamins and minerals. Therefore, from a literal standpoint, they cannot be considered as the legal name of the vitamins added to foods.

(b) Vitamins' generic form as their customary name

48. With regard to the subsidiary concept of 'customary name', as referred to in Article 2(2)(o) of Regulation No 1169/2011, which also applies by analogy to ingredients, it means a name which is accepted by consumers in the Member State in which the food product is sold, without that name needing further explanation.

49. As a matter of common knowledge, the name of a vitamin under its generic form, such as 'vitamin A' or 'vitamin D', corresponds more appropriately to the definition of customary name than that of a vitamin formulation, inasmuch as the generic name of a vitamin is the everyday reference to that substance. None of the parties to the proceedings before the Court contest that matter.

50. It could nevertheless be argued that, where the vitamin formulation is a name recognisable to consumers, it should be regarded as its customary name and thus be indicated in the list of the product's ingredients. Yet consumers do not usually recognise the chemical formulations listed in Annex II to Regulation No 1925/2006, such as 'retinol', 'retynil acetate', 'retinyl palmitate' and 'beta-carotene', on the one hand, and 'cholecalciferol' and 'ergocalciferol', on the other, as names referring, respectively, to vitamins A and D. Consequently, even though, as a general rule, a case-by-case analysis should never be excluded, vitamin formulations appearing in Annex II to

[14] See Article 1(3) of Regulation No 1169/2011.

[15] Directive of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption (OJ 2000 L 197, p. 19).

[16] Opinion of Advocate General Tanchev in *Tesco Stores ČR* (C-881/19, EU:C:2021:830, points 51, 52 and 54).

[17] In Article 3 of Directive 2000/36, reference to Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1) is now to be construed as reference to Regulation No 1169/2011.

Regulation No 1925/2006 do not represent the customary name of those vitamins. There are also no grounds to consider that the combination of the generic name of the added vitamin in question with its corresponding vitamin formulation represents that customary name.

51. In view of the foregoing considerations, a textual interpretation of the relevant provisions of Regulation No 1169/2011 and Regulation No 1925/2006 leads me to conclude that the generic name of a vitamin represents its customary name and hence its 'specific name' within the meaning of Article 18(2) of the former regulation.

2. Contextual interpretation

52. The textual interpretation of an EU provision, which is based on its wording alone, may be reappraised after placing that provision in context and interpreting it in the light of EU law as a whole.[18] In the present case, the Court must decide whether the textual reading of Article 18(2) of Regulation No 1169/2011, as has been proposed in the preceding points of this Opinion, is supported, as a matter of systematic coherence, when relating that provision to other relevant articles of that same regulation. The Court must then examine whether the proposed textual interpretation of Regulation No 1169/2011 is also borne out when placing it in relation to other relevant EU norms on food law.

(a) Systematic coherence: list of ingredients and nutrition declaration

53. I must note that, in parallel with the list of ingredients, which is a mandatory particular in the presentation of a food product according to Article 9(1) of Regulation No 1169/2011, that same provision requires the indication of a nutrition declaration. As already noted, the two particulars pursue different objectives and provide different information to consumers. Whereas the list of ingredients provides information on the composition of the food,[19] the nutrition declaration gives details on the food's energy value and the presence of certain nutrients, which are important for public health.[20]

54. More specifically, the nutrition declaration must indicate the energy value and the amounts of nutrients such as fat, saturates, carbohydrate, sugars, protein and salt.[21] Other nutrients listed in point 1 of Part A of Annex XIII to Regulation No 1169/2011, such as vitamins, may be indicated voluntarily in the nutrition declaration.[22] Yet that list refers to vitamins under their generic name and not under their vitamin formulation.

55. In the first part of my analysis, I concluded that, with regard to foods with added vitamins, the latter can be considered as falling both under the concept of 'ingredient' and that of 'nutrient', as provided for in Article 2(2)(f) and (s) of Regulation No 1169/2011. I must add now that, in my view, there is no systematic argument suggesting an intention by the EU legislature to subordinate vitamins' indications to their generic name under the nutrition declaration and to a combination of their generic name and their vitamin formulation, as defined in Regulation No 1925/2006, under the list of ingredients.

18 Judgment of 6 October 1982, *Cilfit and Others* (283/81, EU:C:1982:335, paragraph 20).

19 Article 18(1) of Regulation No 1169/2011.

20 Recital 36 of Regulation No 1169/2011.

21 Article 30(1) of Regulation No 1169/2011.

22 Article 30(2) of Regulation No 1169/2011.

56. The Croatian Government and the Commission submit, however, that, since the list of ingredients and the nutrition declaration perform different but complementary functions, Regulation No 1169/2011 would operate in a more consistent and precise manner if it were interpreted as requiring more specific information in the list of ingredients and more generic information in the nutrition declaration. However, such an understanding could be accepted, in respect of foods with added vitamins, only if it were at least partially supported by a textual reading of Regulation No 1169/2011 and/or Regulation No 1925/2006, which, as I have already demonstrated, is not the case. I would recall in that regard that the contextual interpretation of a norm is to be used when its textual reading is ambiguous or leads to nonsensical outcomes, [23] but it cannot reshape the wording of that norm to the point of undermining legal certainty and predictability. [24]

57. Furthermore, I would like to draw the Court's attention to Part C of Annex VII to Regulation No 1169/2011, regarding food additives and food enzymes, which are another type of ingredient within the meaning of Article 2(2)(f) thereof. In essence, according to that part of Annex VII to Regulation No 1169/2011, certain food additives and food enzymes belonging to one of the categories listed therein must be designated by the name of that category, together with their specific name or, if appropriate, their E number. It follows that, unlike with food additives and food enzymes, the EU legislature did not conceive vitamins' generic form as a category of ingredients and vitamin formulations as their specific name, as the interveners argue in their observations. It must necessarily be understood that, if that were not the case, a provision analogous to Part C of Annex VII to Regulation No 1169/2011 would have been introduced in that regulation in relation to vitamins.

(b) Regulation No 1169/2011 in the context of EU food law

58. The present case, which concerns foods with added vitamins, calls for placing Regulation No 1169/2011 in context with Regulation No 1925/2006, which, as has already been noted, lists the names of the vitamins which may be added to foods, as well as their vitamin formulations.

59. I have already indicated that the textual interpretation of Regulation No 1925/2006 does not lead to the conclusion that, where vitamins are added to foods, the indication of such vitamins must be done in a combined manner, under its generic name and its vitamin formulation. I would like to point out now that the list of vitamin formulations specified in Annex II to Regulation No 1925/2006 has appeared in that act since its first version, as adopted in 2006. Had the EU legislature intended that vitamins added to foods be indicated according also to their vitamin formulations, a concrete statement or provision in this respect would have been reasonably introduced in Regulation No 1169/2011, upon its adoption in 2011, as a matter of normative coherence.

60. Moreover, attention should be drawn to the fact that, when adopting Regulation No 1169/2011, the EU legislature clarified the information to be provided in the nutrition labelling of products to which vitamins and minerals have been added. It did so by means of Article 50 of that regulation, which amended Article 7(3) of Regulation No 1925/2006 to stipulate that the nutrition declaration of those products had to indicate the information specified in Article 30(1) of Regulation No 1169/2011. It is therefore reasonable to consider, once

[23] See Opinion of Advocate General Bobek in *European Federation for Cosmetic Ingredients* (C-592/14, EU:C:2016:179, point 37 and the case-law cited).

[24] See recitals 9 and 11 of Regulation No 1169/2011, which expressly refer to legal certainty for consumers and other stakeholders.

again, that, if the wish of the EU legislature had been to require vitamins added to foodstuffs to be indicated in the list of ingredients not only by reference to their generic name but also by reference to their vitamin formulations, an amendment to Regulation No 1925/2006 could have been introduced via Regulation No 1169/2011, as was done in relation to the information to be provided in the nutrition declaration.

61. In those circumstances, it is my view that Regulation No 1169/2011, when placed in context with Regulation No 1925/2006, cannot be understood as requiring vitamins added to foodstuffs to be indicated under the name of their formulation in the list of ingredients.

62. For the sake of completeness, I would like to address a detailed argument put forward by the Croatian Government and the Commission in their observations regarding the interpretation of Article 18(2) of Regulation No 1169/2011 in relation to Directive 2002/46.

63. Indeed, both interveners refer to Annex II to that directive, which lists the vitamins that may be used in the manufacture of food supplements and which includes, as a source of folate or folic acid, '*(6S)-5-methyltetrahydrofolic acid, glucosamine salt*',[25] together with '*pteroylmonoglutamic acid*' and '*calcium-L-methylfolate*'. They point out that, according to Implementing Decision 2014/154/EU[26] and Implementing Regulation (EU) 2017/2470,[27] '*(6S)-5-methyltetrahydrofolic acid, glucosamine salt*' must be designated, on the labelling of the foodstuffs containing it, under the form of its vitamin formulation. Thus, if Regulation No 1169/2011 were to be interpreted as not requiring a reference to vitamin formulations, food supplements containing '*pteroylmonoglutamic acid*' and '*calcium-L-methylfolate*' would be referred to by the generic terms 'folate' or 'folic acid'. By contrast, '*(6S)-5-methyltetrahydrofolic acid, glucosamine salt*' would be referred to under the form of its formulation, even though all three substances belong to the same vitamin category.

64. I find this argument irrelevant for the purposes of interpreting Regulation No 1169/2011 in the present case. First and foremost, the adoption of an implementing decision or an implementing regulation by the Commission cannot condition, by virtue of the principle of the hierarchy of norms, the contextual interpretation of Regulation No 1169/2011, adopted by the Parliament and the Council.

65. Secondly, the argument put forward by the interveners does not concern the naming, as in the present case, of the vitamins added to foods in the list of ingredients, which must be defined by interpreting Regulation No 1169/2011 in conjunction with Regulation No 1925/2006. It instead concerns the naming of the ingredients of food supplements, which must be examined by interpreting Regulation No 1169/2011 in combination with Directive 2002/46.

66. In that regard, it is true that Regulation No 1169/2011 applies, pursuant to Article 1(3) and Article 6 thereof, to all foods intended for the final consumer. The Court must then be aware that the interpretation of the provisions of Regulation No 1169/2011 – and of Article 18(2) thereof in particular – may have an impact on the requirements of the list of ingredients

[25] Commission Regulation (EU) 2015/414 of 12 March 2015 amending Directive 2002/46/EC of the European Parliament and of the Council as regards (6S)-5-methyltetrahydrofolic acid, glucosamine salt used in the manufacture of food supplements (OJ 2015 L 68, p. 26).

[26] Commission Implementing Decision of 19 March 2014 authorising the placing on the market of (6S)-5-methyltetrahydrofolic acid, glucosamine salt as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council (OJ 2014 L 85, p. 10).

[27] Commission Implementing Regulation (of 20 December 2017 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods (OJ 2017 L 351, p. 72).

applicable to all foods. Having said that, when referring to the name of ingredients of certain foods, Regulation No 1169/2011 must be interpreted not in isolation, but in combination with a separate EU legal act, which might differ from others in wording, scope and aims. In those circumstances, the interpretation of Article 18(2) of Regulation No 1169/2011 may have different outcomes depending on the particular food at issue, without affecting, in my view, the consistent application of that provision in the context of EU food information law.

67. As to the present case, even assuming that the implementing decision or the implementing regulation cited by the interveners can be taken into account for the purposes of interpreting Article 18(2) of Regulation No 1169/2011 in combination of Directive 2002/46, concerning food supplements, [28] it cannot determine the interpretation of that same article in relation to Regulation No 1925/2006, on foods with added vitamins. Later in the present Opinion, I shall argue that Article 18(2) of Regulation No 1169/2011 should be interpreted differently with respect to both categories of food on teleological grounds, taking into account, in particular, the information needs of consumers in each of those cases. [29]

68. Having regard to the foregoing considerations, the contextual interpretation of Regulation No 1169/2011 does not lead to a reconsideration of the textual reading of that regulation, as has been set out in point 51 of the present Opinion. It in fact supports the view that, when vitamins are added to a food product, a combination of the generic name of the vitamin in question and its formulation is not required in the list of ingredients.

3. Teleological interpretation

69. According to the case-law of the Court, [30] the objective of Regulation No 1169/2011 is, as stated in Article 1(1) thereof, the assurance of a high level of consumer protection in relation to food information, whilst ensuring the smooth functioning of the internal market. [31] In doing so, that regulation takes into account differences in the perception of consumers and their information needs. It also follows from Article 3(1) of Regulation No 1169/2011 – as well as from recitals 3 and 4 of that regulation, in the light of which that provision must be read – that the provision of information to consumers must enable them to make informed choices, with particular regard, among others, to health considerations.

70. As I shall explain below, in the case of vitamins added to foods, I harbour doubts as to whether the indication of the vitamin formulation in the list of ingredients, in combination with its generic name, is capable of fulfilling the objectives of Regulation No 1169/2011. That incapability is particularly evident to me when considering the perception of consumers and their information needs, as is required by Article 1(1) thereof. Nonetheless, I believe that Regulation No 1169/2011 does not contain the necessary elements to reach a definitive conclusion as to whether or not the indication of the vitamin formulations in the list of ingredients would be beneficial for consumers' informed choices in line with the objectives pursued by that regulation. Therefore, to my mind, such an assessment cannot result from judicial interpretation, but must be done by legislative means.

[28] See, in that connection, Article 6(3)(a) of Directive 2002/46.

[29] See points 79 and 80 of the present Opinion.

[30] Judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot* (C-363/18, EU:C:2019:954, paragraphs 52 and 53).

[31] See also Article 1(1) of Regulation No 1925/2006.

(a) Perception of consumers

71. In order to define the scope of the obligations on food information resulting from Regulation No 1169/2011, reference must be made to an 'average consumer who is reasonably well informed and reasonably observant and circumspect'. [32]

72. In my view, as I have already noted in point 50 of the present Opinion, it is not certain that an average consumer, as defined by the Court, is likely to recognise formulations such as 'retinol', 'retynil acetate', 'retinyl palmitate', 'beta-carotene', 'cholecalciferol', 'ergocalciferol', whether alone or in combination with a generic name, as a way to refer to vitamins A and D, respectively. By contrast, the simple indication of vitamin A and vitamin D appears more appropriate in order to facilitate consumers' understanding that a food includes those substances as ingredients.

73. It should be pointed out that, since one of the objectives of Regulation No 1169/2011 is to provide a basis to the final consumer for making informed choices, that regulation aims to ensure that the final consumer easily understands the information provided on the labelling of a food product. By way of example, recital 37 of Regulation No 1169/2011 states that it is appropriate for the term 'salt' to be used on the labelling of a food product instead of the corresponding term of the nutrient 'sodium'. Even though that recital refers to the information provided in the nutrition declaration, the same reasoning must also apply to the designation of substances in the mandatory list of ingredients. Again, generic names of vitamins on their own, and not in combination with the vitamin formulations defined in Annex II to Regulation No 1925/2006, appear more appropriate for achieving that aim.

74. That is the case even when considering a combined reference to a vitamin in the list of ingredients under its generic form and under its source formulation. Indeed, given the close correlation defined by Regulation No 1169/2011 between the list of ingredients and the nutrition declaration, a different reference to vitamins in each of those mandatory particulars may have the effect of rendering less clear the information provided to consumers in the labelling of the food product. Attention should also be given, as is stated in recital 26 of Regulation No 1169/2011, to the fact that easy legibility is an important element in maximising the possibility for labelled information to influence its audience and that illegible product information is one of the main causes of consumer dissatisfaction with food labels. Therefore, the volume of information appearing on food labelling must not be increased excessively since it could result in clarity being reduced and the objectives which Regulation No 1169/2011 seeks to attain, in particular with respect to consumers' perception, being undermined.

(b) Information needs

75. I also question whether, regarding foods with added vitamins, the indication of the vitamins' formulations in the list of ingredients is justified in terms of the information needs of consumers. I recognise however that, in the absence of more conclusive elements resulting from Regulation No 1169/2011, my doubt remains subjective.

[32] See judgments of 16 July 1998, *Gut Springenheide and Tusky* (C-210/96, EU:C:1998:369, paragraph 31), and of 10 September 2009, *Severi* (C-446/07, EU:C:2009:530, paragraph 61).

76. I would like to underline, in that connection, that Article 4(2) of Regulation No 1169/2011, which must be read in the light of recital 28 thereof, prescribes that, when considering the need for mandatory food information, account is to be taken of a widespread need on the part of the majority of consumers for certain information to which they attach significant value or of any generally accepted benefits to the consumer.

77. As for foods with added vitamins, first, the indication of vitamin formulations in the list of ingredients does not seem to me to respond to a need of significant value, considering that, as has already been pointed out, the formulations resulting from Annex II to Regulation No 1169/2011 might not be easily understood by the vast majority of consumers.

78. Secondly, the mandatory indication of a formulation in a food's list of ingredients cannot be considered as resulting in an accepted benefit to the consumer. In that regard, I acknowledge that, as the interveners point out, vitamins may perform different functions depending on their formulation source. However, the products concerned by the present case are ordinary foods to which a limited quantity of vitamins is added in order to enrich or fortify their nutritional characteristics. The effect of those vitamins, regardless of their formulation, is then narrow. This is why, for instance, they are sold in regular commercial venues, without a mandatory leaflet, and are not subject to particular ingestion limitations.

79. In that respect, it might be useful to refer, from a comparative perspective, to food supplements, for which, in my view, the information needs of consumers warrants interpreting the scope of Article 18(2) of Regulation No 1169/2011, read in combination of Directive 2002/46, differently. After all, it follows from Article 2(a) of that directive that food supplements are concentrated sources of nutrients or other substances, including vitamins, with a nutritional or physiological effect, commercialised in dose forms, such as pills, tablets, capsules or liquids in measured doses. Their purpose is to supplement the normal diet and, in particular, to correct nutritional deficiencies, to maintain an adequate intake of certain nutrients or to support specific physiological functions.

80. Therefore, whereas the information needs of consumers may justify the indication of vitamins' formulations in the list of ingredients of food supplements, given the different functions performed by each of those sources and the specific nutritional or physiological effects sought by consumers, those needs do not warrant their indication in the list of ingredients of foodstuffs with added vitamins given their limited effect when consumed.

81. Finally, I should briefly mention that, given that a reference to the vitamin formulation in the list of ingredients of foods with added vitamins is not justified in terms of information needs, the argument put forward by the Commission, according to which the labelling of those products without such a reference is misleading for consumers within the meaning of Article 7(1) of Regulation No 1169/2011, must not be accepted.

(c) An assessment for the EU legislature

82. Recital 19 of Regulation No 1169/2011 states that any new requirements concerning compulsory food information should be established only if they are necessary, in accordance with the principles of subsidiarity, proportionality and sustainability. Also, as has already been mentioned, Article 4(2) of Regulation No 1169/2011 provides, in essence, that any consideration about the need for mandatory food information should take account of the widely demonstrated interest of the majority of consumers in the disclosure of certain information.

83. It follows that, even on the assumption that the combination of the generic name of vitamins and their formulations may have a positive effect in promoting informed choices, such an assessment must be carried out, according to Regulation No 1169/2011, on the basis of the perception of consumers and their information needs and, inter alia, the principle of proportionality.[33] In the absence of more solid support based on a textual and contextual interpretation, that assessment cannot be inferred from pure teleological arguments, as is argued, in essence, by the interveners in the present proceedings, and should instead be carried out by the EU legislature.

84. Furthermore, it should be noted that, even though the prime consideration for requiring mandatory food information is to enable consumers to make informed choices and an appropriate use of a food, Article 3(2) of Regulation No 1169/2011, under the heading 'General objectives', also provides that food information law is to aim to achieve in the European Union the free movement of legally produced and marketed food, taking into account the need to protect the legitimate interests of producers. Article 3(4) of that same regulation adds that an open and transparent public consultation is to be conducted, including with stakeholders, during the preparation, evaluation and revision of food information law.

85. Hence, the objective of guaranteeing a high level of information for consumers must be balanced, according to the objectives set by Regulation No 1169/2011, with the need to take stakeholders into account when establishing new requirements on the labelling of foods. That limits the interpretation of Regulation No 1169/2011 on food information purposes and calls, in my view, for the intervention of the EU legislature.

4. Final remark

86. It follows from the foregoing considerations that none of the canons of EU law interpretation holds that Regulation No 1169/2011, read in conjunction with Regulation No 1925/2006, requires the reference to an added vitamin in the list of ingredients of a food to appear also under the name of its formulation. If an obligation to indicate the vitamin formulation in the list of ingredients were considered appropriate to promote more informed consumer choices, applicable legislation should be modified accordingly.

V. Conclusion

87. On the basis of the analysis set out above, I propose that the Court answer the question referred by the Kúria (Supreme Court, Hungary) as follows:

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/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, and in particular Article 18(2) of that regulation, must be interpreted as meaning that, where vitamins are added to a food, the list of ingredients does not need to include, in addition to the vitamins'

[33] See, for instance, the recent proposal of the Commission to revise EU rules on the information provided to consumers, which aims to ensure better labelling information to help consumers make healthier and more sustainable food choices: https://ec.europa.eu/food/safety/labelling-and-nutrition/food-information-consumers-legislation_en.

generic name, the vitamin formulation used, as listed in Annex II to Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods.