



Press and Information

Court of Justice of the European Union

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Luxembourg, 18 October 2012

Judgment in Case C-37/11  
Commission v Czech Republic

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## **A milk product which cannot be classified as butter cannot be marketed under the designation 'pomazánkové máslo' (butter spread)**

*The Czech Republic has infringed EU law, by allowing that product to be marketed under that designation*

In accordance with the Single CMO Regulation<sup>1</sup>, only products with a milk-fat content of not less than 80% but less than 90%, a maximum water content of 16% and a maximum dry non-fat milk-material content of 2% can be marketed under the designation 'butter'. However, that rule does not apply to the designation of products the exact nature of which is clear from traditional usage and/or when the designations are clearly used to describe a characteristic quality of the product. The products benefiting from this derogation appear on a list drawn up by the Commission.

Pomazánkové máslo is a product similar to butter which is used as a spread and also as an ingredient in manufacturing other food products. As it has a minimum fat content of 31% by weight, a minimum dry material content of 42% and a water content of up to 58%, it does not satisfy the requirements under the regulation for being marketed under the sales designation 'butter'. The Czech legislation none the less allows the product to be marketed under the designation 'pomazánkové máslo' (butter spread).

Since it considered that, by allowing the marketing under the designation 'pomazánkové máslo' of a milk product which could not be classified as butter, the Czech Republic had infringed the regulation, the Commission brought an action before the Court of Justice against the Czech Republic for failure to fulfil obligations.

In its judgment of today, the Court of Justice starts by finding that 'pomazánkové máslo' does not satisfy the criteria laid down in the regulation for it to be marketed under the designation 'butter'. The Court also notes that the product is not included in the list of products which can benefit from a derogation and not be subject to the restrictions in the regulation concerning designations.

The Court examines the Czech Republic's argument that products whose exact nature is clear from traditional usage and/or whose designation is clearly used to describe a characteristic quality of the product automatically benefit from that derogation without their inclusion in that list, and hence prior authorisation by the Commission, being necessary. The Court rejects this argument, pointing out that the regulation expressly empowers the Commission to draw up an exhaustive list of products to which the derogation may be applied, on the basis of the lists sent by the Member States, and holds that the application of the derogation therefore requires a prior decision by the Commission.

**In those circumstances, the Court finds that the Czech Republic has failed to fulfil its obligations under the regulation, by allowing a milk product which cannot be classified as butter to be marketed under the sales designation 'pomazánkové máslo'.**

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<sup>1</sup> 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).

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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