



Press and Information

Court of Justice of the European Union

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Judgment in Case C-636/11  
Karl Berger v Freistaat Bayern

## **EU law allows national authorities to provide the public with information identifying food which is not prejudicial to health, but which is unfit for human consumption**

*Specifically, information relating to the name of the food, and the name or trade name under which it has been manufactured, processed or distributed may be given*

The Regulation on food safety<sup>1</sup> ensures that no food shall be placed on the market if it is unsafe, which means injurious to health or unfit for human consumption. In the latter case, this includes food which is unacceptable for human consumption according to its intended use, for reasons of contamination, or through putrefaction, deterioration or decay. Member States must maintain a system of official controls and other activities as appropriate, including public communication on food safety and risk.

On 16 and 18 January 2006, the Passau Veterinary Office (Germany) carried out official inspections in several establishments pertaining to Berger Wild GmbH, a company active in the game meat processing and distribution sector. The analyses led to a finding that the food in question was unfit for human consumption. The Bavarian authorities informed the company that they intended to inform the public thereof, unless the company itself did so effectively and promptly. Berger objected, asserting that while the products might exhibit sensory anomalies, there was no risk to health. It proposed to issue a 'product warning' inviting its customers to attend their usual retail outlet in order to exchange the game products concerned.

In three press releases dated 24, 25 and 27 January, the Minister for Consumer Protection of Freistaat Bayern announced that the products at issue were to be recalled. The Minister indicated that inspections had revealed that the products at issue gave off a rancid, nauseous, musty or acidic smell, and that in certain cases the putrefaction process had already started. The Minister added that, as revoltingly unhygienic conditions had been encountered in certain of its establishments, a temporary prohibition had been issued against Berger preventing it from marketing products manufactured or processed in those establishments.

In a speech given before the Bavarian State Parliament on 31 January 2006, the Minister stated that Berger had declared itself insolvent that very day, that it was no longer able to market its goods, and that, therefore, any health risks resulting from further products being marketed could be excluded.

Berger considered it had suffered considerable losses as a result of the press releases put out by the Freistaat Bayern authorities, and brought an action for damages against the Freistaat Bayern.

In that context, the Landgericht München I (Regional Court of Munich), before which proceedings were brought, requests the Court of Justice to give a ruling on whether EU law precludes the German legislation which allowed the public authorities to provide that information.

In its judgment delivered today, the Court considers that **EU law does not preclude national legislation**, such as the German legislation at issue, **which allows, in accordance with the**

<sup>1</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

**requirements of professional and business secrecy, information issued to the public relating to food not injurious to health, but which is unfit for human consumption, to mention the name of the food or the name or trade name of the food manufacturer, processor or distributor.**

In that regard, the Court notes that a food which is unfit for human consumption is considered to be 'unsafe' by the regulation. Though not injurious to human health, inasmuch as it may be classified unacceptable for human consumption, it nonetheless does not fulfil the food safety requirements set out by the regulation. Therefore, that food which is unfit for human consumption may prejudice the interests of consumers, the protection of whom is one of the objectives of food law. It follows that national authorities may inform the public thereof, in accordance with the requirements of professional and business secrecy<sup>2</sup>.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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<sup>2</sup> As provided for under Article 7 of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1, and corrigendum OJ 2004 L 191, p. 1).