

Case C-526/19**Request for a preliminary ruling****Date lodged:**

9 July 2019

Referring court:

Conseil d'État (France)

Date of the decision to refer:

28 June 2019

Applicant:

Entoma SAS

Defendants:

Ministre de l'Économie et des Finances

Ministre de l'Agriculture et de l'Alimentation

[...]

Having regard to the following procedure:

The company Entoma applied to the tribunal administratif de Paris (Administrative Court, Paris) for the annulment of the order of 27 January 2016 by which the préfet de police de Paris (Prefect of Police, Paris) suspended the placing on the market of whole insects for human consumption which the company was selling and ordered the withdrawal of those products from the market until authorisation to place them on the market was obtained, following an assessment intended to demonstrate that they do not present any danger for the consumer.

By judgment [...] of 9 November 2017, the tribunal administratif de Paris rejected the application.

By judgment [...] of 22 March 2018, the cour administrative d'appel de Paris (Administrative Court of Appeal, Paris) dismissed the appeal lodged by Entoma against that judgment.

[...], Entoma asks the Conseil d'État to:

- (1) set aside the latter judgment;
- (2) allow its appeal by dealing with the case on its merits;

[...] **[Or. 2]**

[...], Entoma submits that the cour administrative d'appel de Paris:

- erred in law by holding that the products which it was selling were subject to Regulation (EC) No 258/97 of 27 January 1997 concerning novel foods and novel food ingredients whereas, as they consisted of whole insects consumed in their own right, they were excluded from its scope;
- [...] [plea based on national law]

[...], the ministre de l'Économie et des Finances (Minister for the Economy and Finances) contends that the appeal should be dismissed. [...]

[...]

Having regard to:

- the Treaty on the Functioning of the European Union, in particular Article 267;
- Regulation (EC) No 258/97 of 27 January 1997;
- Regulation (EU) 2015/2283 of 25 November 2015;
- [...]
- the judgment of the Court of Justice of the European Union of 9 November 2016, *Davitas GmbH v Stadt Aschaffenburg* (Case C-448/14);

[...]

Whereas: **[Or. 3]**

1. [...] [account of the earlier proceedings]
2. According to recital 2 of Regulation (EC) No 258/97 of 27 January 1997 concerning novel foods and novel food ingredients, which was then in force, on the basis of which the prefectoral order was made: '*... in order to protect public health, it is necessary to ensure that novel foods and novel food ingredients are subject to a single safety assessment through a Community procedure before they are placed on the market within the Community; ...*'. Article 1 of that regulation provides: '*1. This Regulation concerns the placing on the market within the Community of novel foods or novel food ingredients. 2. This Regulation shall*

apply to the placing on the market within the Community of foods and food ingredients which have not hitherto been used for human consumption to a significant degree within the Community and which fall under the following categories: ... (e) foods and food ingredients consisting of or isolated from plants and food ingredients isolated from animals, except for foods and food ingredients obtained by traditional propagating or breeding practices and having a history of safe food use; ...'. In accordance with Article 3 of the regulation: '1. Foods and food ingredients falling within the scope of this Regulation must not: ... present a danger for the consumer ...'. Under Article 4 of the regulation: '1. The person responsible for placing on the Community market (hereinafter "the applicant") shall submit a request to the Member State in which the product is placed on the market for the first time. At the same time, he shall forward a copy of the request to the Commission. 2. An initial assessment as provided for in Article 6 shall be carried out. Following the procedure referred to in Article 6(4), the Member State referred to in paragraph 1 shall inform the applicant without delay: that he may place the food or food ingredient on the market, where the additional assessment referred to in Article 6(3) is not required, and that no reasoned objection has been presented in accordance with Article 6(4), or that, in accordance with Article 7, an authorisation decision is required. ...'.

The merits of the judgment as regards the proportionality of the measures determined by the prefectural order:

3. [...] [Or. 4]
4. [...] [rejection of the plea advanced on this basis]

The merits of the judgment as regards the interpretation of the Regulation of the European Parliament and of the Council of 27 January 1997:

5. According to recital 8 of Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, repealing the Regulation of 27 January 1997 from 1 January 2018: 'The scope of this Regulation should, in principle, remain the same as the scope of Regulation (EC) No 258/97. However, on the basis of scientific and technological developments that have occurred since 1997, it is appropriate to review, clarify and update the categories of food which constitute novel foods. Those categories should cover whole insects and their parts. ...'. Article 1 of that regulation provides: '1. This Regulation lays down rules for the placing of novel foods on the market within the Union. 2. The purpose of this Regulation is to ensure the effective functioning of the internal market while providing a high level of protection of human health and consumers' interests.' Pursuant to Article 2 of that regulation, the Regulation applies to the placing of novel foods on the market within the Union and, under Article 3: '2. The following definitions also apply: (a) "novel food" means any food that was not used for human consumption to a significant degree within the Union before 15 May 1997, irrespective of the dates of accession of Member States to the Union, and that falls under at least one of the following categories: ... (v) food

consisting of, isolated from or produced from animals or their parts, except for animals obtained by traditional breeding practices which have been used for food production within the Union before 15 May 1997 and the food from those animals which has a history of safe food use within the Union; Finally, under Article 35 of the Regulation: ‘... 2. Foods not falling within the scope of Regulation (EC) No 258/97, which are lawfully placed on the market by 1 January 2018 and which fall within the scope of this Regulation may continue to be placed on the market until a decision is taken in accordance with Articles 10 to 12 or Articles 14 to 19 of this Regulation following an application for authorisation of a novel food or a notification of a traditional food from a third country submitted by the date specified in the implementing rules adopted in accordance with Article 13 or 20 of this Regulation respectively, but no later than 2 January 2020.’ [Or. 5]

6. In holding that Article 1(2)(e) of the Regulation of 27 January 1997 must be interpreted as including whole insects consumed in their own right, in relation to which it is not disputed that they had not hitherto been used for human consumption to a significant degree within the Community up until the entry into force of that regulation, the cour [administrative] relied on the judgment of 9 November 2016, *Davitas GmbH v Stadt Aschaffenburg* (C-448/14) by which the Court of Justice of the European Union, in its interpretation of Article 1(2)(c) of that regulation, ruled that the regulation ‘has a twofold objective not only of ensuring the functioning of the internal market in novel foods but also of protecting public health against the risks to which they may give rise’ and that it ‘aims to establish common standards within the EU in the field of novel foods and novel food ingredients, in particular, as stated in recital 2, by introducing a single safety assessment of those foods and food ingredients through a Community procedure before they are placed on the EU market’.
7. Entoma submits that the judgment of the cour [administrative] which it challenges is based on a misinterpretation of Article 1(2)(e) of the Regulation of 27 January 1997. In Entoma’s view, those provisions expressly cover only ‘*food ingredients isolated from animals*’ and not whole animals which were excluded from the material scope of those provisions, as per the finding — moreover — of the UK and Belgian authorities, which have not prevented the marketing of whole insects without prior authorisation. It submits, relying on recital 8 of the Regulation of 25 November 2015 which repealed and replaced the Regulation of 27 January 1997 from 1 January 2018, that the inclusion of whole insects in the category of novel foods, which follows from Article 3(2)(v) of the Regulation of 25 November 2015, does not clarify the earlier definition, which was limited to parts of animals only, but rather modifies the scope of that previous definition by supplementing it. The applicant company infers from that fact that its food products, which consist of whole insects, had been lawfully placed on the market before 1 January 2018 and, on that ground, are covered by the transitional measures laid down in Article 35(2) of the Regulation of 25 November 2015 which allow the products to remain on the market provided that, before 2 January 2020, they are covered by an application for authorisation as novel foods or by a notification as traditional foods subject to the rules defined by that regulation.

8. The Minister for the Economy and Finances contends that there was no health reason to exclude the placing of whole insects on the market from the scope of the Regulation of 27 January 1997, pursuant to recital 2 of that regulation which pursues a public health objective, since the consumption of whole insects presents as many risks as the consumption of food ingredients isolated from animals.
9. In view of the various possible interpretations of the wording of that regulation of 27 January 1997, the question whether Article 1(2)(e) must be interpreted as including within its scope foods consisting of whole animals intended to be consumed as such or applies only to food ingredients isolated from insects poses a significant difficulty in the interpretation of EU law. [...] [reference for a preliminary ruling under Article 267 TFEU] **[Or. 6]**

HEREBY:

[...] [submits the following question]: is Article 1(2)(e) of the Regulation of 27 January 1997 to be interpreted as including within its scope foods consisting of whole animals intended to be consumed as such or does it apply only to food ingredients isolated from insects?

[...] **[Or. 7]**

[...] [signatures]

WORKING DOCUMENT