



## **The sodium content of natural mineral waters must be calculated on the basis not only of sodium chloride but also of sodium bicarbonate**

*A natural mineral water may not mention that it is low in sodium or salt, or that it is suitable for a low-sodium diet, if its sodium content is equal to or more than 20 mg/l, regardless of the chemical form of sodium*

Neptune Distribution sells and distributes the natural sparkling mineral waters 'Saint-Yorre' and 'Vichy Célestins'. In 2009, the French administration ordered Neptune Distribution to remove any indication suggesting that those waters were low or very low in salt or in sodium. The following indications in particular were concerned: 'St-Yorre contains only 0.53 g of salt (or sodium chloride) per litre, that is to say less than a litre of milk!!!', 'Vichy Célestins contains only 0.39 g of salt per litre or 2 to 3 times less than is contained in a litre of milk'. Neptune Distribution challenges that decision.

Hearing the case as the court of last instance, the French Conseil d'État (Council of State) asks the Court of Justice whether the sodium content of the waters at issue must be calculated solely on the basis of sodium chloride (table salt), or whether it must also be calculated on the basis of the total amount of sodium in those waters in all its forms (thus including sodium bicarbonate). The consumer might be misled if mineral water were to be described as low in sodium or salt, or as being suitable for a low-sodium diet, even though it contained high levels of sodium bicarbonate.

If sodium bicarbonate had to be taken into account in the calculation of the sodium content, the Conseil d'État states that distributors of natural mineral waters could be deprived of the opportunity to rely on information that is nonetheless correct, which could limit the freedom to conduct a business and freedom of expression and advertising. Sodium bicarbonate might be regarded as less damaging to human health than sodium chloride, as, currently, there is no scientific data confirming that sodium bicarbonate brings on or aggravates arterial hypertension in the same way and in the same proportions as table salt.

In today's judgment, the Court declares, first of all, that the Regulation on nutrition and health claims<sup>1</sup> prohibits the use of the claim 'very low in sodium/salt' with respect to natural mineral waters and other waters. In the light of the directive on natural mineral waters,<sup>2</sup> claims or indications suggesting to the consumer that the waters concerned are low in sodium or salt or are suitable for a low-sodium diet may be used provided that the total sodium content, in all the chemical forms present, is, in both cases, less than 20 mg/l.

In that connection, the Court recalls that the EU legislature wishes to ensure that consumers have appropriate and transparent information as to the sodium content of drinking waters. Since sodium is a component of various chemical compounds, (such as sodium chloride and sodium bicarbonate), **the quantity present in natural mineral waters must be determined by taking account of the total amount present in the natural mineral waters concerned, whatever its**

<sup>1</sup> Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9, and corrigendum OJ 2007 L 12, p. 3), as amended by Regulation (EC) No 107/2008 of the European Parliament and of the Council of 15 January 2008 (OJ 2008 L 39, p. 8).

<sup>2</sup> Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (OJ 2009 L 164, p. 45).

**chemical form.** Thus, the consumer may be misled where the packaging, labels and advertising for natural mineral waters suggest that those waters are low in sodium or salt or are suitable for a low-sodium diet, whereas, in reality, they contain 20 mg/l or more of sodium.

As regards the validity of the prohibition of displaying on packaging, labels and in advertising for natural mineral waters any claim or indication that they have a low sodium chloride or table salt content, which may mislead the consumer as to the total sodium content of the waters concerned, the Court considers that it is justified and proportionate, in so far as it is necessary for consumers to have the most accurate and transparent information possible to ensure the protection of human health in the European Union. A risk to human health caused by a high level of consumption of sodium present in various chemical compounds, in particular sodium bicarbonate, cannot be excluded with certainty, so that the precautionary principle justifies the adoption of measures restricting fundamental rights.

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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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