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Food Industry

Company names can be made public where food is unfit for human consumption but not injurious to health, EU Court rules

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The Court of Justice of the EU ("CJEU") has recently ruled that EU law allows national authorities to provide the public with information identifying a food business operator ("FBO") whose food is unfit for human consumption even though it is not injurious to human health (Case C-636/11 *Karl Berger v Freistaat Bayern*).

Regulation 178/2002 provides that food shall be deemed to be unsafe if it is considered to be: (a) injurious to health; or (b) unfit for human consumption.

Further, the said rules provide that public authorities must inform the general public of the nature of any general risk to health where there are reasonable grounds to suspect that food may present such a risk and depending on the nature, seriousness and extent of that risk. German legislation provided that the competent authority could inform the public of the name of the food and the name or trade name of the FBO where the relevant food was not injurious to health but was unfit for human consumption.

In 2006, a German veterinary office carried out official inspections in several establishments run by Berger Wild GmbH ("Berger Wild"), a game meat processing and distribution company. As a result of these inspections and subsequent analyses, it was determined that the food in question was unfit for human consumption.

The Bavarian Minister for Consumer Protection announced that the relevant products marketed by Berger Wild were to be recalled and provided the public with considerable detail relating to the unsatisfactory state of the food products inspected and of the "revoltingly unhygienic" conditions that had been encountered in certain Berger Wild establishments.

The Regional Court of Munich asked the CJEU whether EU law precluded German legislation which allowed the public authorities to provide the information concerned to the general public even where the food was not injurious to human health.

The CJEU confirmed that Regulation 178/2002 simply placed public authorities under an obligation to inform the public where there were reasonable grounds to suspect that a food may present a risk to human health, and accordingly did not prohibit authorities from informing the public where a food was merely unfit for human consumption, albeit not injurious to health. Given that food which is unfit for human consumption is deemed to be unsafe under Regulation 178/2002, the Court held that such food would prejudice the interests of consumers, the protection of whom was one of the objectives of food law.

The Court therefore ruled that Regulation 178/2002 did not preclude national legislation which permitted information relating to the name of the food and the name or trade name of the FBO to be issued to the public in cases where the relevant food was not injurious to health but which was unfit for human consumption.

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This judgment provides an indication of the extent to which the CJEU will interpret EU law in accordance with its objectives. In this case, the protection of consumer interests was considered by the Court to be of paramount significance in its interpretation of the scope of Regulation 178/2002.

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