

**Joint Master in EU Trade and
Climate Diplomacy**

*Plant-based food alternatives in
the light of the EU legislative
framework*

Supervised by dr. Cristina Teleki

Marthe Vandenbossche

2023

Statutory declaration

I hereby declare that I have composed the present thesis autonomously and without use of any other than the cited sources or means. I have indicated parts that were taken out of published or unpublished work correctly and in a verifiable manner through a quotation. I further assure that I have not presented this thesis to any other institute or university for evaluation and that it has not been published before.

Vandenbossche Marthe

Nice, 11th of June 20

Acknowledgements

First of all, I express my gratitude to my supervisor dr. Cristina Teleki for all the advice, constructive feedback and patience in guiding my through the whole process. Thank you for the many words of encouragement. Further thanks to Mr Lecompte and Mrs Kuhn for providing the necessary academic guidance.

I would be remiss if I didn't mention my family for their immense support during the crazy journey this thesis, and moreover, this whole Master's degree, has been. Thank you for believing in me, you helped me keep up my spirits when the adventure got scary. I am also grateful for my classmates and friends, who listened and exchanged ideas on many occasions over a cup of coffee.

Lastly, thank you, Thomas, for all the support and the indirect inspiration. If you weren't the inexhaustible source of fun facts that you are, I may not have known that plant-based milk is not to be called milk. We owe CVS a Alpro yoghurt for this.

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List of Abbreviations

CAP	Common Agricultural Policy
CMO	Common Markets Organization
EC	European Commission
ECJ	European Court of Justice
EEA	European Economic Area
EFSA	European Food Safety Authority
EGD	European Green Deal
EU	European Union
EVU	European Vegetarian Union
F2F	Farm to Fork Strategy
FSF	Framework for Sustainable Food Systems
PBFA	plant-based food alternative
SFSP	Sustainable Food Systems Programme
SDG	Sustainable Development Goals
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDL	Union Deutsche Lebensmittel
UN	United Nations
VSW	Verband Sozialer Wettbewerb eV

Since there is no unified definition of what exactly should be considered to be vegan or vegetarian food, this research will talk about plant-based foods instead. The plant-based alternatives can both cover alternatives in the dairy as well as in the meat industry.

Abstract

This thesis explores the legal framework, provided by both Regulations and case-law, for plant-based food alternatives within the European Union. As climate change plays a bigger role in people's lives, consumers become more conscious about their own lifestyles, often adapting their diets to be more sustainable. However, the current EU legislative framework does not provide sufficient support for plant-based food alternatives, causing a lack of clarity and unity within the common market. This thesis aims to address this legal issue by examining the existing regulations and identifying gaps and discrepancies, both for dairy and meat alternatives. The influence of the European Court of Justice and the role of the Member States in facilitating this growing new food category in the market is also analyzed. The findings highlight the need for either explicit inclusion of plant-based food alternatives into the existing framework or to adopt new regulations specifically tailored to the topic. One way to adapt would be a unified definition for plant-based food alternatives within the Union. In that light, consumer protection, food safety and informed choices are important. The thesis concludes by emphasizing the need of a revised framework promoting clarity, fairness, and sustainability in the food sector.

Keywords: legislative framework, plant-based foods, dairy terms, European Union, climate change, regulations, European Court of Justice, consumer protection

1 Introduction

1.1 Wider context: plant-based foods to tackle climate change

When opening the newspaper in the morning, alarming climate change headlines wake me up: heatwaves are alternating with massive storms, ice caps are melting and both floods and droughts occur more frequently. Climate change is undeniably happening, and concerning me as a young researcher. And I am not alone in that, in the past years there has been an equal increase in protest actions, lawsuits against governments and raising awareness campaigns. My academic interest lies in discovering convenient ways how individuals can adapt their lifestyles, and how the bigger legislative framework can be adapted to facilitate a switch.

One way as an individual to take action is to ensure one's diet is as sustainable as possible. Given the high demand from the livestock sector for water and other resources, an increasing number of people tend to opt for plant-based food alternatives (PBFA).¹

1.2 Problem setting and research question

The European Union (EU) is well aware of the changing climate and tries to intervene. It strives to be the first continent to become carbon neutral by 2050. The European Green Deal (EGD) with its various different strategies is the externalization of this mindset shift. However, within this multitude of actions, there is no specific target to reach more sustainable diets. The current EU legislative framework is not welcoming towards PBFA, whether that be meat substitute or dairy alternatives. The term vegan or vegetarian does also not know EU wide recognition, causing a lack of unity within the common market.² The Farm to Fork Strategy recognises these goals but has yet not led to a concrete filling of the gap in EU legislation.³

Furthermore, other indirect signals show the uncertainty PBFA face within the Union. For example, the meat and dairy market accounts for a major piece of the EU's promotional budget, at least 32% in the time period of 2016-2020 was allocated to this industry. The European advertising of plant-based alternatives on the other hand was in that time period non-existent. Another hurdle could be the less favorable tax regime where VAT for alternatives outweighs the taxes for meat and dairy industries.⁴

¹ Anu Lähtenmäki-Uutela et al., "Alternative Proteins and EU Food Law," *Food Control* 130 (December 1, 2021): 108336, <https://doi.org/10.1016/j.foodcont.2021.108336>. 1.

² Lähtenmäki-Uutela et al., "Alternative Proteins and EU Food Law.", 5.

³ Lähtenmäki-Uutela et al., "Alternative Proteins and EU Food Law.", 2.

⁴ C. Macdonald, "EU Urges Plant-Based Diets – but Policy Favours Meat and Dairy," [figlobal.com](https://insights.figlobal.com/plant-based/eu-urges-plant-based-diets-policy-favours-meat-and-dairy), December 13, 2021, <https://insights.figlobal.com/plant-based/eu-urges-plant-based-diets-policy-favours-meat-and-dairy>.

As will be discussed in this thesis, there are EU regulations that protect the dairy terms, however the “meaty names” of food are not exclusively reserved for animal products at EU level. Therefore, the Member States are competent to act in this field, with a variety of measures as a consequence.

We will focus on how the European, and following also the national, legislators can provide for a clear, uniform framework in order to meet the growing interest from consumers towards more sustainable food alternatives. First, the current existing Regulations are discussed. Next, the case law that exists on the PBFA is examined. Finally, the last chapter explores possible renewals in this domain.

1.2.1 Research design and methodology

a. Research design

The research design aims to investigate the impact of the current legislative framework on the designation of PBFA in both the milk and meat sectors. Additionally, it seeks to identify potential alternative regulations and case-law that can ensure clarity in this domain.

b. Methodology

In order to achieve these objectives, a comprehensive research design will be followed, comprising both qualitative and document analysis approaches.

Firstly, there is the qualitative approach. This is chosen to gain a deep understanding of the influence of EU regulations and case law on PBFA, as well as the varying perspectives of the key actors involved. This approach, rather than a quantitative research design, allows for open-ended and exploratory research questions to be addressed effectively.

Secondly, a literature study will be held. This is the main methodology, involving an extensive review and analysis of relevant academic sources pertaining to EU regulations, case law, and the PBFA industry. During this process, comprehensive information will be gathered to form a basis for the analysis, and provide insights into the topic of PBFA and its regulatory framework. A robust understanding of the subject will be ensured by the use of academic sources.

Thirdly, there is the complementary analysis of official sources. Official EU sources need to be understood as legal documents, case law, communications, and reports from various EU institutions that will pass the review. Not only academic databases but also legal databases and EU institutional websites, together with other relevant online platforms, will be utilized to obtain the necessary information. This is necessary to identify any gaps, ambiguities, or areas of the research that would require further clarification.

Fourthly, the data and research collected will be obtained through systematic search strategies, such as researching key terms in various case law and regulations, to obtain the necessary information.

Furthermore, it will be carefully analyzed to provide a comprehensive overview of the influence of EU regulations and case law on PBFA, as well as potential alternative regulatory frameworks.

Lastly, in the framework of this research no conflict of interest needs to be disclosed. All work is my own and all sources are cited with due consideration of ethical academic standards. As no interviews are conducted within this research design, there is no separate approach for the data privacy and confidentiality.

This methodology aims for the study to contribute to the current understanding of the impact of the legislative frameworks on the designations of PBFA within the EU, whilst also proposing a change to ensure sufficient clarity in this domain.

c. State of the art

In the context of this research, many academic papers have been written, both looking at the consumer and the producer side. One paper that many refer to and thus also serves as inspiration for this paper, is the academic debates on the topic. This is visible with the text of A. Leialohilani and A. de Boer on “EU food legislation impacts innovation in the area of plant-based dairy alternatives”. Another important work, specifically focussing on the naming of PBFA, is the one from F. Domke on “Vegetarian and Vegan Products Labelling and Definitions.”.

d. Limitations of the research

The scope of this research is limited in terms of space and methodology. This research stays within the European framework of PBFA and does not take into account global trends, nor does it compare the framework to others. Furthermore, the research is limited in the way that it is analyzing case law and not researching the economic impact of the Regulations on the producers and consumers. This is due to a lack of enough economic background to perform this thoroughly. However, some numbers will be discussed but this is not the main aim nor the main methodology of the research.

2 The role of plant-based foods in sustainable development

2.1 Introduction

All the food consumption worldwide causes more than 25% of all greenhouse gas emissions (GHG). At least 80% of these emissions are caused by the production of animal products. The composition and amount of livestock in diets are widely recognized as the key variables influencing GHG. Agriculture uses around 70% of freshwater worldwide.⁵ Meat and dairy products account for 56 to 58 percent of farmland whilst only providing 18 percent of global food calories, and 37 percent of protein.⁶

Reducing the amount of items derived from animals in human diets has been linked to improved health in recent studies.⁷ These studies have also highlighted the environmental advantages of doing so.⁸ They have demonstrated that dietary adjustments, including a decrease in meat consumption, would relieve land use pressures and lower greenhouse gas emissions. In order to prevent negative environmental effects like global warming above 2°Celsius.

The meat industry's sustainability is threatened by population expansion, rising purchasing power and both its direct and indirect influence on human and nature's health. Despite recent stagnating numbers in meat consumption trends, the EU has attained its highest-ever peak of meat consumption per person, approximately double the global average. Furthermore, these numbers are expected to be rising even higher, due to the rising population and incomes. More flexitarian, vegetarian and vegan diets have been trending, with a whole variety on how much animal-based products are included in each of these. Still, many consumers prefer a more traditional meat based diet on a daily basis.⁹ There are various reasons for this, but convenience, knowledge about the product and its nutritional value, and the price are often mentioned.¹⁰

Furthermore, there exists a global threat for food production. Three points can demonstrate the worldwide nature of this concern. Firstly, the overall utilization of resources for food production has attained significant proportions. Numbers of 2005, almost 20 years ago, show that agriculture occupied nearly 38%

⁵ Food and Agriculture Organization, "World Bank Open Data," World Bank Open Data, 2016, <https://data.worldbank.org/indicator/er.h2o.fwag.zs>.

⁶ "Europe: Vegetarianism & Veganism among Young Adults 2022 | Statista," Statista, May 11, 2022, <https://www.statista.com/forecasts/768475/vegetarianism-and-veganism-among-young-adults-in-selected-european-countries>.

⁷ See for example: Laura Keaver et al., "Plant- and Animal-Based Diet Quality and Mortality among US Adults: A Cohort Study," *British Journal of Nutrition* 125, no. 12 (June 28, 2021): 1405–15, <https://doi.org/10.1017/s0007114520003670> ; Lucia Pacifico, Francesco Massimo Perla, and Claudio Chiesa, "Impact of Healthy Plant-Based Diet on Abdominal Visceral and Liver Fat Contents," *Hepatology Surgery and Nutrition* 10, no. 1 (January 1, 2021): 136–38, <https://doi.org/10.21037/hbsn-20-760>.

⁸ Heidi Lynch, Carol S. Johnston, and Christopher Wharton, "Plant-Based Diets: Considerations for Environmental Impact, Protein Quality, and Exercise Performance," *Nutrients* 10, no. 12 (December 1, 2018): 1841, <https://doi.org/10.3390/nu10121841>.

⁹ Hans Dagevos, "Finding Flexitarians: Current Studies on Meat Eaters and Meat Reducers," *Trends in Food Science and Technology* 114 (June 12, 2021): 530–39, <https://doi.org/10.1016/j.tifs.2021.06.021>.

¹⁰ Marija Banovic et al., "Enabling Sustainable Plant-Forward Transition: European Consumer Attitudes and Intention to Buy Hybrid Products," *Food Quality and Preference* 96 (March 1, 2022): 104440, <https://doi.org/10.1016/j.foodqual.2021.104440>, 1.

of the worldwide land area. This results in an average agricultural land allotment of 0.76 hectares per person. Without technological advancements and intensification of agricultural practices, agriculture would require an acreage equivalent to half and two-thirds of the current terrestrial land area by 2030 and 2070, respectively, to sustain the current levels of food consumption per person. This forecast takes into account the current population growth rates.¹¹

A second argument to underline the global scope of challenges in food production is that nowadays societies are increasingly interconnected. Of course some regions face more difficulties than others but as globalization has facilitated the expansion of international trade, the transfer and mitigation of regional commodity supply shortages or surpluses through global markets was enabled. Moreover, globalization has also influenced different levels of regulations, with national policies concerning land usage progressively integrated into wider international frameworks. This integration may on the one hand impose constraints to the potential expansion of agricultural land, however, expansion might be necessary to achieve global goals aimed at eliminating hunger and malnutrition.¹²

Thirdly, local land use decisions cumulate together, which can yield significant global environmental repercussions, particularly in relation to climate change. This is the result from the interplay between local practices and the broader environment, resulting in global-scale feedback effects.¹³

To ensure access to safe and affordable food for a growing population worldwide, a shift towards PBFA can be part of the solution.¹⁴ Research has shown that switching animal based products with PBFA has the potential to reduce human's impact on the environment.¹⁵ The intensive utilization of natural resources and the realization of how animal farming is contributing to greenhouse gas emissions, is resulting in a decrease of meat consumption and an increase for PBFA.¹⁶ The globally growing economic middle class is resulting in an increase in demand for animal products as well, which can significantly escalate land requirement per calorie compared to PBFA. In certain cases, this factor can amplify land needs by a factor of 10 or even more.¹⁷ In addition, the replacement by similar, yet plant-based, alternatives can lead to more consumer

¹¹ Uwe H. Schneider et al., "Impacts of Population Growth, Economic Development, and Technical Change on Global Food Production and Consumption," *Agricultural Systems* 104, no. 2 (February 1, 2011): 204–15, <https://doi.org/10.1016/j.agry.2010.11.003>, 205.

¹² Schneider et al., "Impacts of Population Growth, Economic Development, and Technical Change on Global Food Production and Consumption." , 205.

¹³ Schneider et al., "Impacts of Population Growth, Economic Development, and Technical Change on Global Food Production and Consumption." , 205.

¹⁴ Joan Sabaté and Sam Soret, "Sustainability of Plant-Based Diets: Back to the Future," *The American Journal of Clinical Nutrition* 100, no. suppl_1 (July 1, 2014): 476S-482S, <https://doi.org/10.3945/ajcn.113.071522>, 480S.

¹⁵ Carmelia Alae-Carew et al., "The Role of Plant-Based Alternative Foods in Sustainable and Healthy Food Systems: Consumption Trends in the UK," *Science of the Total Environment* 807 (October 18, 2021): 151041, <https://doi.org/10.1016/j.scitotenv.2021.151041>.

¹⁶ Allah Bakhsh et al., "Traditional Plant-Based Meat Alternatives, Current, and Future Perspective: A Review," *농업생명과학연구* 55, no. 1 (February 28, 2021): 1–11, <https://doi.org/10.14397/jals.2021.55.1.1>, 1.

¹⁷ Schneider et al., "Impacts of Population Growth, Economic Development, and Technical Change on Global Food Production and Consumption." , 205-206.

acceptance taking into consideration that no big changes in people's normal menus need to happen. For example in the United Kingdom, this is considered as a bridge to overcome barriers to more PBFA.¹⁸

For better sustainability results to be achieved, sustainable diets globally need to be more accessible. This is characterized by its capacity to minimize carbon emissions, safeguard and honor biodiversity and ecosystems; It also ensures sufficient nutrition, safety, well-being, cultural acceptance, and economic affordability. Diets abundant in PBFA exhibit overall the smallest carbon footprint, along with a smaller water and land usage than more traditional animal-based diets.¹⁹ Furthermore, an extra important factor is that some researchers claim that animal-derived foods demonstrate the least efficient conversion of nutrients through food. Therefore, transitioning towards more plant-based diets holds big potential for mitigating greenhouse gas emissions.²⁰ Some would argue that changing one's diet can be more effective to achieve a better sustainable development than technological mitigation options, and may even be crucial and necessary.²¹

A shift to a more plant-based everyday diet ought to be ultimately beneficial for humans.²² Several studies have associated plant-based diets to result in a lower probability rate of overweight, heart diseases, type 2 diabetes and even all-cause mortality. However, like with any sort of food, PBFA might contain less healthy items. Achieving a sustainable diet that is healthy to both the planet and the consumer is critical.

2.2 Global action for sustainable development

The Sustainable Development Goal (SDG) 2, established by the United Nations (UN), aims to attain zero hunger by 2030. This involves ensuring “access to sufficient, nutritious, and safe food for all individuals, implementing sustainable agricultural practices, and preserving ecosystems”.²³ Sustainable agriculture and food play a crucial role in advancing all four dimensions of food security, namely “availability, access, utilization, and stability.”²⁴

¹⁸ Jennie I. Macdiarmid, Flora Douglas, and Jonina Campbell, “Eating like There's No Tomorrow: Public Awareness of the Environmental Impact of Food and Reluctance to Eat Less Meat as Part of a Sustainable Diet,” *Appetite* 96 (January 1, 2016): 487–93, <https://doi.org/10.1016/j.appet.2015.10.011>.

¹⁹ Sabaté and Soret, “Sustainability of Plant-Based Diets: Back to the Future.”, 479S.

²⁰ Federico J.A. Perez-Cueto, “Sustainability, Health and Consumer Insights for Plant-Based Food Innovation,” *International Journal of Food Design* 5, no. 1–2 (December 1, 2020): 139–48, https://doi.org/10.1386/ijfd_00017_3, 140.

²¹ Marco Springmann et al., “Analysis and Valuation of the Health and Climate Change Cobenefits of Dietary Change,” *Proceedings of the National Academy of Sciences of the United States of America* 113, no. 15 (April 12, 2016): 4146–51, <https://doi.org/10.1073/pnas.1523119113>.

²² Lucia Pacifico, Francesco Massimo Perla, and Claudio Chiesa, “Impact of Healthy Plant-Based Diet on Abdominal Visceral and Liver Fat Contents,” *Hepatobiliary Surgery and Nutrition* 10, no. 1 (January 1, 2021): 136–38, <https://doi.org/10.21037/hbsn-20-760>.

²³ Martin, “Goal 2: Zero Hunger - United Nations Sustainable Development,” United Nations Sustainable Development, November 7, 2022, <https://www.un.org/sustainabledevelopment/hunger/> ; United Nations, “Food | United Nations,” n.d., <https://www.un.org/en/global-issues/food>.

²⁴ “Sustainable Food and Agriculture,” Food and Agriculture Organization of the United Nations, n.d., <https://www.fao.org/sustainability/en/> ; “Background,” Food and Agriculture Organization of the United Nations, n.d., <https://www.fao.org/sustainability/background/en/>.

Moreover, the significance of sustainable food and agriculture in accomplishing the 2030 Sustainable Development Agenda is also acknowledged by the UN Global Compact.²⁵ Private sector organizations and civil society are also actively involved in developing more sustainable food systems.²⁶

The UN has taken various measures to promote sustainable food, such as intensifying its efforts to collaborate with diverse stakeholders, like governments, businesses, academia, and civil society. The goal is to foster inclusive, resilient and sustainable agriculture whilst enhancing food systems that deliver for the 3 p's: people, planet and prosperity.²⁷ As part of the UN's Decade of Action to achieve the SDGs, the UN Secretary-General organized a Food Systems Summit in 2021 to introduce new and daring actions.²⁸ The Sustainable Food Systems Programme (SFSP) focuses on several themes, including sustainable diets, better food waste management and an overall more resilient food production system worldwide.²⁹

2.3 EU action for sustainable development

To address the issue of sustainable development and food, the European Commission (EC) highlighted in its Farm to Fork Strategy (F2F) within the framework of the EGD. This Strategy seeks to create an “equitable, nutritious, and eco-friendly food system”.³⁰

The EGD adopts a comprehensive approach to tackle the issues facing sustainable food systems, and acknowledges the inseparable connections between well-being, flourishing societies, and an overall healthy planet. Additionally, the EGD aims to encourage a gradual shift towards the adoption of safer and more sustainable methodologies by the EU's trading associates.³¹

Furthermore, there is the legislative proposal aiming to establish a Framework for Sustainable Food Systems (FSFS), as one of the key initiatives of the F2F. By the end of 2023, the Commission is planning to adopt the Strategy. The primary objective is to simplify the shift towards sustainable food systems, whilst at the same time promoting policy coherence at both the EU and Member

²⁵ “Food and Agriculture | UN Global Compact,” May 23, 2023, <https://unglobalcompact.org/what-is-gc/our-work/environment/food-agriculture>.

²⁶ “Sustainable Food Systems - UNSCN,” n.d., <https://www.unscn.org/en/topics/sustainable-food-systems>.

²⁷ “Food and Agriculture | UN Global Compact,” May 23, 2023, <https://unglobalcompact.org/what-is-gc/our-work/environment/food-agriculture>; Ulla A. Saari et al., “The Vegan Trend and the Microfoundations of Institutional Change: A Commentary on Food Producers’ Sustainable Innovation Journeys in Europe,” *Trends in Food Science and Technology* 107 (January 1, 2021): 161–67, <https://doi.org/10.1016/j.tifs.2020.10.003>.

²⁸ “UN Food Systems Summit,” USDA, n.d., <https://www.usda.gov/oce/sustainability/un-summit>.

²⁹ “Sustainable Food Systems,” UNEP - UN Environment Programme, n.d., <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/asia-pacific-roadmap-7>.

³⁰ Camilla Björkbom, “The EU Sustainable Food Systems Framework - Potential for Climate Action,” *NPJ Climate Action* 2, no. 1 (March 6, 2023), <https://doi.org/10.1038/s44168-023-00034-9>.

³¹ Allan Matthews, “Implications of the European Green Deal for agri-food trade with developing countries”, *European Landowners’ Organization*, 2022, https://www.europeanlandowners.org/images/Matthews_ELO_paper_23_May_2022_1.pdf.

States level. The proposal's adoption will follow extensive consultation and an assessment of its potential impact.³²

While the FSFS has the potential to spur systemic transformation, some specialists remark that it remains unclear which practical measures the FSFS will encompass, such as whether it will establish specific objectives or high-level targets. The FSFS's development furthermore coincides with renewed concerns regarding food security in the wake of recent crises and conflicts. This has led to apprehensions that F2F initiatives could decrease the food production in the EU, together with exports. This would increase worldwide food insecurity. Nevertheless, other experts believe that unsustainable food systems that pose long-term threats to food production are the real cause for food insecurity. They suggest that transitioning to agroecological practices, as advocated in the F2F strategy, can ensure food security if paired right with demand-side dietary changes.³³ As there are new European elections coming up, it is politically important that the legislative proposal for the FSFS gets adopted as soon as possible, to ensure it does not disappear to the background.³⁴

A solid framework at EU level is important, when one takes into account that PBFA are much more expensive than the traditional foods. Research by Neilson demonstrates some interesting numbers.³⁵ It shows that plant-based meat is two times the price as beef, at least three times more expensive than pork and regular chicken is four times less expensive than its plant-based counterpart.³⁶

2.4 Sustainable foods: current state of the industry

In order to be able to understand the present legislative framework on PBFA, it is necessary to evaluate the recent economic landscape of these products within the European market first. Therefore, this chapter opens with a brief examination of the PBFA sector, which provides useful insights into its growth and present trends. The accompanying debate on the present legal framework might be contextualized by investigating these economic considerations.

³² "Legislative Framework," Food Safety, n.d., https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy/legislative-framework_en.

³³ Björkbom, "The EU Sustainable Food Systems Framework - Potential for Climate Action."

³⁴ Alice Poiron, "EU Food Policies: What's Cooking in 2023? - Slow Food International," Slow Food International, January 18, 2023, <https://www.slowfood.com/eu-food-policies-whats-cooking-in-2023/>.

³⁵ Jim Dudlicek, "2020 Retail Meat Review: Robust Sales With Plant-Based Products Gaining Ground," *Progressive Grocer*, March 9, 2020, <https://progressivegrocer.com/2020-retail-meat-review-robust-sales-plant-based-products-gaining-ground> ; NielsenIQ, "Growing Demand for Plant-Based Proteins - NIQ," NIQ, May 22, 2023, <https://nielseniq.com/global/en/insights/analysis/2021/examining-shopper-trends-in-plant-based-proteins-accelerating-growth-across-mainstream-channels/>.

³⁶ Nicole Axworthy, "Plant-Based Meat Will Be Cheaper Than Animal Meat Sooner Than You Think," *VegNews.Com*, May 14, 2023, <https://vegnews.com/vegan-news/technology/cheaper-plant-based-meat>.

Moreover, it is imperative to understand the interplay between regulations and advancements in the PBFA market. Therefore, the impact of the legislation on innovation will be shortly explored.

This chapter serves as a solid foundation of holistic understanding for the next exploration of the current legal framework within the EU.

2.4.1 European plant-based food market overview

If we briefly examine the economic outcomes of the PBFA industry in recent years, there is an increase in both demand and availability observable. Although economic analysis falls outside the scope of this thesis, examination of certain provided figures can help in order to better understand the position of this sector on the market.

The Good Food Institute Europe³⁷ examined NielsenIQ PBFA statistics from 13 EU Member States, including Austria, Belgium, Denmark, France, Germany, Italy, Netherlands, Poland, Portugal, Romania, Spain, Sweden and the UK. The intent of the researchers was to know the size and growth of the PBFA retail sector in the timeframe of 2020 to 2022.³⁸

This research showed that the sector was worth €5.8 billion in 2022 according to their results, showing a €1 billion increase since 2020. The value of the sales experienced a growth rate of 6% between 2021 and 2022. Additionally to that, there was a 4% growth in PBFA unit sales during that same period. Overall, the value of these food sales and unit sales combined grew at least 21% between 2020 and 2022.³⁹

However, to provide some context to the sales performances of PBFA in 2022, one needs to consider the unique macroeconomic circumstances characterized by the still continuing war in Ukraine, leading to both global trade tensions and inflation. While the growth of the PBFA market in retail numbers slowed down in 2022 compared to the growth of 2021, both the euro and unit sales did still grow, showcasing strong consumer demand for this category of products, despite situational obstacles.⁴⁰

³⁷ This is an international NGO, focussing on building more sustainable, secure and just food systems by transforming the current meat production.

³⁸ GFI Europe, “Europea plant-based food retail market insights. 2020-2022”, https://gfieurope.org/wp-content/uploads/2023/04/2020-2022-Europe-retail-market-insights_updated-1.pdf.

³⁹ GFI Europe, “Europea plant-based food retail market insights. 2020-2022”, 2.

⁴⁰ GFI Europe, “Europea plant-based food retail market insights. 2020-2022”, 2.

	2022 sales value	2021-2022 sales growth	2020-2022 sales growth	2022 unit sales	2021-2022 unit sales growth	2020-2022 unit sales growth
Milk	€2.2 B	7%	19%	1.3 B	6%	20%
Meat	€2.0 B	3%	19%	846 M	1%	21%
Yoghurt	€515 M	-0.4%	8%	255 M	-3%	10%
Spreads	€247 M	13%	40%	140 M	4%	26%
Meals	€181 M	20%	79%	72 M	14%	71%
Ice cream	€174 M	8%	14%	57 M	8%	15%
Cheese	€165 M	4%	56%	61 M	4%	62%
Cream	€139 M	7%	7%	109 M	0%	1%
Dessert	€88 M	6%	27%	58 M	5%	40%
Seafood	€43 M	60%	326%	14 M	67%	343%
Total	€5.8 B	6%	21%	2.9 B	4%	21%

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Table 1: Overview of plant-based sales summary per plant-based category within the EU.

An insight in these numbers teaches us that the biggest category of PBFA is dominated by plant-based milk alternatives. A second place is held by the alternatives to the meat industry. Seafood alternatives hold the smallest market share.⁴² The milk alternatives are expected to grow even more, as the growing need for diverse replacements for dairy products among European citizens who are unable to tolerate lactose is an important factor. Furthermore, cow's milk consumption has historically contributed to an increase in issues such as allergies and intolerance, which then led to a significant increase in demand for PBFA for milk within Europe.⁴³

When discussing the market trends, it is fascinating to compare the growth numbers to those of the traditional meat sector. The value of the meat alternatives grew almost five times more than conventional meat sales between 2020 and 2022, with a 19% growth. When comparing the unit sales, the outcome is even more remarkable. While PBFA sales grew by 21%, the traditional meat unit sales experienced a decline of 8%. Considering the average price per unit, the plant-based category was relatively speaking less affected by the inflation and price peaks of 2022. Conventional meat prices rose significantly by 11% whilst the PBFA faced a modest 1% price increase.⁴⁴

⁴¹ GFI Europe, "Europea plant-based food retail market insights. 2020-2022", 3.

⁴² GFI Europe, "Europea plant-based food retail market insights. 2020-2022", 6.

⁴³ SkyQuest Technology Consulting Pvt. Ltd., "Europe Plant-Based Food Market Is Expected to Surpass a Value of USD 15 Billion by Growing at a CAGR of 10.2% During 2022-2028; Growing Trend of Veganism to Elevate Market Growth," *GlobeNewswire News Room*, February 16, 2023, <https://www.globenewswire.com/news-release/2023/02/16/2609744/0/en/Europe-Plant-based-Food-Market-is-Expected-to-Surpass-a-Value-of-USD-15-Billion-by-Growing-at-a-CAGR-of-10-2-During-2022-2028-Growing-Trend-of-Veganism-to-Elevate-Market-Growth.html>.

⁴⁴ GFI Europe, "Europea plant-based food retail market insights. 2020-2022", 9.

Other research shows that in 2023, North-America is projected to hold the dominant position in the global market for plant-based food processing equipment. The substantial market share in this region is caused by several factors. Firstly, there is the presence of prominent plant-based food manufacturers. Additionally, the increasing number of PBFA companies, also of small and medium size, plays an important role. There is the rising adoption of PBFA products and furthermore the growing investments in research and development for processing equipment that contribute to this market share.⁴⁵ This is an illustration of how not only the market share of the actual PBFAs is growing but also the industry surrounding and supporting the outroll of the products.

These numbers demonstrate the growing interest in PBFAs within the economic market. However, one can ask if the legislative framework is as up to speed to keep track of these numbers and accommodate the changing market in the best way possible?

2.4.2 Negative market factors

Despite this success story, it is also important to take into consideration the negative market factors playing in this economic field. On the one hand, European consumers consider taste when selecting their food, and raise concerns about potential dissatisfaction with the flavor profile often cited as a primary deterrent.⁴⁶ Secondly, there are still sensory and nutritional implications that need to be addressed.⁴⁷ Additionally, there are many PBFA producers who are just entering the market and facing difficulties with the necessary production capabilities to fully capitalize on the market.⁴⁸ Globally speaking, there is the bigger problem: when the overall income grows, the demand for animal products increases.⁴⁹ By shortly discussing these factors, it is possible to identify areas of improvement where the legislative framework could play a role to facilitate growth.

The success of newly introduced food products, including PBFA, is hindered by various challenges. In the fast-moving industry, the failure rate for consumer goods can be as high as 50% to 75%. This failure rate emphasizes the complexity involved in achieving success, which requires a harmonious

⁴⁵ Meticulous Market Research Pvt. Ltd., “Plant-Based Food Processing Equipment Market to Reach \$7.79 Billion by 2030 - Exclusive Report by Meticulous Research®,” *GlobeNewswire News Room*, April 18, 2023, <https://www.globenewswire.com/fr/news-release/2023/04/18/2648877/0/en/Plant-Based-Food-Processing-Equipment-Market-to-Reach-7-79-Billion-by-2030-Exclusive-Report-by-Meticulous-Research.html>.

⁴⁶ János Szenderák, Dániel Fróna, and M. Rákos, “Consumer Acceptance of Plant-Based Meat Substitutes: A Narrative Review,” *Foods* 11, no. 9 (April 27, 2022): 1274, <https://doi.org/10.3390/foods11091274>.

⁴⁷ Szenderák, Fróna, and Rákos, “Consumer Acceptance of Plant-Based Meat Substitutes: A Narrative Review.”

⁴⁸ “Alternative Proteins: The Race for Market Share Is On,” McKinsey & Company, August 16, 2019, <https://www.mckinsey.com/industries/agriculture/our-insights/alternative-proteins-the-race-for-market-share-is-on>.

⁴⁹ Uwe H. Schneider et al., “Impacts of Population Growth, Economic Development, and Technical Change on Global Food Production and Consumption,” *Agricultural Systems* 104, no. 2 (February 1, 2011): 204–15, <https://doi.org/10.1016/j.agsy.2010.11.003>.

interaction between multiple interconnected functions, such as research and development, available technology, and regulations on marketing.⁵⁰

When it comes to PBFAs specifically, there exist barriers that impede consumers from adopting a plant-based lifestyle, including old habits, familiarity, and beliefs surrounding meat consumption. Moreover, there is a perception amongst consumers that PBFA is inconvenient and less flavourful compared to their traditional counterparts. Consequently, new products need to address these consumer challenges whilst simultaneously addressing the significant concerns about health and sustainability that consumers prioritize more and more.⁵¹

Two empirical studies⁵² show as one of the key factors for the plant-based product to be successful, they must be “having recognizable design components (e.g., logo, name, ...)”.⁵³ However, further research needs to be conducted in order to conclude whether the protection granted by European Regulations towards dairy names has an influence on the success of new, plant-based, foods.

2.4.3 Influence of legislative framework on innovation PBFA

As discussed by Leialohilani and de Boer, the current regulatory framework of the EU has both positive and negative impacts on innovation in the PBFA sector. On the one hand, one could argue it contributes to innovation by offering legal clarity and ensuring an overall high standard of food safety for consumers of dairy products. On the other hand, it simultaneously stifles innovation by failing to define distinct categories of PBFA and preserving restricted definitions of terminology such as “milk” and “milk products”.⁵⁴

2.5 Conclusion

To summarize, the role of PBFA in sustainable development is critical for today’s climate change concerns. According to various research, lowering reliance on animal products does not only improve human health but has furthermore the potential to reduce GHG and land use constraints.

Transitioning towards more PBFA options offers the potential to achieve real sustainability outcomes. With the current global threat to food production and the need to ensure access to both safe and affordable food for a growing population, a shift is important.

⁵⁰ Listia Rini et al., “Identifying the Key Success Factors of Plant-Based Food Brands in Europe,” *Sustainability* 15, no. 1 (December 24, 2022): 306, <https://doi.org/10.3390/su15010306>, 2.

⁵¹ Rini et al., “Identifying the Key Success Factors of Plant-Based Food Brands in Europe.”, 2.

⁵² Study one focuses on the “Gathering and Identification of Key Success Factors from the Plant-Based Food (PBF) Brands” whilst the second one researches the “Evaluation of the Selected Key Success Factors for Plant-Based Food Brands”.

⁵³ Rini et al., “Identifying the Key Success Factors of Plant-Based Food Brands in Europe.”, 7.

⁵⁴ Małgorzata Krzywonos and Katarzyna Piwowar-Sulej, “Plant-Based Innovations for the Transition to Sustainability: A Bibliometric and in-Depth Content Analysis,” *Foods* 11, no. 19 (October 9, 2022): 3137, <https://doi.org/10.3390/foods11193137>, 14.

The UN, through initiatives such as the SDGs and Food Systems Summit, recognizes the importance and is actively engaging stakeholders to drive change. At the EU level, the F2F Strategy and the proposed FSFS aim to establish equitable, nutritious, and eco-friendly food systems, aligning with the EGD's comprehensive approach to sustainability.

The growing market for PBFAs demonstrates the increasing consumer demand and economic potential in this sector. However, the legal framework must keep up with the societal changes and encourage innovation by providing legal certainty and removing economic growth impediments. We can strive towards a more sustainable future that also benefits the global environment, by adopting plant-based diets and enacting supportive legislation.

3 Existing legal framework for plant-based foods

3.1 Introduction European Regulations

As discussed above, there are plans for the future of the EU to become more lenient towards sustainable foods. In this chapter, the research will analyze and discuss the current PBFA legislative framework.

One of the principal goals of the Rome Treaty of 1957, in the beginning days of what later became the EU, was to establish a common market among the then participating Member States.⁵⁵ A Common Agricultural Policy (CAP) was implemented to achieve one market for agricultural goods.⁵⁶

There are a variety of European Regulations dealing with different aspects of food in the common market. The common organization of the market for milk and milk products started off in 1964. Four years later, in 1968 Regulation No 804/68 was enacted to complement this effort.⁵⁷ Other laws have been put in place to ensure both consumer safety and products safeguarding. These Regulations, their relation to PBFAs and ideas for improvement are discussed down below.

There are no clear and expressly stated, legally obligatory requirements within this legislative framework that describe the criteria for identifying products as “vegan”, “vegetarian”, or “plant-based”. This is true at both the EU and the majority of the EU Member States levels. As a result, companies making and marketing PBFA must generally follow existing commercial laws.⁵⁸

It is important to distinguish between the various legislative actions that can be adopted at EU level. Regulations vary from Directives in their way of implementation; they are legally binding in their totality throughout all Member States. Directives, on the other hand, simply state the aim that must be met, leaving it up to the individual Member States to decide how to achieve these goals.⁵⁹

3.2 European competences in this field

The producing and selling of foods within the EU is governed by inter alia the Common Commercial Policy. This Policy is one of the exclusive competences of the Union⁶⁰, meaning that it

⁵⁵ Article 32 of the Treaty Establishing the European Community (‘Rome Treaty’), 1957.

⁵⁶ Article 33 of the Rome Treaty.

⁵⁷ Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products [1968] OJ L 148/13.

⁵⁸ Felix Domke, “Vegetarian and Vegan Products - Labelling and Definitions,” *European Food and Feed Law Review* 13, no. 2 (January 1, 2018): 102–7, <https://effl.lexxion.eu/article/EFFL/2018/2/4>, 102.

⁵⁹ Article 288 TFEU.

⁶⁰ Article 3 TFEU.

is the EU that sets out all the rules, which the Member States have to follow without any fault. This is so as to guarantee the good functioning of the internal market.

However, environment, agriculture and consumer protection are shared competences within the Union.⁶¹ This entails that both the EU and the Member States are able to legislate in these fields. Member States can only exercise their competences when the Union is not exercising them, or has decided not to exercise. The EU has adopted a wide variety of Regulations in these domains, thus leaving limited possibilities for Member States to act independently. This will be discussed in detail below.

Moreover, Articles 43, 114, 168(4), and 169 of the TFEU control food safety in the common market.⁶² Furthermore, Regulation (EC) No 178/2002 establishes the general principles and criteria of food legislation. The European Food Safety Authority (EFSA) is a decentralized organization tasked with giving independent scientific advice. This entails food-related risks, and hence this authority has an important role to play in food legislation.⁶³ Additionally, each Member State has its own competent authority for food safety regulation and standardization. There are national ministries of food, and some Member States created a special Agency for Food Safety, such as is the case in France.⁶⁴

There are thus several competences with each its own actors involved in the overall regulations of PBFAs within the EU.

3.3 Discussion food-related regulations

Each regulation will be introduced by its aim, next their applicability to PBFA is discussed and lastly there are some words on the room for improvement within the regulation at stake. As there are various European rules, it is important to notice that this discussion is not exhaustive.

⁶¹ Article 4 TFEU.

⁶² “Food Safety | Fact Sheets on the European Union | European Parliament,” n.d., <https://www.europarl.europa.eu/factsheets/en/sheet/51/food-safety#:~:text=The%20EU%20thus%20ensures%20that,for%20food%20and%20feed%20products.>

⁶³ “European Food Safety Authority – EFSA | European Union,” European Union, n.d., https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/efsa_en#:~:text=The%20European%20Food%20Safety%20Authority,risks%20in%20the%20food%20chain.

⁶⁴ Kaihua Zhang et al., “Development of Meat Analogs: Focus on the Current Status and Challenges of Regulatory Legislation,” *Comprehensive Reviews in Food Science and Food Safety* 22, no. 2 (December 29, 2022): 1006–29, <https://doi.org/10.1111/1541-4337.13098>, 7.

3.3.1 Regulation on the Protection of Designations used in marketing of milk and milk products⁶⁵

a. Aim of the Regulation

The aim of this Regulation is to ‘protect the natural composition of milk and milk products in the interest of Community producers and consumers’ and to ‘ensure appropriate labeling and prevent the consumer from being misled’.⁶⁶

It is thus evident from the preamble that Regulation 1898/87 explicitly targets the protection of the dairy industry from rivals and to promote the consumption of dairy. It also refers to measures to restrict the production and promotion of “substitute products in competition”, which are products that resemble dairy but do not have dairy constituents, what one could understand as PBFA.⁶⁷

However, reports indicate that at the time of adoption of the Regulation, the UK made reservations regarding these rather strong limitations, in particular in relation to the marketing of soya milk. The UK government consistently stated that “soya milk” fell within the exception clause, as its nature was considered to be understood based on traditional usage.⁶⁸ In 1995, the Commission made the decision to take legal action against the UK at the European Court of Justice (ECJ) for its failure to review the violation of Regulation 1898/87 in the marketing of soya milk.⁶⁹ After the UK authorities implemented national rules, the Commission did not take any further action. However, new infringement proceedings were started due to the fact that the prohibition on using the name “soya milk” was not being enforced.⁷⁰ However, as of 2001, the UK has adopted implementing rules, now calling all soya milks as “soya drinks”, in application of Regulation 1898/87.⁷¹

In another milk-related matter, the Commission opened infringement proceedings against the Netherlands. It argued that they acted in breach of the Regulation (EEC) No 1411/71 for permitting the marketing of drinking milk with a composition (skimmed milk with at least 25% of

⁶⁵ Regulation (EEC) No 1898/87 of the Council of 2 July 1987 on the protection of designations used in marketing of milk and milk products [1987] OJ L 182/36.

⁶⁶ Preamble Regulation No 1898/87.

⁶⁷ Barbara Bolton, “Dairy’s Monopoly on Words: The Historical Context and Implications of the TofuTown Decision,” *European Food and Feed Law Review (EFFL)* 5, no. 12 (2016): 422–30, 424.

⁶⁸ Bolton, “Dairy’s Monopoly on Words: The Historical Context and Implications of the TofuTown Decision.”

⁶⁹ Bolton, “Dairy’s Monopoly on Words: The Historical Context and Implications of the TofuTown Decision.”, 425.

⁷⁰ Fifteenth annual report on monitoring the application of Community law (1997) (98/C 250/01) COM(1998) 317 final (Submitted by the Commission on 27 May 1998).

⁷¹ Barbara Bolton, “The TofuTown Decision: What Does Dairy’s Monopoly on Words Mean for Plant-Based Businesses in the UK?,” Shepherd+ Wedderburn, 2017, <https://shepwedd.com/knowledge/tofutown-decision-what-does-dairy-s-monopoly-words-mean-plant-based-businesses-uk>.

the fat content of full cream milk) that is not included in the limited list outlined in the Regulation, which establishes additional regulations for the CMO of the milk and milk products.⁷²

Over the years, the original Regulation has undergone numerous modifications, yet the fundamental goals have remained constant: safeguarding and advancing the dairy industry, considering its vital importance within the EU Single Market. The main reasoning of the Regulation lives further in Regulation (EU) No 1308/2013, which forms part of the CAP and is still outlining specific rules for the use of dairy names and designations.⁷³

As highlighted on the Commission's website, milk is a product produced in every single Member State, without a single exception. Moreover, milk holds the top position among single product sectors, contributing approximately 15% of the agricultural output value. European milk plays a significant role in the global dairy market, holding the position of the primary exporter for various dairy products, notably also cheeses. This explains the strong position of the dairy sector within the legislative framework, arguing for an equal strong protection.⁷⁴

b. Applicability PBFA

Article 2 of the Regulation lays down that the word 'milk' can only mean 'normal mammary secretion obtained from one or more milkings'. As will be discussed below, the ECJ takes the wording of the Regulation rather strictly and leaves no room for plant-based drinks to be called milk.

However, article 3.1 second paragraph allows for some exceptions, stating that 'this provision shall 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.' It is the Commission who governs this list of exceptions upon application by the Member States.⁷⁵

The Commission Decision 2010/791/EU⁷⁶ and Commission Regulation (EC) No 445/2007⁷⁷ outline such derogations. For example, Finland has been granted exceptions related to the use of the

⁷² Fifteenth annual report (98/C 250/01) COM(1998) 317 final .

⁷³ Commission Decision of 20 December 2010 listing the products referred to in the second subparagraph of point III(1) of Annex XII to Council Regulation (EC) No 1234/2007 [2010] OJ L 336/55; Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ('Common Market Organisation Regulation', 'CMOR') [2013] OJ L 347/671, art 91(1)(a).

⁷⁴ Bolton, "Dairy's Monopoly on Words: The Historical Context and Implications of the TofuTown Decision.", 423.

⁷⁵ Article 4.1 and 4.2 of Regulation 1898/87.

⁷⁶ Commission Decision of 20 December 2010 - Annex XII to Council Regulation (EC) No 1234/2007.

⁷⁷ Commission Regulation (EC) No 445/2007 of 23 April 2007 laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC)

Finnish word for butter, including products like cocoa butter, peanut butter, cracker, *suillus luteus* and a certain savoury sandwich cake. Other countries have also been granted derogations for specific designations of cream, cheese and milk, like “Liebfrauenmilch” in Germany which is actually wine, “pindakaas” in the Netherlands, translated into English as “peanut cheese”, ... Interestingly, only in 15 Member States exceptions are listed and the amount of exceptions granted to a Member State vary from just one to twenty. This demonstrates a wide variety of traditional usages across the EU.

c. Room for improvement

The system where there are granted exceptions for traditional usage or clear designations provide no uniform clarity within the Union. The exceptions are filed for per country and thus only applicable to the products in that country, leading to even more uncertainty.

Is the argument presented in the preamble of the Regulation, which states that “Whereas competing products enjoy a competitive advantage in terms of production cost due to the fact that many of them are frequently manufactured from raw materials imported at zero duty rates, whereas milk products have a higher production cost which is dictated by the need to safeguard agricultural producer incomes”⁷⁸ still a valid reasoning? One aspect that could be addressed in a better way is to enhance the competitiveness of milk products while simultaneously maintaining the objective of protecting the agricultural producer incomes. It seems a complex task to balance the need for competitiveness and supporting the more traditional agricultural producers.

Considering the evolving market dynamics, it would be beneficial to conduct research on the potential impact of PBFA on these agricultural producers’ incomes. It is essential to ascertain whether the actual naming of the plant-based products has a significant enough influence on potential income losses to keep this reasoning alive. While this is just one of the arguments presented in the preamble, it holds significance as a defense for maintaining distinct naming Regulation between traditional dairy products and PBFAs. Therefore, it is crucial to ensure the accuracy of this argument and its alignment with the current state of affairs.

3.3.2 Common Organization of the markets in agricultural products Regulation⁷⁹

a. Aim of the Regulation

The primary objective of the Common Organisation of the Markets (COM) Regulation is to establish stability in agricultural markets, and thus prevent the escalation of crises by implementing safety measures and exceptional interventions. Furthermore, market transparency is enhanced,

No 1898/87 on the protection of designations used in the marketing of milk and milk products (Codified version) OJ L 106, 24.4.2007.

⁷⁸ Preamble Regulation No 1898/87.

⁷⁹ Regulation (EU) No 1308/2013.

which allows producers to make informed decisions vis-a-vis their production and investments.⁸⁰ The Regulation also aims to improve productivity and quality within the agricultural sector, and to provide support to specific sectors through targeted assistance. This is in particular the fruit, vegetables and wine sector.⁸¹

An additional goal is to promote collaboration within the food supply chain by fostering the formation of producer organizations, representing various stakeholders.⁸² Lastly, the CMO aims at establishing minimum quality requirements, better known as marketing standards, to guarantee sufficient quality of both the end product and the production process.⁸³ Additionally to that, certain provisions of the Regulations govern trade in agricultural products and competition standards.⁸⁴

This Regulation is the follow up of the Milk designations Regulation, that is no longer into force. However, the strict rules on the milk naming are still included.

b. Applicability PBFA

While Regulation 1308/2013 does not contain explicit provisions regarding PBFAs, it encompasses a broad scope that includes various plants, vegetables, and fruits. Therefore, a significant portion of the PBFA sector falls within its purview. Additionally, it is worth noting the relevance of this Regulation in the context of the TofuTown case, where legal arguments were constructed based on its provisions, specifically recitals 64 and 76, together with article 78 and Annex VII.⁸⁵

Although the Regulation may thus not specifically address PBFAs, its principles and frameworks can be applicable and influential in shaping policies and regulations related to this rapidly growing industry.

c. Room for improvement

In its current state, the exception list to this Regulation seems outdated. To address this issue, one potential solution would involve revising the Regulation to introduce more flexible rules regarding the use of dairy terms. Alternatively, certain terms, such as “soya milk”, could be included in the exception list, due to their well-established nature and common use. Considering that plant-based milk alternatives have been available for many years now and terms such as “soya milk” are widely

⁸⁰ Preamble No 11 Regulation (EU) No 1308/2013.

⁸¹ For more information, see also: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A0302_1

⁸² Preamble No 34-35 Regulation (EU) No 1308/2013

⁸³ Preamble No 155 Regulation (EU) No 1308/2013.

⁸⁴ Preamble No 171 Regulation (EU) No 1308/2013.

⁸⁵ TofuTown Case §5-9, see *infra*.

used in everyday language, it is unfounded to suggest that consumers would confuse plant-based milk alternatives with traditional animal milk.⁸⁶

⁸⁶ Domke, “Vegetarian and Vegan Products - Labelling and Definitions.”, 106-107.

3.3.3 Nutrition and Health Claim Regulation

a. Aim of the Regulation

This Regulation⁸⁷ aims to guarantee that consumers are well-protected and able to make informed decisions when faced with products. This is important since consumers' growing concern for their well-being is reflected in their dietary choices, as they prioritize nutrition to support their health, prevent illnesses, and manage existing diseases. Additionally, there is a heightened interest in overall health and beneficial food options. Consequently, specific products that offer health benefits have gained popularity.⁸⁸ A framework to provide safe and appropriate labeling is put into place with this Regulation.⁸⁹

The preamble of the Regulation stipulates that claims addressing specific groups of consumers, such as people who have a gluten-free diet, are dealt with in yet another EU rule, namely council Directive 89/398/EEC.⁹⁰ This Directive gives the option to stipulate the suitability of food for these consumers. However, until the conditions would be laid down at the Union's level, it is each Member State that remains competent and thus adopts national measures.

b. Applicability PBFA

There are no specific provisions in the Regulation establishing the health claim standards for PBFA. However, it is of great importance that any health claims made regarding food, also on food packaging, be substantiated by scientific data. As a result, the claims must undergo a scientific examination by the EFSA, followed by EC approval before accessing the food market.⁹¹ However, nutrition claims are only permitted if they are added to the list, laid down in the Annex of this Regulation.⁹²

c. Room for improvement

This Regulation could form a good basis for the nutritional claims of PBFA, as there is currently still consumer hesitance and insufficient knowledge on the nutritional values of PBFA. The existing framework is thus a good starting point, but should be more inclusive towards PBFA.

⁸⁷ 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 L 404, 30.12.2006, p. 9–25.

⁸⁸ Alie De Boer, "Fifteen Years of Regulating Nutrition and Health Claims in Europe: The Past, the Present and the Future," *Nutrients* 13, no. 5 (May 19, 2021): 1725, <https://doi.org/10.3390/nu13051725>.

⁸⁹ Regulation (EC) No 1924/2006, 1.

⁹⁰ Regulation (EC) No 1924/2006, 3; Directive (EEC) No 89/398 of the Council of 3 May 1989 on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional use, OJ L 186, 30.6.1989, p. 27–32.

⁹¹ Article 15.2, article 15.4, article 16, article 17, Preamble number 23, number 26, number 29 Regulation (EC) No 1924/2006.

⁹² Article 8 Regulation (EC) No 1924/2006.

3.3.4 Food Information Regulation

a. Aim of the Regulation

The aim of the Regulation⁹³ is to establish a clear framework and common basis for governing food information, both on Union level and in the form of national measures. It aims for the food information to be able to adapt to different rapidly changing social, economic, and technological environments, whilst prioritizing the health and well-being of citizens.⁹⁴ Additionally, it emphasizes the right to information and informed choices considering health, economic, environmental, social and ethical considerations.⁹⁵

The Regulation further also has the goal to ensure easier compliance and greater clarity for all stakeholders involved, and take into account new developments by setting common definitions, principles, requirements and procedures.⁹⁶ The aims of this Regulation are thus closely related to the goals of the Nutrition and Health Claim Regulation.

b. Applicability PBFA

The original Regulation did not include any information on nutrition and health claims made about PBFA. However, five years after the original Regulation was adopted, in 2011, an updated version came into force. A novelty to this revisited Regulation is its food information on a voluntary basis, for which the Commission shall adopt implementing acts. Article 36.3.B lays down that such an implementing act can be taken on “information related to suitability of a food for vegetarians and vegans”. This is also further explained in point 59 of the preamble where the example is given of pictograms or symbols that could provide consumers with information on whether a given food product is considered vegan or vegetarian.

⁹³ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 OJ L 304, 22.11.2011, p. 18–63.

⁹⁴ Preamble point 2; preamble point 51 Regulation (EU) No 1169/2011.

⁹⁵ Preamble point 3 Regulation (EU) No 1169/2011

⁹⁶ Preamble point 9; preamble point 13 Regulation (EU) No 1169/2011.

Moreover, the Regulation says that the name of the product must obligatory be shown on the packaging. There are three forms of food names recognized in the EU legislation: legal names, customary names, and descriptive names.⁹⁷ When a legally defined name exists for a particular food, that should be the one used. This classification is also outlined in other EU regulations, such as Regulation (EU) No 1308/2013 establishing a common organization of the markets in agricultural products.

However, only a very limited number of food names have legal definitions. In cases where no such EU-level definition exists, the Member States can provide the legal definition that should be used. If neither EU nor national definitions are available, there should be made use of a customary name. This refers to a name that is well-known and understood by customers in the Member State where the product is sold. Finally, if no customary name is suitable, a descriptive name should be utilized. This category of names should effectively describe the product in a way that aids consumers to understand its nature and distinguishes it from similar products that could cause confusion.⁹⁸

c. Room for improvement

There is clearly room for improvement here, as this Food Information Regulation is unable to provide actual information on PBFAs. Moreover, the fact that the Commission can act on a voluntary basis towards these implementing acts, leaves the PBFAs low on the agenda of priority, whilst small adjustments such as a uniform EU pictogram for what is a vegetarian food option would result in more clarity.⁹⁹ For this to happen, there needs to be a signal definition adopted on what exactly is to be understood as vegetarian or vegan foods.

Furthermore, it is at the level of the Member States that the enforcement and verification of the fulfillment of the food law, is controlled. This leaves room for diversity within different Member States, despite the overarching goal of providing clarity with regards to food information.¹⁰⁰

3.3.5 Agricultural Products Standards Regulation

a. Aim of the Regulation

The Regulation¹⁰¹ entered into force on the 3th of January 2013, both repealing and replacing Regulations 509/2006¹⁰² and 510/2006¹⁰³. Its objective is to augment the quality policy of the EU

⁹⁷ Article 2.1 (n), (o),(p) Regulation (EU) 1169/2011.

⁹⁸ Lähteenmäki-Uutela et al., “Alternative Proteins and EU Food Law.”, 6.

⁹⁹ Ignacio Carreño and Tobias Dolle, “Tofu Steaks? Developments on the Naming and Marketing of Plant-Based Foods in the Aftermath of the *TofuTown* Judgement,” *European Journal of Risk Regulation* 9, no. 3 (September 1, 2018): 575–84, <https://doi.org/10.1017/err.2018.43>, 582.

¹⁰⁰ Carreño and Dolle, “Tofu Steaks? Developments on the Naming and Marketing of Plant-Based Foods in the Aftermath of the *TofuTown* Judgement.”, 584.

concerning agricultural goods by strengthening the consistency of different quality programs. This Regulation encompasses strategies aimed at establishing equitable competition among farmers and producers of products, which have been registered “protected designation of origin” (PDO), “protected geographical indication” (PGI), and “traditional speciality guaranteed” (TSG).

Its purpose is to safeguard intellectual property rights, furnish accurate information to consumers regarding these products, and bolster agricultural and processing endeavors, while concurrently supporting farming systems linked to top-notch goods, in alignment with the EU’s aims for rural development policy.¹⁰⁴ Quality schemes are implemented in order to add value to products that deserve extra protection, such as to secure better market conditions for traditional food that requires higher costs incurred to achieve the specific food quality.¹⁰⁵

b. Applicability PBFA

The Agricultural Products Standards Regulation’s application to PBFAs is evaluated on a case-by-case basis, meaning that different aspects such as the preservation of traditional farming techniques and regional food cultures are taken into consideration. PBFA have the ability to satisfy quality requirements if they display unique and traditional components in their production, have regional linkages, or have distinguishing traits.

A name cannot be registered as a designation of origin or geographical indication, if it clashes with the “name of a plant variety or an animal breed, and if it is likely to mislead consumers about the true origin of the product”, according to Article 6 of the Regulation. This provision aims to avoid confusion, which might be caused by names associated with animal-related terms such as meaty names for PBFA. However, there is still a difference between the name of an animal breed and the final meat end-product, such as a sausage or burger. It is the latter that is often used by PBFA producers, yet only the former is granted protection under this Regulation.

Furthermore, Article 42 addresses the inclusion of names or terms protected or reserved under a quality scheme, specifically in relation to plant varieties and animal breeds. It is only under certain conditions that products can be marketed and labeled with names or terms that are granted protection under this Regulation. For these conditions to be fulfilled, it is necessary that “a) the

¹⁰¹ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs OJ L 343, 14.12.2012, p. 1–29.

¹⁰² Regulation (EC) No 509/2006 of the Council of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed, OJ 2006 L 93.

¹⁰³ *Ibid.*

¹⁰⁴ “Enhancing Quality Schemes for Agricultural Products and Foodstuffs,” EUR-Lex - 0905_2 - EN - EUR-Lex, n.d., <https://eur-lex.europa.eu/EN/legal-content/summary/enhancing-quality-schemes-for-agricultural-products-and-foodstuffs.html>.

¹⁰⁵ Matteo Gragnani, “The EU Regulation 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs on JSTOR,” *European Food and Feed Law Review* 8 (2011): 376–85, <http://www.jstor.org/stable/24325986>, 377.

product in question compromises or is derived from the indicated plant variety or animal breed, b) consumers are not misled, c) the usage of the name of the variety or breed name promotes fair competition, d) the usage does not exploit the reputation of the protected term and e) the production and marketing of the product has already spread beyond its area of origin before the application for registration of the geographical indication”.¹⁰⁶

This Regulation is thus not directly applicable on PBFAs, however, it aims at protecting consumers from misleading information, and maintaining fair competition within the market whilst simultaneously considering the unique characteristics and regional aspects that are associated with traditional agricultural practices.

c. Room for improvement

The new version of the Agricultural Products Standards Regulation aimed to address certain flaws that were signalled in its predecessors. One of those was the lack of consumer awareness regarding the meaning of symbols associated with specific traditional foods, as regulated in this legislation. While the importance of this issue may be debated, as consumer awareness can also be raised by promotional campaigns, it is clear that the Regulation provides insights that are valuable into enhancing the understanding and expectations of consumers in the context of PBFAs.¹⁰⁷

By incorporating definitions such as “designation of origin”¹⁰⁸ and “geographical indication”¹⁰⁹, there is an opportunity to explicitly include specific characteristics of PBFAs as additional product standards. Moreover, the Regulation grants exclusive rights to producers for obtaining and using registered names and indicating PDO/PGI on their products. Introducing a uniform logo or indication specifically for PBFAs, particularly vegan or vegetarian products, could represent a significant improvement in the realm of food law. This would provide greater clarity for consumers and ensure consistent standards for PBFA products within the already existing regulatory framework.

¹⁰⁶ Article 42 Regulation (EU) No 1151/2012.

¹⁰⁷ Gragnani, “The EU Regulation 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs on JSTOR.”, 378-379.

¹⁰⁸ Article 5.1 Regulation (EU) No 1151/2012.

¹⁰⁹ Article 5.2 Regulation (EU) No 1151/2012.

3.3.6 Novel Food Regulation

a. Aim of the Regulation

The aim of Regulation (EU) 2019/1381, better known as the Novel Food Regulation, is to set forth guidelines governing the introduction of new foods into the single market. Novel foods refers to original nourishing components, subject to regulation in many nations outside the EU as well.¹¹⁰

Food businesses must determine themselves if their products are subject to the legislation. They can consult national authorities or seek guidance from the European Commission. The Commission maintains an updated list of novel foods that have been authorized. These authorized products must be safe, non-misleading towards consumers, and beneficial when it is usually consumed as a substitute, such as PBFA to meaty and dairy products.¹¹¹

Both the applicant, be it a EU Member State, a non-EU Member State or an interested party, and the Commission can initiate the process of authorization. The Commission can request an opinion on the food's safety from the EFSA. Next, the Commission is obliged to present its final assessment to the Standing Committee on Plants, Animals, Food, and Feed. Their endorsement is a requirement before possible approval of the novel food. However, a specific set of rules applies to traditional foods from non-EU countries that are intended for sale within the EU.¹¹²

b. Applicability PBFA

The Novel Food Regulation may entail PBFAs, necessitating pre-market permission for the foods or its ingredients that might fall within the scope of the Regulation. A novel food is outlined in the Regulation as food that had only minimal consumption by humans within the EU prior to the 15th of May, 1997. Consequently, any PBFAs that were not usually consumed before might need to get a green light before actually being put on the single market.¹¹³

110 Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 2065/2003, (EC) No 1935/2004, (EC) No 1331/2008, (EC) No 1107/2009, (EU) 2015/2283 and Directive 2001/18/EC OJ L 231, 6.9.2019, p. 1–28.

111 “New Novel Foods Rules from 2018,” EUR-Lex - 09050103_1 - EN - EUR-Lex, 2018, <https://eur-lex.europa.eu/EN/legal-content/summary/new-novel-foods-rules-from-2018.html>.

112 “New Novel Foods Rules from 2018.”

113 Karin Verzijden, “Further Update on New Novel Foods Regulation | Food Health Legal,” 2012, <http://foodhealthlegal.eu/?p=541>.

However, new plant-based proteins entering the market are often exempt from this preliminary obligation as they are mere ingredients in foodstuffs. These ingredients should then still comply with the fundamental prerequisites applicable to all food items.¹¹⁴

c. Room for improvement

Nevertheless, concerns exist regarding the potential hindrance of innovation within the EU and the inadequate preservation of food safety under the current Regulation.¹¹⁵ The requirements set forth by this Regulation can present significant challenges to small companies, while even larger and more established companies find it both time-consuming and demanding. This poses a barrier to the transformative potential of novel foods. Certain micro- and macroalgae have already gained nonnovel status in the EU, enabling an easier market entry. Insects, on the other hand, are considered novel foods, and currently, none of them have obtained authorization at EU-level, although some Member States permit the consumption of insect-based food products.¹¹⁶ Furthermore, critiques have surfaced regarding the Regulation's insufficiencies in regulating traditional foods originating from non-EU nations.¹¹⁷

In response to the UK's departure from the EU, the Novel Food (Amendment) (EU Exit) Regulations 2019 were established to cater to this eventuality.¹¹⁸

3.4 Overview impact Regulations on different PBFA

3.4.1 Milk alternatives

When it comes to the European Regulations on dairy foods, the overarching emphasis is placed on the safeguarding of naming conventions. While there are certain exceptions, the fundamental principle endures: only products originating from mammary secretion are allowed to bear a dairy designation. This steadfast adherence to the rule appears to stem from the dual concerns of consumer protection and food safety.

¹¹⁴ Nicolas Carbonelle, "Innovation in the Plant Proteins Space: Regulatory Environment and Launch Strategies for Plant-Based Foods in Europe," Bird & Bird, 2021, <https://www.twobirds.com/en/insights/2021/belgium/innovation-in-the-plant-proteins-space>.

¹¹⁵ Macdonald, "EU Urges Plant-Based Diets – but Policy Favours Meat and Dairy."

¹¹⁶ Lähteenmäki-Uutelä et al., "Alternative Proteins and EU Food Law," 1.

¹¹⁷ Lucía Beatriz Scaffardi, "A Peculiar Category of Novel Foods: Traditional Foods Coming from Third Countries and the Regulatory Issues Involving Sustainability, Food Security, Food Safety, and the Free Circulation of Goods," in *Springer EBooks*, 2022, 37–58, https://doi.org/10.1007/978-3-031-13494-4_3.

¹¹⁸ King's Printer of Acts of Parliament, "The Novel Food (Amendment) (EU Exit) Regulations 2019," UK Draft Statutory Instruments, 2018, <https://www.legislation.gov.uk/ukdsi/2019/978011180266/contents>.

3.4.2 Meat alternatives

The regulations governing meat products differ from those concerning dairy products. Specific names for the meat of chickens, pigs and are, alongside the term “meat” itself, protected in the legislative framework. However, the names referring to both the shapes and the composition of the products, such as steaks, sausages, and burgers, are not protected. The general marketing rules seem to be sufficient for regulating the use of “meaty” names in the eyes of the European Commission.¹¹⁹

In the meat industry, with a few exceptions there exist no legal designations. Therefore, it is necessary to use customary names. Examples of customary names include “fish fingers” and “Bakewell tart” in the UK. Some names from a different origin, for example muesli and spaghetti, have reached the level of customary names as well.¹²⁰

3.4.3 Needed revision of discrepancies between milk and meat alternatives

There is room for improvement in relation to the different European Regulations concerning PBFA. An option would be for different stakeholders, such as PBFA businesses and consumers to engage in lobbying efforts. In order to include PBFA, an enlargement of the list of exceptions could be pushed by the stakeholders.¹²¹

However, a similar attempt by the UK in the 90s proved unsuccessful. Significant market shifts have occurred since then, together with an improved consumer awareness. The dairy industry, on the other hand, has experienced a significant transformation: it is opposing the inclusion of PBFA in the list of exceptions as a shift away from conventional dairy products is noticeable. Extra products on the exclusion list seems thus unlikely to happen without any direct challenge of the dairy industry.¹²²

The discussion of the food regulations above furthermore reveals discrepancies. There are raised concerns on the lack of a harmonized approach towards animal-based products and plant-based products. As much of the EU food legislation dates back to the very beginning of the Common Market, the focus can lay on the protection of economic interests of certain sectors, such as the dairy sector. Consumer protection seems to be a big concern in these different Directives and Regulations. However, the PBFA market is often primarily aimed towards consumers looking for food alternatives.¹²³ One could say there is a legislative gap between the two categories.

¹¹⁹ Lähtenmäki-Uutela et al., “Alternative Proteins and EU Food Law.”, 7.

¹²⁰ Carreño and Dolle, “Tofu Steaks? Developments on the Naming and Marketing of Plant-Based Foods in the Aftermath of the *TofuTown* Judgement.”, 576.

¹²¹ Bolton, “Dairy’s Monopoly on Words: The Historical Context and Implications of the *TofuTown* Decision.”, 427-428.

¹²² Bolton, “Dairy’s Monopoly on Words: The Historical Context and Implications of the *TofuTown* Decision.”, 427-428.

¹²³ Lähtenmäki-Uutela et al., “Alternative Proteins and EU Food Law.”, 5.

In the light of the internal market law of the EU, one could argue that the national regulations governing meaty names for PBFAs is trumping the common market. Given the division of competences, as discussed above, Member States can lawfully adopt legislation governing the names of meat replacement, as has been done firstly by France.¹²⁴ However, this can constitute a hindrance for the products of other Member States to be sold in a Member State where the naming and labeling rules are more strict.

However, the French Decree to prohibit referring to meat on processed “meat-like” products that contain proteins of plant origin, is only applicable to products manufactured within France, as “products legally manufactured or marketed in another EU Member State or in Turkey or a member of the EEA are not subject to the Decree”.¹²⁵ Products from other countries are thus still free to be exported to France, whatever the name, and the free movement of goods is not hindered by this law. It is thus a potential problem that national rules on the labeling and naming food products could face, however not yet a current problem.

When we look at the ECJ’s case law on this subject, the two primary cases that give guidance on the question of free movement of goods throughout the EU are the Dassonville case and the Keck case. The free movement of goods is one of the four important freedoms, and in general key principles of the EU internal market, outlined in Article 28 of the TEU.

In the Dassonville judgment of 1974, the Court held that “all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade are to be considered as measures having an effect equivalent to quantitative restrictions”.¹²⁶ If the French ban on meaty names like “burgers” for PBFAs disproportionately limit the marketing and the sale of these PBFA, it is possible that they are deemed as barriers towards the free movement of goods.

However, in 1993, the Court specified the Dassonville rule in the Keck case.¹²⁷ Under this ruling, certain national rules that relate to selling arrangements of products may not be considered a hindrance to the free movement of goods if they are applicable to all the companies in the market in a non-discriminatory manner. Classical examples of this are packaging and labeling of products, as is the case by the meaty name that cannot be used on labels for PBFAs in France.

¹²⁴ Ignacio Carreño, “France Bans ‘Meaty’ Terms for Plant-Based Products: Will the European Union Follow?,” *European Journal of Risk Regulation* 13, no. 4 (August 26, 2022): 665–69, <https://doi.org/10.1017/err.2022.22> ; Décret n° 2022-947 du 29 juin 2022 relatif à l’utilisation de certaines dénominations employées pour désigner des denrées comportant des protéines végétales, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045978360>

¹²⁵ Article 1 Decree No. 947 iuncto article 5 Decree No. 947.

¹²⁶ Procureur du Roi v Benoît and Gustave Dassonville (Case 8/74), EU:C:1974:82, [1974] ECR 837, 11 July 1974 §5.

¹²⁷ Procureur v Bernard Keck and Daniel Mithouard (Joined cases C-267/91 and C-268/91) EU:C:1993:905, [1993], 24 November 1993.

It is important to point out that there is currently no case at the ECJ concerning national rules. Some Member States have started to address the discrepancy between dairy and meaty rules themselves, and case law has played a role in this as well.¹²⁸

3.5 Conclusion

In conclusion, the variety of Regulations that are applicable to food entering in the EU market are not all specifically applicable to PBFAs. Therefore, it would be beneficial to either include them explicitly or create new regulations that cater to the unique needs of PBFAs.

Furthermore, the European Regulations reveal discrepancies compared to the traditional animal counterparts. The emphasis on consumer protection in the dairy regulations is not mirrored in the regulations for meat products, as there is still flexibility in the naming and shaping of the product. This creates a legislative gap, which hinders harmonization. Some Member States have begun addressing the discrepancies by installing their own rules.

The influence of the ECJ's rulings will play a crucial role in shaping the future of PBFA law within the EU. A revised framework would ensure more clarity, fairness and informed choices for consumers. The influence of the Court of Justice's rulings in PBFA cases will now be discussed.

¹²⁸ Neli Sochirca, "The European Legal Framework on Vegan and Vegetarian Claims," *European Food and Feed Law Review* 13, no. 6 (2016): 514–21, <https://www.jstor.org/stable/26556926>, 518.

4 PBFA Case Law

4.1 European case law

4.1.1 European Court of Justice – UDL Case 1987¹²⁹

a. Facts

Prior to the establishment of the CMOR in 1987, dairy terms were afforded legal protection through their inclusion in Council Regulation (EEC) No 1898/87.¹³⁰ Union Deutsche Lebensmittel (UDL), a company that produces food with vegetable fats known to be beneficial for lower cholesterol levels, placed their cheese on the market using the names “Dutch appetizer - Dietary cheese containing vegetable oil for a fat-modified diet” and “Dietary soft cheese containing vegetable oil for a fat-modified diet”.¹³¹ The packaging of the products included descriptions such as “this dietary cheese is rich in polyunsaturated fats”¹³² and “this dietary cheese is ideal for a cholesterol-conscious lifestyle”.¹³³

b. Legal question

The German Court sought to determine whether these products could be legally labeled as “cheese”, and if not, whether the accompanying descriptions could alter this conclusion.

c. Finding

In the case of the UDL’s food product, the Court determined that it could not be labeled as “cheese” due to article 2.2 of the Regulation on the Protection of Designations used in the Marketing of Milk and Milk products. That article states that if any milk constituent is replaced, even partially, the product cannot possibly be named after a dairy product.¹³⁴

¹²⁹ Case C-101/98 UDL EU:C:1999:615, [1999] ECR I-08841.

¹³⁰ Regulation No 1898/87; Annisa Leialohilani and Alie De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives,” *Trends in Food Science & Technology* 104 (August 17, 2020): 262–67, <https://doi.org/10.1016/j.tifs.2020.07.021>, 263.

¹³¹ Case C-101/98 §11-§12.

¹³² Original description: “Dieser Diät-Kase ist reich an mehrfach ungesättigten Fettsäuren”.

¹³³ Original description: “Dieser Diät-Kase ist ideal für eine cholesterinbewußte Lebensweise”.

¹³⁴ Case C-101/98 §22-24.

On the second part of the question, the Court concluded that the additional descriptions could not alter its decision since they did not adequately clarify that the product contains vegetable fats instead of milk fats. The Court believes this could lead to confusion among consumers,¹³⁵ who might mistakenly assume that the dietary food is a “milk product”, despite not meeting the criteria for such a classification.¹³⁶

d. Implications – critical commentary

The UDL case had significant implications for consumer protection in the PBFA market. However, it is crucial to critically assess whether this ruling has effectively resulted in enhanced consumer protection. Despite the advancements, there are still concerns about the adequacy of supplementary terms used in the packaging, as they may not provide sufficient clarity for the consumers. Furthermore, this ruling lacks focus on whether consumers seeking to purchase plant-based products are able to easily understand their nature and characteristics based on the packaging standards currently in place. 18 Years after the UDL case, a new dispute on this topic arose, as discussed below.

4.1.2 European Court of Justice – TofuTown case 2017

a. Facts

In 2016, a legal dispute arose between the Verband Sozialer Wettbewerb eV (VSW) and TofuTown GmbH, a German company specializing in vegetarian and vegan food products.¹³⁷ VSW is a German association responsible for fighting unfair competition.¹³⁸ The lawsuit, referred to as Case C-422/16, centered around VSW’s accusation that TofuTown’s use of product names such as “Soyatoo tofu butter” and “veggie cheese” on its PBFAs was misleading for consumers and thus violated the German Act Against Unfair Competition¹³⁹, in conjunction with European Regulation 1308/2013.¹⁴⁰ As a result of this claim against TofuTown, VSW took legal action by seeking a prohibitory injunction in the Regional Court of Trier, Germany.¹⁴¹

b. Legal question

¹³⁵ Case C-101/98 §27.

¹³⁶ Case C-101/98 §26-28.

¹³⁷ Verband Sozialer Wettbewerb eV v TofuTown.com GmbH (Case C-422/16), EU:C:2017:458 , [2017], 14 June 2017.

¹³⁸ Case C-422/16 §15.

¹³⁹ Gesetz gegen den unlauteren Wettbewerb [UWG] [Act Against Unfair Competition], Mar. 3, 2010, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 254, as amended, § 3a, GERMAN LAWS ONLINE.

¹⁴⁰ Case C-422/16 §16.

¹⁴¹ Case C-422/16 §16.

This Regional Court suspended the case and sought guidance from the ECJ on how to interpret the relevant EU legislation regarding the use of the term “milk” and milk product designations. This was done via a preliminary ruling, as mandated under Article 267 of the TFEU.¹⁴²

The Regional Court of Trier asked threefold of questions to the ECJ.

- Is it allowed to add clarifying or descriptive words to the names of plant-based products (such as “tofu butter”), even if they don’t meet the requirements of Annex VII in Regulation 1308/2013?
- Can the word “milk” be used with additional words (like “soya-milk”) to market plant-based products, or does it only refer to normal mammary secretion without any additives or extractions?
- Are names like “whey”, “cream”, and “cheese” reserved only for milk products, or can they also be used for pure plant-based/vegan products that don’t contain animal milk?

c. Finding

The European Court states that Annex VII, Part II of Regulation No 1308/2013 specifies the definition of “milk” and “milk products”. Milk is defined as the secretion obtained from one or more milkings without any addition or extraction. However, the term “milk” may also be used for milk that has been treated without altering its composition or for milk that is standardized for its fat content, provided that the modification is restricted to natural milk constituents.¹⁴³

Point 1 of Part III clarifies that “milk” cannot be used to refer to plant-based products since milk is considered an animal product. Additionally, clarifying terms like “soya” or “tofu” do not fall under the permitted terms allowed for use with “milk” since they do not represent natural constituents of milk. The Court is strict: dairy products are only made from animal milk. Additionally, their names, such as whey, cream, butter, cheese, and yogurt, are designated for animal milk products only. It is however allowed for certain substances to be added when they are required for the complete creation of the dairy product. They can nonetheless not replace any milk Substances required for the creation of the product may be added, as long as they do not replace any milk component.¹⁴⁴

¹⁴² Case C-422/16 §19.

¹⁴³ Case C-422/16 §21-22.

¹⁴⁴ Case C-422/16 §23-25.

Furthermore, a milk product, in which one or more milk constituents have been replaced, cannot be designated with the names referred to in Part III. The same prohibition applies to purely plant-based products since they do not contain any constituents of milk. The names listed in Annex VII, Part III cannot be used to designate a purely PBFA. The same applies as well to names within the meaning of Article 17 of Regulation No 1169/2011 actually used for milk products.¹⁴⁵

There is an exception in the Regulation for products whose exact nature is clear from traditional usage, but this exclusively applies to products listed in Annex I to Decision 2010/791. Soya and tofu are not on this list, and the product names referred to by the court are not listed either.¹⁴⁶ Whilst the use of terms like “cream” and “creamed” may be permitted in certain contexts, it appears that none of the designations mentioned by the court are covered by the exception in the Regulation.¹⁴⁷

It is the Commission who is empowered to adopt delegated acts relating to the definitions and sales names for milk and milk products, but no such act has been adopted.¹⁴⁸ Therefore, the Court came to the Conclusion the prohibition on using the term “milk” or related designations applies to marketing and publicity of the products as well.¹⁴⁹

d. Principle of equality

The Court reiterates in its ruling that the Regulation requiring plant-based products to use names other than “milk” or “cheese” are not in violation of the principle of equal treatment, as they help to protect consumers and maintain fair competition. It furthermore is promoting the quality of products and the economic circumstances for the production and marketing.¹⁵⁰

The principle of non-discrimination necessitates that analogous circumstances are treated uniformly, while dissimilar circumstances are not treated similarly unless there exists an objective justification for such differential treatment.

¹⁴⁵ Case C-422/16 §26-30, see also UDL, C-101/98 §20-22.

¹⁴⁶ Case C-422/16 §33-35.

¹⁴⁷ Case C-422/16 §37-38.

¹⁴⁸ Case C-422/16 §39; The product must be listed in the Commission Decision of 20 December 2010 - Annex XII to Council Regulation (EC) No 1234/2007.

¹⁴⁹ Case C-422/16 §41.

¹⁵⁰ Case C-422/16 §42-44.

In this case, it is established that each sector within the European Union’s CMO possesses distinctive characteristics. Consequently, the differing requirements imposed on producers of plant-based products as replacement for meat or fish products, in contrast to those in the dairy substitute industry, do not conflict with the principle of equal treatment. Moreover, comparing the technical rules enacted to govern various market sectors cannot serve as a valid foundation for allegations of discrimination between dissimilar products that face dissimilar rules.¹⁵¹

The use of these designations only for products that comply with the requirements set by Annex VII, Part III, of Regulation No 1308/2013 ensures that consumers are protected against confusion about the composition of the products they minted to purchase. As a result, the ECJ finds that these rules are both appropriate and necessary for attaining the intended goals.¹⁵² Furthermore, the court does not believe them to be disproportionate. PBFA are indeed not subject to the same limitations as milk or dairy products, although this is not conflicting with the principle of equal treatment.¹⁵³

e. Implications – critical commentary

Following the TofuTown Case, it is very clear that names such as “Tofubutter” or “Veggie cheese” cannot be used for marketing purposes for PBFA to dairy products, unless they were to be listed on the Commission exemption list.¹⁵⁴

A big question that remains is whether this finding is resulting in a setback for consumers or whether it serves to prevent consumer deception. Some argue that many consumers have been using PBFA for decades without ever raising the question of feeling deceived.¹⁵⁵ There have been consumer studies conducted in the USA, and a similar discussion is underway in the EU.¹⁵⁶ The findings raise the question of the purpose served by protecting dairy terms if consumers are not misled by them.

¹⁵¹ Carreño and Dolle, “Tofu Steaks? Developments on the Naming and Marketing of Plant-Based Foods in the Aftermath of the *TofuTown* Judgement.”, 578.

¹⁵² Case C-422/16 §45.

¹⁵³ Case C-422/16 §49-50.

¹⁵⁴ Karin Verzijden, “The EU Tofutown Case – Don’t Mess around with Dairy Product Names,” Food Health Legal, July 31, 2017, <http://foodhealthlegal.eu/?p=889>.

¹⁵⁵ “Attorney Beuger: ‘The Average Consumer Is Informed Enough to Recognise the Difference Between This Product and an Animal Product.’” Vegconomist - the Vegan Business Magazine, July 25, 2020, <https://vegconomist.com/interviews/attorney-beuger-the-average-consumer-is-informed-enough-to-recognise-the-difference-between-this-product-and-an-animal-product/>.

¹⁵⁶ Carrieschaefter, “Consumers Support Use of Dairy Terms for Plant-Based Foods • Linkage Research & Consulting,” Linkage Research & Consulting, February 27, 2020, <https://linkageresearch.com/fda-plant-based/>; Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 266.

Initially, the objective of such protection may have been to prevent deceptive practices.¹⁵⁷ However, nowadays, much of the “imitation food” like plant-based cheese is intentionally developed to closely resemble traditional animal-based products, in taste, texture and appearance. These alternatives are often sought after by consumers who actively want to replace the animal product by a plant-based option. Therefore, it could be argued that the ECJ’s assertion that the use of protected dairy terms for plant-based products could cause confusion is still valid.¹⁵⁸

Furthermore, some argue in reply to the Court’s decision that the ‘traditional’ designations provide clear guidance to consumers when making purchasing choices. If PBFA were required to label with unfamiliar, non-standard names, customers would need to rely on supplementary text and images on the packaging to gather information about the product’s appearance, taste, texture, preparation, ... This unnecessary complication in the buying process would restrict consumer’s ability to make informed shopping decisions independently.¹⁵⁹ By extending the aforementioned ban, even in situations where there is no likelihood of confusion, the Court effectively established an excessive level of protection for consumers, without impairing their right to be informed.¹⁶⁰ Moreover, the ECJ does not sufficiently consider the equilibrium between the interests of consumers and producers, as some argue that the end result creates uncertainty amongst producers.¹⁶¹

The national enforcement authorities have the power to prohibit the usage of the names in light of this strict interpretation of the Regulation.¹⁶²

¹⁵⁷ Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 266.

¹⁵⁸ Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 266.

¹⁵⁹ Domke, “Vegetarian and Vegan Products - Labelling and Definitions.”, 105.

¹⁶⁰ Daniele Pisanello and Luchino Ferraris, “Ban on Designating Plant Products as Dairy: Between Market Regulation and Over-Protection of the Consumer,” *European Journal of Risk Regulation* 9, no. 1 (March 1, 2018): 170–76, <https://doi.org/10.1017/err.2018.4>, 171.

¹⁶¹ “Attorney Beuger: ‘The Average Consumer Is Informed Enough to Recognise the Difference Between This Product and an Animal Product.’”

¹⁶² Verzijden, “The EU Tofutown Case – Don’t Mess around with Dairy Product Names.”

Lastly, it is important to stress that various sources review the TofuTown case as the Court of Justice prohibits the use of dairy terms to PBFA.¹⁶³ Nonetheless, it must be clear that this is incorrect. The Court did indeed rule that these words can only be used for products consisting of “mammary secretions”, thus the secretions of mammals. This is however a mere correct reading of Annex VII, Part II of Regulation No 1308/2013, which is based on a political decision years ago.¹⁶⁴ The institutional framework of the EU hints at a separation of powers which leaves the Court the option to clarify questions, not to change the existing Regulations. There is close cooperation and coordination between the different institutions, yet each of them has their own distinct scope of work.¹⁶⁵

4.1.3 Comparison UDL case versus TofuTown case

When comparing both landmark cases, it is clear that both are clarifying the terms used for PBFA to milk products.¹⁶⁶ However, even with the same category of products, the Court assesses the intention of the consumers differently in both cases. In the UDL case, there is the point of view of the consumer who is willing to buy a plant-based product. On the other hand, in the TofuTown judgment, the Court is assessing a consumer category that needs to be prevented from being tricked into buying a plant-based product.¹⁶⁷

Another important difference is the added layer of reasoning brought in the TofuTown case, where there were allegations of violations of the principles of proportionality and non-discrimination, something that has not been brought up in the UDL case.¹⁶⁸

Overall, the Court maintains its reasoning in the two cases, even after big market changes in the almost 20 years that passed. Consumer protection seems to still be the most important take-away.

¹⁶³ See for example: BBC News, “EU Court Bans Dairy-Style Names for Soya and Tofu,” *BBC News*, June 14, 2017, <https://www.bbc.com/news/business-40274645>; Admin, “EU Court of Justice Rules against Dairy Names for Vegan Products,” *Just Food*, June 14, 2017, <https://www.just-food.com/news/eu-court-of-justice-rules-against-dairy-names-for-vegan-products/>.

¹⁶⁴ Bolton, “Dairy’s Monopoly on Words: The Historical Context and Implications of the TofuTown Decision.”, 422.

¹⁶⁵ Article 13 TEU.

¹⁶⁶ Sonja Rentz. 2021. “Labels Misleading Courts Rather Than EU Consumers: Understanding Restrictions on the Designation of Plant-Based Alternative Products.” *Faculty of Law Lund University*, 50.

¹⁶⁷ Pisanello and Ferraris, “Ban on Designating Plant Products as Dairy: Between Market Regulation and Over-Protection of the Consumer,” March 1, 2018, 172.

¹⁶⁸ Pisanello and Ferraris, “Ban on Designating Plant Products as Dairy: Between Market Regulation and Over-Protection of the Consumer,” March 1, 2018, 172.

4.2 Member States case law

4.2.1 *Court of Appeal Brussels, Belgium – Alpro case 2015*

In 2015, the Court of Appeal of Brussels ruled in the Court of Appeal Brussels 10 March 2015 2014/AR/1274, better known as the Alpro case, that the use of dairy names in advertising campaigns violates both European and Belgian regulations. Specifically, Alpro had used the protected terms “dairy” and “yogurt” in describing and promoting some of their products, as well as terms such as “variation to dairy” and visual elements resembling those of dairy products and visual elements resembling those dairy products.¹⁶⁹

Alpro described her own products as dairy products on her website, stating that “What makes Alpro different and just that little bit special? Well, firstly our milks, drinks, yogurts, desserts and creams are made naturally from the goodness found in soyabeans, and in some cases, almonds and hazelnuts too - and secondly, because our range is 100% plant-based, it’s better for you, and the planet too.”¹⁷⁰

Alpro attempted to defend their promotional campaign by arguing that the prohibition on using dairy names only applied to the name under which the product is sold and what is stated on the product itself. The company claimed that they did not use the term “yogurt” as the sales name on their product packaging.¹⁷¹ However, the Brussels Court ruled that the prohibition is not limited to the sales name of the product, and that the restricted use of dairy terms is to be understood in a broad sense, including the promotion of the product.¹⁷²

Furthermore, Alpro attempted to rely on an exception in Annex VII to Regulation 1234/2007, which allows products whose nature is clear from traditional use to use certain dairy terms. Alpro argued that their product is known not to be yogurt, but the court clarified that this exception is intended for non-dairy products that can still be called yogurt.¹⁷³ In this case, Alpro used their defense in the opposite direction, stating that their product is not yogurt. The Court found this to be unclear and ruled that the products concerned could still be considered yogurt and not clearly plant-based.¹⁷⁴

¹⁶⁹ In the original text it was called “variatie op zuivel”.

¹⁷⁰ Alpro case, §15, 17.

¹⁷¹ Alpro case, §16, 23.

¹⁷² Alpro case, §17, 24.

¹⁷³ Alpro case, §18, 24.

¹⁷⁴ Alpro case, §19, 24-25.

No Cassation appeal was made after the ruling, and there was no preliminary reference to the Court of Justice to interpret whether the broad interpretation taken by the Court of Appeals of Brussels was correct under Union law. However, the TofuTown Case appears to be in line with the reasoning of the Brussels court. It can be concluded that the interpretation is thus correct under Union law.

4.2.2 Higher Regional Court Celle, Germany – Cheese alternative case 2019

In a German decision of 2019¹⁷⁵, the Higher Regional Court (OLG) of Celle stated that advertising a plant-based product made from cashew nuts as a “cheese alternative” does not constitute an unfair commercial practice within the meaning of the German Act Against Unfair Competition (UWG). According to these provisions, a business practice is considered unfair if “it violates a legal regulation that is intended to govern market behavior in the interest of market participants”.¹⁷⁶ Although it is not allowed under EU law and the case law of the ECJ to refer to purely plant-based products as “dairy” products¹⁷⁷, the OLG Celle clarified that the term addition of “alternative” does not constitute such a designation, since it clearly expresses that it is not cheese.¹⁷⁸

It is interesting that not so long after the strict reasoning by the ECJ, this German Higher Regional Court deemed it not necessary to ask a preliminary question in order to clarify if the addition of the word “alternative” is enough of a distinction from the mere dairy term. This leads to the conclusion that the TofuTown case in itself sets the example of strict interpretation in the plant-based dairy alternatives market.

¹⁷⁵ OLG Celle, 06.08.2019 - 13 U 35/19.

¹⁷⁶ “OLG Celle: Plant-based product can be designated as alternative to cheese,” MTR Legal Lawyers, September 30, 2019, <https://www.mtrlegal.com/en/news-and-press/detail/news/olg-celle-plant-based-product-can-be-designated-as-alternative-to-cheese.html>

¹⁷⁷ See TofuTown case, *supra*.

¹⁷⁸ “OLG Celle: Plant-based product can be designated as alternative to cheese,” ; <https://www.kanzlei.biz/veganer-kaese-werbung-mit-kaese-alternative-ist-zulaessig-olg-celle-06-08-2019-13-u-35-19/>.

4.3 Conclusion case law

The case law concerning PBFA has offered valuable insights into product labeling and marketing. In 1987, the ECJ ruled in the UDL case that PBFAs cannot be branded as “cheese” if any milk element is substituted. To minimize potential consumer misunderstanding, the Court further stated that additional descriptions on the label should sufficiently indicate the lack of animal milk fats.

In 2017, the TofuTown case confirmed this restriction on using dairy words for plant-based substitutes, even if there is a clarifying or descriptive word indicating the plant-based nature of the food. This is unless it is ABOUT A exception on the EC exemption list. The Court confirmed that this is necessary for not only consumer protection but also fair competition and maintaining a high product quality standard.

Several Member States have had similar cases at national level, following the lead of the ECJ. In Belgium, the Brussels Court of Appeal even ruled that the strict prohibition also applies to the advertising of the PBFA.

The case law shows a continuous attempt to safeguard consumers and maintain fair competition in the PBFA market. However, there are debates concerning the necessity and impact of these judgments. It is emphasized that there needs to be further research of consumer expectations, labeling requirements, and the balance between regulation and consumer choice.

5 Movement towards new legal tools in the EU?

After having discussed the current state of the legislation and the case-law, we will now first discuss some current trends happening in the PBFA market in the EU. Secondly, the European Citizens Initiative will be highlighted as example of concern on PBFA amongst the EU citizens. Lastly, there is the proposal for a renewal and revision of the current legislative framework.

5.3 Current trends in the EU

The use of meat-related terms in the names of PBFA has become increasingly popular. However, regulations prohibiting the use of such terms or the existing uncertainty surrounding them could possibly impact the innovation and marketing of new PBFA. This situation may also reduce transparency for consumers, making it more challenging for them to identify suitable PBFA.¹⁷⁹

In a joint statement of the 27th of April 2018, the European Dairy Association, the Association of Dairy Trade, and Copa-Cogeca, a EU trade association that acts as representative of EU farmers and cooperatives, urged the EU to uphold its commitment to protect dairy products from misleading sales descriptions within the EU legislative framework. This statement was released in hopes of influencing the upcoming CAP reform. These groups emphasized, building their case on the TofuTown judgment, that the goal of EU labeling rules is to provide consumers with accurate information about their products. In their opinion, this increases the transparency in sales descriptions, to combat deceptive tactics. The focus is not on the existence of innovative plant-based items on the market, but on ensuring that consumers are not misled or perplexed about the nutritional properties of animal-derived produce with regards to PBFA.¹⁸⁰ In December 2021, the agreement that reforms the CAP was adopted with 10 key objectives, such as climate change, food value chain and environmental care, for the period 2023-2027.¹⁸¹ Within the FFS, the importance of plant-based diets is recognized, however this CAP reform does not provide intensive policy changes.¹⁸²

Furthermore, the European Vegetarian Union (EVU) has engaged in extensive lobbying in the EU to establish legally binding definitions. These actions have generated widespread support. Germany, known for pioneering the introduction of a wide range of vegetarian products into its supermarkets, became a primary target. After years, the German Federal Government, supported

¹⁷⁹ Zhang et al., “Development of Meat Analogs: Focus on the Current Status and Challenges of Regulatory Legislation.”, 10-11.

¹⁸⁰ Carreño and Dolle, “Tofu Steaks? Developments on the Naming and Marketing of Plant-Based Foods in the Aftermath of the *TofuTown* Judgement.”, 581.

¹⁸¹ “Key Policy Objectives of the CAP 2023-27,” Agriculture and Rural Development, May 19, 2023, https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cap-2023-27/key-policy-objectives-cap-2023-27_en.

¹⁸² Macdonald, “EU Urges Plant-Based Diets – but Policy Favours Meat and Dairy.”

by the major political parties, and the food industry, are all in favor of the adoption of the criteria proposed by the EVU. Moreover, within the regional governments in Germany, the consumer protection ministers reached a unanimous agreement on the proposed wording for “vegan” and “vegetarian” terms in food labeling. They have effectively made this proposal binding by implementing it within their jurisdictions, resulting in a de facto binding application.¹⁸³

However, a year later, in April 2019, a French Member of the European Parliament introduced in the Committee on Agriculture and Rural Development, an amendment to the Commission’s proposal for the reform of the CAP (COM/2018/0394). The amendment aimed to restrict the use of terms like “steak”, “sausage” and “burger” exclusively to animal-based products. The amendment received support within the Committee but was ultimately rejected by the entire European Parliament during a vote on the 23th of October, 2020.¹⁸⁴

Furthermore, the European Parliament was trying to get amendment 171 in place, prohibiting any reference towards the word ‘dairy’ for dairy alternatives, which would mean a further limitation of the naming scope that food alternatives can use. Some argue that this would confuse consumers more than provide clarity, since people looking for an alternative will get to know more specific names for the products they want.¹⁸⁵

However, during the Trialogue negotiations between the European Commission, the European Council and the European Parliament, 34 members of the latter are trying to get the amendment rejected.¹⁸⁶ In May 2021, it was announced that this amendment was completely off the table.¹⁸⁷

It seems like both the PBFA industry and the more traditional food industries are aiming for a different approach in clarifying the newer PBFAs. On the one hand, the traditional food sector, such as the dairy industry, wants to protect and uphold its current high protection and thus no changes in the framework as it stands. However, the PBFA industry strives for more clarification within the overall framework, thus aiming for at least a revision of the current Regulations.¹⁸⁸

¹⁸³ Domke, “Vegetarian and Vegan Products - Labelling and Definitions.”, 103.

¹⁸⁴ Lähtenmäki-Uutela et al., “Alternative Proteins and EU Food Law.”, 7.

¹⁸⁵ Ensa, “Denominations of Plant-Based Food and Drink Products: European Parliament Sends Mixed Message Ahead of Trilogue Negotiations on CAP Reform - ENSA,” ENSA, February 9, 2021, <https://ensa-eu.org/denominations-of-plant-based-food-and-drink-products-european-parliament-sends-mixed-message-ahead-of-trilogue-negotiations-on-cap-reform/>.

¹⁸⁶ CNS MEDIA, “Amendment 171: 34 Politicians Protest Plant-Based Dairy Censorship in European Parliament,” *Foodingredientsfirst.Com*, April 1, 2021, <https://www.foodingredientsfirst.com/news/amendment-171-34-politicians-protest-plant-based-dairy-censorship-in-european-parliament.html>.

¹⁸⁷ Sinead Barry, “Cheesed off? Controversial Amendment 171 Withdrawn from EU,” *Euronews*, May 28, 2021, <https://www.euronews.com/green/2021/05/28/cheesed-off-controversial-amendment-171-withdrawn-from-eu>.

¹⁸⁸ Eugenio Demartini et al., “Would You Buy Vegan Meatballs? The Policy Issues around Vegan and Meat-Sounding Labelling of Plant-Based Meat Alternatives,” *Food Policy* 111 (August 1, 2022): 102310, <https://doi.org/10.1016/j.foodpol.2022.102310>, 1.

In March 2023, the EFSA held a colloquium considering the current important developments with regards to insect-based, plant-based or other food alternatives. This had as its primary goal to guarantee the suitability of its risk assessment for cell cultured foods. Additionally, it aimed to explore untapped areas within the agrifood system, to assess the evolving safety and methodological factors.¹⁸⁹

5.2 European Citizens' Initiative for vegan meals

In October 2022, the European Commission took the decision to register a new European Citizens Initiative called the “European Citizens' Initiative for vegan meals”.¹⁹⁰ The initiative takers are requesting a law mandating private and public food and drink vendors in Europe to provide a vegan alternative explicitly. They argue that this initiative will address growing concerns around animal rights and contribute to fighting the climate crisis by promoting PBFA consumption, whilst simultaneously reducing food costs.¹⁹¹

The initiative has met the formal requirements laid down, namely that “(1) the proposed action does not fall manifestly outside the framework of the Commission's powers to submit a proposal for a legal act, (2) it is not manifestly abusive, frivolous or vexatious and (3) it is not manifestly contrary to the values of the Union”.¹⁹²

Currently, the initiative is open for collection of support. For the EC to even examine the request, one million declarations of support must be collected within 12 months after registration. However, as of this writing, just 560 single support signatures had been gathered.¹⁹³

At this stage, the initiative is not yet analyzed on its substance. However, one could be hopeful that the Commission does at first glance not think the proposal to be “frivolous” or “vexatious”. If the needed citizens support follows, this could be one piece of EU legislation more aimed towards facilitating food sustainability within the Union.

¹⁸⁹ “The Future of Food: European Regulators Taking Action?,” Insights | Sidley Austin LLP, March 28, 2023, <https://www.sidley.com/en/insights/newsupdates/2023/03/the-future-of-food-european-regulators-taking-action>.

¹⁹⁰ Article 11(4) TEU iuncto Article 24(1) TFEU iuncto Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative, OJ L 130, 17.5.2019, p. 55–81.

¹⁹¹ “Initiative Detail | European Citizens' Initiative,” n.d., https://europa.eu/citizens-initiative/initiatives/details/2022/000009_en.

¹⁹² Article 6(3) Regulation (EU) 2019/788.

¹⁹³ “Initiative Detail | European Citizens' Initiative.”

5.3 New PBFA legal framework to achieve sustainable development

5.3.1 *Role EC in new framework*

When the EC would take these proposed changes into consideration, it is required to examine a variety of issues, including economic and ethical concerns. In the case of PBFA, there are major economic interests at risk since the dairy industry is the second biggest European agricultural sector. As a result, the EC has the difficult task of matching the opposing interests of all stakeholders involved. Therefore, the potential adjustments proposed regarding the naming of new products may take some time to be implemented.¹⁹⁴

5.3.2 *New legal framework: maximum harmonization*

If the EU would start harmonizing or putting new rules into place, a maximum harmonization would be the best approach. This means that the national law cannot exceed the terms of the legislation, and thus at national level PBFA options could not be governed more strictly. This is in order to make sure that there are no hindrances towards the free movement of goods since there is one uniform rule applicable in all Member States. This would lead to the necessary repeal or amendment of national rules already in place, especially in the meat sector as the dairy sector is governed by a Regulation already.¹⁹⁵

However, it is common in European law for different clauses to have different minimum or maximum harmonization rules. In the case of this necessary plant-based revision, the vegan and vegetarian definitions should surely be uniform and thus face maximum harmonization. National exceptions for different traditional or well-known foods could be put into place and thus not be governed by maximum harmonization.¹⁹⁶ Yet, this does not seem to be the right approach here, since unity is lacking in the PBFA market.

¹⁹⁴ Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 266.

¹⁹⁵ “SUMMARY OF: Article 288 of the Treaty on the Functioning of the European Union – Directives.” 2022. EUR-Lex - L14527 - EN - EUR-Lex. 2022. <https://eur-lex.europa.eu/EN/legal-content/summary/european-union-directives.html>.

¹⁹⁶ “SUMMARY OF: Article 288 of the Treaty on the Functioning of the European Union – Directives”

5.3.3 Revision existing Regulations

The current case-law and regulatory system provides various advantages to the dairy alternative business and its customers. First, legal clarity is provided, guaranteeing that dairy-alternative enterprises may function within set limitations. This clarity gives producers the steadiness and confidence they need to create and advertise their products successfully within the legal framework.¹⁹⁷

Second, consumer protection is improved since the regulations serve to protect customers by ensuring accurate and trustworthy labeling of plant-based dairy alternatives.¹⁹⁸

However, as set out above, the system has certain drawbacks. The various interpretations of the CMO might result in unequal execution of laws, posing clarity problems for both businesses and consumers. Additionally, consumer protection standards differ between different industries, which can lead to different protection for consumers depending on the product.¹⁹⁹

Furthermore, there is currently no EU-wide uniform defined legal understanding of “plant-based”, “vegan”, and “vegetarian”. Only a few associations have voluntarily established standards to define the requirements for these terms to be used in the labeling of foods.²⁰⁰ It would not be beneficial for consumer protection if consumers need to rely on unknown, new terms, since there would be an increase in explanatory extra information on the packaging.

In the revision of the discussed Regulations, it is essential to establish clear standards regarding the definitions and label declarations of PBFA. Furthermore, the exceptions lists of different Regulations, as discussed above, could be elaborated. In the case of the meaty terms, the EU can step in to address the use of food and food ingredients derived from animals. This could then meet the emerging needs of producers and consumers, and reduce possible existing confusion.²⁰¹

¹⁹⁷ Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 264.

¹⁹⁸ Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 264.

¹⁹⁹ Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 264.

²⁰⁰ Zhang et al., “Development of Meat Analogs: Focus on the Current Status and Challenges of Regulatory Legislation.”, 11.

²⁰¹ Zhang et al., “Development of Meat Analogs: Focus on the Current Status and Challenges of Regulatory Legislation.”, 17.

A detailed explanation and guideline regarding the food ingredients that stem from animals, such as gelatin and certain enzymes, is needed in foods that are labeled ‘plant-based’, ‘vegan’, or ‘vegetarian’, as this forms a hurdle for certain consumers.²⁰²

In 2018, the European Commission announced that it wanted to develop EU-wide definitions in 2019. These clear and precise definitions would be beneficial to both consumers and the industry, helping to reduce uncertainty regarding the labeling of foods.²⁰³

The establishment of a legal definition of a PBFA, in combination with a known dairy or meaty term, could accurately describe the product without creating confusion or misrepresentation. Consequently, the concerns raised in the TofuTown case would no longer be relevant as the addition of a legally defined ‘vegan’, ‘vegetarian’, or ‘plant-based’ term would resolve any uncertainty.²⁰⁴

However, there are also reasons not to interfere in the current regulatory framework within the EU. A recent study conducted by Demartini et al revealed that consumers’ perceptions of both taste and healthiness, as well as how inclined they were to purchase PBFA, was adversely influenced by the presence of vegan labeling.²⁰⁵

²⁰² Zhang et al., “Development of Meat Analogs: Focus on the Current Status and Challenges of Regulatory Legislation.”, 17.

²⁰³ Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 265.

²⁰⁴ Leialohilani and De Boer, “EU Food Legislation Impacts Innovation in the Area of Plant-Based Dairy Alternatives.”, 265.

²⁰⁵ Giulia Andreani et al., “Plant-Based Meat Alternatives: Technological, Nutritional, Environmental, Market, and Social Challenges and Opportunities,” *Nutrients* 15, no. 2 (January 15, 2023): 452, <https://doi.org/10.3390/nu15020452>, 12.

5.3.4 New legal framework: proposal for including PBFA definitions

Since there currently exists no legal definition for various sorts of PBFA, such as vegan and vegetarian food, producers are allowed to just label products as “vegan” or “vegetarian” without one consistent standard.²⁰⁶ As discussed above, the Novel Food Regulation²⁰⁷ leaves leeway for the European Commission to adopt such definitions. However, even after the announcement of 2018, there is no strict timeline or deadline put forward.

Germany, as a Member State, has adopted legal definitions, which can serve as inspiration for a EU-wide definition. The phrasing was collaboratively and unanimously formulated by a working group consisting of various stakeholders, including an industry lobby, the German Federation for Food Law and Food Science, and VEBU, which is the German branch of the EVU. These last have been advocating for a definition for an extended period of time.²⁰⁸

The definition is the following: “Vegan foods are not of animal origins and in which, at no stage of production and processing, use has been made of or the food has been supplemented with:

- ingredients (including additives, carriers, flavorings and enzymes)
- processing aids
- substances which are not food additives but are used in the same way and with the same purpose as processing aids

in either processed or unprocessed form that are of animal origin.

Vegetarian foods meet the requirements of paragraph 1 with the difference that in their production, the following may be added or used:

- milk,
- colostrum,
- eggs,
- honey,
- beeswax,
- propolis,

²⁰⁶ Livekindly, “Europe Fights for Legal Definitions of ‘Vegan’ and ‘Vegetarian,’” LIVEKINDLY, December 15, 2020, <https://www.livekindly.com/europe-fight-legal-definition-vegan-vegetarian/>.

²⁰⁷ Regulation 1169/2011.

²⁰⁸ foodnavigator.com, “Germany Backs Proposal for Legal Definition of Vegetarian and Vegan Food,” June 1, 2016, <https://www.foodnavigator.com/Article/2016/06/01/Germany-backs-proposal-for-legal-definition-of-vegetarian-and-vegan-food>.

- wool grease (including lanolin derived from the wool of living sheep or their components or derivatives)²⁰⁹

This definition is thus starting from the most strict option, vegan foods, and adding extra allowances for food to still be considered vegetarian once it is not fully vegan. As Germany is a front runner in PBFA options and this definition seems to be concise yet comprehensive, the EU could draw inspiration from or even copy this into its EU legislation.

In order to avoid consumer confusion, not only a harmonized definition is key but also clear indication on the packaging. For this to be true, a clear logo is needed. Furthermore, as people adhering to a vegan diet have a stricter definition than those with a vegetarian diet, a distinction between both logos seems necessary. The EVU has some logo's that are voluntarily applied to foods. However, the distinction between “vegan” and “vegetarian” is not clear from these logos as it is merely added by a description, taking away from the mere visual recognition. A different choice of colors or different pictogram linked to the “V” for the “vegan” options can provide some clarity.



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Image 1: Vegan and Vegetarian logo EVU

Image 2: The Vegan Trademark

After the adoption of the general definition, these terms can be simply added to any product, along with the logo, or most likely both. This eliminates the need for a comprehensive dairy definition and resolves the issue of the absence of a definition on what “meat” products can carry a meaty name. Member States can individually regulate bans as long as they do not impede the free movement of goods, as long as PBFA options clearly specify the type of PBFA they are.

5.4 Conclusion

In conclusion, the EU faces a need for harmonization and new rules to address the challenges and discrepancies that currently exist in the legislative framework of PBFAs. If the chosen method is the creation of a new Directive, maximum harmonization would be the preferred approach to obtain uniformity across all Member States. This also eliminates barriers to free movement of goods.

²⁰⁹ Translation provided by the EVU.

²¹⁰ “Bio-Inspecta - Services - V-Label,” n.d., <https://www.bio-inspecta.ch/en/services/service-484~v-label.html>.

²¹¹ “The Vegan Trademark,” The Vegan Society, n.d., <https://www.vegansociety.com/the-vegan-trademark>.

Clear definitions and labeling standards for terms like “vegan” and “vegetarian” are necessary to provide clarity for consumers and industry alike. The German example of legally defined terms can serve as inspiration for an EU-wide definition. Alongside the definition, a clear logo on all products could help prevent confusion.

The implementation of these changes involves considering economic and ethical factors, as there is a delicate balance to be struck between the interests of the dairy, meat and plant-based industry. A gradual implementation of adjustments to naming and labeling regulations can be a result of that.

6 Conclusion

In conclusion, the legislative framework for PBFA in the EU has to be reevaluated and amended to reflect the existing issues and disparities and amended to reflect the existing issues and disparities. The existing laws governing food entering the EU market are not especially geared to PBFA, emphasizing the need to either expressly include them or develop new regulations that address their specific demands. The absence of unity in the common market with terms like “vegan” and “vegetarian” not having EU-wide acceptance, exacerbates the situation.

The EGD and the F2F Strategy acknowledge the importance of sustainable diets but have not yet led to concrete measures for PBFA. Indirect signals, such as the significant allocation of the EU’s promotional budget to the meat and dairy industry, compared to the lack of advertising for PBFA, demonstrate the uncertainty these products face in the Union. Moreover, the current regulations reveal discrepancies between dairy and meat products, hindering harmonization and creating a legislative gap.

The influence of the ECJ’s rulings will play a crucial role in the future of PBFA law within the EU. A revised framework that ensures clarity, fairness, and informed choices for consumers is essential. The case law has provided valuable insights into product labeling and marketing, putting emphasis on consumer protection, fair competition, and maintaining high product quality standards.

Interestingly, the issue of consumer protection becomes questionable when considering body products, such as body lotion and hair shampoo, that use terms like “body butter” and “hair milk”. These products often contain ingredients like coconut oil, shea butter, or plant-based oils and butters, yet they can be referred to as “butter” without confusion or concern.²¹² It seems ironic that these non-food items can adopt dairy-related names while products intended for consumption cannot, to avoid confusing consumers. This raises the question of how the argument for consumer protection in the context of dairy products remains valid when there is less likelihood of serious errors due to confusion between food and non-food items.

To address the challenges, the EU needs to pursue harmonization and introduce new rules that explicitly cater to the unique needs of the growing market of PBFA. Maximum harmonization would encourage consistency across all Member States and reduce barriers to the free movement of goods. To enhance clarity for both consumers and producers, clear definitions and labeling requirements is required. Drawing inspiration from the German example of legally defined terms, an EU-wide definition and the adoption of a clear logo on all PBFA products can help prevent confusion.

²¹² Kao Beauty Brands, “What Is Body Butter?,” n.d., <https://mykaoshop.com/blogs/jergens/what-is-body-butter>.

Implementing these changes requires considering economic and ethical factors and finding the delicate balance between the interests of the dairy, meat, and plant-based industries. Gradual adjustments to the naming and labeling regulations can be a result of this balance, ensuring a smooth transition whilst encouraging innovation and supporting the growth of the PBFA sector. As this is currently more popular than ever before, this gradual adjustment should also not take too long. If the EU wants its food market to function properly, it needs to take action.

By revising this legislative framework, the EU can address the current gaps, create a more supportive environment for sustainable food alternatives, and contribute to achieving true sustainability outcomes. With the increasing consumer demand and economic potential in the PBFA sector, aligning the legal framework with societal changes is crucial for a more sustainable future that benefits the global environment and promotes the well-being of individuals, starting one meal at a time.

7 Closing remarks

This thesis forms the final stop of my academic path. The research was demanding and not straightforward yet very rewarding; it taught me to think outside the legal framework since all factors must be taken into account to make good legislation. Moreover, I discovered that a niche topic can be a detail for some but a real point of contention for others. It was interesting to see both sides of the debate in this. I hope to stay curious and question the status quo in order to strive for a more steadfast legislative framework, that can serve our common fight against climate change.

My research hopefully serves as inspiration for politicians, stakeholders or legal analysts. There is still much room for discussion on how to best approach this problem. My findings are only one way of looking at it, and deeper research need to be conducted on the economic markets, the influence on innovation and consumer perceptions, ... to grasp the complexity of the whole PBFA better. It will be interesting to follow this discussion at EU level in the next years, given the Green Agenda that is pushed forward and the upcoming European elections that might influence the given direction.

For my further path, I wish to stay puzzled, even when doing banal things like choosing yoghurt in the supermarket.

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