

DATE	Updated on 14 <sup>th</sup> October 2020 - Please refer to the <a href="#">briefing note</a> on the joint legal analysis that IPIFF and Bird&Bird (Law firm) conducted.
SUBJECT	Information note: Ruling from the Court of Justice of the European Union (CJEU) on the EU 'regulatory status' of whole edible insects
AUTHORS	IPIFF Secretariat

### Disclaimer

*This document aims to explain the recent ruling of the CJEU. It does not represent in any way the views of the IPIFF organisation on this subject. This document is partially constructed on the information of 'informal nature'.*

#### 1. CJEU clarifies 'whole edible insects' do not fall under the old novel foods Regulation.

The CJEU in [its ruling from 1<sup>st</sup> October 2020](#) stated that whole insects did not fall within the scope of the 'old' novel food, i.e. [Regulation \(EC\) No 258/97](#).

Extract from the ruling:

*'On those grounds, the Court (Third Chamber) hereby rules: Article 1(2)(e) of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009, must be interpreted as meaning that foods consisting of whole animals intended to be consumed as such, including whole insects, do not fall within the scope of that regulation.'*

This judgment was given in response to a question raised by the French Administrative Supreme Court (Conseil d'Etat - Council of State, France) in the context of a dispute between a company producing insects for food and the French administration (French Ministry of Agriculture and the French Ministry of Economy and Finances<sup>1</sup>).

Through the judgement, the Court has decided to follow the [opinion](#) delivered by the Advocate General (Bobek) on 9 July 2020, as well as the reasoning of the European Commission, formulated in its written observations preceding the ruling<sup>2</sup>.

#### 2. What does the CJEU ruling mean for the edible insect sector in the EU?

The judgement from the CJEU may open new possibilities for edible insect operators who have marketed 'whole' (**not** powders/extracts) edible insects **before** the application of the 'new' novel foods Regulation, i.e. [Regulation \(EU\) 2015/2283](#) (i.e. 1<sup>st</sup> January 2018). Particularly, this is the case of operators who were denied the possibility to commercialise their products in their country, i.e. Member States (MS) not applying the so-called 'novel foods transitional measure' (such as France, Spain, Portugal, Italy, Sweden) as provided under the 'new' novel foods Regulation (*for further detail about the transitional measure, see 'background and context' below*).

<sup>1</sup> The Conseil d'Etat' stated that there 'is a serious doubt that whole insects are included in the 'old' definition of 'novel food' as provided by Article 1 of Regulation 258/97, decided to stay proceedings on the case. Subsequently, the Conseil d'Etat' further referred to the **Court of Justice of the European Union (CJEU)** on 9th June 2019, under the 'Preliminary ruling procedure' to clarify if whole insects and their preparations fell within the scope of the 'old novel foods Regulation'.

<sup>2</sup> The CJEU had received written opinions on the aforementioned subject from the French Government, Italian Government, and the European Commission (EC) as well as from the company from which originated this legal proceeding (i.e. ENTOMA SAS). In their respective observations, ENTOMA and the EC state that 'whole' or products composed of whole insects fall out of the scope of old Regulation. In contrast, the French and Italian governments argue against the position of ENTOMA and the EC. The Advocate General (AG) has also given an [opinion](#) addressed to the CJEU given on 09 July 2020 stating that whole insects did not fall under the scope of the 'old' novel foods Regulation.

**The ruling is indeed applicable in all Member States of the European Union.**

IPIFF, in collaboration with a specialised law firm, will **produce a legal analysis** about the possible implications of this ruling. This document will be made available on the [IPIFF Website](#) in the following days.

In parallel, IPIFF encourages insect food producers active in the above-mentioned countries **to contact their competent national authorities in order** to clarify the potential consequences of this ruling respective to their specific situation. Thus, in addition to the legal analysis mentioned above, the consequences of this ruling will **have to be further investigated**.

In conclusion, this judgement is therefore an **important milestone for the development for the European edible insect sector**. However, the **‘novel food authorisations’ remain the most critical step** towards providing EU wide market access for edible insect products. Several novel food applications are currently being assessed by the European Food Safety Authority (EFSA). IPIFF hopes that the first EFSA opinions will be adopted and published in the following weeks. These opinions should pave the way to the first ‘novel food’ authorisation, expected in mid-2021.

### **3. Background and context:**

#### **a. Where do edible insects fall in the legal context?**

‘Novel food’ is defined as food that had not been consumed to a significant degree in the EU before 15 May 1997, when the first Regulation on novel foods (‘old’ novel food [Regulation \(EC\) No 258/97](#)) came into force. The replacing ‘new’ novel foods [Regulation \(EU\) 2015/2283](#) includes ‘whole’ edible insects and their products (powdered, extracts) as a novel foods. To this end, it provides transitional measures for operators to continue placing their products that are currently being assessed in view of its authorisation on the EU market. However, the criteria to benefit from the transitional measure include:

- an application (data protected/non-data protected) for these foods was submitted by 1 January 2019;
- the products were lawfully placed on the market by 1 January 2018;
- not covered under the ‘old novel foods Regulation’ (Regulation (EC) 258/97).

*For more details please refer to [IPIFF Briefing paper on Novel food Chapter ‘EU Member States approaches on the novel status of ‘whole insects and their preparations’](#)*

#### **b. Different application of the transitional measure under the ‘new’ novel foods Regulation by Member States (MS)**

Although ‘whole insects’ destined for human consumption have ‘only’ now been included under the ‘new’ novel foods Regulation, several MS consider that ‘whole’ insects were covered under the ‘old’ novel foods Regulation as well and should have been authorised (i.e. an application be submitted through the authorisation procedure). This interpretation of including ‘whole’ insects in the ‘old’ novel foods Regulation disqualifies whole edible insect products in these MS to benefit from the transitional measure. On the other hand, MS that currently apply the transitional measure<sup>3</sup>, consider that ‘whole insects’ as well as were clearly out of the scope of Regulation (EC) No 258/97.

---

<sup>3</sup> Netherlands, Denmark, Finland, Belgium, Czech Republic, Austria. For more details see [IPIFF Briefing paper on Novel food Chapter ‘EU Member States approaches on the novel status of ‘whole insects and their preparations’](#)

IPIFF Secretariat – Avenue Adolphe Lacomblé 59, 1030 Brussels | +32-2-743 29 97 ; [christophe.derrien@ipiff.org](mailto:christophe.derrien@ipiff.org)