

EU FOOD LEGISLATION REPORT

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INTRODUCTION

WITH the approval in May of two key regulations covering respectively nutrition and health claims and the addition of vitamins and minerals to foods the EU has taken an important step forward in setting the legal framework for the food industry in Europe. Already formally approved and coming into effect this year is the directive reforming the sugar regime. The once-feared REACH chemical directive is no longer much of a threat to food manufacturers. But the relative peace on the legislative front may only last for a year or so until the European Commission comes up with new food labelling proposals that could well signal a tough crackdown on health grounds. These and other issues are examined in detail.

1) NUTRITION AND HEALTH CLAIMS REGULATIONS

AT long last the broad shape of EU regulations laying down the claims that food manufacturers may or may not make in respect of nutrition and health, as well as the rules covering the addition of vitamins and minerals to food, has become clear. A crucial piece in the legislative jigsaw was put in place on May 16 when the European Parliament voted by a massive majority at second reading to accept a compromise reached a few days earlier with the EU Council of Ministers. The council itself is expected to give political agreement to the parliament's amendments before mid-year, with formal adoption expected by the autumn. The regulation would then enter into force within 20 days of publication in the EU's Official Journal and the first provisions would begin to apply 6 months later. The parliament's prompt acceptance of the compromise deal means that a lengthy and perhaps bitter conciliation process between the two sides can now be avoided and the measure will become law much sooner than expected.

The Commission said the proposed regulation "will ensure that consumers will be able to rely on the truth and accuracy of information on food labels and will create a level playing field for food manufacturers wishing to use health or nutrition claims." As a transitional measure, existing nutrition claims would be able to remain on the market for 2 years, and existing health claims for three years. The Commission had wanted manufacturers to indicate the nutrient profile of a product - such as its fat, sugar and salt content - if they wished to highlight one of the ingredients in their promotional texts, but under the new agreement only products claiming to reduce a specific health risk, such as heart disease, would face the most stringent levels of procedure.

Reaction to the deal has been relatively muted on all sides so far. While there is no doubt that the legislation has been substantially watered down from the original Commission proposals, there is still much that is unclear. The UK's Food and Drink Federation (FDF) said while in general it supported the Commission's intention to harmonise the use of scientifically substantiated nutrition and health claims for food "the devil will be in the detail of the regulation." It continued: "What form the profiling will take and the list of accepted claims are still yet to be decided, so there is still much work to be done. We need to ensure that profiling will not restrict manufacturers from innovating and providing consumers with the foods they want," the FDF said. The Confederation of the Food and Drink Industries of the EU (CIAA) said: "We recognise this package is all that is politically possible at this stage. We welcome the fact that there is now a European decision. In looking to implementation, industry wants to participate constructively and be consulted on work that lies ahead, notably on nutrient profiles."

The European consumer group BEUC (Bureau Européen des Consommateurs) described the text as "not too bad and a lot better than some previous ideas of the parliament." It was referring to a vote by the parliament on first reading last year when it scrapped an obligation on food producers to highlight less attractive nutritional profiles as well as attractive ones - such as "low on fat - high in sugar", apparently under pressure from food manufacturers. In fact to some surprise, this provision, considered by many as the very heart of the legislation, was brought back in the final draft. BEUC also welcomed the fact that new claims would have to be proved before they could be used in marketing and that trademarks would gradually come within the scope of the regulation.

That said, some MEPs had questioned the need for any new legislation in this area at all and expressed some bitterness over the outcome. The German conservative member Renate Sommer, who had been fighting against the law since it was proposed in 2003, said the final compromise was "just as bad as the original draft of the Commission." Small businesses were losing money because of EU "over-regulation," she said. It was also wrong to try and tell people how to behave. "Food advertisers are obviously not responsible for the fact that people are becoming fatter," she said. But the Dutch liberal MEP Jules Maaten said that consumers would now be able to receive reliable information without being patronised. A baker should be able to promote fibre-rich bread "without having to go through a complicated authorisation procedure," he said. The new regulations provide for accelerated approval procedures for most new foods and say that foods used before 2006 and which are not included in the annex can continue to be used for 3 years after the regulation enters into force.

The weight of lobbying in the parliament reflected manufacturers' concern at the direction of legislation over the presentation of nutrition and health claims in one of the industry's brightest growth areas, namely foods that can be made more attractive

to consumers through additives. Also the industry felt a need for a harmonisation of national rules concerning the addition of vitamins, minerals and other substances in order to bring about the free circulation of goods on the EU market. Some member states ban the addition of vitamins and minerals to foods while others allow it under certain conditions. Under the new law, over 100 vitamins and minerals on a "positive list" can be added to many foods though not to fresh foods like fruit, vegetables, meat and fish or to drinks and products containing alcohol. In general, companies will face less exacting regulatory procedures when applying for permission to add specific nutritional claims to their products.

However the draft regulation does set new limits on claims and will put an end to claims about nutritional quality made without any evidence. The regulation will for instance set strict conditions for the use of nutrition claims such as 'low fat', 'high fibre' or 'reduced sugar', establishing threshold levels for the claims to apply. There will have to be six grams of fibre per 100g for the claim 'high fibre' to be used, for instance and no more than 0.12g of sodium per 100g/100ml for the claim "low sodium/salt".

A claim that a food is fat-free may only be made where the product contains no more than 0.5g of fat per 100g or 100ml, under the regulation, which also bars the use of percentage claims such as "90% (or some other figure) fat-free."

In respect of other promotional statements, the regulation provides that a claim that a food is low in saturated fat may only be made where the product contains no more than 1.5g of saturates per 100g for solids, or 0.75g of saturates per 100ml for liquids, and in either case saturated fat must not provide more than 10% of energy. A claim that a food is low in energy may only be made where the product contains less than 40 kcal (170 kJ)/100g and less than 20kcal (80kJ)/100ml. "Sugars-free" may only be stated where the product contains no more than 0.5g of sugars per 100g or 100ml and a claim that a food is low in sugars may only be made where the product contains no more than 5g of sugars per 100g or 100ml. In general nutritional claims will only be allowed on food labels if they fit certain nutrient profiles, that will be drawn up and agreed within two years by the European Commission and national governments, with advice from the European Food Safety Agency (EFSA).

Brussels had said originally that such claims were often used to draw consumers' attention away from high salt, fat or sugar content. The parliament had earlier voted to amend the original text on the grounds that such nutrient profiles were hard - if not impossible - to draw up. The compromise is that nutritional claims will be allowed on food labels if only one of the nutrients exceeds the permitted threshold. Thus food producers will be allowed to make promotional claims in respect of fat, sugar or salt provided that the other two ingredients comply with EU regulation or if the label states the product has a "high content" of them. Some MEPs said this was illogical, as it would allow products such as confectionery, which had a high sugar content, to advertise themselves as "healthy" because they contained little fat.

The regulation provides for the Commission to draw up a list of positive health claims - such as 'calcium is good for your bones' - that will be allowed on product packaging as long as they are proven to apply to the food in question. Health claims permitted by national governments will have to be submitted to the commission, which will then compile a definitive EU list, raising the possibility of some claims that are currently permitted being banned. Claims that are not included on the EU list will have to seek approval from EFSA and the commission. The parliament has agreed to drop its opposition to bringing branded food products into the scope of the regulation, although companies will still have 15 rather than 10 years to phase out claims that do not comply with the new rules.

Generic names such as 'digestive' or 'cough sweet' will be exempted from the health claims rules, since they are not perceived by consumers as health claims according to Brussels while non-packaged products such as bread, fruit and vegetables are also exempted. The EU health commissioner Markos Kyprianou accepted that he would have liked a stronger crackdown saying food labels had a huge influence over consumers' choices and it was only reasonable to expect that the claims on them were not false or misleading. However he accepted the outcome and said the regulation "will create a fairer market for producers making genuine and substantiated health or nutrition claims."

Justifying the crackdown on claims about health and nutrition, Brussels said that at present consumers perceived products carrying certain claims to be better for their health though in fact "a food which is high in fat, salt and/or sugar, can still use claims such as rich in vitamin C" or "high in fibre" to attract consumers, even "if the overall health and nutritional benefits of the product are low." This would no longer apply though there would be a derogation to allow nutrition claims if just one nutrient did not meet the required profile. "However, the high level of this nutrient must be clearly marked on the label, close to and with the same prominence as the claim. If two or more of the nutrients exceed the limit, no nutritional claim can be made," said the Commission.

2) GREEN PAPER

THE BIG future challenge for the food industry where EU legislation is concerned will come next year when the European Commission presents its plans for revising the food labelling directives. At present, the EU laws applying to food labelling are harmonised through Directive 2000/13/EC, which would be normally slated for revision in 2007 in any case. However the matter has been overtaken by a number of high profile health concerns, the most prominent being obesity, and it's now widely expected that the Commission will use next year's revision to proclaim its credentials in the health field. This should not be under-estimated. According to the International Obesity Task Force more than 200 million adults and 14 million children in the EU - over half the adult population and almost a quarter of children - were overweight or obese in 2004 and

the figures were rising at a "most worrying" rate.

As of now, all major players - industry, the health associations and the EU institutions - have said they want to improve the health of Europeans through voluntary action. The instrument for this at present is the EU Platform for Action on Diet, Physical Activity and Health, created in March 2005 with the aim of developing voluntary initiatives by industry to deliver quicker and more extensive results than legislation. An official helping manage the platform claimed that voluntary actions "are a more flexible tool than the law when it comes to helping millions of people change their behaviour - especially with food and physical activity, which are deeply rooted in their personal history." The 34 founding members included the EU political bodies, food industry representatives like McDonald's, medical associations, consumer groups, retailer organisations and a number of think tanks.

The platform members set out 92 commitments to fight obesity under three themes: healthy lifestyles, physical activity, and diet. Most commitments so far focus on lifestyle and diet. According to Markos Kyprianou, European commissioner for health and consumer protection, "the platform has created an accelerated consensus-building process among the industries and given them the chance to pool best practice against obesity. This has led to the very quick implementation of concrete measures visible to all consumers through food labels, TV, schools and restaurants." He added that he wanted more project in three key areas: "reformulation, portion sizes and commercial communication, especially to children."

Among programmes introduced so far under the platform are Ireland's Food Dude Healthy Eating Programme to improve children's long-term consumption of fruit and vegetables, a pledge by the European Modern Restaurant Association, including Quick and McDonald's, to provide consumer information on the Guidance Daily Amount and the percentage of their maximum daily allowance of protein, fat, sugar, salt and calories provided in meals, and a commitment by members of the European Snacks Association to develop healthier products by increasing the number of snacks with reduced calories, saturated fat, salt and sugar.

The second major input to next year's deliberations is the Green Paper published by the Commission in December 2005 on the promotion of healthy diets and physical activity, or more specifically on "how to achieve a European dimension to reducing obesity in order to complement and reinforce national and local measures." Mr Kyprianou said in May that the Commission was analysing over 250 contributions made in response to the paper and "this will help define elements of a comprehensive and coherent Community strategy which I expect to present early next year." New areas for action could include "possible new legislative initiatives," he said.

The Green Paper states flatly that "unhealthy diets and lack of physical activity are the leading causes of avoidable illness and premature death in Europe, and the rising prevalence of obesity across Europe is a major public health concern." The EU "has a clear [constitutional] competence in this area," it states. Article 152 of the Treaty of European Union requires that "a high level of human health protection be ensured in the definition and implementation of all Community policies and activities." Among the areas where action is needed, Brussels lists consumer information, advertising and marketing. "Clear, consistent nutrition information about foods can, along with relevant consumer education, act as the foundation of informed dietary choice," it says. This was the thinking behind this year's proposal for a regulation to harmonise the rules on nutrition on health claims which included the principle of setting nutrient profiles, in order to prevent foods high in certain nutrients (such as salt, fat, saturated fat and sugars) making claims about their potential nutrition or health benefits. Where advertising and marketing were concerned, consumers should not be misled and vulnerable consumers, especially children, should not be exploited "in particular advertising for foods high in fat, salt and sugars, such as energy-dense snacks and sugar-sweetened soft drinks, and the marketing of such products in schools." Industry self regulation "could be the means of choice" in this field, it said, though "other options would need to be considered should self-regulation fail to deliver satisfactory results."

In the paper, the Commission quoted various studies showing that an excessive intake of the 'wrong' type of fats, such as saturated and trans fatty acids "increases the likelihood of developing cardiovascular disease by 25%" and that 38,000 cases of cardiovascular disease among adults aged 20 and above in the Netherlands "can be attributed to an unfavourable composition of the diet." It called for improved public knowledge about the relationship between diet and health, about energy intake and output, on diets that lowered the risk of chronic diseases, and about healthy choices of food items, was indispensable for the success of any nutrition policy.

The Green Paper concluded that unhealthy diets and lack of physical activity were the leading causes of avoidable illness and premature death in Europe and asked interlocutors how food-based dietary guidelines could be developed at an EU level while taking into account social and cultural variations and different regional and national dietary habits. It also asked how the gaps between proposed nutrient targets and actual consumption patterns could be overcome, how dietary guidelines could be communicated to consumers and how nutrient profile scoring systems such as those developed in the UK could contribute to better health.

In response, the confederation of the food and drink industries of the European Union (CIAA) says that while the Green Paper focuses on food for the prevention of chronic diseases, overweight and obesity, "a broader approach is needed." The Commission paper, it says does not assign suitable importance to physical activity with regard to the prevention of chronic diseases and to maintenance of mental health. "Instead of narrowly addressing the obesity issues with nutrition-related

measures and in particular measures related to specific nutrients and/or foods, the main focus should be put on nutrition education and physical activity," says the confederation.

To be successful in improving public health, CIAA says that any public policy intervention "must be evidence-based." The European food industries say they believe that the Green Paper is "partially" evidence-based, but robust evidence is lacking to show the relative weight of certain areas for action and "there is scope in the Green Paper to include a section dealing with encouraging scientific substantiation/review of the scientific gaps in understanding." CIAA stresses that "effective self-regulation and voluntary co-operation with stakeholders is the most effective way to bring together resources and forces to be successful in the promotion of healthy diets and physical activity." Of all the measures outlined, the most important should be improved public health education on nutrition and healthy lifestyles, it says.

Many of these points are also made by the Food and Drink Federation (FDF), representing the UK industry, which says there is no evidence that certain foods and drinks are prominent in determining obesity levels. "The evidence available more strongly suggests that all food and drink may be over-consumed by individuals whose body fatness level is increasing," it says. The FDF says consumers should be empowered to make informed choices and for that choice to be maximised, "advertising and other forms of consumer communication should not be unjustifiably restricted."

The FDF says its members do not believe that any universal nutrition profiling scheme could be used fairly to assess whether or not an individual food is "healthy." Such a scheme would take no consideration of a child's requirements nor of the size of the portion nor the frequency of consumption. "Indeed, universal nutrition profiling schemes tend to demonise foods such as meat and cheese which are good sources of nutrients for children," it says.

Clearly some fairly basic differences of approach are expressed here though much of it, on both sides, may be regarded as sabre-rattling - it will probably be the best part of a year before the Commission introduces its proposals. There is some evidence that up until fairly recently the system under which food safety laws are set by national administrations under an umbrella of principles laid down by the EU has worked quite well. However this may have to change for a number of reasons.

The first is that there is little actual legislation covering food labelling at EU level. A good deal of food safety is achieved through self-policing and voluntary action, which may be practical but has long been the cause of some irritation in EU institutions. Secondly there is a danger that food labels may already be becoming unwieldy. Many packages are relatively small and labels may have to carry texts in several languages covering several flavours and bearing many claims both factual and promotional. Last year's enlargement of the EU to 25 countries will have worsened this problem and strengthened the arguments of those calling for standardised EU labelling for all food products.

The final, and perhaps most important, factor is the growing power of the EU health lobby. Public concern about health, in particular obesity, and the part played in this by diet is at levels unheard of even five years ago. The EU food industry is certainly not ignorant of this and moves to promote healthier diets and reduce the presence of allegedly dangerous ingredients have been springing up all over Europe in recent times. The question seems to be whether the industry has gone far enough with its self-policing to head off legislation next year. Given the common ground between the Commission's Green Paper and industry's response to it, this seems just probable.

3) REACH

THE EU'S proposed new system for the registration, evaluation and authorisation of chemicals (REACH) is no longer the threat to the food industry that it once threatened to be, though it could have some small indirect effect and it would not do to take things for granted before the directive is finally agreed and in force later this year. Essentially the system extends to a huge range of older chemicals the strict testing and authorisation procedures that have been required of all new chemicals introduced since 1981. As initially conceived, this would have imposed heavy costs on the manufacturers and users of many widely used chemicals and could have led to withdrawals from the market and scarcities of supply in some areas.

However the directive has been significantly watered down since then. Specifically, in late 2005 the European Commission, acting under pressure from the European Parliament which in turn reflected heavy and sustained lobbying by the food manufacturing industry, agreed to exclude food and food ingredients from REACH. As well as the potential extra cost burden on food manufacturers, the food industry also argued that in highlighting the link between chemicals and food the legislation could have had adverse consequences for the industry's public image. As it stands now, the legislation will have no direct impact on the industry. It remains theoretically possible that the directive might be widened to take in more chemicals including those used in food manufacture but this is highly unlikely given that there has now been agreement on the scope of the legislation by the 25 EU governments.

Possibly the directive as it stands may have some indirect effect on costs through packaging and the use of certain chemicals in production methods but this will probably be slight. An official at EuPC, the association of European Plastics Converters, said that there "should be no direct link between the REACH legislation and the food industry." Plastic resins used in the manufacture of food packaging were not covered by REACH and "there should not be any major impact," the official said. Where cans are concerned, a study based on data from the Metal Packaging Manufacturer's association found that even if all the additional costs of coatings used on food cans were passed on there would be only a tiny rise of just

0.14% at most to the industry.

That said, there remain powerful forces determined to rein in the use of potentially dangerous chemicals in food, or at least to bring attention to the development. One such is the CASCADE Network of Excellence, a network "dedicated to research, education and information on chemicals as contaminants in the food chain." Although CASCADE is planning no action in respect of REACH at present "our standpoint is the same now as it was before," said Cecilia Johansson, dissemination manager. "We will continue with our task, which is to strengthen the research by collaborative science among the top experts in the field. Ultimately we are aiming to bring forward reliable data and risk assessment that can serve as a foundation for better lives through informed decisions about food for European citizens," she said.

4) GM FOOD

THERE is renewed speculation that the EU might be ready to take a more liberal approach to the approval of GM foods following a recent (May 2006) ruling by the World Trade Organisation (WTO) that the 1998-2004 EU moratorium on genetically modified products was in violation of international trade rules. The WTO effectively supported the US, Canada and Argentina who had claimed the EU ban was an unfair trade barrier to outside producers of GM products and was more about protectionism than science. The WTO also said that GM bans in six member states - Austria, France, Germany, Greece, Italy and Luxembourg - violated international trade rules.

European Commission officials have ruled out early change. Spokesman Peter Power said the EU will continue to set its own rules on the import and sale of GM foods "and nothing in this panel report will compel us to change." Earlier, in March 2006, a report from the Commission concluded that the development of EU-wide legislation on the co-existence of genetically modified crops with conventional and organic farming "does not appear justified at this time."

At present GMOs "which are safe for human and animal consumption and for release into the environment" may be approved for circulation, under strict conditions, within the EU. Decisions as to acceptability are taken on a case-by-case basis through the 'comitology' process - ie. through agreement between the European Commission and a committee of experts from the EU member states. This is a cumbersome and time-consuming process giving many opportunities for blocking votes. "However the Commission believes it is a good system and just because there have been difficulties over some authorisations it should not be called into question," says Barbara Hefferich, the Commission's environment spokeswoman.

The Commission has nevertheless recently (in May 2006) proposed "further steps to improve the scientific consistency and transparency for decisions on GMOs." The aim is to "reassure member states, stakeholders and the general public that Community decisions are based on high quality scientific assessments which deliver a high level of protection of human health and the environment," it said.

The proposals will be discussed with the 25 member states and the European Food Safety Authority in the coming months. Although the changes are largely technical, some countries are likely to resist anything that makes it easier to get authorisations, and GM food could become a political issue again this year.

5) SUGAR

FOLLOWING agreement on the basic political deal to reform the EU's sugar regime last November, the European Commission's sugar management committee is now working hard to complete the lengthy slew of detailed technical regulations arising out of the deal. Under last year's reform proposals, the first since the sugar regime was created some 40 years ago, EU sugar prices are to be cut by 36% over 4 years. Over the same period a voluntary restructuring scheme will reduce production by around 6 million tons. By general consent the food manufacturing industry and other buyers of sugar should have most to be pleased about but it is not quite that straightforward.

"The new sugar regime is going to have an enormous impact on our sector because at present we are paying three times the world price for sugar and this has meant the loss of 16,000 jobs in the past five years," said Alison Ward, director of communications at the Biscuit Cake Chocolate and Confectionery Association. "Obviously, we want reform but we're really disappointed that it's not going to come as quickly as we'd hoped. It's going to be at least 2 1/2 years before we see any benefit and until then we're still going to be paying these increased costs." UK buyers in fact pay 10% more than those in the rest of EU because of the way the market is structured.

Richard Laming, spokesman for the (British) Industrial Sugar Users Group (UKISUG) explained that while the new sugar regime comes into force on July 1 this year, prices to industrial users will not change until October 2008. "The final price won't change until the marketing year starting in 2008 and then it might start to fall," he said. The reference price is slated to fall from Euro 631.9 per tonne to Euro 541.5 in 2008 "but given that we pay above the reference price now we have doubts that we'll see a fall of that kind in 2008." However a lot of restructuring and consolidation was happening. "It's possible that these changes will deliver a more competitive market in 2008 - we're not expecting it, but it's possible," he said.

The basic regulations were agreed in February 2006 and the political debate is now over. Now it is the turn of the sugar management committee, composed of representatives of the 25 EU member states, to bring in the implementing regulations.

The UK industry consults regularly with DEFRA on this. "They are technical issues but given the nature of the sugar regime quite a lot can rest on these technicalities. The interests of industrial users of sugar did not end when the regime was agreed and we have to make sure that these interests are represented in the technical regulations," Mr Laming said.

The process from now on will - as with GM approvals - be handled by a 'comitology' process involving agreement between the sugar management committee and the European Commission on a number of implementing measures. In other words there is a direct link between Brussels and the EU member governments, with no role in this procedure for the European Parliament or the Council of Ministers.

What kind of measures are involved here? One example arises from the commitment in the political sugar regulation to set up a system of price reporting. The Commission has been obliged to produce an independent commentary on the price of sugar. The implementing regulation covers how that price reporting system should be operated - it sets out the mechanics for it. Another technical regulation, which could be of considerable significance to traders and buyers, covers the system for moving a quota from one company to another. Another lays down the way that the restructuring fund is to be operated.

The interests of sugar traders are handled in Brussels by the Association des Organisations Professionnelles du Commerce des Sucres pour les Pays de l'Union Europe (ASSUC) which lobbies "to ensure a level playing field for all engaged in the European sugar trade." The Sugar Traders Association of the United Kingdom is affiliated to ASSUC.

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