



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 June 2009

10641/09

**Interinstitutional File:
2008/0028 (COD)**

**DENLEG 40
CODEC 804**

REPORT

from : Presidency

to : Council

Subject : **AGRICULTURE AND FISHERIES COUNCIL MEETING ON
22 AND 23 JUNE 2009**

Proposal for a Regulation of the European Parliament and of the Council on the
provision of food information to consumers
– *Progress report by the Presidency*
(Other business item)

The Council is invited to take note of the attached Presidency's progress report on a proposal for a Regulation on the provision of food information to consumers.

**Proposal for a Regulation of the European Parliament and of the Council
on the provision of food information to consumers**

– Progress report by the Presidency –

1. The Commission's proposal

On 6 February 2008, the Commission submitted to the Council a proposal for a Regulation on the provision of food information to consumers¹, based on Article 95 of the Treaty.

In the White Paper on Food Safety², adopted in 2000, the Commission, assuming that consumers must be provided with essential and accurate information so that they can make informed choices, had made a reference to the need for a reform of the labelling legislation.

The proposal was one of the measures announced in the White Paper on a Strategy for Europe on Nutrition, Overweight and Obesity related health issues³, the purpose of which was to set out *an integrated EU approach to contribute to reducing ill health due to poor nutrition, overweight and obesity*.

According to the White Paper:

- individuals' knowledge, preferences and behaviours related to lifestyle and eating habits are shaped by the environment around them;
- clear and evidence-based information should be provided to consumers when they are deciding which foods to buy;
- nutrition labelling is one way in which information can be passed on to consumers and used to support healthy decision-making in relation to the purchasing of food and drink.

¹ 6172/08.

² 5761/00.

³ 9838/07.

The proposal presented by the Commission aims at updating the legislation applicable to food labelling in general and to nutrition labelling in particular, merging into a single Regulation the two Directives in force: 2000/13/EC⁴ and 90/496/EEC⁵. The proposal is in line with the Commission's Better Regulation Policy.

A considerable number of the existing provisions in these two Directives and in several other pieces of legislation were reintroduced in the proposal, subject to a rearrangement of the legal text⁶. Nonetheless, a number of modifications are proposed to the current legislation and among these, a major one: nutrition labelling should become mandatory.

Concerning **general labelling**, the proposal lays down common labelling requirements applicable to all foods to be delivered to the final consumer and to foods supplied to mass caterers.

Furthermore, it aims to clarify who, among the different food business operators throughout the supply chain, should be **responsible** for the accuracy of the information provided on the labels. The proposed Regulation provides for different levels of responsibility corresponding to the capacity of intervention of each food operator.

Improving the **legibility** of the information provided on the labelling was another one of the concerns reflected in the proposal. With this aim, the Commission proposed a measurable rule consisting in establishing a minimum font size of 3 mm for the mandatory information, in addition to the need to ensure a significant contrast between the print and the background.

⁴ Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L 109, 6.5.2000, p. 29).

⁵ Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs (OJ L 276, 6.10.1990, p. 40).

⁶ A new structure has been created based on the introduction of a number of Annexes supplementing the provisions in the Articles.

The proposal provides for a number of exemptions to the obligation for foods to bear a list of ingredients, in particular concerning certain **alcoholic drinks**. This exemption will be the subject of a report by the Commission after 5 years.

The indication of the **country of origin** or place of provenance of a food is voluntary, but if the failure to give such information might mislead the consumer, it becomes mandatory, in particular if the information accompanying the food implies that the food has a different place of origin.

Additionally, criteria are introduced for the voluntary declaration of country of origin or place of provenance of food, in particular with regard to the origin of the primary ingredients.

The main new aspects of the proposal concerning **nutrition labelling** relate to the mandatory character of the declaration and to the fact that it should be stated in the **principal** field of vision.

The mandatory declaration is for energy, fat, saturates, carbohydrates, with specific reference to sugars, and salt expressed as amounts per 100 g or per 100 ml or **per portion** whilst nutrients from another defined list may be declared voluntarily.

An exemption was provided for **alcoholic drinks**, as already mentioned, subject to the Commission report referred to above.

The nutritional declarations may be expressed through additional presentation formats developed through voluntary **national schemes** adopted by the Member States.

A flexible mechanism (through national schemes) is aimed at enabling innovation and allowing for some aspects of the labelling rules to be adapted to different and changing markets and consumer demands.

The provision of information in relation to **non-prepacked food** can be derogated by national measures. The information on **allergens** is always compulsory.

2. Other institutions

On 16 March 2009, the European Parliament rapporteur, Ms Renate Sommer, requested the Environment, Public Health and Food Safety Committee to produce a new (second) draft report in an attempt to streamline the more than 1000 amendments that were submitted regarding this important and complex file. The Committee approved the rapporteur's request, so the European Parliament's first reading will restart at the beginning of the next legislative term.

The Economic and Social Committee delivered its opinion on 18 September 2008.

3. Council

The proposal and its impact assessment were presented by the Commission to the Working Party on Foodstuffs (hereinafter referred to as "Working Party") during the Slovenian Presidency. The Working Party has continued its examination of the proposal under the French and Czech Presidencies.

To reinforce the arguments invoked during the meetings, the delegations submitted numerous written comments and suggestions that were incorporated into the text when agreed by the Group.

The 6 meeting days scheduled by the Czech Presidency were the opportunity for thorough discussions on the open issues, with the following results:

Responsibilities:

How to attribute responsibility for the provision of the food information to each actor involved in the chain of distribution was one of the most difficult issues to be resolved by the Working Party. The point to determine was to what degree every link in the chain should be held liable for ensuring compliance of food information with the applicable food information law.

The new proposal recently submitted by the Presidency and still under consideration by the Working Party is based on a description of the activities of the food business operator in relation to the food information: if he introduces the food information within the Community, he must assume responsibility for the presence and the accuracy of the information; if he modifies the information, he should ensure that such modification would not mislead the consumer or reduce the level of consumer protection; if he does not affect the information, he is responsible for ensuring compliance with the requirements of food information law which are relevant to his activities and ensuring that when a breach of the food information law is identified the food in question is no longer supplied unless made compliant.

Country of origin / place of provenance:

According to the Commission's proposal, the reference to the origin of the product is, in principle, voluntary. This approach can be accepted by a large number of Member States.

However, a significant number of delegations consider that for non-processed products the indication of the origin should be mandatory.

Legibility:

The current legislation already requires that labels be legible, but as it does not provide for a measurable criterion of legibility, Member States face difficulties in enforcing this requirement. That is the reason why the Commission decided to propose an objective and measurable criterion applicable to the fonts of the labels.

The idea of establishing an obligatory minimum font size, supplemented by the requirement of ensuring a significant contrast between the print and the background, as proposed by the Commission, received a large measure of support of the Working Party, although some delegations still wonder how it will be possible to measure and control contrast.

The 3 mm proposed by the Commission was clearly rejected by a wide majority of the delegations as too large to become a mandatory measure. The proposal now on the table, supported by the majority of the delegations, is for a font size corresponding to the height of 1,2 mm for the small letter "x".

The Working Party is also considering if other criteria such as the text type (arial) and format (bold), the layout (margins), the print quality, the white space around the text, the surfaces (not rough surfaces) should be laid down in the Regulation as most delegations agree that the notion of "legibility" is wider than solely the font size and contrast.

A possible solution under examination is to adopt additional criteria through the comitology procedure, if necessary. Furthermore, the possibility of non-binding guidance including indicative criteria on legibility to be provided by the Commission was discussed.

It was recognised that there is a need to determine the minimum surface to which the mandatory font size should be applied. The 10 cm² proposed by the Commission were deemed too small and various different values are under consideration.

Distance selling:

The Commission proposed to insert a definition of *foods offered for sale by means of distance communication* in the text by making a reference to the Directive on the protection of consumers in respect of distance contracts. However, discussion continues as to whether the Regulation should use a definition by reference to another piece of legislation or contain an independent definition corresponding to its own specific purposes as suggested by several delegations.

It has been established that some mandatory particulars should be available before the purchase is concluded while other particulars can be provided only when the food is delivered. It has not yet been finalised within the Working Party which particulars should fall in each category.

Regarding foods offered for sale by means of distance communication, the Working Party decided to distinguish between prepacked foods and non-prepacked foods, where in respect of the latter ones, the particulars are to be specifically required by the Member States.

Exemptions for alcoholic drinks:

The Commission's proposal exempts a number of alcoholic drinks from the obligation of indicating the ingredients and the nutrients, subject to a report which the Commission will draw up five years after the entry into force of the Regulation.

From the discussions, it seemed clear that the Working Party agrees on treating all competing alcoholic drinks the same way. Some alcoholic beverages were therefore added to the list proposed by the Commission.

However, it has not yet been decided whether the drinks should be totally exempted or at least made subject to an obligatory indication of energy content.

Mandatory nutrition declaration:

One of the main new features of the proposal is that the nutrition declaration should become mandatory. Generally accepted by the delegations, the mandatory character of the nutrition declaration still raises some doubts to a few delegations as it can become excessive burden, especially for the small and medium enterprises.

The list of the nutrients that should mandatorily be labelled has not yet been definitively established: while some delegations required the removal of some of the proposed mandatory particulars (e.g. carbohydrates), other delegations would like to add some nutrients (e.g. protein, fibre). Nevertheless, in general it was echoed that the number of mandatory particulars should be limited in order to provide a simple and comprehensible information to consumers.

Tolerances:

Concerning the calculation of the quantities of nutrients, delegations underlined the need for the definition of the tolerances to be taken into account when official checks are carried out.

Expression *per portion*:

According to the Commission's proposal, the amount of energy or nutrients could be expressed per portion, only, under defined conditions. The Working Party, however, recognised that the notion of *portion* is not yet sufficiently established to be the only consumer's reference providing for the reliable comparison among products. Therefore, most of the delegations could only accept the expression 'per portion' as additional to the expression 'per 100 grams' or 'per 100 millilitres' and not as an alternative.

Concerning the expression of the mandatory nutrition declaration as a percentage of the reference intakes, the majority of the delegations supports its voluntary status. It needs however to be further considered whether it should be expressed per portion, as an alternative to the expression per 100 grams or 100 millilitres.

Meanwhile, and following a demand expressed by many Member States, the European Food Safety Authority published a scientific opinion of the Panel on Dietetic Products, Nutrition and Allergies related to the review of labelling reference intake values for selected nutritional elements.

Field of vision:

One of the innovations of the Commission's proposal is to require that some mandatory nutrients should appear in the principal field of vision of the pack. The vast majority of the delegations considered it more important for all the elements of the nutrition declaration to appear in the same field of vision, rather than allowing for presentation of nutrition declaration in different fields of vision in order to highlight the mandatory particulars.

National schemes:

The Commission's proposal would authorise indicating the individual particulars of the nutrition declaration by complementary forms of expression and presentation adopted in the context of voluntary national schemes. These national schemes can furthermore be established for other labelling provisions.

A few Member States supported this proposal as it allows the continuation of the systems that are being employed in these Member States and contribute to their national public health policy. They also underlined the benefits of such systems in terms of prompting innovation in the way of presenting the information on the labels.

Without denying the interest in keeping a door open to innovation and to best practices in relation to the consumer information, a broad majority of the delegations were opposed to the admissibility of national schemes as proposed by the Commission. They feared that the co-existence of different national forms of expressions could confuse the consumer instead of contributing to providing him with clearer information, could create undue distortions of competition and, therefore, disrupt the functioning of the internal market. In their opinion, complementary forms of labelling should be therefore harmonised at Community level.

Allergens:

There is agreement on the need to inform consumers of the presence of allergens in respect to all foods, even if, in the case of non-prepacked food, the way the information is conveyed to consumers is to be decided by the Member States.

Information related to non-prepacked food:

The information to be given to the consumers in the case of non-prepacked food and the way that information should be conveyed are aspects which have been thoroughly discussed by the Working Party.

Regarding non-prepacked food, the logic of the Commission proposal – which made non-prepacked food subject to the same rules as prepacked food, with the possibility for the Member States to derogate from those rules – has been inverted.

Except for allergens, where an indication of their presence must always be provided, non-prepacked foods are exempted from the requirement to provide mandatory particulars. Member States can decide whether to require the provision of other particulars than allergens and chose the manner in which the respective particulars would be made available.

Relations with health/nutrition claims:

It has been clarified that when a health or nutrition claim is made, the nutrition declaration should be obligatory, with no exceptions.

4. Next steps

The merging of different legislative acts in a single Regulation should eventually lead to a clearer, more consistent and easy to follow legal framework in the field of food labelling. However, the legislative work requires more effort in order to avoid contradictions, incoherencies, repetitions or legal gaps.

Working on numerous provisions that should be kept in force provided an opportunity for Member States to share, during the debate at Working Party level, the difficulties they face in applying the current legislation. Discussions took longer as they focused not just on the quality of the text but also on the difficulties in enforcing the current legislation.

Given the number of issues to be resolved, the complexity of the file and the interdependence among the different issues, the examination of the proposal will have to continue at Working Party experts level with a view to enable the Council to reach a political agreement on the proposed Regulation.

It would be worthwhile if informal contacts between the Council and the European Parliament resumed at the beginning of the next term of the Parliament in order to synchronise the work of both institutions during their first reading.
