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ON 14, 15 AND 16 DECEMBER 2009**

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

– *Information from 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 also 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 to update 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 which of the different food business operators throughout the supply chain should be **responsible** for the presence and the accuracy of the information provided on the labels. The proposed Regulation specifies the responsibility corresponding to the role of each food operator in the supply chain.

Another major concern reflected in the proposal was to improve the **legibility** of the information provided to consumers. Therefore, the Commission proposed a measurable rule consisting in establishing a minimum font size of 3 mm for the mandatory information, which would improve the possibility for Member States to control the compliance with the legislation. It is further clarified that, besides font size, it is necessary 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 from the obligation for foods to bear a list of ingredients and nutrients. These exemptions concern in particular certain **alcoholic beverages** and will be the subject of a report by the Commission 5 years after the entry into the force of the Regulation.

One of the main new aspects of the proposal is that **nutrition labelling** should be mandatory and that the nutrition declaration should be in the **principal** field of vision.

The mandatory declaration should be 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.

In the field of food information, Member States may only adopt **national provisions** where it is provided for by the Regulation.

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.

It is clarified that, where food information covered by the Regulation is provided on a **voluntary basis**, such information shall comply with the relevant specific requirements laid down in this Regulation.

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

Ms Renate Sommer, the European Parliament rapporteur, submitted her first draft report to the Environment, Public Health and Food Safety (ENVI) Committee on 7 November 2008. On 16 March 2009, before the vote by the Committee, Ms Sommer requested for the possibility to produce a new (second) draft report in an attempt to streamline the numerous amendments that were tabled in the meantime. The ENVI Committee approved the rapporteur's request, so the European Parliament' first reading restarted at the beginning of the new legislative term.

Ms Sommer was re-designated rapporteur on 21 July 2009 and delivered a new (second) draft report on 11 November 2009. It is expected that the ENVI Committee will vote on this report in March 2010 and that the EP should conclude its first reading in May 2010 with the vote in Plenary.

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, Czech and Swedish Presidencies.

To reinforce the arguments put forward during the meetings, the delegations submitted numerous written comments and suggestions that were incorporated into the text when agreed by the Working Party.

The 8 meeting days scheduled by the Swedish Presidency were the opportunity for thorough discussions on various issues, with the following results:

It is possible to consider that Articles 3-7, 10-12, 16, 18, 19, 23, 26, 27, 28, 30, 31, 36, 39, 40, 42, 43, 49 should not raise any further questions, except if changes were to become necessary as a result of the redrafting of the Annexes.

Concerning the main issues dealt with by the Swedish Presidency, the results attained may be summed up as follows:

Responsibilities

The issue of the responsibility for the provision of food information of each actor involved in the distribution chain is one of the most difficult issues to be resolved by the Working Party.

The regime currently applicable (Regulation (EC) No 178/2002⁷) establishes that food business operators, at all stages of the supply chain, within the business under their control, are obliged to comply with the requirements relevant to their activities.

At the present stage there are three different positions, each of them supported by equivalent number of Member States. The first group is of the view that the General Food Law is sufficient and that, therefore, the provisions of Article 8 of the Commission proposal specifying the regime of the responsibilities could be deleted. The second supports the Commission proposal and the third group of Member States which represents an intermediate position, would integrate in Article 8 the approach of the General Food Law – equal distribution of the responsibility by each stage of the supply chain – but restrict the responsibility of the operators to the limit of their activities.

The delegations were not yet ready to conclude on this issue, but significant progress has been made in the analysis of the consequences of this Article.

⁷ Regulation (EC) No 178/2002 of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Review of the mandatory particulars

According to the Commission's proposal, the list of the mandatory particulars is considered as non-essential element of the Regulation and could therefore be amended by the regulatory procedure with scrutiny.

The Working Party did not agree and considers that the list should, as an essential element, be revised through the ordinary legislative procedure.

Legibility

The current legislation already requires labels to be legible. However, 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 size of the letters of the labels.

The obligatory minimum font size, supplemented by the requirement for a significant contrast between the print and background received quasi-unanimous support from the Working Party.

On the other hand, the 3 mm as proposed by the Commission was clearly rejected by all the delegations. Instead, the delegations support the font size corresponding to the height of 1,2 mm for the small letter "x".

As the delegations agreed that the notion of "legibility" is wider than the font size and contrast, the Working Party considered that 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 through the comitology procedure, if necessary. Furthermore, most Member States prefer that the Regulation itself provide that the Commission would establish non-binding guidance, including indicative criteria on legibility.

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 was deemed too small. A proposal for 50 cm² is now under consideration. A smaller minimum font size – not yet defined but 0.9 mm is under discussion – could be applicable to the small packages.

Name of the food

Part of the provisions related with the name of the food included in an Annex of the Commission's proposal were transferred to the body of the Regulation.

Exemptions for alcoholic beverages

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

The majority of Member States supports this approach but proposed to complete the list proposed by the Commission with additional alcoholic beverages.

A few Member States suggest to exempt all alcoholic beverages containing more than 1,2% by volume of alcohol (mixed drinks would be exempted).

It has not yet been decided whether alcoholic beverages exempted should not at least be subject to an obligatory indication of energy content.

The delegations supported that the Commission would have to present its report within 5 years following the entry into force of the Regulation.

Mandatory nutrition declaration

One of the main new features of the proposal is the mandatory nature of the nutrition declaration. Generally accepted by the delegations, this proposal still raises doubts for a few delegations whose concern is the increased administrative burden, especially for small and medium enterprises.

The list of the nutrients has not yet been definitively established. Proteins have been added to the mandatory list proposed by the Commission, as requested by a large majority of the Member States. While some delegations requested the removal of some of the proposed mandatory particulars (e.g. carbohydrates), other delegations would like to add certain nutrients (e.g. trans fats). Concerning "salt", certain delegations would like to make a distinction between natural and added salt.

Nevertheless, in general, it was agreed that the number of mandatory nutrients should be limited in order to provide simple and comprehensible information to consumers.

Additional nutritional declaration

The Member States considered that the Regulation should clarify that in addition to the mandatory declaration, an additional declaration indicating the energy or the energy and fat, saturates, sugars and salt, which can be expressed per portion or per consumption unit alone and presented in any field of vision – for instance 'front of pack' – and in any format, may be provided.

Voluntary nutrition declaration

The majority of the Member States deemed that the Regulation should provide for, in some cases in which the food might be exempt from the mandatory declaration, the possibility of producing a voluntary nutrition declaration indicating the energy or the energy and fat, saturates, sugars and salt, which can be expressed per portion or per consumption unit alone and presented in any field of vision and in any format.

Expression as a percentage or "*per portion*"

Concerning the expression of the mandatory nutrition declaration as a **percentage** of the reference intakes, a majority of the delegations supports its voluntary status, except for the declaration on vitamins and minerals.

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 it was of the utmost importance for the consumer to have the possibility to compare the energy and nutrient content in different products. As the expression per portion does not allow for simple comparison between products and product groups, it cannot be the unique form of expression.

It means that, according to the majority of the delegations, the expression 'per portion' or 'per consumption unit' is only acceptable as additional to the expression 'per 100 grams' or 'per 100 millilitres' and not as an alternative, and subject to the condition that the portion or unit is quantified on the label and the number of portions or units contained in the package is stated.

Presentation / 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 together in a tabular form in the same field of vision, rather than allowing for presentation of the nutrition declaration in different fields of vision in order to highlight some mandatory particulars. A few delegations insisted on requiring the name of the food to appear on the front of the pack.

Voluntary schemes

The Commission's proposal would authorise to indicate the individual particulars of the nutrition declaration by complementary forms of expression and presentation adopted as voluntary national schemes. These national schemes could 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 which contribute to their national public health policy. They also underlined the benefits of such systems in terms of promoting innovation in the ways in which information is presented on the labels.

However, while supporting the possibility to develop alternative means of presenting food information, the large majority of the Member States preferred alternative schemes based on harmonised criteria or even adopted at Community level.

As an alternative to the Commission proposal, the Presidency submitted a new proposal regarding "additional voluntary schemes", which would be developed at the initiative of the Member States or of the stakeholders; they would comply with a basic set of criteria (see Articles 33 (1) and 34 (5) of the Commission's proposal), and would have to be endorsed by Member States before they can be used.

While some Member States asked for more time to reflect, a number of Member States welcomed the basic principles underlying the Presidency's proposal.

Compatibility between the Regulation and the national legislation:

According to the Commission proposal, Member States would not be able to adopt national provisions in the field of food information unless authorised by the Regulation.

It has been clarified that for matters not harmonised by the Regulation (i.e. falling outside of its scope), Member States are allowed to adopt national measures under the condition that they do not prohibit, impede or restrict the free movement of goods.

Transitional period

A new Article has been added, establishing that when imposing new requirements, the Commission must establish an appropriate transitional period, during which foods bearing labels not yet complying with those requirements may be placed on the market and the stocks be exhausted. It has furthermore been established that the implementing powers of the Commission can only be exercised a limited number of times per year, except in case of urgency.

Relations with health/nutrition claims:

It has been clarified that when a health or nutrition claim is made, the nutrition declaration should be obligatory. Even if the health or nutrition claim is made for a non-obligatory nutrient, the amount of that nutrient has to be declared.

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 of simplification requires even more effort in order to avoid repetitions, contradictions, incoherencies or legal gaps. Moreover, the innovative part of the legislation needs to be carefully examined in order to evaluate its practical consequences and the viability of its implementation.

Given the number of issues yet to be resolved, the complexity of the file and the interdependence among the different issues, the examination of the proposal could not be completed under the Swedish Presidency.

There is still work to do at Working Party experts level with a view to enabling the Council to reach a political agreement on the proposed Regulation.

A first reading agreement with the European Parliament seemed, since the beginning, impracticable. It would be worthwhile if informal contacts between the Council and the European Parliament's re-designated rapporteur, Ms Renate Sommer, would continue in order to synchronise the work of both institutions during their first reading, so as to pave the way for a possible second reading agreement.
