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EUROPEAN COMMISSION

Brussels, 22.2.2011
COM(2011) 77 final

2008/0028 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council at first reading on the adoption of a Regulation of the European
Parliament and of the Council on the provision of food information to consumers**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2008) 40 final – 2008/0028(COD)): 1 February 2008

Date of the opinion of the European Economic and Social Committee: 18 September 2008

Date of the opinion of the European Parliament, first reading: 16 June 2010

Date of transmission of the amended proposal: [*]

Date of political agreement: 7 December 2010

Date of adoption of the Council position: 21 February 2011

* Taking into account the developments in Council following the European Parliament first reading, the Commission did not prepare an amended proposal but expressed its views on the Parliament amendments in the "Commission Communication on the action taken on opinions and resolutions adopted by Parliament at the June 2010 part-session" (document **SP(2010)6136**) sent to the European Parliament on 29 September 2010.

2. PURPOSE OF THE COMMISSION PROPOSAL

The proposal consolidates and updates two important areas of labelling legislation, the general food and nutrition labelling covered by Directives 2000/13/EC¹ and

¹ 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).

90/496/EEC² respectively. The proposal recasts also six other Directives concerning the labelling of certain categories of foods. The objectives of this proposal are:

- To simplify the food labelling legislation by creating a single instrument for principles and requirements for horizontal labelling requirements regarding general and nutrition labelling;
- To include specific provisions on the responsibilities along the food chain with respect to the presence and accuracy of food information;
- To establish measurable criteria for certain aspect of legibility of food labelling;
- To clarify the rules that apply with respect to country of origin or place of provenance labelling;
- To introduce mandatory nutrition labelling in the principal field of vision for the majority of processed foods;
- To establish a system of governance for certain aspects of voluntary food labelling through endorsement by Member States.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1. General comments

The European Parliament (EP) adopted its position at the first reading on 16 June 2010. The Commission accepted in full, in part, or in principle 113 out of 247 amendments adopted at the first reading as it considered that these amendments clarified or improved the Commission proposal and were consistent with the general aim of the proposal.

While the position of the Council at first reading adopted on 21 February 2011 meets largely the objectives of the original Commission proposal, on some issues it deviates from it. The Commission did not stand against the political agreement on the text in order to allow the legislative process to move forward. However, the Commission indicated to the Council in the attached declaration that the EP amendments that the Commission had indicated it could accept are not covered by the Presidency text, in particular the requirement for certain nutrition information on the front-of-pack.

3.2. Amendments of the European Parliament accepted by the Commission and incorporated in full, in part or in principle in the position of the Council at first reading

Origin labelling – The EP first reading position proposed mandatory origin labelling for meat, poultry, dairy products, fresh fruit and vegetables, other single ingredient products, and meat and fish when used as an ingredient in processed foods (am 101).

² Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs (OJ L 276, 6.10.1990, p. 40).

Mandatory labelling legislation already exists for fruit and vegetables, beef, wine, olive oil, and imported poultry, and a proposal³ has been recently presented by the Commission which aims at creating a legal basis for possible compulsory labelling of place of farming for all agricultural sectors, following impact assessments. In its Communication on the EP opinion the Commission partially accepted, subject to rewording, the EP amendment for an extension of the cases of mandatory origin labelling as regards basic primary foodstuffs which have not undergone a substantial/significant processing and are generally considered as single-ingredient products subject to the entry into force of delegated measures, based on impact assessments. The Commission also indicated that in order to take account of the expectations of the consumers and the practical constraints related to specific foods, the application of mandatory origin labelling should be subject to the entry into force of delegated measures, based on impact assessments, determining in particular the way to express information about where the food comes from, for all foods or specific categories of foods.

The Council first reading position would apply mandatory origin labelling to unprocessed meat from swine (pig meat), sheep, goat and poultry, subject to the adoption of implementing rules within 2 years of entry into force of the Regulation. The Council also proposes that the Commission must submit to the EP and the Council within 3 years from the entry into force of the Regulation a report on the mandatory origin labelling of: milk; milk used as an ingredient in dairy products; meat used as an ingredient; unprocessed foods; single ingredient products; and, ingredients representing more than 50% of a food. The Commission can accept the approach of mandatory labelling for pig meat, poultry, sheep and goat meat. However, the Commission considers that, in light of the Treaty on the Functioning of the European Union (TFEU), the application of this requirement should be made via delegated acts given that quasi-legislative elements are concerned (for example to determine the appropriate geographical level). These delegated acts should be adopted in the framework of specific Union provisions applicable to the pig, sheep, goat and poultry meat sectors. The legal text should be accordingly adapted, in light of the TFEU. The measures of application of this requirement should take into account in particular the need to avoid imposing unnecessary and excessive administrative burden on the food business operators and enforcement authorities. This in turn should ensure a balance between providing valuable information to consumers while avoiding that such measures undermine competitiveness, disrupt trade or create disproportionate costs for business and consumers. The Commission considers that the Council's proposed report on the extension of the origin labelling to other foods acknowledges the EP interest in mandatory origin labelling for other foods but allows for an approach that can take into account the expectations of the consumers and the practical constraints related to specific foods as indicated in the Commission's response to the EP, and is compatible with approach taken in the proposal of modification of Regulation (EC) 1234/2007 as regards the origin labelling (COM(2010)738). Here the Commission considers the principle is acceptable but the text may require legal redrafting.

Imitation/substitute foods: The EP amendment that explicitly prohibited misleading practices regarding "imitation foods" (am 78) was considered to be partly acceptable

³ COM(2010)738.

by the Commission. The Council first reading approach of strengthening the general provisions regarding misleading presentation is in line with the Commission's position on the EP amendments and can be accepted. The Council's position of including in the Annex a requirement that the components or ingredients that replace those that a consumer would expect to be normally used or naturally present should be clearly indicated on the label (not only in the ingredient list) can, in the spirit of compromise, be accepted by the Commission. However, the Commission does not accept to have the name of the food or ingredient to be described for example "substitute" cheese or ham etc, or "imitation cheese" or "imitation ham" as proposed in the EP amendment 230.

Labelling of 'nano' ingredients: The EP position that would require ingredients derived from nanotechnology to be labelled as such (am 130) was accepted in principle by the Commission. The Council proposal to include a cross reference to the definition of "engineered nanomaterials" and the requirement to indicate in the list of ingredients that such ingredients are present is acceptable to the Commission. The Council position is in line with the discussions on the revision of Regulation (EC) No. 258/97 on novel foods and novel food ingredients.

Mandatory information requirements for non-prepacked foods: The EP first reading position is that non-prepacked foods should be out of the scope of the Regulation (am 30). However, the EP position concerning the national measures for non-prepacked food (am 184), accepts the principle of the provision of information on presence of ingredients containing substances that may cause allergies or intolerances (allergenic ingredients). The Council has also accepted this principle of providing information on allergenic ingredients on non-prepacked food.

Both the EP and the Council first reading positions are to change the principle underlying the provision of mandatory information (other than information on allergens) with respect to non-prepacked food. The original Commission proposal is in line with the existing legal framework that in principle provides that mandatory food information should be available for all foods within the scope of the legislation. But, in the case of non-prepacked foods, Member States may decide that certain information does not need to be always available, provided that the consumer is sufficiently informed. Both the EP (am 184) and the Council positions are to reverse the approach of the Commission proposal and allow Member States to require provision of information on the mandatory particulars covered by the Regulation, in addition to information on allergens. This proposed change is acceptable as the change in the form of the legal Act to a Regulation would have meant that, in the absence of rules by a Member State, a food business operator would have to provide all the mandatory particulars, not just information on allergens.

Responsibilities of food business operators: The Council position on responsibilities of food business operators (Article 8 of the Commission's original proposal) is in line with the principles of the Commission's proposal. The EP first reading position (am 84, 86, 88, 89 and 326) adapted the Commission's proposal to the approach that had been adopted in Regulation (EC) N° 767/2009 on feed marketing and labelling. The Commission had accepted the EP amendments. However, given the sensitivity of the issue and the controversial debate in the Council, in the spirit of compromise the Commission can accept the Council first reading position.

3.3. Amendments of the European Parliament rejected by the Commission and incorporated in full, in part or in principle in the position of the Council at first reading

National schemes: The EP position in first reading deleted Chapter VII on the development of national schemes (am 301). The Council position includes the same proposal. The Commission regrets that neither the EP nor the Council shared the vision of the Commission to provide a framework for the exchange of best practice on voluntary labelling schemes.

The EP amendments (am 155, 156, 298, 299) in the first reading that changed the criteria concerning additional forms of expression of nutrition information and combining them with the criteria on graphical forms of presentation were rejected by the Commission. The Council has also proposed to combine the criteria for additional voluntary forms and presentation of nutrition information (AVS). In addition, the Council position includes the introduction of provisions that: permit Member States to promote specific AVS on their territory; oblige Member States to ensure appropriate monitoring of AVS on their market; and notes that the Commission can facilitate the exchange of information and best practice on AVS. The Council position obliges the Commission to adopt implementing rules with respect to the criteria in Article 34 and to report within 5 years after the application of the Article to the EP and the Council on: the use of AVS; their impact; and, the advisability of their harmonisation. The Commission considers that the proposed approach of the Council could provide a basis for the review of the AVS for nutrition labelling in the future and the Commission can accept the Council proposal.

Nutrition information: With respect to nutrition labelling the Commission had rejected that EP position for the expansion of the list of mandatory nutrients (am 144). The Council position in first reading is that the mandatory declaration should be expanded to include protein. The Commission is concerned about the additional costs to the economic operators, in particular small and medium sized enterprises, and would prefer to have a short list of mandatory particulars. However, given that both the EP and the Council have proposed to include protein, which is the only macronutrient that was not included in the Commission's proposal, it can be accepted.

Nutrition information in relation to per portion: The Commission proposal introduced the possibility that under certain circumstances the nutrition information could be provided on a per portion basis alone. The EP (am 313) and the Council positions have both deleted this possibility. The Council requires that the nutrition information should always be provided on the basis of per 100g or 100ml and that the per portion information can be an additional voluntary declaration. On the other hand, the EP proposes that the information should be always provided on the basis of 100g or 100ml and per portion. The Commission considers that the proposal of the EP is not acceptable as it would be an added burden to industry. Regarding the Council's position, the Commission can accept that having the nutrition information provided on the same basis would allow consumers to more easily compare the nutrient composition of different foods.

3.4. Amendments of the European Parliament accepted by the Commission as such or subject to rewording, but not incorporated in the position of the Council at first reading:

A number of amendments in the EP first reading position, some of an editorial nature, were accepted in principle by the Commission. The issues where the first reading positions of the EP and the Council clearly differ are discussed in detail below. Also mentioned are some of the changes that concerned matters of substance and that entailed inclusion of new provisions in the position of the EP and were accepted in principle by the Commission but have not been included in the Council first reading position.

Nutrition declaration in the principal field of vision (front-of-pack): In the Commission Communication on the EP position, the Commission indicated its agreement to mandatory front-of-pack (FOP) nutrition labelling for five elements (energy, fat, saturates, sugars and salt) (am 313) and the Commission agreed in principle with the EP amendment 162 that the application of the requirement of FOP to foods that are regulated under the framework of Directive 2009/39/EC on foods for particular nutritional uses would need to be clarified. The declaration of the Commission (attached) specifically notes that the Commission regrets the position of the Council to remove the requirement for some nutrition information to be provided on the FOP. On this issue the Commission continues to believe that FOP labelling would allow consumers to readily see the nutrition information when purchasing foods and the Commission reserves the right to support the EP position to include five nutritional elements on the FOP.

Name of the food business operator: The EP position (am 100) would oblige, not only the name and address of the food business operator under whose name or business name the product is marketed, but also the name, business name or trademark of the manufacturer of the food itself. The Commission accepted the EP amendment. However, the Council position is that the name of the food business operator should be the one identified as responsible for the labelling, i.e. the operator under whose name or business name the food is marketed or, if he is not established in the European Union, the importer into the European Union market. The Commission continues to support the intention of the EP position as it would provide transparency for the consumer on the manufacturer of the product.

Date of minimum durability: the Commission agreed to the EP position (am 61) on the need to clarify the distinction between "use-by" and "best before" dates. A recent study led by the European Commission⁴ indicated that food wastage represents a huge amount of waste with an average of about 76 kg/person/per year at households level, of which 60% could be avoided. Some of this avoidable wastage would be due to a poor understanding of the date labelling system.

Scope of the Regulation: The EP proposed (am 39) that the Regulation should not apply to transport catering services, such as planes and trains, on routes that are not wholly within the EU. The Commission believes that there is merit in considering further the issue of how the regulation should apply to transport catering services.

⁴ <http://ec.europa.eu/environment/eussd/reports.htm>

In the same amendment, the EP also proposed to include a provision in the enacting part of the Regulation reflecting Recital 15 of the Commission's proposal that certain activities are outside the scope of the Regulation. In this case, the Commission notes that the Council carefully considered this issue and decided not to include a provision in the enacting part. The recital provides guidance on the intended scope of application of the Regulation so the Commission did not oppose the Council's first reading position on this point.

Definition of ingredient: The Commission's original proposal included a simplified approach to the definition of "ingredient" as compared to the existing legislation. It has since been noted that the simplified approach proposed by the Commission has an impact on the application of other legislative texts that make reference to "ingredient" as defined in the general labelling Directive 2000/13/EC. Therefore, the Commission considers that the definition of "ingredient" from Directive 2000/13/EC, adapted to take account of the EP amendment 49, should replace the Commission's original proposal. The change in approach would have an impact on the drafting of some other Articles.

Labelling of meat consisting of combined meat pieces: The EP proposed in amendments 276 and 293 that when a food is meat consisting of combined meat pieces that this should be indicated on the front of pack or associated with the name of the food. The Commission believes that this proposal would ensure that consumers are informed about the specific characteristics of the food they are purchasing. The Commission accepts the intention of the amendments in principle but considers that the drafting of the provision needs to be reviewed.

Labelling of meat with added protein and/or water: The Commission accepted in principle the EP position that certain meat and fish products containing added protein and/or water should indicate the source of the added protein and the presence of added water on the labelling (am 207 and 226 to 228). The EP amendments for the labelling of added protein are in line with the Commission's interpretation of the current legislation.

Other amendments were supported by the Commission, such as: **labelling of "date of manufacture" for frozen products:** (am 62, 97, 140, 141), **derogation for micro enterprises** (am 104), **additional information for instructions for use and storage** (am 142), **introduction of criteria for the voluntary labelling "vegetarian and vegan"** (am 175), **sausage casings** (am 229). If these were considered in the second reading the Commission would be willing to consider the inclusion of relevant provisions.

3.5. Amendments of the European Parliament rejected by the Commission and the Council and not incorporated in the position of the Council at first reading:

Legibility: The EP position on legibility (am 53, 334, 111 to 113) that deleted the requirement for a minimum font size and proposed that criteria for legibility should be established through guidelines was not accepted by the Commission. The Council first reading position on legibility maintains a measurable criterion in the Regulation itself and helps to clarify this provision by including a reference for the measurement of the minimum font size. The Commission considers that the Council position on the criteria for a minimum font size improves the original proposal and is acceptable.

Scope of the Regulation: the first reading position of the Council supports the Commission proposal for the scope of the Regulation to apply to all foods intended for the final consumer and the overall consumer focused objective of the Regulation. The EP first reading position to restrict the scope of the Regulation to prepacked food (am 38 and 39) and reduce the consumer focus of the Regulation (am 66) was not accepted by the Commission nor the Council.

Nutrition information: many new provisions in the EP first reading position that relate to certain aspect of nutrition information were not accepted by the Commission. For example, the extension of the mandatory list of nutrients to include protein, fibre and *trans* fats (am 144) and the extension of the list of additional voluntary nutrients (am 145); the repetition of the information on energy in a specific format on the FOP was considered by the Commission as a duplication of information (am 158); the requirement to include a statement regarding the basis of the reference intake (am 151) was not considered necessary; many of the proposed exceptions from mandatory nutrition labelling; and, the deletion of the reference to the International System of units of measurement for energy (kJ) (am 246, 248, 319). The Council first reading position does not include these changes proposed by the EP.

Alcoholic beverages: The EP position to exempt all alcoholic drinks from the requirement to provide an ingredients list and nutrition labelling pending the report of the Commission (am 145 and 294) was not acceptable to the Commission. The Council position proposes that the exemptions to the requirements to include an ingredient list and a nutrition declaration should be extended to include alcoholic beverages that are considered competitive to those already exempted under the Commission proposal. The Commission can accept the approach to treat competitive products in an equivalent way. However, the Commission considers it is essential that ready-to-drink mixed alcoholic beverages provide information on the ingredients and the nutrient composition.

Origin labelling: The Council proposal on origin labelling maintains the principle of the Commission's proposal that, when the origin of a food is given and the country of origin of the primary ingredient is not the place of last substantial change of the product as a whole, the origin of the primary ingredient should be given also. The EP position was to delete this provision (am 172) which is not acceptable to the Commission as the intention is to prevent potentially misleading origin indications.

3.6. New provisions introduced by the Council

Legibility: as previously mentioned, the Council text maintains the Commission proposal for a minimum font size to be included in the Regulation but includes an important clarification on how the font size should be determined. The Commission considers that the Council position on the criteria for a minimum font size improves the original proposal.

Labelling of substances causing allergies or intolerances: In the Article concerning the labelling of certain substances causing allergies or intolerances, the Council position proposes to clarify the text with regard to the approach to the labelling of products that do not include an ingredients list. This clarification is appropriate and can be accepted in principle as the proposal corresponds to the

existing rules on the labelling of these substances. However, as previously mentioned, the Commission would like to change the approach on the definition of "ingredient".

Net quantity: the Council first reading position reintroduces the possibility for Member States to maintain rules on the expression of the net quantity for specified foods in a different manner to that provided for in the Regulation. The Commission can accept this proposal that would allow, in the absence of detailed EU rules, the maintenance of the existing approach in the expression of net quantity for specific food categories, in particular where the nature of the product can vary from being liquid to solid.

Labelling of foods containing caffeine: implementing rules in Commission Directive 2002/67/EC of 18 July 2002 on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine (adopted under Directive 2000/13/EC) include specific rules for the labelling of certain beverages containing caffeine. The Council first reading position proposes that the labelling statement should also indicate that the products are not suitable for pregnant women or young children. The Council first reading position is that the obligation to the specific labelling should be extended to foods with caffeine added for a nutritional or physiological purpose. The Commission accepts the principle of including labelling statements for foods with caffeine added for nutritional or physiological effect, with respect to the consumption of such products by specific population groups which are within the scope of the available scientific advice⁵

Final provisions and transitional periods (Article 45, recital 54): The EP amendment 194 proposed to change the Commission's proposal for an additional 2 year transitory period for micro-businesses (with less than 10 employees) from the requirement to provide mandatory nutrition labelling to be extended to businesses with less than 100 employees. The Commission did not accept the EP amendment.

Regarding the date of application, instead of a two step application of the rules on nutrition labelling, with an additional 2 years allowed for micro-businesses to adapt, the Council text proposes that when nutrition information is provided it should comply with the new requirements from 3 years after the entry into force of the Regulation. However, the obligation to provide nutrition information would not come into effect until 5 years after the entry into force.

The Council position includes a new provision that indicates that there should be a transitory period for the application of new requirements, and that products placed on the market before the end of the transitory period can continue to be sold until stocks are exhausted. They also propose that the date of application should be 1st April in any calendar year, except in the case of urgency measures. The Commission can accept the Council's position concerning the application of the Regulation and transition measures.

Exercise of the delegation and delegation of powers throughout the text: The alignment of the delegation of powers in the Council's position are broadly in line

⁵ Opinion of the Scientific Committee for Food of 21 January 1999 on caffeine and other substances used as ingredients in 'energy drinks'.

with the Commission's approach and are appropriate for the scope of the delegation of powers proposed. There are some differences compared with the approach of the Commission in response to the EP opinion, however, in the context of the Presidency text the delegations are appropriate and can be accepted with the exception of the proposed implementing powers related to measures associated with the mandatory origin labelling of meat.

The following changes introduced by the Council are also acceptable to the Commission:

- Option for the inclusion of a statement that explains that the nutrition declaration on salt refers to naturally present sodium/salt. This voluntary labelling provides clarification;
- Chapter on national measures – the Council has amended Article 37 of the Commission's original proposal which clarifies the scope of the Chapter;
- Annex V – new requirement for labelling "defrosted";
- Annex VI B – the obligation to indicate whether a hydrogenated oil or fat is fully or partially hydrogenated;
- Annex IX – deletion of the exemptions from "best before date" for certain products;
- Annex XI – change to reference quantity for the significant amount of vitamins and minerals;
- The simplification of the Annex providing the order of presentation of the vitamins and minerals (Annex XIII of Commission's original proposal) as proposed is acceptable.

3.7. Major problems when adopting the position of the Council at first reading

The position adopted by the Council at first reading contains elements departing from the Commission's proposal. They concern, in particular, as highlighted above certain aspects of nutrition labelling, origin labelling, the inclusion of the name of the manufacturer, and the definition of ingredient.

4. CONCLUSION

The Commission takes the view that the position of the Council at first reading contains elements departing from the Commission's proposal. Although there are remaining concerns, in order to allow the legislative process to move forward, the Commission did not stand against the position adopted by the Council by qualified majority.

The Commission indicated to the Council in the attached declaration that it particularly regrets the Council decision to delete the requirement for a front-of-pack nutrition declaration.

ANNEX

Declaration by the Commission

In a spirit of compromise, the Commission will not stand against a qualified majority vote in favour of the Presidency text although there are remaining concerns given that the Presidency text contains some elements departing from the Commission's proposal and some legal elements to be revised in line with the Treaty on the Functioning of the European Union. Furthermore, the Council has not considered the EP first reading opinion and consequently the EP amendments that the Commission had indicated it could accept are not covered by the Presidency text.

In particular, the Commission regrets to see that the Council has opted for deleting the "front-of-pack" nutrition declaration. The Commission considers that this is weakening the benefits that the consumers could get from the mandatory nutrition declaration and is convinced of the benefits that front-of-pack labelling would bring to consumers by allowing them to readily see the nutrition information when purchasing foods.