E U R O P E A N E C O N O M I C A R E A

STANDING COMMITTEE OF THE EFTA STATES

Ref. 1084921

30 October 2008

SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

EEA EFTA Comments on the proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers COM(2008) 40 final

EXECUTIVE SUMMARY

The EEA EFTA Member States welcome the Commission proposal on food information to the consumer. In our opinion, a revision of this legislation is highly appropriate.

The EEA EFTA Member States strongly support the introduction of a mandatory nutrition declaration.

The EEA EFTA Member States believe that the mandatory elements of the nutrition declaration should provide information on the content of energy, protein, fat, saturated fat, trans-fatty acids, carbohydrates with specific reference to sugars and added sugars, and salt.

However, in our opinion, the nutritional declaration should not necessarily be placed in the principal field of vision. We believe that the mandatory labelling in the principal field of vision should be used to give easily accessible information on the elements in the diet that have been scientifically proven to have a negative impact on health, such as saturated fat, added sugars and salt. These elements would include nutrients as well as ingredients. In addition, we believe that energy content should be included in the mandatory labelling in the principal field of vision.

The EEA EFTA Member States do not support the introduction of mandatory Guideline Daily Amount (GDA) labelling. We consider essential elements of the GDA system misleading. Consequently, we do not want it to be introduced.

The EEA EFTA Member States strongly support the position that the mandatory nutrition declaration should be expressed per 100 g/ml and not solely per portion.

The EEA EFTA Member States hold the opinion that the difference between voluntary food information, national provisions and national schemes should be clarified further.

The EEA EFTA Member States welcome the proposed clarifications in the rules on origin labelling. However, we believe that some further clarifications are necessary on this issue.

I. GENERAL COMMENTS

1. In general, the EEA EFTA Member States (Iceland, Liechtenstein[1] and Norway) endorse the Commission proposal for a Regulation on the provision of food information to consumers. We welcome the Commission's initiative to update the harmonized general food and nutrition labelling legislation and consider a revision of this legislation to be highly appropriate.

2. In the view of the EEA EFTA Member States, the proposal is appropriately structured by first providing general principles and requirements and then establishing more specific provisions.

3. By clearly stating the general objectives and principles of food information, the proposal may contribute to making the interpretation of the various provisions of food information law less controversial. The same applies to the introduction of the numerous definitions in the proposal. We would recommend a further discussion on some of the definitions and technical provisions in the annexes of the proposal, as outlined in the Annex to this document.

4. The EEA EFTA Member States strongly support the introduction of a mandatory nutrition declaration. However, in our opinion, the nutrition declaration should not necessarily be placed in the principal field of vision, as proposed by the Commission. Rather, the EEA EFTA Member States believe that the mandatory labelling in the principal field of vision should be used to give information on the elements in the diet that have been scientifically proven to actually have a negative impact on health. Please see our elaboration on this below.

5. The EEA EFTA Member States support the clarification of the responsibilities regarding food labelling for the different food business operators along the supply chain, as well as the clarification of the provisions on origin labelling.

6. The EEA EFTA Member States consider it to be positive that the requirement to present the actual alcoholic strength as regards beverages containing more than 1.25 of

[1] By means of Joint Committee Decision No. 97/2007 of 28 September 2007, Liechtenstein has been exempted from the application of legislation in the field of foodstuffs.

alcohol by volume will be maintained. The fact that the legal basis for introducing national health warnings regarding alcohol will not be changed is also positive.

II. SPECIFIC COMMENTS

1. Information to fulfil dietary recommendations

1.1. Dietary information presented front of pack (FOP)

7. The EEA EFTA Member States would like to express our support for the introduction of mandatory "in the principal field of vision" labelling, as referred to in paragraph 1 of Article 34 of the proposal. However, we would like to suggest some amendments to this proposal. In the following we will refer to this requirement as "front of pack labelling" (abbreviated "FOP labelling").

8. The EEA EFTA Member States would like to suggest a somewhat new approach to the otherwise excellent Commission proposal to make FOP labelling mandatory. We consider it most appropriate to base the FOP labelling on dietary recommendations. Thus, the EEA EFTA Member States would like to suggest a FOP labelling scheme which will provide consumers with information on the content of energy, saturated fat, added sugars and salt. This would be highly appropriate to advance the objectives laid down in Articles 5 and 8 of Regulation (EC) No 178/2002[2] (the Food Law Regulation).[3]

9. This new FOP labelling scheme is based on our firm conviction that it is of paramount importance to consumers to have access to appropriate information about the elements in their food which are unbeneficial to their health – be it ingredients or nutrients. Easy access to such information, on the basis of dietary recommendations, would enable consumers to make more informed choices when they buy food. We would like to point to the fact that according to commonly accepted scientific evidence, some nutritional elements do distinguish themselves as particularly nutritionally unbeneficial. The EEA EFTA Member States hold the opinion that mandatory FOP labelling would be a most appropriate instrument to ensure consumers easily understandable information about such elements in their food.

10. The amount of documentation showing the impact of diet on people's health is increasing rapidly. The WHO report on Diet, Nutrition and the Prevention of Chronic Diseases (report 916/2003), summarized in The Global Strategy on Diet, Physical

[2] Regulation (EC) No. 178/2002 of the European Parliament and of the Council 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 (OJ L 31, 1.2.2002, p. 1).

[3] According to Article 5 of the Food Law Regulation, the protection of consumer interests is one of the general objectives of the European legislation on foodstuffs. Also, pursuant to Article 8 of the Food Law Regulation, foodstuffs legislation must aim for the protection of the interests of consumers and provide a basis for consumers to make informed choices in relation to the foods they consume. The EEA EFTA Member States strongly support these observations. We would like to underline that in order to ensure these objectives, labelling regulations must provide consumers with relevant information which they can understand.

Activity and Health, gives the commonly accepted recommendations for healthy diets.[4] Further, the WCRF/AICR's "Second Expert Report, Food, Physical Activity and the Prevention of Cancer, a Global Perspective" (2007) is considered to be one of the most comprehensive reports on this matter.[5]

11. As is made clear in the abovementioned reports, the elements in foods which affect people's health most negatively are saturated fat, salt and added sugars. Consequently, the mandatory FOP labelling should provide consumers with information on the content of saturated fat, added sugars and salt, in addition to the content of energy. However, the choice of elements to be included in this FOP labelling scheme could be a subject for further consideration.

12. One consequence of our suggestion would be that the FOP labelling would include ingredients as well as nutrients. In this regard, the EEA EFTA Member States would like to remark that nutritional recommendations are today sometimes given for nutrients such as fat and sodium and sometimes for ingredients such as sugar and syrup. Consumers often find it difficult to assess information given on nutrients exclusively. This has led many national health authorities and others to present nutritional recommendations as advice on the intake of ingredients such as sugar rather than on nutrients.

13. The EEA EFTA Member States hold the opinion that for the sake of legibility and accessibility for consumers, the mandatory FOP information should be presented as one coherent piece of information, which should be separated from the mandatory nutrition declaration. This implies that the FOP labelling should not be presented as an integrated part of the nutrition declaration.

14. The EEA EFTA Member States trust that our new approach to mandatory front of pack labelling will ensure consumers information that is brief, easily understandable and that corresponds to dietary recommendations.

1.2. The nutrition declaration

15. The EEA EFTA Member States strongly support the proposal to make the nutrition declaration mandatory.

16. In our opinion, a mandatory nutrition declaration should provide information about energy content, energy-giving nutrients such as protein, carbohydrates with specific reference to sugars and fat, as well as all nutrients that have been proven to have a negative impact on health, such as saturated fat, salt and trans-fatty acids. In order to

[4] The goals are to achieve energy balance and a healthy weight, to limit energy intake from total fats and shift fat consumption away from saturated fats to unsaturated fats and toward elimination of trans fatty acids; to increase the consumption of fruits, vegetables and legumes, whole grain and nuts, to limit the intake of free sugars and to limit the salt (sodium) consumption from all sources and ensure that the salt is iodized.

[5] The report shows that high intakes of saturated fat, salt, added sugars and low intakes of fruit and vegetables are the dietary elements most commonly recognized in connection with the development of lifestyle diseases, such as obesity, diabetes, cardiovascular disease, cancer, metabolic syndrome etc.

correspond to the suggested FOP labelling described above, and to provide a basis for consumers to make more informed choices, the nutrition declaration should include information on the content of added sugars.

17. In the opinion of the EEA EFTA Member States**,** the nutrition declaration should not necessarily be placed in the principal field of vision, as proposed by the Commission.

18. As will appear from the discussion on FOP labelling above, we would prefer the mandatory front of pack information to be based more explicitly on dietary recommendations. Consequently, we suggest that the mandatory requirement to present information in the principal field of vision should encompass what we have called FOP labelling. On the other hand, our suggestion implies that the mandatory requirement to present information in the principal field of vision should not encompass the mandatory nutrition declaration.

1.3. Declaration of carbohydrates in the FOP labelling and the nutrition declaration

19. The EEA EFTA Member States would like to stress that the total content of carbohydrates in the form of fructose, lactose, starch, fibre etc. does not in itself represent a negative element in the diet. Among the various carbohydrates it is the added sugars that represent a risk to people's health. We would like to point to the fact that products with a natural content of carbohydrates contribute to a varied, healthy and beneficial diet. The consumption of added sugars, however, provides only "empty calories", i.e. no other nutrients that are useful to the human body.

20. Consumers should have access to appropriate information about elements in their food which are unbeneficial to their health. It is therefore important that consumers be put in a position which enables them to distinguish between carbohydrates that are beneficial to their health and those that are not. Regrettably, the EEA EFTA Member States hold the opinion that the Commission proposal as it stands does not put consumers in such a position.

21. In order to ensure consumers appropriate information on this important matter, the EEA EFTA Member States hold the opinion that it is highly important that added sugars be made a part of the mandatory FOP labelling. We would like to suggest that the term "added sugars" be used in this context. This term is not defined in existing legislation or standards. Consequently, it will be necessary to agree on a definition which is suitable for the novel FOP labelling scheme.

22. The term 'free sugars' was defined by the WHO in 2003.[6] The WHO includes the nutrient as well as the ingredient in their advice when defining the term "free sugars" as all monosaccharides and disaccharides added to foods by the manufacturer, cook or consumer, plus sugars naturally present in honey, syrups

6 WHO report on Diet, Nutrition and the Prevention of Chronic Diseases (report 916/2003).

and fruit juices. This definition could be one of the inputs to a discussion on how the term "added sugars" should be defined.

1.4. Verifying the addition of sugars in the FOP labelling and the nutrition declaration

23. It has been argued that the declaration of added sugars cannot be made mandatory because it will be difficult for control authorities to verify this information by means of inspections of processed products. The EEA EFTA Member States acknowledge this difficulty. However, we would like to point out that this problem is definitely not exclusive to the question of declaring added sugars and has been regulated in other fields.

24. There are numerous kinds of processing other than the addition of sugars which are difficult to verify by means of chemical or physical analysis; these include the QUID-labelling (quantitative ingredients-labelling) of an ingredient in grinded foodstuffs such as sausages, and the labelling of origin and provenance. However, this difficulty has not been recognized by European authorities as an argument against regulating these issues.

25. Regulation (EC) No. 882/2004 on official controls[7] and the Food Law Regulation make it clear that competent authorities may perform controls by means other than chemical or physical analysis. According to Article 17 of the Food Law Regulation, food business operators must ensure that foodstuffs are in compliance with the requirements of food law and operators must be able to verify that these requirements are met. Operators are legally obliged to maintain documentation of processing activities, e.g. the addition of any sugars to their products.

26. In the light of this situation, the EEA EFTA Member States hold the opinion that the difficulties of verifying the addition of sugars by means of analysis do not constitute a weighty argument against making the declaration of added sugars mandatory. The decisive arguments on this issue should rather be that control authorities may require documentation of compliance with all prevailing legislation within the field of food law, and that all food business operators are legally obliged to provide control authorities with such information on demand.

1.5. Extended nutrition declaration

27. The EEA EFTA Member States find the interpretation of paragraph 3 of Article 29 of the proposal unclear. In our opinion, it should be clarified as to whether the presentation of a nutrition or health claim will make the declaration of all the substances in paragraph 2 of Article 29 necessary, or whether such a claim will only necessitate the declaration of the substance for which the claim is made.

---

[7] Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4. 2004, p. 1).

1.6. Forms of expression of the nutrition declaration and the FOP labelling

28. The EEA EFTA Member States strongly support the position that the mandatory nutritional declaration as well as the information included in our novel FOP labelling scheme should be expressed per 100 g or per 100 ml. At most, a declaration per portion could be permitted as a supplement to declaration per 100 g or per 100 ml, but not as an alternative to declaration per 100 g or per 100 ml.

2. Presentation of the mandatory nutrition declaration as Guideline Daily Amount

29. According to Section 3 of the Commission proposal, the mandatory nutrition declaration must be expressed as a percentage of the reference intakes set out in Part B of Annex XI, i.e. what is commonly known as Guideline Daily Amount (GDA) labelling.

30. The EEA EFTA Member States do not support the introduction of mandatory GDA labelling. We appreciate the efforts made to find ways of expressing the mandatory nutrition declaration that are easily understandable to the average consumer. However, we hold the opinion that the GDA system might carry with it some unfortunate aspects. In our view, essential elements of this system are misleading. Consequently, the GDA system should not be introduced.

31. In more detail, our main concerns are:

- The reference values do not correspond to official recommendations for a healthy diet as regards the prevention of diet related diseases. In particular, the EEA EFTA Member States hold the opinion that the reference value on sugars is misleading. The value is a combination of recommendations on maximum energy intake from added sugars and an estimate on average intake of sugars from dairy products, fruits and vegetables.
- The system does not include specific reference values for children.
- The basis of reference for energy is not representative for the entire population. For instance, there is no guideline to distinguish reference values for men and for women.
- The system does not differentiate clearly between reference values that represent a maximum and a minimum of recommended daily intakes.
- Food business operators may largely choose for themselves what nutrients to list on the front of the packaging.
- The system does not specify any serving size per portion.

3. Presentation of mandatory particulars

32. The EEA EFTA Member States hold the opinion that the introduction of mandatory rules on the legibility of labels will benefit the consumer. It will probably be beneficial to prepare a guideline on the subject.[8]

33. However, we would like to question why Article 14(1) refers to Article 9(1) points (a) to (k), but not to point (l). We believe that this makes it unclear whether the requirement that characters on labels should be printed in a font size of at least 3 mm also applies to Article 9(1) point (l), i.e. to the nutrition declaration.

4. Scope of Chapters V, VI and VII of the proposal

34. The EEA EFTA Member States welcome the efforts to distinguish more clearly between different measures of food law, such as voluntary food information, national provisions and national schemes. However, in our opinion, the proposal is not entirely clear on how to draw the line between these measures.

35. As an example, it is not clear whether Chapter V on voluntary food information is directed towards food business operators exclusively, and, if so, whether this would imply that national authorities may not interfere by regulating voluntary food information. Moreover, it is not clear whether all questions concerning the competence of the Member States to regulate in the field of food law are regulated by Chapters VI and VII, to the effect that Chapter V does not concern Member States' regulatory competence at all.

36. Furthermore, the EFTA EEA Member States believe that the meaning of and differentiation between the terms "exclusively non-binding rules" in Article 44 (1) and "national provisions" in chapter VI is not clear. These terms are not defined in the proposal.

5. Provisions on the indication of country of origin and place of provenance

37. The EEA EFTA Member States welcome the Commission's efforts to clarify the European rules on origin labelling. However, we do have some remarks as regards the interpretation of the proposed provisions. In our view, the provisions leave some issues as regards origin labelling unresolved.

38. First, in the opinion of the EEA EFTA Member States, the connection between the proposed Articles 38(1) and 38(2) should be clarified. It is the position of the EEA EFTA Member States that there should be a possibility for Member States to introduce

---

[8] As an example we would like to draw attention to DG Enterprise and Industry's Guideline on the Readability of the Label and Package Leaflet of Medical Products for Human Use.

mandatory rules on origin labelling either based on the conditions listed in Article 38(1) or the conditions listed in Article 38(2).

39. To our knowledge, there is no definition of the term "quality" in the proposal. It is therefore uncertain whether the term applies to "hard quality", i.e. solid measurable facts concerning food safety and hygiene, or rather to "soft quality", i.e. tradition, history or animal- or environmentally-friendly production methods adding extra value to the product,[9] or to both these kinds of quality. The term "certain qualities" should be clarified.

40. It is also unclear how it should be proven that there is a link between certain qualities of the food and its origin or provenance, cf. Article 38 (2). This can either be compared to the requirements for a PGI, where a product originating in a region, specific place or country possesses a specific quality, reputation or other characteristic attributable to that geographical origin, cf. Regulation (EC) No. 510/2006[10] Article 2 point 1.b., or to the requirements for a PDO where the quality in question must be essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, cf. Regulation (EC) No. 510/2006 Article 2 point 1.a.

41. In the opinion of the EEA EFTA Member States, the proposal does not clarify in what ways a Member State may provide evidence that the majority of consumers attach significant value to the origin or provenance of a food, as required by Article 38(2).

III. CONCLUDING REMARKS

42. In general, the EEA EFTA Member States welcome the Commission proposal for a revision of the harmonised legislation for general labelling and nutrition labelling. We support the main content of the proposal, although we consider it necessary to amend the proposal on some points, as we have described above. We trust that our comments may be of use to the Council and the European Parliament in the further discussions of the Commission proposal. Naturally, the EEA EFTA Member States will be pleased to provide additional information on any of the issues that we have described in these comments.

* * * * * *

9 Definitions from http://ec.europa.eu/agriculture/foodqual/index_en.htm.

10 Council Regulation (EC) No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 93, 31.3.2006, p. 12).

ANNEX

to the EEA EFTA Comments on the proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers (COM(2008) 40 final)

In this annex the EEA EFTA Member States would like to address some technical issues in the Commission proposal. For the sake of readability, our comments are presented article by article – annex by annex.

Article 2 (Definitions):

In paragraph 1(e), the definition of "meat" refers to the definition used in Regulation (EC) 853/2004:

1.1."Meat" means edible parts of the animals referred to in points 1.2 to 1.8, including blood.

1.14"Mechanically separated meat" or "MSM" means the product obtained by removing meat from flesh-bearing bones after boning or from poultry carcases, using mechanical means resulting in the loss or modification of the muscle fibre structure.

However, in Annex VI, Part B, point 17 of the proposal, there is another definition of meat which does not correspond to the one in Article 2. The definition in Annex VI is the same as the definition of meat given in Directive 2000/13/EC. Also, in Annex VI, part B, point 18 of the proposal, there is a definition of mechanically separated meat (MSM). This definition is also taken from Directive 2000/13/EC, and it does not correspond to the definition in Article 2 of the Commission proposal.

The EEA EFTA Member States hold the opinion that it is important to avoid definitions that do not correspond to each other.

Further, in our opinion it will be misleading to the consumer if blood and MSM are labelled as "meat". Thus, the definition in Directive 2000/13/EC, which is followed up in Annex VI, Part B, point 17 of the proposal, should be the appropriate definition for labelling purposes.

Annex II

In point1 (b) and point 6 (a) there is a reference marked 1. However, there is no further reference to this footnote in the document.

Annex V Part C

The EEA EFTA Member States would like to question whether this kind of composition criteria for minced meat actually fall within the scope of food labelling provisions.

According to Article 29, the declaration of the fat content is mandatory as a part of the nutritional declaration.

Annex IX

The heading says “Date of minimum durability”. The text, however, includes provisions on “date of minimum durability” as well as “use by date”, cf. Article 9(f). Consequently, the heading should be amended in order to correspond to the actual subject matter in Annex IX.

Annex XIII Part A

According to the Commission proposal, the content of salt is only permitted to be declared in grams. In order to avoid misleading the consumers, The EEA EFTA Member States hold the opinion that the content of salt should be presented by decimal units when appropriate.