

High Level Group (HLG) on the Competitiveness of the Agro-Food Industry

CIAA contribution to the discussions of the Working Group: “Food Law”

Background

The legislative environment for European food and drink industry operators is extremely complex and remains burdensome. Costs of inappropriate legislation negatively affect the competitive position of companies. Lengthy authorization procedures lead to delays in return on investments and act as innovation disincentives.

European legislation is not in line with international developments and therefore undermines the functioning of the global market.

In tackling regulatory challenges, it is important to choose the right instrument, which is not always the case. Self-regulatory measures do not yet get the recognition, as these would deserve. Decisions are not always based on science, but taken under political pressure, undermining the confidence of business operators in the regulatory system as a whole. It is important to emphasize and recognize that the regulatory framework should support rather than limit the global competitiveness in the food sectors.

The response of European authorities upon a health issue is often additional legislative provisions, whereas an improved enforcement of existing regulations could be the solution.

Concrete examples

Novel Foods

On 14 January 2008, the European Commission adopted the proposed revision of the Novel Foods Regulation. The Novel Foods regulation should stimulate innovation in the food and drink industry. Given that the legislation should protect the functioning of the internal market, protect public health and, at the same time, facilitate the marketing of novel food products, several areas need to be further reviewed to ensure that the global competitiveness of the food and drink industry is enhanced and that particularly SMEs can in the future profit from easier procedures, thereby encouraging them to invest in innovation:

- It is necessary to establish a more explicit link between a novel food authorisation and the applicant company;
- It is necessary to provide appropriate transitional mechanisms for pending novel food applications;

- An operable relationship between the Novel Foods and Health Claims Regulation needs to be ensured and explicitly mentioned in the text.
- Introducing a simplified notification procedure for foods and ingredients with a history of safe use, such as foods and ingredients that are used in food supplements, which are intended to be used in a novel food.

General Food Law: Rapid Alert

In view of the fact that the RASFF has been operating in its current form since February 2002, and although some improvements have been made as regards the presentation of the notification tables, CIAA believes that it would be timely for the Commission and the National Competent Authorities to assess the efficiency of the system in practice. Clear implementation rules are necessary to prevent diverging interpretation of Rapid Alert Systems for Food and Feed (RASFF) at Member State level to the detriment of food industry. Responsible rapid alerts are needed, as the aim with the RASFF should be to prevent further incidents, which is why an evaluation of the impact before issuing a rapid alert should be conducted. Industry should be a partner in the debate and evaluation of the impact and share observations with governmental experts in order to improve the functioning of the system and to prevent diverging interpretation. The RASFF published on the DG Sanco website should serve the needs of those concerned.

Labelling

The revision of the EU labelling rules should result in a simplification of existing legislative measures, which should be neither too prescriptive nor too detailed, providing a frame for operators to adapt to changing consumer needs and interests. Simplification involves more than merging and/or eliminating legislation. In this case it also involves making information to the consumer less confusing.

The reduction of administrative burdens should also be achieved by allowing for different means to provide information to consumers.

Moreover, the inflation of labelling demands originating from different policies is leading to practical problems resulting in potentially conflicting information and thereby confusing the consumers.

Finally the proposal introduces a national soft-law system that has the potential to weaken the internal market, as national soft-law initiatives could lead to technical barriers to trade.

Nutrition labelling

The requirement of essential energy information on the front of the package¹ (as in the voluntary CIAA nutrition labelling scheme) with possibly a clear reference to the nutritional information depicted on the rear side of the package is an effective way of informing the consumer. The amount of information demanded under the proposed legislation coupled with a minimum required font size of 3 mm would result in overcrowded labels and put into question brand recognition.

For industry, it is essential that self-regulatory initiatives, such as the adoption of the CIAA voluntary nutrition labelling scheme are not overturned by legislation. Self-regulation and regulation should be considered as complementary tools. In this spirit industry is currently working on the definition of portion sizes.

¹ Consumer research of individual CIAA members confirms that the requirement to list minimum 6 nutrients on the front of a package is excessive.

European legislation must be in line with international developments

Low Level Presence of GM Events

It is becoming impossible to reconcile the EU's zero tolerance policy with increased approval commercialisation of genetically modified (GM) products on world markets. Europe is not able to live up to the speed of approvals of GM events. GM varieties exist for many raw agricultural materials and analysis indicates that the impact on the current zero tolerance policy for EU-unapproved GMOs could have considerable consequences on the food sector. It is important that this situation gets the necessary recognition by policy makers.

Selection of the right legal measures: the production of fish oils rich in DHA, a rare fatty acid with important nutritional properties

These products will be brought under the scope of the hygiene rules by eliminating, by the end of the year, an existing derogation and this for administrative reasons.

The impact on, for example, the dietary and health care sector, is huge and underestimated. This oil is mainly produced outside the EU and only 20% of the current production will meet the new requirements leading to scarcity of a important ingredient, huge prices and export limitations.

Self-regulatory measures

Early in 2002, the Swedish National Food Authority and the University of Stockholm jointly announced that they had found significant levels of acrylamide in starch-based foods that had formed as a result of heating at high temperatures. According to international risk assessments (IARC 1994), acrylamide is a "probable human carcinogen" (class 2A). The Swedish findings were rapidly confirmed by several other governments.

Following this, CIAA developed a box of tools to try to mitigate acrylamide following this publication. Pamphlets targeting SMEs, and more particularly the bread, biscuits, French fries and cereals' sector, were developed in close cooperation with national governments.

This is one example illustrating that self-regulatory measures need to be considered as an alternative to regulation; another example is the adoption of a voluntary nutrition labelling scheme.

Decisions need to be based on science

On 8 July the European Parliament voted in favour of labelling requirements for colour included in the so-called Southampton study, which actually followed the outcome of a triologue discussion between, Council, the Parliament and the Commission.

EFSA concluded in its Opinion on the Southampton Study², that "in the context of the overall weight of evidence and in view of the considerable uncertainties, such as the lack of consistency and relative weakness of the effect and the absence of information on the clinical significance of the behavioural changes observed, the Panel concludes that the findings of the study cannot be used as a basis for altering the ADI of the respective food colours or sodium benzoate."

On the basis of such advice, CIAA would not have expected the European Commission to revise current authorisations for the additives concerned. CIAA believes that the described action, as a result of political pressure, breaches a number of important principles and consequently sets a dangerous precedent for future risk management decisions, namely:

² EFSA opinion "Assessment of the results of the study by McCann *et al.*(2007) on the effect of some colours and sodium benzoate on children's behaviour", *The EFSA Journal* (2008) 660, 1-54

- the need to underpin legislation with sound evidence;
- the need to take account of expert scientific advice, in this case the opinion of EFSA;
- the need to undertake an appropriate regulatory impact assessment, if additional labelling is required;

CIAA considers this decision to be a violation of the Principles of Risk Analysis (Art. 6 of 178/2002) and the Precautionary Principle (Art. 7).

CIAA Priority Objectives and Recommendations

- The existing and all new food legislation should be evaluated and where necessary replaced with a legislation that supports the global competitiveness in the food sectors without posing a risk to food safety.
- Decisions need to be based on proper impact assessments, including the effects on SMEs.
- Policies of different Commission departments should be interlinked to prevent unjustified burden, and therefore uncoordinated actions to the detriment of the food and drink industry.
- Given the Better Regulation efforts, the introduction of clear and proportionate legislation is a must. Diverging implementation of EU legislation must be avoided, through the use of regulations rather than directives and clear instructions that do not provide room for national interpretation.
- The introduction of new governance principles should never have the potential to weaken the Internal Market as this has been the case with the current proposal on the food information package.
- Politisation of scientific issues should be avoided. Public pressure should not interfere with decisions for which scientific advice has already been given, even if not in line with the public opinion
- Where appropriate, self-regulatory measures need to be considered as an alternative to legislative provisions.
- Administrative burden should be reduced and approval procedures, where possible, should be replaced by fast track procedures.
- European legislation should live up to international standards and mutual recognition of safety assessment, for instance of GMOs, if based on Codex Plant Guidelines, should be integrated.
- Legislation must be enforceable and where this is not the case (zero tolerance) adjustments must be made.
- The introduction of clear implementation rules for the RASFF should prevent national derogations and the involvement of those concerned at the earliest possible stage should help prevent unjustified RASFFs
- Emphasis should be put on the enforcement of existing rules instead of constantly developing new legislation.