



**WORKING GROUPS IN THE FRAMEWORK
OF THE HIGH LEVEL GROUP ON THE COMPETITIVENESS
OF THE AGRO-FOOD INDUSTRY**

- UGAL COMMENTS -

12th September 2008

UNION DES GROUPEMENTS DE DÉTAILLANTS INDÉPENDANTS DE L'EUROPE

A.I.S.B.L.

Avenue des Gaulois, 3 boîte 3

B – 1040 BRUXELLES

Tél. : + 32 (0)2 732 46 60

Fax : + 32 (0)2 735 86 23

info@ugal.eu

www.ugal.eu

Established in 1963, UGAL – the Union of groups of independent retailers of Europe – is the European association that acts as an umbrella organisation for the main groups of independent retailers in the food and non-food sectors.

These groups are set up like wholesale businesses by independent retailers and craftsmen. Their aim is not only to provide their members with the best purchasing conditions. What they are also seeking is to jointly contribute technical and material resources, together with all the services and the human capacity required to guarantee the operation and development of modern commercial and distribution enterprises for retailers to effectively respond to consumer expectations.

To achieve this, these groups seek economic performance through networks of points of sale – consisting of SMEs usually working under a common brand name.

UGAL represents more than 313.000 independent retailers, who manage more than 446.000 sales outlets. This represents a total employment upper to 3.808.000 persons.

More information about UGAL under www.ugal.eu

UGAL welcomes the initiative of the European Commission to set up a High Level Group in order to promote the competitiveness of the European agro-food industry. Indeed, the food industry and more precisely the food distribution is a significant economic sector, the competitiveness of which has recently been questioned.

Commerce has repercussions on all aspects of our lives. It reflects consumers' changing lifestyles and brings choice and life to towns and villages. It plays a unique role within the European Union, acting as the link between producers and 500 million consumers across Europe. Commerce, including retail, wholesale and international trade, is the active purchasing agent of European consumers. It is a leading driving force of the European economy, purchasing products from local and international suppliers, selling goods and services to end consumers.

Over 31 million Europeans work in commerce and the sector is one of the last few remaining job creating activities across Europe. The 6 million companies active in commerce generate 11% of the EU GDP. Up to 8.000 new products are put on the shelves every year. A vibrant commerce sector guarantees low prices, product quality, attractiveness and life of city centres.

However the competitiveness of this sector could still be improved. There are still legislative and practical barriers which stop retailers to develop themselves and their services, at the cost of consumers. In order to participate in the debate on the competitiveness of the agro-food industry, UGAL would like to raise some of those obstacles .

SUMMARY OF RAISED CONCERNS

→ **SMEs** in the European Market continue to face numerous disproportionate regulatory and administrative burdens in comparison with larger business. One of the reasons is the lack of binding character of the framework initiatives undertaken by the Commission (the implementation measures should however always remain in the Member States' competence). Another important repeated error is the fact that SMEs are treated in the European policy as an isolated Community policy. However, SMEs should not be treated as an exemption, but as the rule ! In this view, each legislative proposal or EU policy should be preceded by an impact assessment on SMEs carried out by an independent body. An impact assessment would also be required in existing policies. As an example, UGAL would like to mention some aspects :

- **Competition law** : National and EU competition policies currently restrict the behaviour and relations between members within such groups (SMEs which are active under the same brand name) in ways that are FUNDAMENTALLY DISCRIMINATORY, compared to the freedom enjoyed by wholly integrated retailers (big companies). Retailer groups are particularly limited in the control they can maintain over retail prices and promotions, store level stocking / range decisions, and purchasing requirements of members, thereby affecting the group efficiency and the consistency of the retail image / offer presented to consumer.
- **Operators responsibility** : Due to the lack of precise statements in food legislation, some national authorities tend to hold the retailer / the SME jointly liable with the producers for their products and the pieces of information that accompany them. This situation is unacceptable in practice since a small retailer is not in a position to control and check whether the upstream operators have respected all their obligations ensuing from Community law. The Commission has already made the first move by introducing the Article 8 within the framework of the "*Proposal for a Regulation on the provision of food information to consumers*". However, these vague provisions still need to be improved and adjusted to the solution adopted in the non-food sector.
- **Animal By-products Regulation (ABP)** : The scope of the proposed ABP Regulation currently includes ABP from retail and wholesale trade, but excludes catering waste (Article 2.2 (f)). Risks to public and animal health concerning these ABP are, at most, comparable to the risks concerning catering waste. The amount of ABP from retail / SME waste does not exceed that of catering waste.
- **"Proposal for a Regulation on the provision of food information"** : SMEs associations criticize the proposal (see detailed information about the Proposal in chapter I point 3.5), calling it "a complication, not a simplification". A study carried out by the Austrian Chamber of Commerce revealed that new nutrition information labelling would cost the EU approximately €6 billion.
Additionally, the proposal also foresees the possibility to provide information about the food by other means than the label. SMEs worry about the one

who should bear the costs for the implementation of these "alternative means" like scanning systems, and who will be held responsible if the final consumer was not correctly informed about the foodstuff (the buyer is not always the final consumer).

→ **Prices and the food chain** has recently been a very debated and controversial subject at European and national levels. UGAL would like to make some comments in this regard.

- Following the emergence of new communication technologies, increased competitive pressures and changeable consumer demands, the commerce sector has undergone drastic changes in the recent years.
- In spite of this, the market power of retail does not exceed the market power of the manufacturing sector, especially regarding individual product categories.
- Thus it became inevitable that the retail sector moved towards concentration and development of buying platforms to enable it to negotiate on a level playing field with large international suppliers.
- Despite current pressures on the price of raw materials and energy products, price increases were overall lower than inflation for a number of years, as a result of globalisation, more efficient production and distribution networks, innovation in products and processes, technology, etc. Retailers' margins are usually very small, meaning that price increases are essentially due to cost increases (including taxes).

→ **Food law**

Food legislation which rules the activities of the operators in the food sector could sometimes result in an obstacle to their competitiveness and efficiency. This is sometimes the consequence of the lack of cooperation and common vision inside the Commission itself (between different concerned DGs). The most important legislative barriers to better performance are in the eyes of UGAL :

- **Food quality requirements** : the food retailers face a lot of problems within the food chains because of support absence from the European and national authorities as to private food quality schemes and lower level of MRLs required vis-à-vis their suppliers and which are fully justified.
- **Microbiological criteria** : zero tolerance for salmonella in meat is neither realistic or scientific, nor practical.
- **Animal by-products** : there is no risk-based motive not to exclude from the scope of the Regulation the insignificant waste coming from retail activities.
- **New proposal on labelling** : the Commission proposal is commonly considered complicated and unrealistic. It is against the "Better Regulation" principles but also in some cases against the Internal Market. The most critical points are : responsibility of operators, possibility for other means than label, disposal as to unpacked foodstuffs, presentation requirements, national schemes and new origin labelling rules.

I- WORKSTREAM 2 "SMEs"

In spite of previous promises, actions and programmes coming from the Commission, the situation of SMEs on the European market remains the same. They continue to face numerous disproportionate regulatory and administrative burdens in comparison with larger businesses, to have reduced access to multiple sectors (public procurements or bank credits), to face the challenge of globalisation and to be treated as the exception in the Internal Market, even if they constitute more than 90% thereof. In regards to the policy carried out by the European Commission, the implementation of the "Think small first" principle is thus far from the reality.

There is no doubt that the main reason why the Commission's initiatives and programmes introduced to help SMEs failed, is their **lack of a binding character**. Documents such as the "*European Charta for Small Enterprises*" represent an important commitment to improve the business environment, making it easier for small firms to start out and grow. Nevertheless Member States are not constrained to abide by those engagements. As a result, they remain on the paper as a mere political message and are not respected in practice by the national policies.

Nevertheless, the binding character of the programmes and other projects relative to the SME issues should be limited to their framework or obligation to implement them. **The measures how to achieve these initiative should however remain in the hands of Member States.** Such a flexibility would enable Member States to take into account the diversity of SMEs and their needs in different markets and countries. This solution, which reflects the subsidiarity principle, also protects enterprises from any undesirable decision of the Commission which could be favourable in one Member State but appear difficult in another.

Another important issue, which undermines the competitiveness of SMEs, is the fact that they are treated as an isolated and independent Community policy. Nevertheless, **separate "SMEs policies" do not exist. SMEs should not be treated as an exemption, but as the rule**, which they are in reality. Indeed SMEs constitute the large majority of the European market and the multinational companies are the exception. This is why SMEs concerns should be part of the main priorities in each individual EU policy. This is the only way to success.

UGAL is of the opinion that each new legislative proposal or EU policy should be preceded by an impact assessment on SMEs. It is also necessary that this analysis is carried out in a transparent and objective way. This would require an external body which would not contribute to the legislation drafting and would not be related to these debates.

It is also in this sense that UGAL proposes to establish an officer in charge of SMEs in every Directorate General of the Commission which could have an impact on small enterprises (DG Environment, DG Competition, DG Trade, DG Energy, etc.). Such a solution is likely to guarantee that the interests and the needs of medium and small enterprises will be taken into consideration from the very first approach of any new legislation.

The impact assessment would also be required in existing policies. As an example, UGAL would like to mention some aspects : (1) competition law, and more precisely the situation of groups of independent retailers which are mainly made up of SMEs, (2) differentiated responsibility of the operators (and also SMEs), (3) Animal By-product Regulation and (4) the new "*Proposal for a Regulation on the provision of food information to consumers*".

These examples reflect at the same time our conviction that SMEs interests have to be taken into account as a part of the whole EU policy and cannot be qualified as an isolated aspect.

➔ 1. COMPETITION LAW – BARRIERS THAT COULD UNDERMINE THE COMPETITIVE PERFORMANCE OF RETAIL SERVICES

There are very serious (legislative) barriers for SMEs working under a common brand name through groups of independent retailers in the field of competition law.

SMEs are permanently facing a challenging competitive environment, not least because of the growing presence and market power of big players which are usually integrated chain-store retailers. The almost only solution for SMEs to survive is to join a group of independent retailers in order to reinforce their power on the market. By being members of such a group, though, they can pool resources and in principle benefit from economies of scale and scope sufficient to allow them to be efficient and effective competitors. However, this ability is presently restricted : not so much by their own ability or desires, but by legal impediments.

Specifically, national and EU competition policies and laws currently restrict the behaviour and relations between members within such groups in ways that are FUNDAMENTALLY DISCRIMINATORY, compared to the freedom enjoyed by wholly integrated retailers (big companies). The groups of independent retailers are treated in a discriminatory way with regard to their structure (horizontal, vertical or... mixed agreements) and the legal uncertainty hanging over on how to define their various forms of activities and organisation.

In particular, retailer groups are limited in the control they can maintain over retail prices and promotions, store level stocking / range decisions, and purchasing requirements of members, thereby affecting the group efficiency and the consistency of retail image / offer presented to consumers. They are also subject to stringent market share thresholds, resulting in further restrictions on their behaviour and greater legal uncertainty over their agreements as they grow in size. These restrictions do not apply to fully integrated retailer groups that have been, with few exceptions, freely allowed to grow and that increasingly dominate markets, often at the expense of independent retailers.

Independent retailers by their nature may suffer disadvantages compared to fully integrated chains. However, at issue are public policy and law that can exacerbate these disadvantages – merely because of the form of association and agreements they use as a means of working together for a common good. Such policy

discrimination, if not appropriately addressed, may adversely impact retail markets and harm consumers' interests by reducing diversity and plurality in the retail sector, which has for long been the mainstay and source of retail innovation, entrepreneurship and general competitive drive.

UGAL would like to emphasise that groups of independent retailers **neither demand to be protected nor require special treatment** in comparison with their competitors, but they claim for the same rights as those of other forms of commerce. They just **need a level playing field**, with requisite legal certainty over their agreements, to allow them to achieve sufficient efficiency benefits and consistency in their marketing image to enable them to compete on effective terms. If they can obtain this, then there is much greater prospect that procurement and retail markets across Europe will remain competitive to the definite and continuing advantage of consumers (1).

→ 2. OPERATOR RESPONSIBILITY

As to the second topic, UGAL would like to draw your attention to the very controversial issue, which has been lately debated in Brussels, the "operator responsibility" question.

For UGAL member organisations it is of the utmost importance that each independent retailer, in his / her shop, can only be held liable for his / her own activities and not for what business further up the supply chain have done or not ! It is paramount that each distributor should only be liable for his / her own activities, at whatever level.

However due to the lack of precise statements in food legislation, some national authorities tend to hold the retailer / the SME jointly liable with the producers for their products and the information that accompany them. This situation is unacceptable in practice since a small retailer is not in a position to control and check whether the upstream operators have respected all their obligations ensuing from Community law.

A significant example for such a practice is the judgement "Lidl Italia" of 23rd November 2006. With this judgment, the Court of Justice of the European Community states that for foodstuffs marketed on its territory but made in another Member State and in the absence of detailed provisions on this subject in Community law, a Member State is entitled to impose responsibility on the distributor, as the final link in the food chain, for accurate compliance, not the mere presence of mandatory particulars which are to be shown on the labelling, but also the accuracy of all the Community rules that may result in a mandatory particular. This judgement is applicable to the food and non-food sectors.

(1) For more details, please find attached the Executive Summary and Report Overview of the study "*Levelling the playing field. Competition policy to enable independent retailer groups to be efficient and competitive*" prepared by Professor Paul Dobson on behalf of UGAL. The study is available on the UGAL website <http://www.ugal.eu/document/en/7-studyDobson.pdf>

This tendency of Member States is translated into the fact that they prefer to hold a national operator (retailer) responsible, since he is easier to locate than an operator established in another Member State (producer). This is why, for the national product, the same national authorities will go and ask the national producer for any missing or inaccurate information.

This practice, which is against the Internal Market principle, presents an unjustified additional burden for SMEs / distributors, since the foodstuff which already circulates in the European Market should be conform with the EU legislation and safety. Furthermore this food should also be the subject of controls carried out by national authorities. It is not the role of retailers, the last in the food chain who simply market the producer foodstuff without changing it, to assume this control and compatibility with the EU legislation.

UGAL is convinced that such an obligation is excessive, unrealistic and unnecessary, and that it is disproportionate to the objectives pursued by EU law to ask the final retailer to assume the responsibility to systematically perform checks that should have taken place before, on aspects which are not a matter of his own activities !

Each company of each independent retailer being the subject of a control, could be punished if an inaccuracy was found in one of the mandatory statements on the labelling which is due to the manufacturer. The pressure will therefore be considerably greater on SMEs of independent retailers, even if they are members of groups, than on large integrated retail chains. The "Lidl Italia" judgement thus opens the way to **disparities in treatment** between distributors.

Moreover if upstream businesses consider that they are able to offload their responsibility with regard particularly to the requirements that may result in a compulsory statement on the label, they will be less attentive and will carry out fewer controls. As the retailer will objectively not be able to check everything, this will inevitably lead to a **reduction** of compliance with the requirements which should serve to **protect consumers** !

Finally the "Lidl Italia" judgement is of such a nature to generate the appearance of **barriers to trade**. The responsibility of retailers for the compliance with Community requirements applicable to foodstuffs made in other countries of the European Union, will encourage retailers to stop selling such products because they are unable to assess the extent of the risk that they will have to assume, or the amount of the penalty that they risk, since they may be held responsible for a minor or fundamental infringement, by another business, of the obligations under Community food law !

Therefore it is necessary to get a precise provision on differentiated responsibility, according to which each operator is only responsible for its own activities. In the non-food sector the new Decision 768/2008 already covers this legal gap. As far as the food sector is concerned, the Commission has already done the first move by introducing the Article 8 within the framework of the "*Proposal for a Regulation on the provision of food information to consumers*". However, these vague provisions still need to be improved and adjusted to the solution adopted in the non-food sector. That is why UGAL and the whole commerce are **calling for more**

precisions and in particular clear statements about the difference between downstream operators. According to this, the distributors who simply market products without affecting food information, should not be responsible to verify and ensure the conformity of the labelling with the food legal requirements. Nevertheless they should act promptly when they have been informed, or when they become aware within the limits of their respective activities, of the absence or of the inaccuracy on the label of mandatory particulars foreseen in Article 9 (1), relative to the mandatory particulars.

This approach is in accordance with the existing EU legislation.

→ 3. ANIMAL-BY PRODUCTS REGULATION (ABP)

The scope of the proposed ABP Regulation currently includes ABP from retail and wholesale trade, but excludes catering waste (Article 2.2 (f)). Risks to public and animal health concerning these ABP are, at most, comparable to the risks concerning catering waste. The amount of ABP from retail / wholesale waste does not exceed that of catering waste (there are many big catering companies). Especially **there is no risk-based motive not to exclude from the scope of the Regulation the insignificant waste coming from the activities of groups of independent retailers which are mostly SMEs.**

Caterers often cut and process raw meat and fish, producing considerable amounts of raw animal waste in the process. There are no scientific grounds to exempt this catering waste stream, while the commerce sector, and in particular SMEs have to comply with excessive administrative and financial burdens to collect, transport and dispose of former foodstuffs.

There are some exemptions for small amounts. For example in Belgium if the ABP does not exceed 10 kg per week, it falls outside the scope. 10 kg per week is nothing ; if you have a few bottles of milk, this limit is easily reached !

Economic realities

As Member States have opted for very different waste strategies, the position of food operators is very different as to the costs of compliance with ABP rules. Member States relying on incineration of communal waste have much less costs than those composting, recycling and using biogas plants. When the waste management infrastructure does not support the requirements of the Regulation, ABP complying costs will also be very high for the SMEs of commerce. Changes in waste treatment strategies of the Member States take time and require sound scientific grounds.

In Spain and Portugal retailers have to separate among others raw meat, raw fish and organic products in their shops, which is very difficult due to the small amounts of waste as well as the dimension of some stores. Fish is sold directly to the consumers in the points of sale, meaning that ABP is generated in the stores. The waste volume in Spain is less than 4 kg per day per store. The big problem is that

there is no company willing to collect the ABP fish for a reasonable/economically justified price since the total volume is too small and expensive.

ABP in the Netherlands go back to the distribution centre and from there to the incineration plants; these foodstuffs are neither intended for feeding purposes nor for landfill. However, the current legislation imposes a huge administrative and financial burden on the supermarkets because they have to apply with the rules such as weighing, registration, etc. These rules are unnecessary since the distribution centre transports the waste all together and weighs all at the centre. This unnecessary obligation for the supermarkets should be removed.

UGAL strongly supports the authorisation of landfill or incineration in those cases where the current requirements concerning collection, transport and disposal of ABP necessitate disproportionate arrangements. Currently, Regulation 197/2006 provides alternative means of collection, transport and disposal of ABP for cases where a risk-based approach allows such a treatment, without any danger for animal and human health.

Moreover, given the context in which these derogations are granted, the economic, social and environmental impact that the lack of such measures would have, are taken into due account. These derogations have contributed to more simplification for SMEs businesses, less administrative burdens and more legal certainty. At the same time, human and animal health have not encountered any further risk.

As a consequence, **UGAL strongly encourages the Commission to make the current derogation measures – namely Regulation 197/2006 – permanent considering** the recognition of the adequacy of these measures. Moreover, UGAL suggests to extend this derogation to unprocessed ABP. The Member States are well placed to make risk evaluation based on local circumstances also concerning unprocessed ABP.

The strict requirements of the ABP Regulation have caused and still do cause **huge financial as well as administrative burdens for the commerce sector**. As mentioned previously, the amount / volume of retail and wholesale waste, especially that coming from SME businesses, does not exceed that of catering waste, while the latter is exempted from the scope and the commerce sector has to undergo all the lengthy and unnecessary administrative procedures and pay extra for disposing ABP. UGAL therefore urges the EU to treat retail and wholesale ABP waste the same as catering waste and exclude it from the scope.

Furthermore, in Article 23 (2) of the draft ABP Regulation, Member States are given authority to adopt or maintain national rules concerning catering waste, pending implementation measures by the Commission. This authority should be extended to cover also category 3 material referred to in Article 13 (e), particularly animal by-products from retail and wholesale trade. In Regulation 1774/2002 Article 7 (1) catering waste is exempted from the scope of the Regulation as to the requirements concerning collection, transport and disposal of ABP. **ABP from retail and**

wholesale trade should be treated in an equivalent manner also in this respect.

→ 4. PROPOSAL FOR A REGULATION ON THE PROVISION OF FOOD INFORMATION

SMEs associations criticize the proposal (see detailed information about the Proposal in chapter I point 3.5), calling it "**a complication, not a simplification.**" Considering 90% of the food industry is made up of companies with 10 employees or less, food labelling will put extra duties on SMEs and increase costs, which will hit SMEs the most. A study carried out by the Austrian Chamber of Commerce revealed that new nutrition information labelling would cost the EU approximately €6 billion (see the PowerPoint justification attached, presented by the Austrian Chamber during the public hearing at the European Parliament of 28th August 2008).

The proposal also foresees the possibility to **provide information about the food by other means than the label**. Information could be provided in different leaflets or through technological tools like the bar code scanning system. In the future the manufacturers could use the label for commercial goals, placing food information by "alternative means" and the retailers (in majority SMEs) will have to take up all costs relative to the set up of the scanning systems as well as assume the responsibility to ensure that the final consumer received all essential information about the product. How it will be possible in convenience stores and other SMEs shops to verify if the client took the right leaflet or whether the pieces of information available only on the point of sale will reach the final consumer who is not necessary the buyer ? Finally, who, except big companies, will be in a position to cover additional cost relative to technical tools ?

However, if the Commission decides to maintain its intention, UGAL believes that the availability of certain mandatory particulars by **means other** than on the package or on the label may be established by the Commission **together with the relevant stakeholders**. Moreover, the mandatory food information relative to health issues should be excluded from its scope and be always directly available to the ultimate consumer (which is not always the buyer), and according to the EU case-law, the only way to ensure it is to provide it on the label.

For other pieces of information provided by operators by means other than the label, the former should ensure the necessary measures allowing reception of this information by the final consumer. He should also fully bear their implementation costs. Furthermore the **alternative means should be no discriminatory and accessible for any consumer and operator**.

→ 5. CONCLUSION

To conclude, UGAL would like to stress that the above-mentioned examples are not exhaustive. There are a lot of Community legislations relative to the commerce sector that have been adopted bearing in mind exclusively big companies.

That is why we would like to simply express one main message. **SMEs should not be treated as an exemption, but as the rule.** SMEs constitute the large majority of the European market and the multinational companies are the exception.

II- WORKSTREAM 2 "PRICES AND THE FOOD CHAIN"

Following the emergence of new communication technologies, increased competitive pressures and changeable consumer demands, **the commerce sector has undergone drastic changes in the recent years.**

Modernisation of the sector has often been accompanied by concentration as a mean to develop economies of scale, efficiencies and rationalisation. Even in the most concentrated segments of the sector, competition is intense on elements such as price, service, localisation, technology, product range, etc.

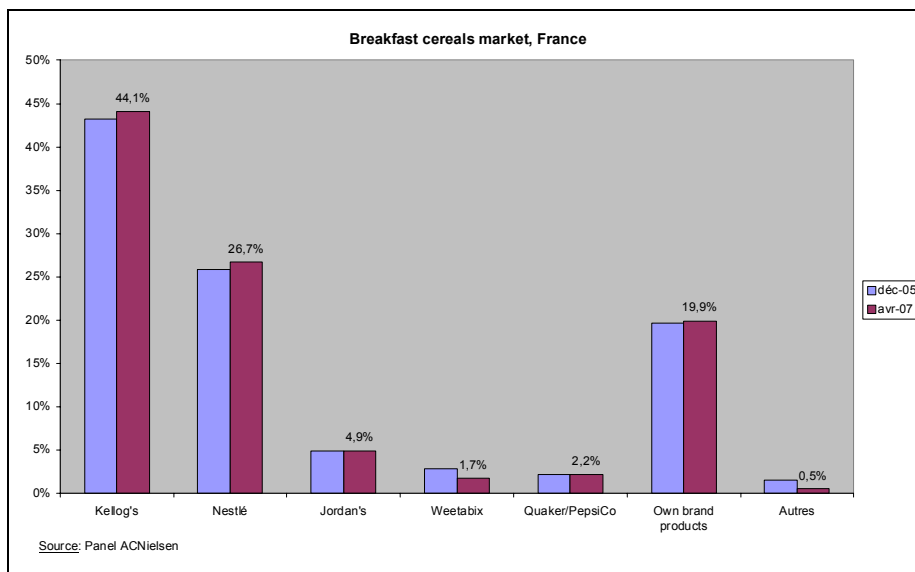
In spite of this, the market power of retail does not exceed the market power of the manufacturing sector, especially regarding individual product categories (2). The dominant food brands are supplied by only a handful of food companies in Europe.

Example :

In France, according to an AC Nielsen Panel, the two largest breakfast cereal producers represent 70% of the market and their dominance is increasing. The two largest men's razors producers represent 88% of the market and the three largest washing powder producers represent 84% of the market. On the other hand, the three largest retailers in France together represent only 55% of the market.

In Estonia, the largest milk producer alone represents 53% of the market.

In Spain, the top three retailers make up 56% of the market, the top three manufacturers of soft drinks 87%, of beer 74% and of pizzas 73%.

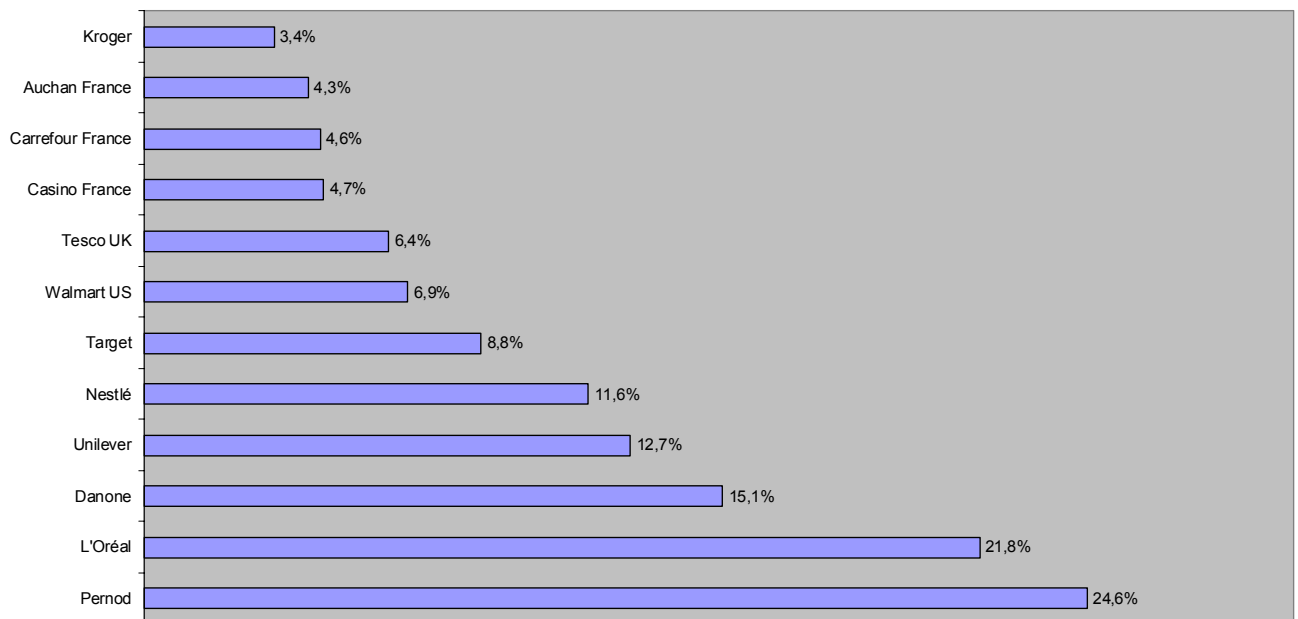


(2) For more details, see in this regard the document attached "*An international empirical analysis of the performance of manufacturers and retailers*".

It thus became inevitable that the retail sector moved towards concentration and development of buying platforms to allow it to negotiate on a level playing field with large international suppliers. The consumer benefit is widely recognised.

As a result of intense competition, margins in commerce are much lower than those of other actors in the supply chain. Across Europe, retailers earn no more than 2 to 3 cents after tax for every €1 of product sold (3). The profits of suppliers are on average two to three times higher.

Operational margins, 2006



Source: NATIXIS, A. Casas & C. Raux - marges distribution-industrie sur 10 ans - Septembre 2007

"Manufacturers outperform retailers in the 1, 3, 5 and 10 years Total Shareholder Returns, even though in each year since 1992 both manufacturers and retailers stated that they thought power had shifted to the retailers."

"(...) manufacturers also outperformed their customers in increased absolute economic profit during the last decade."

"An international empirical analysis of the performance of manufacturers and retailers", Marcel Corstjens, Richard Steele, *Journal of Retailing and Consumer Services* 15 (2008) 224-236

(3) As an example, see the document attached presenting the value construction of fruits and vegetables.

Competition leads retail companies to innovate and develop strategies to better respond to consumer demands and retain their loyalty : price, formats of shops, service, assortment of products, sustainability issues, etc.

Identifying niche opportunities and delivering a competitive, customer friendly approach is the key to success, regardless of size.

"Grocery retailers' buyer power is of benefit to consumers since part of the lower supplier prices arising from this buyer power will be passed on to consumers in the form of lower retail prices. "

- UK Competition Commission "*The supply of groceries in the UK market investigation*", 30 April 2008 -

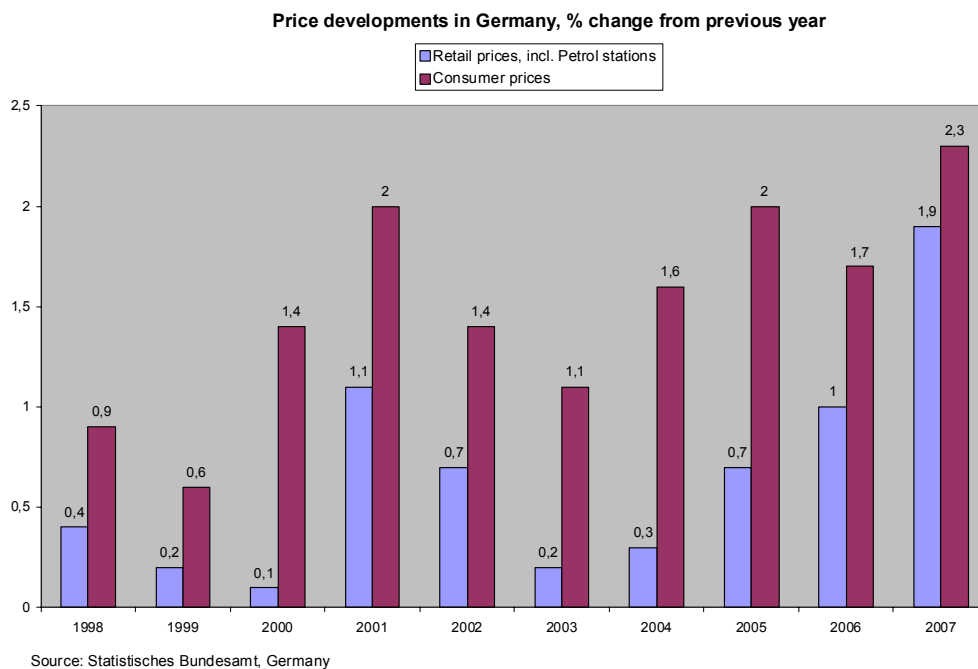
Over the years, competition in commerce sector has produced tremendous benefits to consumers :

- service : different formats have emerged, this provides a wide range of service levels from hard discount outlets focused on low costs and prices to city centres convenience stores. Customer's preferences constantly change and the drive to cater for these preferences leads to healthy competition. Diversity in the retail sector has never been more developed with a staggering growth in on-line trade, the emergence of niche operators such as health food stores and organic produce providers as well as the continual improvement in the service provided by traditional high street stores ;
- product choice : today, large supermarkets offer up to 50.000 products every day and several will introduce up to 8.000 new product lines annually. Supermarkets have democratised food purchasing by making available to all what was once the preserve of the rich : a broad range of high quality, healthy food products from all over the world accompanied by excellent customer service ;
- product quality has increased as a result of innovation and higher standards. Since retaining consumer trust and company reputation is essential, retailers have put in place procedures aiming at ensuring product safety that often go beyond their minimum legal obligations (e.g. traceability in the food chain, safety of toys, etc.) as well as different levels and types of product quality ;
- innovation : vigorous competition has led to high levels of innovation throughout the commerce sector. Driven by changing lifestyles, commerce constantly comes up with new ways to meet consumer demand. By introducing new services, innovative products and processes, the sector increases choice and value for consumers and helps stimulate competition ;

"The retail sector has been at the forefront in adopting ICT in order to manage its supply chain in many countries"

"Market structure in the distribution sector and merchandise trade", OECD trade policy working paper N°68, Feb. 2008

- information provided by retailers on different issues like healthy, varied and balanced diets, safe levels of alcohol intake or sustainable lifestyles help educated consumers in making their buying decisions ;
- prices : Despite current pressures on the price of raw materials and energy products, price increases were overall lower than inflation for a number of years, as a result of globalisation, more efficient production and distribution networks, innovation in products and processes, technology, etc. **Retailers' margins are usually very small, i.e. price increases are essentially due to cost increases (including taxes)**. Competition also explains the fact that decreasing prices are immediately passed on to the consumer.



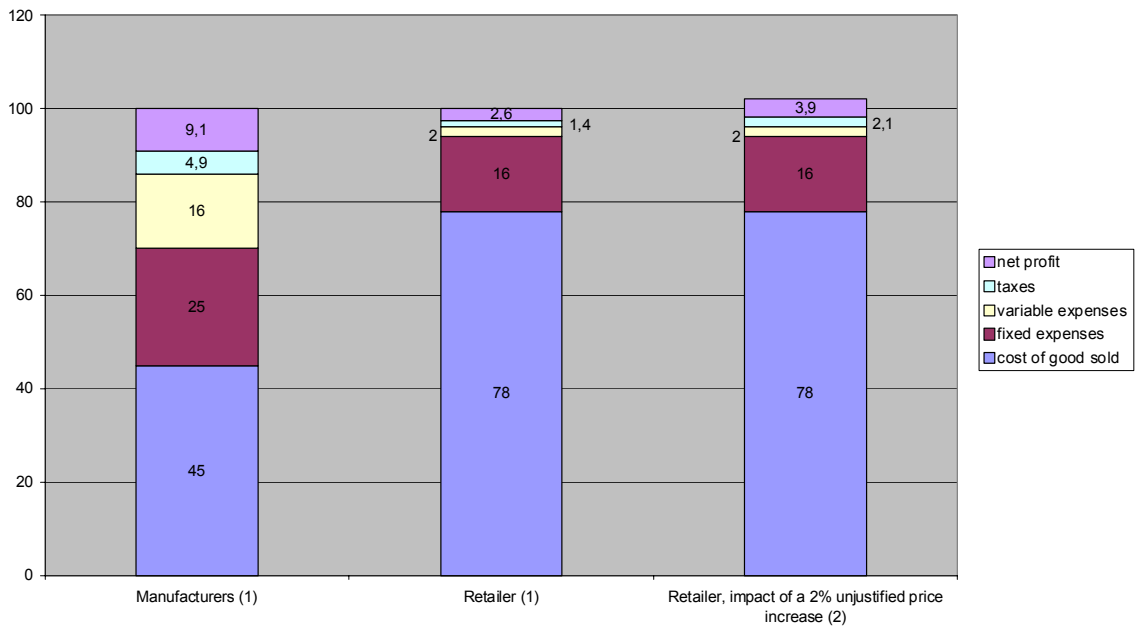
In Belgium, if over the past 15 years the average inflation rate reached 1.99%, retail prices only increased by 1.47% over the same period (4).

In Belgium, a study on a basket of 13 products shows that all products are less expensive in 2008 than in 1983 – except for three : coffee cake, potatoes (apart from Bintje, varieties for sale are totally different) and cod (due to the sharp decrease in cod resources and an overall increase in fish prices over the past 20 years) (5).

(4) Source : National Bank of Belgium and FEDIS

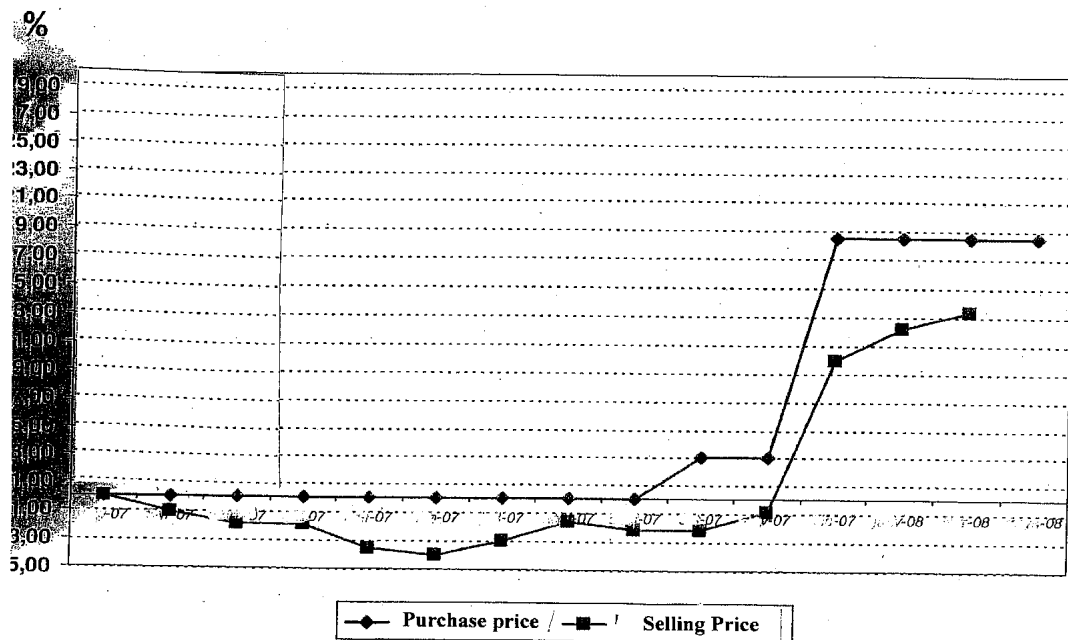
(5) The study calculates how long one must work in order to obtain those 13 food products. Published in *Le Soir* on 29th May 2008

Stylised cost structure for retailers and manufacturers



Source: (1) Journal of retailing and consumer services 15 (2008) 224-236, table 6, Marakon and INSEAD client expertise, (2) Eurocommerce computation

Yogurt



III- WORKSTREAM 3 FOOD LAW

→ 1. LACK OF COHERENCE BETWEEN DIFFERENT DGs OF THE COMMISSION

The food law concerns several Directorates General of the Commission, however the main initiators and players in this field are undoubtedly DG SANCO and DG AGRI. While their interests are quite similar, UGAL can notice that there is no collaboration between these two services. Worse, their proposals and initiatives are very often contradictory and undermine the competitiveness of European operators. Their projects are not coordinated and cause considerable additional burdens for the food chain. As an example we can mention the legislative work on labelling. Recently, the Commission (DG SANCO) proposed a "*Regulation on the provision of food information to consumers*". However the Commission restricts its preoccupation in this text only to the information relative to consumer health. As a consequence, other communication about the food as for instance related to animal welfare, animal health or different quality logos are out the scope of the new Regulation and will be worked out by different Directorates of the Commission. This lack of harmonized approach as to food labelling has always been present in the work of the Commission. This is why today we have different approach rules as to the labelling of eggs, of organic products or of alcohol drinks. These different approaches and pieces of legislation contribute to the confusion among the operators but also to additional costs. First of all there is **no uniform date for new food labelling rules** whatever their objective (consumer health, animal health, bio products, etc). As a consequence, the operators are obliged to continually change their labels according to "legislative production" of different DG's and this from the technical as well as from the commercial point of view. And each change of that kind leads to considerable financial charges which consumers also have to bear. Furthermore, the different pieces of legislation regarding food labelling contain different requirements as to the presentation, information and do not take into account the existence of other legal requirements in this field, which in some cases makes the **implementation of the whole Community legislation impossible**. This practice is **against any simplification** announced by the Commission and it **undermines the effectiveness** of food operators.

That is for all these reasons that **UGAL is calling for a common vision inside the Commission as far as food legislation is concerned.**

→ 2. FOOD QUALITY

a) **The private food quality schemes** (PFQS) developed by large supermarkets chains are from the long time a point of discussion and disagreement in the agro-food industry.

The two main critical points coming from the agro- / industry sector are :

- there are too many schemes standards, which leads to additional costs for them
- they would like to have / see some benefits ensuing from PFQS.

Indeed, in the past, the retail sector developed very different types of PFQS which were based on different approaches, information requirements and certification programmes. This caused additional charges for the agro-/industry sector since they were obliged to answer to different schemes depending on the retailer chain.

However today the commerce sector mostly agree on the PFQS form and nowadays in whole Europe **only three of them exist**. As a consequence, an enterprise has very rarely to produce more than one certification in order to meet the distributor requirements.

Furthermore, the PFQS are nothing else than a certification that products are conform with EU legislation. This allows the retailer to avoid marketing products for which they could be held responsibly by national authorities and which could prove to be dangerous or misleading for the consumer. **There is no additional legal obligation as to the character of a foodstuff.**

As a consequence, UGAL member organisations do not understand the opposition coming from the agro-/industry sector, which undermines the well-functioning and performance of the whole food chain.

b) Another point of disagreement within the food chain is the issue of the **compliance with MRLs** (maximum residue limits). Some retail chains require from the suppliers MRLs at levels below "official" MRLs, which causes opposition and complaints from the agro and farmers sectors. They claim some benefits ensuing from this certification schemes and additional requirements. On the other hand, the trade sector is under pressure of various NGOs questioning the legal level of MRLs and boycotting the sell of food which according to them, are not healthy enough for consumers. For example Greenpeace requests the prohibition of 38 pesticides, basing its opposition on a (obsolete according to the Commission) study stating that the number of ingested pesticides by consumers is definitely higher than what the food tests made in laboratory make think. This has of course a huge repercussion on retail turnover as to the products containing these pesticides. That is why the trade sector, in order to meet consumer expectations, requires from its suppliers the lower content of these MRLs in the food.

Due to many complains of agriculture and farmer sector, some services of the Commission as well as of national authorities are questioning the imposed lower level of MRLs. **BUT distributors are free in choosing their products to sell in all sectors.** If consumers wish lower level of MRLs, it is logical that the supermarkets would like to answer this expectation exactly for the same logic that some car sellers choose to sell only "black cars" or other electro shop refuse the sale of some marks which are not good enough in the opinion of their clients... Of course the situation changes when more restrictive requirements are imposed / recommended by national authorities. **Here it is no more a question of commercial choice but of politics, which goes against the Community law principles.** UGAL can mention as an example a recent case happened in Germany, where one of our members has been "advised" by the German Chemical and Veterinary Investigations Office to no longer use certain substances and plasticizers for the production of their gymnastic

balls, even if these substances are fully authorized in Community and national laws. The reason of this *high recommendation* mentioned by the authority itself is the fact that these substances are likely to have noisome effects and that from the technical point of view, it is possible to produce such balls without these substances. Of course it is possible but then the price would increase by about 20-30%...

→ 3. MICROBIOLOGICAL CRITERIA

Another piece of legislation which hinders the food retail sector in its performance are the microbiological criteria.

Microbiological criteria do not figure in the Commission priorities in the frame of the review of the hygiene package. As a reminder, the European Commission adopted on 15th November 2005 Regulation n° 2073/2005 on microbiological criteria for foodstuffs, based on Regulation n° 852/2004, which has to be applied since 1st January 2006.

The Commission stated that this Regulation is already done and does not need any modification. On the contrary, the Commission believes that this Regulation is well formulated, good as it is and the only thing it takes into account is the increase of new microbiological and pathogenic criteria.

However participating in different meetings and conferences, we came to the conclusion that the **real problem, which ensues from the hygiene regulations, is the microbiological criteria for foodstuffs**. Other legislations seem not to raise such relevant problems as Regulation 2073/2005.

UGAL member organisations also consider the requirement in Regulation (EC) 2073/2005 on the **zero tolerance for salmonella in meat preparations is neither realistic or scientific, nor practical**. Especially the Salmonella criterion on minced meat and meat preparations made from other species than poultry intended to be eaten cooked is an unjustified burden for the retailers.

We consider that the Commission cannot be indifferent to this issue, which represents a huge problem on the European market.

→ 4. ANIMAL BY-PRODUCTS

The scope of the proposed ABP regulation currently includes ABP from retail and wholesale trade, but excludes catering waste (Article 2.2 (f)). Risks to public and animal health concerning these ABP are, at most, comparable to the risks concerning catering waste. The amount of ABP from retail / wholesale waste does not exceed that of catering waste (there are many big catering companies). Especially **there is no risk-based motive not to exclude from the scope of the Regulation the waste coming from their activities** (see in this regard detailed comments in point I 3).

→ 5. FOOD LEGISLATION – RECENT PROPOSAL

The Commission recently proposed a new *Regulation on the provision of the food information to consumers*. Although the assurance as to the simplification of existing rules, the Commission proposal is commonly conceived as complicated and unrealistic.

a) **General remarks**

Since the late 70's, consumers' demand and marketing practices have continuously changed. There is thus a real necessity to review the current EU food labelling legislation, by meeting consumers' needs for simple, legible and understandable labels and industry's demands for flexible rules that can adapt to the changing market.

The draft Regulation, however, seems to **have missed its announced objective of simplifying the complex food labelling legislation**. Far from identifying the essential information that should constitute the mandatory food information on the label, the proposal adds a layer of requirements, at the risk that the average consumer might get lost amongst all this information.

The announced simplification is also missed as far as the operators are concerned. The mandatory requirements remain broadly the same. On the contrary, the Commission proposes new burdens and requirements such as a mandatory nutrition labelling, 3mm of font size, new requirements for non pre-packed foods, etc. Also **the structure of the Regulation is complex and lacks the transparency**. Please let us mention only one example : Art. 34.1 bears reference to Art. 31.2 which bears reference to Art. 31.1 which sends to Art. 29. 1 and 2 taking into account part A of annex XIII...

The danger of this complexity is all the more bigger that the Commission has chosen a fully harmonisation for question related to the information on food to consumers. While previous document was a simple Directive which allows the Member States some space for adaptation as to national needs or practice, regulatory instrument chosen at present (a Regulation) should be directly applied at national level, without any appreciation room in order to be identical in whole Internal Market. For this reason, the disposal of a Regulation should be drafted in a very precisely, clear and transparent way. Unfortunately very often this is not the case for the above-mentioned Commission Proposal. The articles are too vague, and give not a concrete statements, definitions or obligations (Art. 8.4 relative to responsibility).

UGAL also regrets that the voluntary commitments on nutrition labelling made by the EU Platform on diet, physical activity and health have not been given more time to work before the EU legislates. Businesses have invested a lot of time, efforts and money, and yet, are faced with a prescriptive legislation on nutrition information with no evidence that the new requirements will affect the levels of obesity. This is

all the more disappointing given the Better Regulation objectives currently pursued by the Commission.

Finally, while ensuring the smooth functioning of the internal market has always been a main purpose of the European food labelling legislation, **UGAL fears that some of the proposed new rules may seriously threaten the Single Market.**

b) Responsibility – Article 8.4

See comments relative to the point I 2).

c) Timely application

In order to minimize the economic impact of any labelling changes by the food business operators but also to make them more efficient, the new labelling rules shall be implemented on the basis of uniform compliance dates. For the same reasons, these uniform compliance dates could be based for instance on a two-year cycle, which could allow an orderly adjustment of new labelling requirements. All the more that the Commission enlarges the scope of objectives of this Regulation to environmental, social and ethical considerations. This means that the future changes to labelling can cover also these areas which are not of the competence of DG SANCO and as consequence, are worked out separately by the other Commission's services, without any coordination.

Hence, in order to avoid that the labelling requirements are changing in the short period, **an uniform compliance date should be established.** Of course, from this rule should be excepted the cases with information requirements with safety implication.

d) Other means than label – Article 13

See in this regard comments relative to the "alternative means" under point 1.4.

e) Unpacked foodstuffs - Article 41

According to the draft Regulation, all the rules contained in the proposal will apply directly to non-prepacked foodstuffs, foods packed on the sales premises at the consumer's request or prepacked for direct sale, unless a Member State decides to exclude some or all of the requirements. Allergens would always need to be mentioned, whatever the Member State would decide.

We believe it is **not justified to change the rules for this category of products** as there is **no cross-border activity for non-prepacked food**, hence no single market concern in case of different national rules.

Moreover, provisions for prepacked foodstuffs are **not feasible in practice** for non-prepacked foodstuffs. The variety of product ranges, the manual production and the changing offer of products will make it impossible to follow the same rules, especially for nutrition labelling and allergens and **even more so for SMEs with little staff.**

Therefore, we would suggest going back to the current regime, where Member States need to take proactive steps if they want to make some labelling requirements applicable to non-prepacked foodstuffs.

f) **Minimum font size - Article 14.1 and 14.4**

UGAL shares the Commission's view that ensuring legibility of labels is central to enable consumers to make informed choices. On the other hand, label clarity and legibility depend on a number of elements, including print size, colour, contrast etc. Addressing one element isolated from the others will not be enough to ensure the legibility that is hoped for. As a consequence, the specification of a minimum font size of 3 mm is **unjustified** and does not ensure the fulfilment of the consumer request. Furthermore it is **disproportional** and **impossible** to implement.

The Commission proposes a minimum font size of 3 mm for all mandatory labelling requirements. UGAL members believe that **this provision is not practical**, for the following reasons:

A minimum font size of 3 mm would prevent multi-lingual labels from continuing to exist. Multi-lingual labels are not only the result of growing intra-community trade, but are also mandatory in some Member States, e.g. Belgium.

The increase in font size of the mandatory requirements will result in all the information being the same size, hence making other important information for the consumer, such as the product name, to be more difficult to find.

In practice the size of the label but also the size of packages would increase, going against all the efforts of reducing packaging waste (including current legal obligations to minimise packaging).

Larger packaging could also encourage larger portion sizes – clearly a matter of serious concern given the objectives of reducing the obesity trend in Europe.

Finally, the proposed size is bigger than most of the popular newspapers (even the Official Journal is only of 2 mm font size!) and bigger than warnings required for chemical products (1.8 mm).

Nevertheless, a more comprehensive approach to "legibility requirements" through the development of EU guidelines agreed between interested parties and relevant authorities is highly recommended.

g) **National schemes - Articles 44 to 47**

We are deeply concerned that the adoption of various national schemes will create barriers to Community trade. The so-called "**voluntary**" **schemes will de facto become the rule for a market** and operators will need to comply with various systems, thus threatening the single market.

In particular, situations such as Member States discriminating against products labelled according to other Member States' national schemes must be avoided.

h) **Origin labelling – Articles 35 and 38.2**

UGAL members do not understand the objective of the new rules on the origin of food. The existing legislation already foresees that the origin must be given when

the absence of this indication could mislead the consumers as to the true origin of the product. This general principle should be sufficient.

Origin of primary ingredients : Currently, it is a common practice for retailers to provide origin labelling on a voluntary basis for a certain number of products. With the proposed new rules, **continuing to provide country of origin will result in an enormous cost increase for industry**:

- Food operators will be pushed to constantly change packaging, which could be nearly impossible if the product contains several characterising ingredients (in particular where seasonal variations occur);
- They will be pushed to restrict the number of countries from which ingredients are sourced.
- Moreover, for some products, the primary ingredients may not be available in sufficient quantity to be able to be sourced from only one place.

The likely outcome of introducing such provisions at EU level would be the removal of the voluntary origin declaration currently given on pack, to the detriment of consumer information.

National measures on origin : We wonder what the underlying reasons are for providing new criteria to allow Member States to adopt national measures for indications of origin. Knowing that one of the basic principles of the EU is the free movement of goods, **the procedure should remain as strict as possible to avoid the increase of derogations and of technical barriers to the free movement of goods**. There is already a procedure which foresees the possibility for the Member States to require additional mandatory particulars for specific types of products. This should be sufficient.

IV- ANNEXES

→ Presentation of the value construction of fruit and vegetables (prepared by an UGAL member for its internal needs). This document clearly indicates where is the biggest benefit in the food chain.

→ Article "*An international empirical analysis of the performance of manufacturers and retailers*", which goes against the recent press and general arguments asserting that retailers are getting more powerful.

→ Power point prepared by UEAPME and the Austrian Chamber of Commerce as to costs related to the new labelling Proposal.

→ Summary of the study "*Levelling the playing field. Competition policy to enable independent retailer groups to be efficient and competitive*".