Chairman: Mr Basil Mathioudakis

The agenda was adopted.

I was agreed that, on the request of UK, an item concerning Apricot Kernels would be raised under miscellaneous.


**Item 1 A and B**

The German delegation explained that the temporary prohibitions had been issued for the products under items A and B, containing ingredients based on soya fibre, soya protein isolates and lecithin from soya and intended for persons with high cholesterol, because they considered that the products do not comply with the definition of foods intended for particular nutritional uses for the following reasons; there was an absence of a coherent nutritional concept for the products; they do not fulfil the particular nutritional needs of a specific population group; and, they are not clearly distinguishable from products intended for normal consumption. The Commission questioned certain of the arguments, in particular, whether the products could not fulfil the particular needs of a specific population group as, in the Commission’s view, people with hypercholesterolemia could be considered as a specific population group with particular nutritional needs. Several Member States agreed with the decision of German delegation. The Committee concluded that the products considered under item 1 A and B did not fulfil the definition of foods for particular nutritional uses as they were normal foods. The Chairman noted that Directive 89/398 provided the possibility for normal foods to indicate their suitability for fulfilling the particular nutritional requirements of specific population groups.

**Item 1 C to F**

Regarding items, C, D, E and F, Germany explained that they considered that the products, that were concentrated sources of zinc and histidine, should be considered as normal foodstuffs rather than as foods for particular nutritional uses. The reasons given in the notification were: there were not clearly defined target population groups with specific nutritional requirements for the level of zinc included in the products; the products were not adequately distinguished from normal foods, in particular food supplements; and the products could not be
considered as dietetic foods as they did not contribute to the energy intake. The Committee agreed with the decision of the German delegation on these products as they were not clearly distinguishable from foods for normal consumption, in particular food supplements.

**Item 1 G**
Regarding the two foodstuffs covered by the notification under item G, which contain the ingredient phaseolamin, the German delegation explained that they considered these products as medicines. Without going into the substance of the argument put forward by the German delegation, it was argued by some Member States and the Commission that Article 11 of 89/398/EEC was not the correct basis for their decision on these products. The German delegation indicated that in the light of the discussion they would consider the opportunity of withdrawing the notification.

The Commission would reflect on the appropriate form of the measures to be taken with respect to the outcome of the discussions on items A to F.

2. **Exchange of views on plant sterol-based product being presented as "suitable for the special nutritional needs of persons with hypercholesterolemia"**
The French delegation informed the Committee that the discussion under item 1 of the agenda addressed the questions they had raised.

Further to third parties’ requests, the Commission asked EFSA to provide opinions, in conformity with article 6 paragraph 11 of Directive 2000/13/EC, on the appropriateness for inclusion of molluscs, fructose, lupine and their eventual derived products in the list of food allergens set up in Annex IIIa of that Directive, in the light of the most recent scientific evidence.

These opinions being now issued, the Commission would have to submit to the vote of the Committee the possible modification of that list and in that context the views of the Member States would be useful.

It was noted that EFSA did not give any recommendations for labelling purposes, estimating it is the task of the risk manager.

Further EFSA points out in its opinions that:
- fructose is not an allergen but a sugar, to which certain persons are intolerant;
- for lupine there is no information on the frequency of allergy in the general population, but an important rate of cross reactivity can be observed in people allergic to peanuts;
- for molluscs, 0.4% of the population is allergic.

During the discussion that took place, a majority of the Member States that intervened indicated that they would favour the inclusion of molluscs and lupine in Annex IIIa of Directive 2000/132/EC, but not of fructose.
4. **Exchange of views on a French notification on the labelling of alcoholic beverages (at the request of Belgium).**

Belgium had asked for a discussion within the Committee on a French notification on the labelling of alcoholic beverages imposing a warning to pregnant women on the package of these drinks. Belgium, together with the Czech Republic and Spain, recalled that they issued a detailed opinion against that French notification, stating that the aim of reducing alcohol consumption by pregnant women is not questioned but the measure creates an obstacle to free circulation of goods in the Community and therefore the French measure in not justified.

In January 2006, the Commission decided not to oppose the French measure, considering that, though it is likely to have consequences on the free circulation of the concerned products, it is justified on the basis of Article 28 of the Treaty, because it is appropriate for health protection, in particular with a view to increasing information on the risk of alcohol consumption during pregnancy to all women in child bearing age. Moreover, it is proportionate as it is included in a global information program which includes other information tools. Finally, the possibility to use a pictogram on labels reduces the technical burden for the operators.

The Commission concluded that, as there was no other reaction, it takes note that a wide majority of Member States are not opposed to this measure.

The Commission also informed that it will favour a debate on the extension of the measure at Community level in the context of a further EU Alcohol Strategy.

5. **Information point regarding an Italian Decree on the labelling of a product called “passata di pomodoro” (tomato puree)**

Italy had notified a draft Decree imposing the indication of the origin of the tomatoes on the labelling of a product called “passata di pomodoro” (tomato puree). The Commission informed the Member States that it issued a negative opinion on this Decree and notified it to Italy. However, the Commission will not submit a project of measure to the Committee, pursuant to Article 19 of Directive 2000/13/EC, as Italy has adopted the measure despite the negative opinion. The Commission indicated that an infringement procedure was therefore envisaged.

The Italian Delegation explained that its measure is based on a clear demand from consumers to have more information on origin of these products. The Commission indicated that such national initiatives were likely to breach Community law and such issue should be preferably addressed at EU level. The Commission recalled in that respect that origin labelling is one of the issues raised in the consultation paper on labelling made public recently.

6. **Letter from Spain concerning CLA (Conjugated Linoleic Acid).**

Before the entrance into force of the novel food Regulation (15 May 1997) conjugated linoleic acid (CLA) had a history of consumption in food supplements only. Apparently in 2004 dairy products with added CLA appeared on the market in Spain. Upon request by Member States Spain provided information about CLA use in Spain and made suggestions to rectify the situation. The Committee agreed that an assessment of CLA and subsequent authorisation under the Novel Food Regulation has to be made.
Furthermore, Member States were invited to check again whether there are other foods on their markets that contain ingredients that were only used in food supplements before 15 May 1997, but where such ingredients were afterwards used in other foods.

7. Letter from Belgium concerning a request whether products should be considered as foods or cosmetics.
The Belgian delegation explained that they have been contacted by a company who want to market a spray and a tablet containing a new molecule for the purpose of masking bad breath. While the company wants to market those products as cosmetics, it is not clear for Belgium if they are foods or cosmetic products.

Several delegations indicated that they are also confronted to this problem and it was noted that in different Member States a product can be classified under different categories.
A Commission representative from DG Enterprise explained that, in general, in borderline cases, companies try to have their products classified as cosmetics as the system is easier and cheaper than to market a medicine or, as in the present case, novel food.

In order to determine the borderline between food and cosmetics, the relevant criterion is whether the product is intended to be ingested (food) or not (cosmetics).

The Commission representative from DG Enterprise drew the attention to a "manual" on borderline cases in the area of cosmetics. This manual is available on the internet under: http://ec.europa.int/comm/enterprise/cosmetics/html/cosm_borderline_docs.htm.

8. Miscellaneous

1. The chairman reminded the Committee that at its meeting of 9th February the Commission had asked the Member States for comments on the question whether there is a need to revise Article 19 Regulation (EC) 178/2002 in a way to expand the extent of the obligation to notify to cases where a food product, which does not comply with EC food legislation, had been offered to a food business operator but this operator refused the product and returned it to the supplier.

It was noted that so far, the Commission has not received any comments from the Member States to this respect. Several Member States informed the Commission that they are preparing comments which will be sent soon.

2. On the request of the UK a discussion took place regarding bitter apricot kernels. These are sold in the UK and some other Member States either pre-packaged or not. Given the cyanide content of the kernels the question was raised whether for safety reasons their sale should be restricted. The UK noted that although retail shops have restricted or abolished the sale of the kernels, these may be available via sources that are difficult to control, such as the internet or postal distribution often from another country. In addition it was noted that the potential toxicity of the product was related to the consumed quantity and that bitter apricot kernels were used since long time
in the manufacture of pastries and as substitute to almonds and bitter almonds.