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European Union Food Law Update

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EUROPEAN UNION FOOD LAW UPDATE

*Nicole Coutrelis**

I. PUBLISHED REGULATIONS

A. Labeling of Foodstuffs

On December 23, 2006, the European Commission published Commission Directive 2006/142/EC "amending Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council listing the ingredients which must under all circumstances appear on the labelling of foodstuffs" in regard to Directive 2000/13/EC of the European Parliament and of the Council of March 20, 2000, "on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs."[1] "Annex IIIa of Directive 2000/13/EC lists the ingredients which must under all circumstances appear on the labeling of foodstuffs . . . ," and the new Directive added two new allergens which must be indicated on packaging of foodstuffs: Lupin and products thereof and Molluscs and products thereof.[2]

B. Food Additives

Directive 2006/52/EC of the European Parliament and of the Council of July 5, 2006, "amending Directive 95/2/EC on food additives other than colours and sweeteners and Directive 94/35/EC

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1. Commission Directive 2006/142, 2006 O.J. (L 368) 110 (EC).
2. Directive 2006/142, whereas (1)-(5), at 110.

on sweeteners for use in foodstuffs" was adopted.[3] Some new additives were added to Directive 95/2/EC, while others were deleted, which means that they can no longer be used as additives.[4] A new additive was added to Directive 94/35/EC to be used as a sweetener—erythritol.[5] Additionally, more stringent requirements were established for the use of nitrites and nitrates in meat.[6] The directive also extended the permitted uses of some food additives.[7]

C. Foods for Particular Nutritional Uses

New Directive 2006/141/EC "on infant formulae and follow-on formulae and amending Directive 1999/21/EC" was adopted.[8] The main purpose of the new Directive is to recast previous legislation, Directive 91/321/EEC, in the interest of clarity. The Directive also includes some modifications. Definitions of infant formula and follow-on formula have been slightly changed. Quantities of substances which can be added to these products have also been partially modified.

D. Protected Food Names

During March 2006, the European Commission published Council Regulation No. 510/2006/EC "on the protection of geographical indications and designations of origin for agricultural products and foodstuffs."[9] This regulation repealed Regulation 2081/92/EEC on the same issue.[10] The new regulation was adopted following the decision of the World Trade Organization (WTO) Dispute Settlement Body of March 15, 2005.[11] It establishes that operators in third countries are entitled to submit applications for the protection of geographic names and statements of objection to applications directly to the European Commission.[12]

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3. Council Directive 2006/52, 2006 O.J. (L 204) 10 (EC).
4. Directive 2006/52, art. 1, at 12.
5. Directive 2006/52, at 22.
6. Directive 2006/52, at 10.
7. Directive 2006/52, at 11.
8. Commission Directive 2006/141, 2006 O.J. (L 401) 1-33 (EC).
9. Council Regulation 510/2006, 2006 O.J. (L 93) 12 (EC).
10. Regulation 510/2006, at 13.
11. Panel Report, *European Communities—Protection of Trademarks & Geographical Indicators for Agricultural Products & Foodstuff*, WT/DS174/R (Mar. 15, 2005).
12. *Id.* at 165.

As a result of this new Council Regulation being adopted, a new Commission Regulation (EC) No. 1898/2006 of December 14, 2006, "laying down detailed rules of implementation of Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs" was adopted.[13]

E. Pesticides

Commission Directive 2006/92/EC "amending Annexes to Council Directives 76/895/EEC, 86/362/EEC and 90/642/EEC as regards maximum residue levels for captan, dichlorvos, ethion and folpet"[14] was adopted on November 9, 2006. This directive amends three other directives concerning maximum residue levels of some pesticides in some types of vegetables, fruits, and cereals.

F. Food Hygiene

Commission Regulation (EC) No. 1662/2006 of November 6, 2006, "amending Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin" sets up new hygiene provisions.[15] "Fish oil is included in the definition of fishery products [and specific] requirements for production and placing on the market of fish oil for human consumption" were therefore established.[16] Specific hygiene rules for colostrum production were also established.[17]

Conditions for the production of collagen were modified because a new opinion of the European Food Safety Authority (EFSA) considered a new processing method for the production of collagen to be safe.[18] New provisions were also established on the complete skinning of the carcass of domestic ungulates.[19] Commission Regulation (EC) No. 1663/2006 of November 6, 2006 "amending Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human con-

13. Commission Regulation 1898/2006, 2006 O.J. (L 369) 1 (EC).
14. Commission Directive 2006/92, 2006 O.J. (L 311) 31 (EC).
15. Commission Regulation 1662/2006 O.J. (L 320) 1 (EC).
16. Regulation 1662/2006, at 1.
17. Regulation 1662/2006, at 1.
18. Regulation 1662/2006, at 1.
19. Regulation 1662/2006, at 1.

sumption" established appropriate control measures for the new requirements established by Regulation 1662/2006/EC.[20] Commission Regulation (EC) No. 1664/2006 of November 6, 2006, "amending Regulation (EC) No. 2074/2005 as regards implementing measures for certain products of animal origin intended for human consumption and repealing certain implementing measures" established new health certificates for imports of certain products of animal origin intended for human consumption.[21] "These certificates [were] developed to comply with the expert system 'Traces' developed by the Commission to follow any movement of animals and products derived therefrom within the EU territory and from third countries," and set up new requirements for testing and certifying certain animal products (e.g., fishery products, molluscs, milk).[22]

G. Genetically Modified Organisms (GMOs)

Following importation of non-authorized genetically modified rice, LL RICE 601, from the United States, the European Commission adopted three decisions on emergency measures regarding the non-authorized genetically modified organism LL RICE 601 in rice products.[23] These decisions established that Member States shall allow the first placing on the market of some listed rice products only where an original analytical report based on suitable and validated method for detection of genetically modified rice LL RICE 601 and issued by an accredited laboratory accompanying the consignment demonstrates that the product does not contain genetically modified rice LL RICE 601. The Commission insists on control measures which are done at the Member States level.[24]

H. Transmissible Spongiform Encephalopathies (TSE)

On December 18, 2006, a new Regulation (EC) No. 1923/2006 of the European Parliament and of the Council amended Regulation (EC) No. 999/2001 "laying down rules for the prevention, control

20. Commission Regulation 1663/2006, 2006 O.J. (L 320) 11-12 (EC).
21. Commission Regulation 1664/2006, 2006 O.J. (L 320) 13 (EC).
22. Regulation 1664/2006, at 13.
23. Commission Decision 2006/578, 2006 O.J. (L 230) 8 (EC); Commission Decision 2006/601, 2006 O.J. (L 244) 27 (EC); Commission Decision 2006/754, 2006 O.J. (L 306) 17 (EC).
24. Decision 2006/578, art. 2-3, at 10; Decision 2006/601, art. 2-3, at 28-29; Decision 2006/754, art. 2-3, at 18-19.

and eradication of certain transmissible spongiform encephalopathies."[25]

Rules for the disposal of specific risk materials and animals infected by transmissible spongiform encephalopathies were repealed from the Regulation as all measures are now established in Regulation 1774/2002/EC "laying down health rules concerning animal by-products not intended for human consumption."[26] "Based on evolving scientific knowledge, Regulation (EC) No. 999/2001 should allow the extension to other species of the scope of rules concerning the placing on the market and export of bovine, ovine and caprine animals, their semen, embryos and ova."[27] This new regulation gives more power to the European Commission to approve rapid tests established by Member States, to adapt the age of animals under surveillance, to introduce tolerance level (based on a favorable risk assessment, a decision may be taken in accordance with the procedure referred to in Article 24(3) to introduce a tolerance level for insignificant amounts of animal proteins in feedingstuffs caused through adventitious and technically unavoidable contamination, taking into account at least the amount and possible source of contamination and the final destination of the consignment), and to allow feeding of young animals of ruminant species with protein derived from fish and extending certain provisions for other animal species.[28] The Commission is also empowered to establish rules providing for exemptions from the requirement to remove and destroy specific risk material, to establish criteria to demonstrate improvement of the epidemiological situation, and to establish criteria for granting exemptions from certain restrictions as well as production processes.[29]

I. Food Contaminants

During July 2006, Regulation 1041/2006/EC "amending Annex III to Regulation (EC) No. 999/2001/EC of the European Parliament and of the Council as regards monitoring of transmissible spongiform encephalopathies in ovine animals" extended the moni-

25. Commission Regulation 1923/2006, O.J. (L 404) 1 (EC).
26. Regulation 1923/2006, at 4.
27. Regulation 1923/2006, at 4.
28. Regulation 1923/2006, at 3.
29. Regulation 1923/2006, at 3.

toring of sheep in order to improve Community eradication programs.[30]

A new Commission Regulation (EC) No. 1881/2006 of December 19, 2006, "setting maximum levels for certain contaminants in foodstuffs" was adopted.[31] It repealed previous Regulation No. 466/2001 which was amended many times and therefore needed to be codified.[32] The new regulation amended maximum levels for certain contaminants.[33]

Two other Commission Regulations were also adopted at the same time: Commission Regulation (EC) No. 1882/2006 of December 19, 2006, "laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs;"[34] and Commission Regulation (EC) No. 1883/2006 of December 19, 2006, "laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs."[35]

A new Recommendation 2006/794/EC "on the monitoring of background levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in foodstuffs" was adopted.[36] It repeals the previous Recommendation 2004/705/EC.[37] The monitoring program was modified, taking into account the experiences acquired.

II. PENDING DRAFT REGULATIONS

A. Food Additives and Food Enzymes

The European Commission has issued two draft proposals: a draft regulation on food additives,[38] and a draft regulation on food

30. Commission Regulation 1041/2006, 2006 O.J. (L 187) 10 (EC).
31. Commission Regulation 1881/2006, 2006 O.J. (L 364) 5 (EC).
32. Regulation 1881/2006, at 5.
33. Regulation 1881/2006, at 5.
34. Commission Regulation 1882/2006, 2006 O.J. (L 364) 25 (EC).
35. Commission Regulation 1883/2006, 2006 O.J. (L 364) 32 (EC).
36. Commission Recommendation 2006/794, 2006 O.J. (L 322) 24 (EC).
37. Recommendation 2006/794, at 24.
38. *See Commission Proposal for a Regulation of the European Parliament and of the Council on Food Additives*, COM (2006) 428 final (July 28, 2006), *available at* http://ec.europa.eu/food/food/chemicalsafety/additives/com2006_428_en.pdf [hereinafter *Commission Proposal on Food Additives*].

enzymes used in foodstuffs.[39] Both proposals were transmitted to the Council and European Parliament on July 28, 2006.[40]

The proposed regulation on food additives repeals previous existing directives to establish a single legislation including sweeteners, colors, and other additives.[41] The second proposal is new, as there was no previous European legislation on food enzymes authorized in foodstuffs because different measures were being applied in each Member State.[42]

B. Food Flavorings

The European Commission issued a proposal for a Regulation on flavorings and certain food ingredients with flavoring properties for use in and on food.[43] This proposal was transmitted to the European Parliament and to the Council on July 28, 2006.[44] It aims to establish a list of flavorings allowed in foodstuffs and their condition for use. It also concerns labeling of flavorings.[45]

A proposal for a Regulation establishing a common authorization procedure for food additives, food enzymes, and food flavorings was also transmitted to the Council and the European Parlia-

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39. *See Commission Proposal for a Regulation of the European Parliament and of the Council on Food Enzymes and Amending Council Directive 83/417/EEC, Council Regulation (EC) No. 1493/1999, Directive 2000/13/EC, and Council Directive 2001/112/EC*, COM (2006) 425 final (July 28, 2006), *available at* http://ec.europa.eu/food/food/chemicalsafety/additives/com2006_425_en.pdf [hereinafter *Commission Proposal on Food Enzymes*].

40. *See Commission Proposal on Food Additives*, COM (2006) 428 final (July 28, 2006); *see also Commission Proposal on Food Enzymes*, COM (2006) 425 final (July 28, 2006).

41. *Commission Proposal on Food Additives*, at 1-3 COM (2006) 428 final (July 28, 2006).

42. *Commission Proposal on Food Enzymes*, at 2 COM (2006) 425 final (July 28, 2006).

43. *See Commission Proposal for a Regulation of the European Parliament and of the Council on Flavorings & Certain Food Ingredients with Flavoring Properties for Use In and On Foods and Amending Council Regulation (EEC) No. 1576/89, Council Regulation (EEC) No. 1601/91, Regulation (EC) No. 2232/9666 and Directive 2000/13/EC*, COM (2006) 427 final (July 28, 2006), *available at* http://ec.europa.eu/food/food/chemicalsafety/additives/com2006_427_en.pdf [hereinafter *Commission Proposal on Flavoring Properties*].

44. *See Commission Proposal on Flavoring Properties*, COM (2006) 427 final (July 28, 2006).

45. *Commission Proposal on Flavoring Properties*, at 2-3 COM (2006) 427 final (July 28, 2006).

ment.[46] Its main objectives are to set up a "centrali[z]ed, effective, expedient and transparent" authorization procedure "based on risk assessment[s] carried out by the European Food Safety Authority," and to replace the various existing procedures.[47]

III. CASE LAW–JUDGMENTS ISSUED

A. Responsibility of Distributors

Following the submission of a request for a preliminary ruling deferred to the European Court of Justice by an Italian jurisdiction, the Court had to deal with an issue on responsibilities for labeling of foodstuffs.[48]

An Italian distributor sold an alcoholic beverage, "Amaro alle erbe," in an outlet.[49] The distributor bought the product from a German producer who pre-packaged it in Germany to be sold as such to the final consumer.[50] Controls carried out by Italian authorities showed that the alcoholic strength by volume of the product was lower than that stated on the product label, which did not conform to provisions of Directive 2000/13/EC on the labeling of foodstuffs.[51] Indeed, Directive 2000/13/EC states that labeling should not mislead consumers.[52] The labeling was done by the producer in Germany.[53]

The Municipality of Arcole ordered the distributor to pay an administrative fee.[54] The distributor challenged this decision before the Giudice di pace (Justice of the Peace) who decided to refer to

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46. *See Commission Proposal for a Regulation of the European Parliament & of the Council Establishing a Common Authorization Procedure for Food Additives, Food Enzymes, and Food Flavorings*, COM (2006) 423 final (July 28, 2006), *available at* http://ec.europa.eu/food/food/chemicalsafety/additives/com2006_423_en.pdf [hereinafter *Commission Proposal for Common Authorization Procedures*].

47. *Commission Proposal for Common Authorization Procedures*, at 2 COM (2006) 423 final (July 28, 2006).

48. Case C-315/05, Lidl Italia Srl v. Comune Di Arcole (VR), 2006 ECJ CELEX LEXIS 713 (November 23, 2006), *available at* http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-315/05&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *See* Lidl Italia Srl, *supra* note 48.

54. *Id.*

the European Court of Justice to determine whether Community provisions establishing responsibilities for labeling of pre-packaged foodstuffs are imposed only on the producer of the foodstuff or whether they can also apply to the distributor.[55]

The Court explained that Directive 2000/13/EC on labeling of foodstuffs prohibits, inter alia, labeling and methods used for misleading the purchaser as to characteristics of foodstuffs and added that

> an examination of the general scheme of . . . Directive 2000/13 and of the context in which it occurs and the objects of that directive gives sufficient convergent indications permitting the conclusion to be drawn that it does not preclude national legislation, . . . which provides that a distributor may be held liable for infringement of the obligation as regards labelling imposed by those provisions.[56]

Moreover, the Court stated that Regulation 178/2002/EC, laying down the general principles and requirements of food law, states "that operators in the food sector should ensure at every stage of production, processing and distribution in the undertakings under their control that the foodstuffs comply with the requirements of the food legislation applicable to their operations and should check that those requirements are fulfilled."[57]

Therefore, the European Court of Justice decided that Directive on labeling of foodstuffs did not preclude legislation of a Member State from stating that a distributor will be held responsible for an infringement of one of the provisions of the directive resulting from the producer's inaccurate statement on the product label, even when it "simply markets the products as delivered to it by the producer."[58]

B. Free Movements of Goods

In another case, the European Court of Justice had to deal with an issue concerning the free movement of goods and, more specifically, of "bake-off" products.[59] "The 'bake-off' method consists of

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55. *Id.*
56. *Id.*
57. *Id.*
58. *See* Lidl Italia Srl, *supra* note 48.
59. Joined Cases 158 & 159/04, Alfa Vita Vassilopoulos AE & Carrefour Marinopoulos v. Elliniko Dimosio, Nomarkhiaki Aftodiikisi Ioanninon, *available at* http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-158/04&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100.

quick thawing followed by re-heating or baking, at the sales outlets, of fully or partially pre-baked and frozen products."[60]

Greek legislation stated that to establish a bakery or a bread shop, a license should be obtained first from the competent local authority.[61] Two food shops sold bread and used ovens for the baking of frozen bread without any license. Greek authorities ordered cessation of operation of the bread ovens.[62] The two shops challenged this decision before the National Court.[63]

The National Court referred to the European Court of Justice for preliminary ruling. The main question was whether a requirement for prior license in order to make "bake-off" products constituted a "measure equivalent to a quantitative restriction within the meaning of Article 28" of the Treaty.[64] Article 28 prohibits measures having equivalent effects to quantitative restrictions of import between Member States.[65]

> The Court has, however, clarified that measures having equivalent effect to quantitative restrictions and therefore prohibited by Article 28 EC do not include national provisions restricting or prohibiting certain selling arrangements, so long as those provisions apply to all relevant traders operating, within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products of those from other Member States.[66]

In the case at stake, the Court stated that the Greek measure dealt with the process of production of the product, and not with "certain selling arrangements."[67] Therefore, there was no doubt that Article 28 of the Treaty could apply to the measure.[68] Nevertheless, "a national rule which hinders the free movement of goods is not necessarily contrary to Community law if it may be justified "by a public interest reason such as health protection."[69]

The Court recognized that "the national legislation aimed at ensuring that bakery products are prepared and marketed in proper hygienic conditions."[70] However, in this legislation, "a number of

60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *See* Joined Cases 158 & 159/04, *supra* note 59.
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. *See* Joined Cases 158 & 159/04, *supra* note 59.
70. *Id.*

requirements relating to the manufacturing method of traditional bakery products [were] inappropriate and [went] beyond what [was] necessary for 'bake-off' products."[71] The measure was disproportionate regarding health protection.[72] The Court decided that the legislation, as far as "bake off" products were concerned, was contrary to Community law and established a measure having equivalent effect to quantitative restrictions to trade.[73]

C. Bovine Spongiform Encephalopathy (BSE)

In another case, the Court of First Instance (CFI) had to deal with an action for damages allegedly suffered by the applicants (people living in France) as a consequence of the infection and subsequent death of members of their families who suffered from the new variant of Creutzfeld-Jakob disease after consuming infected meat some time ago.[74] The applicants considered that the Commission and the Council failed to adopt adequate measures in order to prevent contamination of consumers by the new variant of Creutzfeld-Jakob disease at the end of the 1980s.[75]

The applicants based their action on the extra-contractual responsibility of the European Institutions (Commission and Council), provided for in two articles of the Treaty establishing the European Community:

> Article 288, § 2: "In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties."[76]
>
> Article 235: "The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 288."[77]

The Court indicated that, regarding the Community's non-contractual liability, *a right* to reparation is conferred where three conditions are met: (1) the rule of law infringed must be intended to confer rights on individuals and the breach must be sufficiently

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71. *Id.*
72. *Id.*
73. *Id.*
74. Case T-138/03, E.R. & Others v. Council & Commission (July 5, 2003).
75. *Id.*
76. *Id.*; *see also* Treaty Establishing the European Community, Dec. 24, 2002, 2002 O.J. (C 325) 147 [hereinafter EC Treaty].
77. *See* Case T-138/03, *supra* note 74; *see also* EC Treaty *supra* note 76, at 128.

serious; (2) the existence of a damage must be established; and (3) there must be a direct causal link between the breach of the obligation resting on the Community and the damage suffered by the injured parties.[78]

> The applicants claimed that the defendants made a manifest error of assessment in their management of the risks associated with the BSE epidemic by not recommending a forward scientific evaluation of the risk of BSE developing[] in various geographical areas of the Union at the time of identification of the causes of the epidemic and of adoption of the first protective measures in the United Kingdom.[79]

"In support of their claims, the applicants submitted that the defendants' conduct in this case constitute[d] a misuse of powers inasmuch as it was aimed only at protecting in an ill-considered manner the interests of the market and of the beef sector."[80]

"The applicants further maintain[ed] that the defendants' internal disorgani[z]ation led their staff to underestimate the risks of BSE developing and by that very fact constitute[d] a serious breach of the legitimate expectations of European consumers."[81] The CFI did not deny the fact that people had died from the new variant of Creutzfeld-Jakob disease because of consuming meat infected by BSE.[82] Nonetheless, the Court considered that, even if legislation had forbidden at that time the consumption of specified risk materials (SRM) (specific part of beef considered to be very contagious) in all Member States, it was not sure that the applicant would not have been infected by Creutzfeld-Jakob disease.[83] Therefore, the Court refused to establish responsibilities of European Institutions as there was no direct causal link between the breach of the obligation resting on the Community and the damage suffered by the in-

78. *See* Case T-138/03, *supra* note 74.

79. *Action Against the Council of the European Union and Commission of the European Communities*, 2003 O.J. (C 158) 26, *available at* http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=T-138/03&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100 [hereinafter *Action Against the Council & Commission*]; *see also* Case T-138/03, *supra* note 74.

80. *See Action Against the Council & Commission*, *supra* note 79; *see also* Case T-138/03, *supra* note 74.

81. *See Action Against the Council & Commission*, *supra* note 79; *see also* Case T-138/03, *supra* note 74.

82. *See* Case T-138/03, *supra* note 74.

83. *Id.*

jured parties.[84] The applicants have decided to appeal against this judgment in the European Court of Justice.[85]

IV. OTHER RELEVANT NEWS

A. Regulations Entered Into Application

1. Labeling: Health Claims

On December 20, 2006, Regulation (EC) No. 1924/2006 of the European Parliament and of the Council "on nutrition and health claims made on foods" was finally adopted.[86] It will become effective on July 1, 2007.[87]

The proposed Health and Nutrition Claims Regulation lays down strict conditions "for the use of nutrition claims such as 'low fat,' 'high fiber,' or 'reduced sugar.'"[88] Set thresholds will have to be met before such claims can be made.

> [C]laim[s] can only be used if the product bearing the claim fits a certain nutritional profile (i.e. below a certain salt, fat and/or sugar level). These nutritional profiles will be set by Commission and Member States through Comitology procedure, based on the opinion of the European Food Safety Authority (EFSA), within twenty-four months of the Regulation entering into force.[89]

With regard to health claims, the Commission will draw up, within three years of the Regulation entering into force, a positive list of established claims on the basis of lists submitted by Member States.[90] "Any claims submitted for the European Union list after this period will have to be examined by EFSA and approved by the Commission and Member States through the Comitology procedure."[91]

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84. *Id.*
85. *Id.*
86. Corrigendum to Council Regulation 1924/2006, 2007 O.J. (L 12) 3 (EC).
87. Regulation 1924/2006, art. 29, at 15.
88. Press Release, Europa, Commission Kyprianou Welcomes European Parliament Vote on Heath & Nutrition Claims (May 16, 2006), *available at* http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/626&format=HTML&aged=0&language=EN [hereinafter Vote on Health & Nutrition]; *see also* Regulation 1924/2006, Annex, at 16-18.
89. *See* Vote on Health & Nutrition, *supra* note 88.
90. *Id.*
91. *Id.*

"The use of new health claims or disease reduction claims . . . will require specific authori[z]ation by the Commission through the Comitology procedure, following scientific assessment and verification of the claim by EFSA."[92] Transitional provisions are also set up for products legally labeled before the entry into force of the regulation.[93]

2. Food Fortification with Vitamins and Minerals

Regulation (EC) No 1925/2006 of the European Parliament and of the Council of December 20, 2006, "on the addition of vitamins and minerals and of certain other substances to foods"[94] was adopted at the same time as the "nutrition and health claims" Regulation. This Regulation aims at creating harmonized EU rules on the addition of vitamins, minerals, and other substances to food.[95] Strict labeling criteria for fortified foods are also set out in the Regulation.[96]

An EU list of approved vitamins and minerals is set out in the Regulation, and vitamins and minerals not included on this list will no longer be allowed to be added to food.[97] Minimum and maximum levels for the addition of different nutrients to food will also be established through the Comitology procedure based on scientific advice from the EFSA.[98] The regulation also deals with substances, other than vitamins or minerals, that have a nutritional or physiological effect.[99] Lists of prohibited or restricted-in-use substances will be established.[100] Scientific evaluation will be done by the EFSA.[101] In the meantime, national rules still apply regarding these substances.

92. *See id* ; *see also* Corrigendum to Regulation 1924/2006, whereas (12), at 4, whereas (23), at 6.
93. Regulation 1924/2006, art. 2, at 14-15.
94. Council Regulation 1925/2006, 2006 O.J. (L 404) 26 (EC).
95. Regulation 1925/2006, whereas (2), at 26.
96. Regulation 1925/2006, art. 7, at 31.
97. Regulation 1925/2006, art. 3, at 29.
98. Regulation 1925/2006, art. 6, at 30.
99. Regulation 1925/2006, art. 2, at 29.
100. Regulation 1925/2006, art. 8, at 31.
101. Regulation 1925/2006, art. 8, at 31.

B. Unofficial documents and announcements

1. Food Colors

On December 7, 2006, the European Food Safety Authority (EFSA) launched a call for data on food colors as part of a systematic re-evaluation of all authorized food additives in the EU.[102] The European Commission asked the EFSA to proceed as such in order to take an account of new information since the original assessments were done.[103] The EFSA planned to provide scientific advice on colors in early 2007.[104] Interested stakeholders were to submit information by March 31, 2007.[105]

2. Genetically Modified Organisms (GMOs)

On December 15, 2006, the "EFSA launched a public consultation on the use of animal feeding trials to assess the safety a nutritional value of [genetically modified] food or feed."[106] The EFSA has already discussed the different types of scientific tests available and seeks views of all interested parties before final recommendations are made.[107]

3. Acrylamide

Acrylamide is "a chemical which has been shown to be present in food as a result of cooking practices, some of which have been used for many years, even centuries."[108] The Commission has been coordinating several initiatives on that topic in the EU. For the moment, there is still a need to clarify the risk incurred by the con-

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102. Press Release, European Food Safety Auth., Food Colours: Call for Data to Support Re-Evaluation (Dec. 7, 2006), *available at* http://www.efsa.europa.eu/EFSA/News_PR/pr_afc_colourings_en.pdf.

103. *Id.*

104. *Id.*

105. European Food Safety Auth., Food Colours: Call for Data to Support Re-Evaluation, http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_1178620771267.htm (last visited Oct. 18, 2007).

106. Press Release, European Food Safety Auth., EFSA Launches Public Consultation on GMO Feeding Trials (Dec. 15, 2006), *available at* http://www.efsa.europa.eu/EFSA/News_PR/pr_gmo_feeding_en.pdf.

107. *Id.*

108. EUROPA, *Food Safety: From the Farm to the Fork*, http://ec.europa.eu/food/food/chemicalsafety/contaminants/acrylamide_en.htm (last visited Oct. 18, 2007).

sumption of acrylamide because acrylamide could raise toxicological problems.[109] The European Food Industry (CIAA) issued a toolbox to highlight ways to lower levels of acrylamide in food.[110]

109. *Id.*

110. CONFEDERATION OF THE FOOD & DRINK INDUSTRIES OF THE EU (CIAA), THE CIAA ACRYLAMIDE "TOOLBOX," *available at* http://www.ciaa.eu/documents/brochures/CIAA_Acrylamide_Toolbox_Oct2006.pdf.