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European Union Food Law Update

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EUROPEAN UNION FOOD LAW UPDATE

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I. INTRODUCTION

The year 2009 was chosen to be the *European Year of Creativity and Innovation*.[1] Every year, the European Union selects a theme for a campaign targeted at raising awareness on a particular matter. Creativity and innovation are to be emphasized. Although skeptics will find plenty to demonstrate these two words ought to be taken with a grain of salt, one thing is certain: 2009 is the year of "New". In June 2009, European Union citizens will elect a new European Parliament, and in November 2009, a new European Commission will be appointed. In addition, the application of the Treaty of Lisbon is still uncertain, and in the middle of this heavy procedural and political turmoil, laws must still be negotiated, enacted, implemented, and enforced.

The following is an overview of the recent developments that have taken place since last European Food Law Update in the areas of genetically-modified organisms, novel foods, feed safety, animal welfare, transmissible spongiform encephalopathy, food additives, food contact materials, food quality, food labeling, and nutrition/health claims.

II. GENETICALLY MODIFIED ORGANISMS

Last December, the European Commission "authorized the import of the genetically modified RoundupReady2 soybean" developed by Monsanto, and the import of "food and feed products de-

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1. European Commission, *How the EU promotes creativity and innovation - 20 projects showcased in Brussels*, http://ec.europa.eu/news/eu_explained/090302_1en.htm (last visited April 11, 2009).

rived from it."[2] This means that technically unavoidable traces of this soybean are now allowed in agricultural imports.[3] The Commission followed the safety evaluation issued by the European Food Safety Authority (EFSA), which concluded that products from this GM RoundupReady2 soybean are as safe as those from comparable conventional soybeans.[4]

With respect to the genetically modified maize lines Bt11 and 1507, Member States were unable to achieve an agreement since the Standing Committee on the Food Chain and Animal Health did not reach a qualified majority.[5] These two applications are of particular importance because they "represent[] an important signal of whether agricultural application of green gene technology will be possible in the EU."[6] However, environmental and consumer organizations pressure Member States not to grant these authorizations. The EFSA's GMO Panel made an initial assessment of the risks in 2005-2006 and had concluded that maize Bt11 and 1507 was "unlikely to have an adverse effect on human and animal health or the environment in the context of its proposed use."[7] In 2008, the EFSA confirmed this conclusion.[8] Last January, the EFSA issued a

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2. GMO Compass, *New genetically modified soybean authorised in the EU*, Dec. 5, 2008, http://www.gmo-compass.org/eng/news/407.docu.html (last visited Apr. 11, 2009).

3. *Id.*

4. European Food Safety Authority, Opinion of the Scientific Panel on Genetically Modified Organisms on an application (Reference EFSA-GMO-NL-2006-36) for the placing on the market of glyphosate-tolerant soybean MON89788 for food and feed uses, import and processing under Regulation (EC) 1829/2003 from Monsanto, 2008 E.F.S.A. 758, 1-23.

5. GMO Compass, *No majority: political blockade in the EU of the genetically modified maize 1507 and Bt11*, Feb. 26, 2004, http://www.gmo-compass.org/eng/news/419.docu.html (last visited Apr. 11, 2009).

6. *Id.*

7. *See* European Food Safety Authority, Opinion of the Scientific Panel on Genetically Modified Organisms on a request from the Commission related to the notification (Reference C/F/96/05.10) for the placing on the market of insect-tolerant genetically modified maize Bt11, for cultivation, feed and industrial processing, under Part C of Directive 2001/18/EC from Syngenta Seeds, 2005 E.F.S.A. 213, 1-33; *See* European Food Safety Authority, Opinion of the Scientific Panel on Genetically Modified Organisms on an application (Reference EFSA-GMO-UK-2004-05) for the placing on the market of insect-protected and glufosinate and glyphosate-tolerant genetically modified maize 1507 x NK603, for food and feed uses, import and processing under Regulation (EC) No 1829/2003 from Pioneer Hi-Bred and Mycogen Seeds, 2006 E.F.S.A. 355, 1-23.

8. *See* European Food Safety Authority, Scientific Opinion of the Panel on Genetically Modified Organisms on a request from the European Commission to re-

new opinion following the review of new evidence relating to the risk assessment of Bt11; however, once again, the EFSA confirmed the previous findings.[9] On the basis of the assessments the Commission formulated in 2007, a decision was drafted that recommending that Member States allow the cultivation of both maize lines under specific conditions. Now, the Council of Ministers can issue a decision, and if it cannot reach one, the Commission can implement its draft decision. In the meantime, "Bt maize MON810 remain[s] the only [genetically-modified] plant for which cultivation is approved in the EU."[10]

In addition, despite the Commission's draft decision requesting that Austria and Hungary lift their cultivation bans on the genetically modified maize lines MON810 and T25, they will remain valid for now. A qualified majority of the EU ministers for the environment pushed for the bans to remain on the grounds that consumers and farmers do not want genetically-modified plants. The EFSA had found that there was no evidence to support the claim that cultivating these maize lines was dangerous or had undesired effects.[11] In addition, these national bans may be challenged at the World Trade Organization level.[12] Nevertheless, France and Greece are also trying to have Member States support their respective bans on MON810.[13] As of yet, they have not been able to gather the support of a qualified majority of Member States. This means that they might have to lift their bans, following the Commission's request.

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view scientific studies related to the impact on the environment of the cultivation of maize Bt11 and 1507, 2008 E.F.S.A. 851, 1-27.

9. *See* European Food Safety Authority, Scientific opinion of the Scientific Panel on Genetically Modified Organisms on an application (Reference EFSA-GMO-RX-Bt11) for renewal of the authorisation of existing products produced from insect-resistant genetically modified maize Bt11, under Regulation (EC) No 1829/2003 from Syngenta, 2009 E.F.S.A. 977, 1-13.

10. *See* GMO Compass, *supra* note 5.

11. *See* European Food Safety Authority, Scientific Opinion of the Panel on Genetically Modified Organisms on a request from the European Commission related to the safeguard clause invoked by Austria on maize MON810 and T25 according to Article 23 of Directive 2001/18/EC, 2008 E.F.S.A. 891, 1-64; *See* Euopean Food Safety Authority, Request from the European Commission related to the safeguard clause invoked by Hungary on maize MON810 according to Article 23 of Directive 2001/18/EC, 2008 E.F.S.A. 756, 1-18.

12. GMO Compass, *Cultivation ban on genetically modified maize in Austria and Hungary remains*, http://www.gmo-compass.org/eng/news/422.docu.html (last visited Apr. 11, 2009).

13. Europolitics, *GMOs: French and Greek safeguard clauses in the balance*, Feb. 17, 2009.

In February, the European Court of Justice ruled that the general public has the right to know the location of fields planted with genetically modified crops.[14] This case started five years ago, when a Frenchman's request for disclosure of the current and future location of fields containing genetically-modified crops was denied by a Mayor, on the ground that disclosing such information might endanger the privacy and safety of the farmers involved.[15] Therefore, the plaintiff took his case to the French Administrative court, which referred it to the European Court of Justice.[16] The Court held that the information the plaintiff requested could not be kept confidential pursuant to article 25(4) of Directive 2001/18 on the deliberate release into the environment of genetically modified organisms,[17] and that the protection of public order is not a valid reason to refuse the disclosure of information.[18]

Moreover, Poland has decided to allow research on genetically modified organisms in its laboratories,[19] despite its 2006 ban on genetically-modified organisms, and its ban on the movement of genetically-modified seeds, which was challenged by the Commission as a violation of Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms.

III. NOVEL FOODS

In December 2008, the European Parliament Environment, Public Health and Food Safety (ENVI) Committee voted on Rapporteur Liotard's Draft Report and the amendments made to it, and issued its official report.[20] The report contains an amendment prohibiting the inclusion of food from cloned animals or their descen-

14. Case C-552/07, Commune de Sausheim v. Pierre Azelvandre, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0552:EN:HTML (last visited Apr. 11, 2009).

15. *Id.*

16. *Id.*

17. Council Directive 2001/18/EC, 2001 O.J. (L 106) 1, 14.

18. *Commune de Sausheim v. Pierre Azelvandre, supra* note 14.

19. *Poland Gives Green Light to GMO Research,* EU FOOD LAW WEEKLY, Nov. 28, 2008, at 19.

20. *See* Eur. Parl., Comm. on Public Health and Food Safety, *Report on the proposal for a regulation of the European Parliament and of the Council on novel foods and amending Regulation (EC) No XXX/XXXX [common procedure]* , A6-0512/2008 (Dec. 18, 2008), *available at* http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-0512+0+DOC+PDF+V0//EN [hereinafter *Liotard Report on Novel Foods*].

dants in the Community list of authorized novel food products.[21] The ENVI Committee does not want food produced from cloned animals or their descendants to be merely subject to the comitology procedure; instead desiring a separate regulation of the European Parliament and of the Council to be enacted under codecision.[22] The decision of whether a specific novel food should be included in the Community list is done by Comitology procedure; this requires the Commission to submit a proposal to a comitology committee, which is composed of Member State experts, and which votes in favour of or against the proposal on the basis of qualified majority. In this case, the comitology committee involved is the Standing Committee on the Food Chain and Animal Health; however, the Parliament would prefer foods from cloned animals and their descendants to be regulated through codecision, the typical procedure to enact regulations. The report also introduces a definition for "foods produced with the aid of nanotechnology," which reads "product which contains, consists of or is produced with intentionally manufactured material with one or more external dimensions or an internal structure, (i) on the scale from 1 to 100 nm, or, (ii) where larger than 100 nm, is generally scientifically accepted as a product of nanotechnology."[23] In January 2009, a trialogue meeting between the European Commission, the European Parliament, and the Council was held to attempt a first reading agreement. Although the definition of nanotechnology was relatively well-received, the issue of cloning spurred a major debate, which put in jeopardy the first reading agreement hoped for. It is now likely that the Proposal will be reviewed for a second reading. The Commission refused the Parliament's suggestion to expressly add clones and their offspring in the regulation because this would require food produced from cloned animals or they descendants to receive prior approval.[24] The Commission believes an approval would not be granted, given the anti-cloning sentiment throughout the EU.[25] The Parliament rejected the Commission's stance to wait for further studies until drastic measures, such as bans, are taken.[26]

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21. *Id.* at amendment 51, p. 33-34.
22. *Id.*
23. *Id.* at amend. 37, p. 27.
24. *Novel Foods Deal Off as MEPs Opt to Vote on Cloning*, EU FOOD LAW WEEKLY, Mar. 6, 2009, at 5.
25. *Id.*
26. *Id.*

Furthermore, following the EFSA's draft opinion on nanotechnology in October 2008, the agency published its final opinion in March 2009 and concluded that risk assessment of engineered nanomaterials ought to be performed on a case-by-case basis.[27] It recognized that "risk assessment processes are still under development with respect to characterisation and analysis of [engineered nanomaterials] in food and feed, optimisation of toxicity testing methods for [engineered nanomaterials] and interpretation of the resulting data," and that therefore "any individual risk assessment is likely to be subject to a high degree of uncertainty."[28] The opinion also lists what still needs to be researched related to engineered nanomaterials.[29]

Moreover, the European Court of Justice recently issued a preliminary ruling, initially requested by a German court, concerning the German authorities' prohibition of the M-K Europa GmbH & Co. KG from marketing a food product from Japan called Man-Koso 3000.[30] "Man-Koso 3000 is obtained from over 50 plant ingredients by means of a fermentation process."[31] When this product was introduced in Germany, the authorities prohibited its marketing; the company appealed the ban, but this appeal was rejected. The company then brought the case in front of another Germany judicial body, which dismissed the claim on the ground that Man-Koso 3000 was a novel food and thus regulated by Regulation (EC) No 258/97. The company appealed once again, and the court referred the case to the European Court of Justice to make a preliminary ruling on the interpretation of Article 1(1), (2), and (3) of Regulation No 258/97. The Court held that "[T]he fact that all the individual ingredients [here, algae] of a food product meet the requirement laid down in Article 1(2) of Regulation No 258/97 . . . [on novel foods and novel food ingredients], or have a safe history, cannot be regarded as sufficient for that regulation not to apply to the food product concerned."[32] "[T]the competent national authority must

27. European Food Safety Authority, Scientific Opinion of the Scientific Committee on a request from the European Commission on the Potential Risks Arising from Nanoscience and Nanotechnologies on Food and Feed Safety, 2009 E.F.S.A. 958, 1-39.

28. *Id.* at 2.

29. *Id.* at 26-27.

30. Case C-383/07, M-K Europa GmbH & Co. KG v. Stadt Regensburg, European Court of Justice, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0383:EN:HTML (last visited Apr. 11, 2009).

31. *Id.*

32. *Id.*

proceed on a case-by-case basis, taking into account all the characteristics of the food product and of the production process."[33] "Experience regarding the safety of a food product existing exclusively outside Europe is not sufficient to establish that the product concerned falls within the category of food products 'having a history of safe food use' within the meaning of Article 1(2)(e) of Regulation No 258/97."[34]

IV. FEED SAFETY

In February, the European Parliament voted in favor of the agreement for a Regulation on the placing on the market and use of feed. The Commission had issued a Proposal a year ago,[35] and the Parliament approved a compromise text in first reading.[36] Now, Farm Ministers are to vote on the matter at the next Council session on March 23-24, and the final regulation will be published in the Official Journal in May or June. An important component of this agreement is the establishment of a catalogue of feed materials that stakeholders will create in a comprehensive way to help customers have a better understanding of the products that are on the market.[37]

V. TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHY

Beginning in 2009, the Commission published additional regulations relating to bovine spongiform encephalopathy (BSE).[38] On February 26, 2009, the Commission issued Commission Regulation (EC) No 162/2009, "amending Annexes III and X to Regulation (EC) No 999/2001 . . . laying down rules for the prevention, control

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33. *Id.*

34. *Id.*

35. *See Proposal for a regulation of the European Parliament and of the Council on the placing on the market and use of feed*, COM (2008) 124 final, Mar. 3, 2008, *available at* http://ec.europa.eu/food/food/animalnutrition/labelling/COMM_PDF_COM_2008_0124_F_EN_ACTE.pdf ; *See* Emilie H. Leibovitch, *European Food Law Update*, 4 J. FOOD L. & POL'Y 155, 160 (2008).

36. European Parliament legislative resolution of 5 February 2009 on the proposal for a regulation of the European Parliament and of the Council on the placing on the market and use of feed, Feb. 5, 2009, available at http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0050

37. *Id.*, art. 24-26.

38. Commission Regulation (EC) 162/2009, 2009 O.J. (L 55) 11; Commission Regulation (EC) No 163/2009, 2009 OJ (L 55) 17.

and eradication of certain transmissible spongiform encephalopathies."[39] These annexes respectively cover the monitoring procedure and the reference laboratories, sampling and laboratory analysis methods. Annex III was amended to cover additional methods of disposal for a body of an animal that has been tested for BSE and for a body of an animal found positive or inconclusive to the rapid test.[40] Given the results of various scientific assessments performed, Annex X was amended to allow diagnosed atypical scrapie cases to be relieved from further testing for BSE.[41] In addition, on the same day, the Commission published Commission Regulation (EC) No 163/2009 amending Annex IV to Regulation (EC) No 999/2001, which covers animal feeding.[42] This amendment allows Member States to authorize "the feeding to farmed animals of feed materials of plant origin and feedingstuffs containing such products following the detection of insignificant amounts of bone spicules . . . if there has been a favourable risk assessment."[43]

VI. RAPID ALERTS

In December 2008, the Irish government recalled all domestically-produced pork products after high levels of dioxin were discovered in animal feed and pork fat samples. The problem was found while performing a routine monitoring, during which "elevated levels of polychlorinated biphenyls were found" in pork.[44] Following this scare, the Commission mandated the European Food Safety Authority (EFSA) to give "scientific assistance on the risks for human health related to the possible presence of dioxins in pork and products containing pork,"[45] and the EFSA concluded that serious human contamination was unlikely. The debate surrounds

39. Commission Regulation 162/2009, 2009 O.J. (L 55) 11.

40. Regulation 162/2009, 2009 O.J. (L 55) 11, 13.

41. Regulation 162/2009, 2009 O.J. (L 55) 11, 12.

42. Commission Regulation 163/2009, 2009 O.J. (L 55) 17.

43. Regulation 163/2009, 2009 O.J. (L 55) 17, 18; *But see* Al Goodman, *Woman dies from mad cow disease in Spain*, http://edition.cnn.com/2009/WORLD.europe/03/07/spain.mad.cow/ (last visited Apr. 11, 2009) (indicating that in March 2009, a woman died from the Creutzfeldt Jakob disease, the human form of the mad cow disease. It is Spain's fifth case since 2005).

44. European Food Safety Authority, Statement of EFSA on the Risks for Public Health Due to the Presence of Dioxins in Pork from Ireland, 2008 E.F.S.A. 911, 1-15.

45. Press Release, European Food Safety Authority, EFSA Responds to Commission's Urgent Request on Dioxins in Irish Pork (Dec. 10, 2008), *available at* http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_1211902210953.htm.

the fact that the Irish government decided to recall all of the pork products as a precautionary measure. Officials recognize that there was a traceability deficiency, which is why they were not able to distinguish contaminated products from non-contaminated ones. In January, the Irish Ministry of Agriculture, Fisheries and Food announced that Ireland was "launching a 'comprehensive review' of the way the authorities handled the dioxin contamination scandal . . ." to then make recommendations on potential adjustments on the way crises are addressed.[46]

VII. FOOD ADDITIVES

In December 2008, the Commission issued a Directive "laying down specific purity criteria concerning colors for use in foodstuffs."[47] Moreover, in February 2009, the Commission updated the purity criteria for food additives by issuing a Directive that incorporates the European Food Safety Authority (EFSA)'s latest opinions on various additives, such as nisin, formaldehyde, guar gum, E504(i) magnesium carbonate, E526 calcium hydroxide, E529 calcium oxide, E901 beeswax, E905 microcrystalline wax.[48] Biphenyl and thiabendazole are no longer permitted as food additives. Member States have now one year to update their national laws.

VIII. FOOD CONTACT MATERIALS

In February 2009, the Belgian food safety agency recalled cereals after it was discovered that they had been contaminated with 4-Methylbenzophenone and Benzophenone.[49] These substances were contained in the ink used on the packaging and then migrated into the food. Given the urgency of the situation, the Commission ordered the European Food Safety Authority (EFSA) to perform a risk assessment of 4-Methylbenzophenone and review the risk assessment of Benzophenone.[50] The EFSA concluded that the level of ex-

46. *Ireland Launches Review After Dioxin Contamination Crisis*, EU FOOD LAW WEEKLY, Feb. 6, 2009, at 17.

47. Commission Directive 2008/128/EC, 2009 O.J. (L 6) 20.

48. Commission Directive 2009/10/EC, 2009 O.J. (L44) 62.

49. *Belgian Agency Recalls Cereals Contaminated with Ink*, EU FOOD LAW WEEKLY, Feb. 27, 2009, at 3.

50. *See Conclusions of the Standing Committee on the Food Chain and Animal Health Section Toxicological Safety* (Mar. 6, 2009), *available at* http://ec.europa.eu/food/food/chemicalsafety/foodcontact/docs/conclusions.pdf [hereinafter *SCFCAH Toxicological Safety*]

posure could not pose any health danger to adults, but might have health consequences for children.[51] As a result, the Commission convened the Standing Committee on the Food Chain and Animal Health's section on Toxicological Safety[52] and concluded that food contact materials printed with inks containing these chemicals must not be in contact with food unless they fall below a certain threshold. The Standing Committee also recommended that Member States monitor the levels of the chemicals in foods on the market and to monitor food packers to ensure they have appropriate documentation to prove measures are adequately taken to reduce the migration. Once the EFSA submits its final opinion, the Commission will reevaluate what needs to be done at European level.[53]

IX. FOOD QUALITY

Following the October Green Paper on food quality adopted by the Commission,[54] the European Parliament Agriculture and Rural Development (AGRI) Committee adopted a resolution on 10 March 2009 "ensuring food quality, including harmonization or mutual recognition of standards."[55] The Committee agreed that in order to protect the quality of agricultural products within the European Union (EU) and ensure that European products remain competitive on the global scale, there should be conditions of fair competition for imported products, where the imported products meet the same quality standards as those imposed on European farmers.[56] The AGRI Committee also expressed its concern for the "big retail chains['] . . . standardisation and reduction of variety of agricultural and food products," and called for regulation of the "reverse tendering practices" imposed by these chains.[57] In addition, it called for more simplification of marketing standards and more guidelines to

51. *Id.*

52. *Id.*

53. *Id.*

54. *See Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes*, COM (2008) 641 final (Oct. 10, 2008), *available at* http://ec.europa.eu/agriculture/quality/policy/consultation/greenpaper_en.pdf.

55. *See* Resolution on Ensuring Food Quality, Including Harmonisation or Mutual Recognition of Standards, 2008/2220(INI) (Mar. 10, 2009), http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0098&language=EN (last visited Apr. 11, 2009) [hereinafter *EP Resolution on food quality*].

56. *EP Resolution on food quality, supra* note 55.

57. *EP Resolution on food quality, supra* note 55.

avoid misleading practices.[58] AGRI Members of Parliament (MEPs) also supported a mandatory indication of place of production through a country of origin label such as "produced in the EU," optional reserved terms and specific quality systems like protected geographical indications, protected designations of origin, and guaranteed traditional specialties. They even suggested the creation of a European Agency for Product Quality, which would collaborate with the EFSA and the Commission and would oversee applications for the aforementioned specific quality systems. The issue of origin labelling is also dealt with in the Commission's Proposal for a Regulation on the provision of food information to consumers,[59] and will be addressed further in the following part devoted to the Food Information Proposal. With respect to organic food, the AGRI Committee supported an organic label with mandatory indication of the "country of origin [for] . . . organic products imported from third countries."[60] The report suggested encouraging programs for local markets to emphasize local processing and marketing initiatives. It also called for the establishment of criteria for quality initiatives (e.g., voluntary GMO-free labelling schemes), and it rejected the idea of additional certification systems.[61]

X. FOOD LABELING

Following last November's publication of Member of Parliament (MEP) Renate Sommer's Draft Report on the Commission' Food Information Proposal,[62] the MEPs of the European Parliament Environment, Public Health and Food Safety (ENVI) Committee issued amendments to her Draft Report.[63] The amendments are

58. *EP Resolution on food quality*, *supra* note 55.

59. *See Proposal for a regulation of the European Parliament and of the Council on the provision of food information to consumers*, COM (2008) 40 final (Jan. 30, 2008), *available at* http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/publications/proposal_regulation_ep_council.pdf. [hereinafter *Food Information Proposal*]

60. *See Food Information Proposal*, *supra* note 59.

61. *See Food Information Proposal*, *supra* note 59.

62. *See Food Information Proposal*, *supra* note 59; *See* Sommer Draft Report on thePproposal for a Regulation of the European Parliament and of the Council on the Provision of Food Information to Consumers, 2008/0028(COD) (Nov. 7, 2008), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//NONSGML+COMPARL+PE-415.015+01+DOC+PDF+V0//EN&language=EN (last visited Apr. 11, 2009) [hereinafter *Sommer's Draft Report*].

63. *See generally* Amends. 144-310 to Sommer's Draft Report, 2008/0028(COD) (Jan. 28, 2009), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//

numerous since there are more than six hundred of them, and many are inconsistent with each other. The nutrition labeling is the issue the most debated on. The MEPs, even those within the same political parties, share different opinions on which nutrients should be declared, and whether they should be declared on a mandatory or voluntary basis. Many differ on whether nutrition declaration should be expressed on a per 100 g/ml basis or on a per portion basis, or both, and MEPs disagree on which nutrition information ought to be placed on the front of the pack and on the back of the pack. Some MEPs disagree with Rapporteur Sommer's decision to delete the possibility for Member States to issue national schemes, and some still bring up the option of traffic lights.[64]

With respect to origin labeling, MEPs' positions vary. Some disagree with Rapporteur Sommer's position that origin labeling should remain voluntary; however, in the event origin were to be declared, the manufacturer would have to indicate "made in the EU."[65] Sommer states that "for poultry and meat, other than beef and veal, the indication on the country of origin or place of provenance may be given only as the place where animals have been reared and/or fattened, i.e. not the place of breeding, slaughter, processing or packing."[66] For fresh fruit and vegetables, she suggests that the place of agricultural production can be the only indication as to the country of origin or place of provenance.[67]

Sommer's proposal to delete the entire Article 4 of the Claims Regulation (EC) 1924/2006, which establishes nutrient profiles,[68] was also received with some opposition. Article 4 of Regulation

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NONSGML+COMPARL+PE-416.699+02+DOC+PDF+V0//EN&language=EN (last visited Apr. 11, 2009); *See generally* Amends. 311-543 to Sommer's Draft Report, 2008/0028(COD) (Jan. 23, 2009), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-418.218+01+DOC+PDF+V0//EN&language=EN (last visited Apr. 11, 2009); *See generally* Amends. 544-648 to Sommer's Draft Report, 2008/0028(COD) (Feb. 24, 2009), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-418.219+02+DOC+PDF+V0//EN&language=EN (last visited Apr. 11, 2009); *See generally* Amends. 649-751 to Sommer's Draft Report, 2008/0028(COD) (Mar. 2, 2009), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-418.220+03+DOC+PDF+V0//EN&language=EN (last visited Apr. 11, 2009).

64. Press Release, Europa - Parliament Food Health Claims Divide MEPs (Mar. 22, 2006), *available at* http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20060320IPR06493+0+DOC+XML+V0//EN.

65. *Sommer's Draft Report, supra* note 62, at 66 (amend. 113).

66. *Id.* at 67 (amend. 114) (emphasis omitted).

67. *Id.* at 68 (amend. 115).

68. *Id.* at 75 (amend. 124).

(EC) 1924/2006 calls for the establishment of nutrient profiles by January 19, 2009.[69] However, Rapporteur Sommer believes that nutrient profiles are not scientifically-based and are purely political, and are only "indoctrina[ting]" consumers.[70] This next part on nutrition claims will discuss this issue further.[71]

Although the vote in the ENVI Committee is scheduled for March 31, 2009 and the vote in Plenary is scheduled for May, it is unlikely that the Parliament will vote on this Report in first reading before the June Parliamentary elections. This text will more than likely be in the hands of the new Parliament. In addition, the Commission and some MEPs' proposal for the use of Guideline Daily Amounts (GDAs) has come under heavy criticism by some consumer associations. In Denmark, where GDAs are depicted as misleading consumers because they are based on portions that are unrealistically small and thus supposedly give consumers wrong ideas by making a portion appear low in calories, for example, when in fact the only reason why the portion does not have an important energy value is because the portion itself is small.[72]

XI. NUTRITION AND HEALTH CLAIMS

In December 2008, the Commission issued a revised Working Document on the Setting of Nutrient Profiles for Foods Bearing Nutrition and Health Claims,[73] and in February 2009, the Commission issued a preliminary draft in anticipation of the vote at the Standing Committee on the Food Chain and Animal Health scheduled for March 27, 2009.[74] If the Standing Committee votes in favor of these proposed nutrient profiles, they will be adopted by the Commission through the comitology procedure and will enter into force following publication in the Official Journal of the European Communities. However, should Sommer's amendment deleting the entire Article 4 of the Claims Regulation be adopted, this whole

69. Corrigendum to Council Regulation 1924/2006, art. 4, 2007 O.J. (L12) 8 (EC).

70. *Sommer's Draft Report*, *supra* note 62, at 75 (amendment 124).

71. *See infra* Part XI.

72. *See genrally* stopGDA.eu, *available at* http://www.stopgda.eu (last visited Apr. 11, 2009).

73. *Working Document on the Settling of Nutrient Profiles* (Dec. 16, 2008), *available at* http://www.food.gov.uk/multimedia/pdfs/consultation/ecsettingnp.pdf.

74. *Working Document on the Settling of Nutrient Profiles*, (Feb. 13, 2009), *available at* http://www.aesan.msc.es/AESAN/docs/docs/notas_prensa/the_setting_of_nutrient_profile.pdf.

process would become moot. Nutrient profiles were initially created to prevent nutrition claims from misleading consumers. In other words, with nutrient profiles, nutrition claims will be able to be made only if the reduction of sodium, sugar, and/or fat, depending on the claim, makes this (these) nutrient(s) fall below a certain threshold. Nutrient profiles are being criticized for not being scientifically-based.

In addition, the European Food Safety Authority (EFSA) is still reviewing health claims falling under Article 13 of the EC Regulation on nutrition and health claims No 1924/2006. These claims refer to the "role of a nutrient or other substance in growth, development and the functions of the body; psychological and behavioural functions; [or] . . . slimming and weight control or a reduction in the sense of hunger or an increase in the sense of satiety or to the reduction of the available energy from the diet."[75] The Commission must establish a positive list of permitted health claims by January 2010, and EFSA is to provide scientific recommendations on the submitted claims.[76] However, given the number of submitted claims to EFSA so far, meeting the January 2010 deadline is more and more seen as a challenge.

XII. CONCLUSION

As we approach the June elections, it is expected that an increasing number of decisions will be left to the new Parliament.

75. Corrigendum to Council Regulation 1924/2006, art. 13., *supra* note 69, at 11.

76. Council Regulation 1924/2006, art. 13, 2007 O.J. (L 12) 11