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European Union Food Law Update

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EUROPEAN UNION FOOD LAW UPDATE

*Emilie H. Leibovitch**

I. INTRODUCTION

The European Union (EU) is facing major institutional challenges because Ireland rejected the Treaty of Lisbon last summer. The Treaty of Lisbon aims at modifying the institutional framework of the EU; more precisely, it aims in part at modifying the interaction of the various EU regulatory bodies with one another, as well as the interaction between the EU regulatory bodies and the national ones.¹ The next few months will be decisive in determining whether the Treaty of Lisbon will finally replace the Treaty of Nice.

Since the last update,² several important developments have occurred in the realm of food law, especially in the areas of genetically-modified organisms, novel foods, feed safety, transmissible spongiform encephalopathy, food additives, maximum residue limits, food contact materials, food quality, and food labeling, nutrition and obesity.

II. GENETICALLY MODIFIED ORGANISMS

Following the European Commission's request for the European Food Safety Authority (EFSA) to provide scientific advice on France's decision to invoke the safeguard clause over the genetically modified maize MON810 pursuant to Directive 2001/18/EC and France's decision to justify its action under the emergency measures provision of Council Regulation 1829/2003, the EFSA Panel on Genetically Modified Organisms (GMOs) released a scientific opinion holding that France did not provide any new scientific evidence that

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1. Treaty of Lisbon, Dec. 13, 2007, 2007 O.J. (C306) 1.

2. Emilie H. Leibovitch, *European Union Food Law Update*, 4 J. FOOD L. & POL'Y 155 (2008).

would invalidate the previous risk assessments of maize MON810.³ Directive 2001/18/EC allows Member States to invoke safeguards on particular GMOs when new or additional information would affect the risk assessment of authorized GMOs.⁴ Article 34 of Council Regulation 1829/2003 allows a Member State to suspend or modify a GMO's authorization when "it is evident that products authorised by or in accordance with this Regulation are likely to constitute a serious risk to human health, animal health or the environment."⁵ The EFSA's Panel on Genetically Modified Organisms thus faced the issue of "whether the documents submitted by France comprise new scientific information that would change the outcome of previously performed risk assessments," and whether "detailed grounds exist to consider that the authorised maize MON810, for its intended uses, constitutes a risk to human and animal health or the environment."⁶ The EFSA released its opinion on October 29, 2008, and found that France had not provided the required scientific evidence to disprove the previous risk assessment of MON810 and to prove that MON810 is likely to constitute a serious risk to human health, animal health or the environment; thus, the EFSA concluded that the scientific evidence presented by France did not "justify the invocation of a safeguard clause under Article 23 of Directive 2001/18/EC and an emergency measure under Article 34 of Regulation (EC) No 1829/2003."⁷ Similarly, the EFSA issued an opinion on Greece and Hungary's bans on MON810 and found them not scientifically justified.⁸

3. Scientific Opinion of the Panel on Genetically Modified Organisms on a request from the European Commission related to the safeguard clause invoked by France on maize MON810 according to Article 23 of Directive 2001/18/EC and the emergency measure according to Article 34 of Regulation (EC) No 1829/2003. *The EFSA Journal* (2008) 850, 1-45.

4. Council Directive 2001/18, art. 23, 2001 O.J. (L 106) 13 (EC).

5. Council Regulation 1829/2003, art. 34, 2003 O.J. (L 268) 19 (EC).

6. Scientific Opinion of Panel on Genetically Modified Organisms, EFSA, *see supra* note 3, at 6.

7. Scientific Opinion of Panel on Genetically Modified Organisms, EFSA, *see supra* note 3, at 31.

8. 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. *The EFSA Journal* (2008) 756, 1-18; Request from the European Commission related to the safeguard clause invoked by Greece on maize MON810 according to Article 23 of Directive 2001/18/EC. *The EFSA Journal* (2008) 757, 1-12.

In May 2008, the Swiss government voted to extend the ban on genetically modified plants until 2013.⁹ The ban initially started in 2005, prohibiting the cultivation of genetically modified plants and the market placement of transgenic animals for food production, and was to expire in 2010.¹⁰ However, the government decided to extend the ban, pending the assessment of the benefits and risks of genetically modified plants by the National Research Programme.¹¹

In July 2008, the European Union Council of Agricultural Ministers declined to approve the placement on the market for food and feed of genetically modified soybean A2704-12 and genetically modified cotton LLcotton25, despite the EFSA's opinion recognizing them as safe.¹² The initial request was about authorizing the use of the plants with the EU, but not about allowing their cultivation. Despite such rejection on the part of Member States, the Commission could authorize the products based on the EFSA's opinion.

As for the general perceptions of GMOs in Europe, they are changing. In the United Kingdom, for instance, commercial cultivation of GMOs is prohibited; however, last June, the environmental minister Phil Woolas stated that the United Kingdom should perhaps rethink its reluctance to allow GMOs in light of the current state of poverty in the developing world and the current environmental crisis.¹³ In addition, the agricultural industry of several European countries (Romania, Poland, Slovakia, the Czech Republic, Portugal, and Spain) has increased the use of genetically modified crops. In addition, several European countries (Romania, Poland, Slovakia, the Czech Republic, Portugal, and Spain) have increased the use of genetically modified crops.¹⁴

A study conducted by the King's College London and funded by the European Commission, addressed the question of whether consumers in the EU buy genetically-modified foods when they are

9. GMO Compass, *Swiss government wants to roll over biotech ban*, May 21, 2008, <http://www.gmo-compass.org/eng/news/361.docu.html> (last visited Nov. 14, 2008).

10. *Id.*

11. *Id.*

12. GMO Compass, *EU Council's GMO approval standstill continues*, July 16, 2008, <http://www.gmo-compass.org/eng/news/374.docu.html> (last visited Nov. 14, 2008).

13. GMO Compass, *UK: New attitudes on GM crops are developing*, June 19, 2008, <http://www.gmo-compass.org/eng/news/367.docu.html> (last visited Nov. 14, 2008).

14. GMO Compass, *Cultivation of GMOs rises in many European countries*, Sept. 30, 2008, available at <http://www.gmo-compass.org/eng/news/379.docu.html>.

available in grocery stores.¹⁵ The study focused on ten Member States: the Czech Republic, Estonia, Germany, Greece, The Netherlands, Poland, Slovenia, Spain, Sweden and the UK. The findings showed that Europeans buy genetically-modified foods when they are physically present on the shelves and that “a major factor in governing the purchase of GM-products by Europeans is the decision of retailers to make them available to consumers.”¹⁶ In Denmark, farmers expressed interest in growing genetically modified crops starting in 2009.¹⁷ They will be allowed to grow European Union (EU)-sanctioned crops after they attend an educational course.¹⁸ The Danish Minister for Food, Agriculture and Fisheries, Eva Kjer Hansen, was pleased about this interest from farmers; she believes genetically-modified crops can positively help farmers from an economical and environmental point of view.¹⁹ Moreover, last October, the Council of EU Environment Ministers met and addressed the issue of potential changes in GM plants’ authorization process and whether authorizations should be based solely on scientific safety evaluations, or whether socio-economic factors should also be taken into account.²⁰ The group was not able to reach a common agreement; this question will eventually be decided at the Council’s December 2008 session.²¹

III. NOVEL FOODS

Following the Commission’s Proposal to revise the Novel Foods Regulation (EC) 258/97 in order to improve the access of innovative foods to the EU market while ensuring food safety,²² the debate at

15. See King’s College of London, *Do European Consumers Buy GM Foods?*, <http://www.kcl.ac.uk/schools/biohealth/research/nutritional/consumerchoice> (last visited Nov. 22, 2008).

16. *Id.*

17. GMO Compass, *Danish Farmers to Grow GM Crops*, Oct. 13, 2008, <http://www.gmo-compass.org/eng/news/383.docu.html> (last visited Nov. 22, 2008).

18. *Id.*

19. *Id.*

20. GMO Compass, *Council of environment ministers of the European Union: No Joint Alignment on GM Authorization*, <http://www.gmo-compass.org/eng/news/388.docu.html> (last visited Nov. 22, 2008).

21. *Id.*

22. *Commission of the European Communities Proposal for a Regulation of the European Parliament and of the Council on Novel Foods and Amending Regulation (EC) No XXX/XXXX*, COM (2007) 872 final, available at <http://ec.europa.eu/food/>

Parliament level started. The European Parliament Environment, Public Health and Food Safety (ENVI) Committee was selected as the Committee responsible for overseeing the novel foods dossier and preparing it for the vote in Plenary. MEP Kartika Tamara Liotard, from the Netherlands (Confederal Group of the European United Left – Nordic Green Left), was appointed as Rapporteur and is thus responsible for drafting the report on potential amendments to the Commission's Proposal. The draft report deals in part with some controversial issues like cloning and nanotechnology, and to what extent these issues should be part of the Novel Foods Proposal, if at all.²³ The draft report suggests that the placement on the market of foods from cloned animals and their descendants should be dealt with in a separate regulation.²⁴ The draft report also explicitly adds foods produced with the aid of nanotechnology in the definition of "novel foods".²⁵ Definitions of "cloned animals," "descendants of cloned animals," and "foods produced with the aid of nanotechnology" were also added.²⁶ The vote in first reading of these amendments within the ENVI Committee is scheduled for December 2008 and the vote in Plenary in first reading is to take place in January 2009.²⁷

Moreover, a debate over nanotechnology is under way. The Parliament is trying to agree on a definition for nanotechnology and the Commission mandated the EFSA to write an opinion on the risks of nanotechnology.²⁸ The EFSA thus issued in October 2008 a Draft Opinion of the Scientific Committee on the Potential Risks Arising from Nanoscience and Nanotechnologies on Food and Feed

food/biotechnology/novelfood/COM872_novel_food_proposal_en.pdf [hereinafter *Novel Foods Proposal*].

23. *Draft 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]*, 2008/0002(COD), amendment 20-21, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/NONSGML+COMPARE+PE-409.414+01+Doc+PDF+Vo//EN&language=EN> [hereinafter *Draft Report on Novel Foods Proposal*].

24. *Id.*, at amendment 20.

25. *Id.*, at amendment 21.

26. *Id.*, at amendments 24-26.

27. See the Legislative Observatory of the European Parliament at <http://www.europarl.europa.eu/oeil/file.jsp?id=5583302> (last visited Nov. 22, 2008).

28. *Draft Opinion of the Scientific Committee on the Potential Risks Arising from Nanoscience and Nanotechnologies on Food and Feed Safety*, (Question No EFSA-Q-2007-124), endorsed for public consultation on 14 October 2008, available at http://www.efsa.europa.eu/cs/BlobServer/DocumentSet/sc_opinion_nano_public_consultation.pdf?ssbinary=true.

Safety and concluded that additional research and data were needed to really assess the safety of engineered nanomaterials.²⁹ The public had until December 1, 2008 to comment on the draft opinion.³⁰

IV. FEED SAFETY

Following the Commission's introduction of a Proposal for a Regulation of the European Parliament and of the Council on "the placing on the market and use of feed,"³¹ the European Parliament Agriculture (AGRI) Committee was selected as the Committee responsible for overseeing the dossier and preparing it for the vote in Plenary. MEP Graefe Zu Baringdorf Friedrich-Wilhelm from Germany (Group of the Greens/European Free Alliance) was appointed Rapporteur; his Draft Report was released in June 2008, and in October 2008,³² the AGRI Committee voted on it. Some of the relevant issues raised by the AGRI Committee amendments deal in part with labelling requirements, a proposed catalogue of feed materials to help customers have a better understanding of the products that are on the market, technical provisions on impurities, and tolerance values. The vote in Plenary is tentatively scheduled for December 2008.³³

In August 2008, the Rapid Alert System for Food and Feed (RASFF) was notified of the presence of monensin residues in dried deactivated yeast, a by-product from the Brazilian bioethanol industry. Following this alert, the Commission requested data on the sector's use of bactericides in food and bioethanol production processes, where co-products resulting from these are used for feed. At

29. *See id.*

30. *Id.* at 21-24.

31. *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, available at http://ec.europa.eu/food/food/animalnutrition/labelling/COMM_PDF_COM_2008_0124_F_EN_ACTE.pdf [hereinafter *Feed Proposal*].

32. *See Draft Report on the Proposal for a Regulation of the European Parliament and of the Council on the Placing on the Market and Use of Feed*, 2008/0050(COD) available at Europarl.europa.eu/sides/getDoc.do?pubref=-//EP//NONSGML+COMPARE+PE407.423+01+Doc+Pdf+VO//EN&Language=EN.

33. *See European Parliament, Committee on Agricultural and Rural Development, Report on the Proposal for a regulation of the European Parliament and of the Council on the placing on the market and use of feed*, A6-0407/2008, Oct. 15, 2008, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-0407+0+DOC+PDF+V0//EN>.

its last meeting, the Standing Committee on Animal Nutrition decided to set the monensin residue level at 1.25 mg/kg.³⁴

V. TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHY

Since the beginning of 2008, the Commission published several additional regulations relating to transmissible spongiform encephalopathy (TSE), and more particularly relating to bovine spongiform encephalopathy (BSE). Moreover, Regulation (EC) 999/2001 has been amended several additional times and the list of rapid tests for the monitoring of BSE in bovine animals has been amended twice.³⁵ Commission Regulation (EC) 357/2008 of April 22, 2008 amends Annex V to Regulation 999/2001 that lays down rules for the prevention, control and eradication of certain TSEs; the amendment modifies the age limit for characterizing the vertebral column in bovines as specified risk material.³⁶ Commission Regulation (EC) 571/2008 of June 19, 2008 amends Annex III to Regulation 999/2001 with respect to the criteria for revision of the annual BSE monitoring programs.³⁷ Commission Regulation (EC) 746/2008 of June 17, 2008 amends Annex VII to Regulation 999/2001 by modifying the eradication measures for ovine and caprine animals.³⁸ Commission Decision 2008/661/EC of August 1, 2008 amends Commission Decision 2007/182/EC by extending the 'survey for chronic wasting disease in cervids.'³⁹ Finally, Commission Regulation (EC) 956/2008 of September 29, 2008 amends Annex IV to Regulation 999/2001 by authorizing the use of fishmeal for the production of milk replacers intended for the feeding of young animals of ruminant species.⁴⁰

34. See European Committee, Committee on the Food Chain and Animal Health, *Summary Minutes of the Meeting of the Standing Committee on the Food Chain and Animal Health, Animal Nutrition Section*, Sept. 18-19, 2008, available at http://ec.europa.eu/food/committees/regulatory/scfcah/animalnutrition/sum_1819092008_en.pdf.

35. See Commission Regulation 21/2008, 2008 O.J. (L 9) 3; See Commission Regulation 315/2008, 2008 O.J. (L 94) 3.

36. Commission Regulation 357/2008, 2008 O.J. (L 111) 3.

37. Commission Regulation 571/2008, 2008 O.J. (L 161) 4.

38. Commission Regulation 746/2008, 2008 O.J. (L 202) 11, 14.

39. Commission Decision 2008/661/EC, 2008 O.J. (L 215) 8, 9.

40. Commission Regulation 956/2008, 2008 O.J. (L 260) 8.

VI. FOOD ADDITIVES

All authorized food additives have to meet certain purity criteria. In June 2008, the Commission published Commission Directive 2008/60/EC, which lays down specific purity criteria for the use of sweeteners in food stuffs.⁴¹ In August 2008, the Commission issued Commission Directive 2008/84/EC on specific purity criteria on food additives other than colors and sweeteners.⁴²

VII. MAXIMUM RESIDUE LIMITS

The EU pesticide Maximum Residue Limits (MRLs) Regulation 396/2005 came into effect on 1 September 2008. The amendments modifying Annexes II, III and IV to pesticide MRLs Regulation (EC) 396/2005 were published in the Official Journal as Regulation 839/2008, and can be accessed online.⁴³ DG SANCO also posted the MRLs database on its website,⁴⁴ along with a Question & Answer fact sheet entitled "New Rules on Pesticide Residues in Food."⁴⁵

In March 2008, the Commission issued Commission Regulation (EC) 260/2008, amending Regulation (EC) No 396/2005 of the European Parliament and of the Council by establishing Annex VII listing active substance/product combinations covered by a derogation as regards post harvest treatments with a fumigant.⁴⁶

VIII. FOOD CONTACT MATERIALS

In March 2008, the Commission published Commission Regulation (EC) 282/2008 on recycled plastic materials and articles intended to come into contact with foods and amending Commission Regulation (EC) No 2023/2006.⁴⁷

In June 2008, the Commission issued Commission Regulation (EC) 597/2008 amending Regulation (EC) No 372/2007, laying

41. Commission Directive 2008/60/EC, 2008 O.J. (L 158) 17.

42. Commission Directive 2008/84/EC, 2008 O.J. (L 253) 1.

43. Commission Regulation 839/2008, 2008 O.J. (L 234) 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:234:0001:0216:EN:PDF>.

44. See *Pesticide EU-MRLs Database*, http://ec.europa.eu/sanco_pesticides/public/index.cfm (last visited Dec. 1, 2008).

45. European Union, Directorate-General for Health and Consumers, *New Rules on Pesticide Residues in Food*, Sept. 2008 http://ec.europa.eu/dgs/health_consumer/press/pesticide_residues.pdf (last visited Dec. 1, 2008).

46. Commission Regulation 260/2008, 2008 O.J. (L 76) 31.

47. Commission Regulation 282/2008, 2008 O.J. (L 86) 9, 12.

down transitional migration limits for plasticizers in gaskets in lids intended to come into contact with foods.⁴⁸

IX. FOOD QUALITY

In October 2008, the Commission adopted a Green Paper on food quality and launched a consultation on agricultural product quality.⁴⁹ In light of the current EU standards, the various quality and certification programs, and the numerous labeling schemes, the Green Paper asks stakeholders about what actions could be taken to efficiently take advantage of EU farming and to better inform consumers on the products. The Green Paper also requests input on possible improvements that could be made. The consultation could potentially be followed by a legislative proposal.⁵⁰

On November 12, 2008, European Union Member States voted on Commission proposals to repeal specific marketing standards for twenty-six types of fruit and vegetables.⁵¹ The decision will take effect in July 2009. Through this initiative, the Commission aims at eliminating unnecessary administrative work and simplifying EU rules. Products that do not respect the marketing standards will thus be able to be sold, provided that they are labeled in such a way that consumers will be able to distinguish them from the other standardized products.⁵² With the current food crisis, this rule will also avoid unnecessary food waste.

48. Commission Regulation 597/2008, 2008 O.J. (L 164) 12.

49. *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.

50. Commission of the European Communities, *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.

51. Press release, European Comm'n, *The Return of the Curvy Cucumber: Commission to Allow Sale of 'Wonky' Fruit and Vegetables* Commission Press Release, (IP/08/1694, Nov. 12, 2008), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1694&format=HTML&aged=0&language=EN&guiLanguage=en>.

52. *Id.*

X. LABELING, NUTRITION, AND OBESITY

A. *Labeling Proposal*

Following the Commission's Proposal for a regulation of the European Parliament and of the Council on the provision of food information to consumers,⁵³ the European Parliament ENVI Committee was put in charge of drafting the report to be voted in Plenary. MEP Renate Sommer from Germany (Group of the European People's Party (Christian Democrats) and European Democrats) was named Rapporteur, and her draft opinion is due sometime in November 2008. The main issues of concern relate to the selection of nutrients to be labeled and whether the labels should be in the front of the pack or on the back of it. The Food Information Proposal suggests that the labelling of the energy value, the amounts of fat, saturates, carbohydrates with specific reference to sugars, and salt" should be mandatory.⁵⁴ Moreover, the legibility of labels is also being debated, and the Food Information Proposal suggests a font size of 3mm minimum.⁵⁵ The Proposal also focuses on the format nutrition labelling should have. A debate is under way as to whether the system of traffic lights that is currently used in the United Kingdom should be used EU-wide. Traffic lights are a color-coding system where a food product receives a color for each nutrient that the UK's Food Standards Agency has deemed problematic: fat, saturates, sugars, and salt.⁵⁶ Depending on the quantity of these nutrients in a food product, each will receive either a green label, an amber label, or a red label.⁵⁷ Green designates a low amount, amber designates a medium amount, and red designates a high amount. This system is controversial because some argue that consumers see the red color as a sign that they should not eat the product at all.⁵⁸ It is unlikely

53. *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*].

54. *Id.*, art. 29.

55. *Id.*, art. 14.

56. Food Standards Agency, *Traffic light labeling*, <http://www.eatwell.gov.uk/foodlabels/trafficlights/> (last visited Jan. 5, 2009).

57. *Id.*

58. Press release, EUFIC- European Food Information Council, *European Consumers Spill the Beans on Food Labels*, available at <http://www.eufic.org/jpage/en/page/PRESS/ftid/european-consumers-spill-the-beans-on-food-labels/>.

that the Commission will agree to this national scheme because studies have found them to mislead consumers,⁵⁹ and this system has received heavy criticism on the part of the industry. The industry has proposed another system: the Guideline Daily Amounts (GDAs). GDAs are guidelines for healthy adults and sometimes children that companies voluntarily decide to adopt about the approximate amount of calories, fat, saturates, carbohydrates with reference to sugars, protein, fiber, and sodium required for a healthy diet. This system also draws criticisms, especially because many argue that there is not a single definition of healthy diet, since what is healthy depends on each individual and its physiological and environmental conditions.

Moreover, in October 2008, the Commission Directive 2008/100/EC of October 28, 2008, amending Council Directive 90/496/EEC on nutrition labeling for foodstuffs as regards recommended daily allowances for vitamins and minerals, energy conversion factors and the definition of dietary fiber was published in the Official Journal.⁶⁰

B. Nutrition and Health Claims

Following the European Food Safety Authority's (EFSA) Opinion on the Setting of Nutrient Profiles for Foods Bearing Nutrition and Health Claims that was issued in January 2008,⁶¹ the Commission Working Group on Nutrition and Health Claims meets regularly to establish thresholds for the nutrients that will be used for profiling purposes. This working group issues working documents that provide proposals of options, which are not binding. The last working document was published on October 22, 2008.⁶² According to this document, food supplements, dietetic foods, as well as raw fruit and vegetables, fresh, frozen, chilled, dried, and fruit and vegetable juices without added sugar, could be exempted from the profiling system.⁶³ Other foods would be subject to a general profile,

59. *Id.*

60. Commission Directive 2008/100, 2008 O.J. (L 285) 9.

61. *The Setting of Nutrient Profiles for Foods Bearing Nutrition and Health Claims Pursuant to Article 4 of the Regulation (EC) No 1924/2006, Scientific Opinion of the Panel on Dietetic Products, Nutrition and Allergies*, 644 EFSA J. 1, 2 (2008), available at http://www.efsa.europa.eu/EFSA/Scientific_Opinion/nda_op_ej644_nutrient%20profiles_en,2.pdf.

62. *Working Document on the Settling of Nutrient Profiles*, Oct. 22, 2008, available at <http://www.food.gov.uk/multimedia/pdfs/consultation/ecsettingnp.pdf>.

63. *Id.* at 6.

except for ten sectors that would have specific profiles: non alcoholic drinks; vegetable oils and spreadable fats; dairy products except cheeses; cereals apart from breakfast cereals; breakfast cereals; fruit, vegetables and their products; meat and meat products; fish and fish products; and ready meals.⁶⁴

Furthermore, the EFSA is currently reviewing health claims pursuant to Article 13 (on health claims other than those referring to the reduction of disease risk and to children's development and health) and Article 14 (relating to the reduction of disease risk claims and claims referring to children's development and health) of Regulation 1924/2006EC.⁶⁵ EFSA's scientific evaluation will allow making sure that claims and advertising on nutrition and health are accurate and can actually help consumers make a healthy choice when selecting food products. The concept of "healthy," however, is controversial and is the subject of discussions between the industry and the authorities. Some wonder where the line should be drawn between a "healthy" product and an "unhealthy" one.

C. Obesity

Regarding the Poli Bortone's Draft Report on the White Paper on Nutrition,⁶⁶ which was mentioned in the last update, the European Parliament Environment, Public Health and Food Safety (ENVI) Committee voted on it on May 27, 2008 (the Poli Bortone Draft Report was renamed Foglietta Draft Report after Mrs. Poli Bortone was replaced by MEP Alessandro Foglietta). The ENVI Committee recommended that restrictions be established on advertising of "unhealthy" foods to children.⁶⁷ The Report asks for protected times for children's television viewing and mentions that advertising restrictions should also cover new forms of media.⁶⁸ In addition, the Committee stressed the need for schools to actively participate in the fight against childhood obesity by ensuring that children get enough physical activity and have a balanced diet.⁶⁹

64. *Id.* at 3.

65. Corrigendum to Council Regulation 1924/2006, 2007 O.J. (L12) 3, 11 (EC).

66. Adriana Poli Bortone, *Comm. On the Env't., Pub. Health and Food Safety, Draft Report on the White Paper on Nutrition, Overweight- and Obesity-Related Health Issues*, 2007/2285(INI) (Dec. 19, 2007).

67. *Comm. On the Env't., Pub. Health and Food Safety, Report on the White Paper on nutrition, overweight- and obesity-related health issues*, 2007/2285(INI) (June 18, 2008).

68. *Id.*

69. *Id.*

In July 2008, the Commission issued a Proposal to establish an EU-wide scheme to provide school children with free fruits and vegetables.⁷⁰ The Commission hopes this will encourage young people to have good eating habits. As part of this campaign, participating Member States would have to set up educational initiatives to raise awareness on obesity. Farm ministers discussed this initiative at the October Agriculture Council meeting. Some of the questions raised were whether this scheme would be a matter of national public health and social policy, or whether it would fall under the CAP. The scheme is expected to be voted on at the next meeting of the Agriculture Council in November 2008.

In October, the EU launched a milk promotion campaign, aiming at targeting schoolchildren.⁷¹ Farm Commissioner Mariann Fischer Boel is at the origin of this campaign and wants to encourage schoolchildren to have a healthy diet.⁷² The program would subsidize the distribution of dairy products in schools.⁷³

XI. CONCLUSION

The year 2009 will be interesting for the European Union, given the fact that the future of the Treaty of Lisbon is still uncertain. In addition, Europeans will elect a new Parliament in June 2009, and the number of seats the Parliament is to be composed of will depend on whether the elections are held under the Nice Treaty or the Treaty of Lisbon. In any event, a new Parliament means a possibility that the direction the policy was taking up until now will change. Moreover, the French Presidency of the Council will end in December 2008, and the Czech Republic will take over for the first half of 2009. The second half of the year will be handled by Sweden. All of these changes and new players will surely shape the regulatory future of EU food law.

70. *Proposal for a Council Regulation amending Regulations (EC) No 1290/2005 on the financing of the common agricultural policy and (EC) No 1234/2007 establishing a common organization of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) in order to set up a School Fruit Scheme*, COM(2008) 442 final, July 8, 2008 [hereinafter *School Fruit Scheme Proposal*].

71. Press Release, European Union School Milk Programme, *Commission Launches EU School Milk Campaign* (Oct. 17, 2008), available at http://www.drinkitup.europa.eu/fileadmin/Content/Downloads/PDF/Press_Release/press-release-school-milk-programme-launch_en.pdf.

72. *Id.*

73. *Id.*

