European Union Food Law Update

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On March 31, 2006, the European Commission published Council Regulation (EC) No. 510/2006 On the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs. This new regulation repealed Council Regulation (EEC) No. 2081/92 On the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs mainly to bring Community law into conformity with the World Trade Organization (WTO) agreements and the findings of a recent WTO panel. Under the new Regulation, persons in third countries (non-European Union members) are entitled to address applications for the protection of geographic names and statements of objection to applications directly to the European Commission. Persons in third countries can still submit applications and objections via their national authorities if they prefer.
Geographical indications (GIs) and designations of origin (DOs) registered under the repealed Regulation will remain protected. On March 31, 2006, the European Commission also published Council Regulation (EC) No. 509/2006 On Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed replacing Council Regulation (EEC) No. 2082/92 On Certificates of Specific Character for Agricultural Products and Foodstuffs. Protections granted under the old scheme will also remain valid.

B. Food Supplements


C. Foods for Particular Nutritional Uses


D. Irradiated Foods

On May 12, 2006, a List of Member States’ Authorizations of Food and Food Ingredients Which May Be Treated with Ionising Radiation was published according to Article 4(6) of Directive No. 1999/2/EC of the European Parliament and of the Council On the

Approximation of the Laws of the Member States Concerning Foods and Food Ingredients Treated with Ionising Radiation. This document replaced the previous list published on March 11, 2003.

E. Pesticides


F. Organic Foods

On April 13, 2006, the European Commission published Commission Regulation (EC) No. 592/2006 Amending Annex II to Council Regulation (EEC) No. 2092/91 On Organic Production of Agricultural Products and Indications Referring Thereto on Agricultural Products and Foodstuffs. By this amendment, the authorization to use composted or fermented household waste for organic production is confirmed without any limitation of time, whereas this authorization was originally provisional and limited to March 31, 2006.


essing aids which may be used in products of plant and animal origin produced by organic methods is amended. The amending provisions will apply from December 1, 2007. Also, the use of sodium nitrate and sodium nitrite in some products is to be re-examined before December 31, 2007, with a view to limiting or withdrawing the use of these additives.

G. Polish Ban on Certain GM and non-GM Maize


H. Genetically Modified Organisms (GMOs)

In February 2006, the European Food Safety Authority (EFSA) published an opinion adopted in December 2005, according to which the BASF Plant Science's genetically modified potato “EH92-527-1” poses no threat to human health. Even though the potato is intended mainly to be used in the production of starch for industrial purposes, and not for direct human consumption, the company said it could not exclude the possibility the potato or its starch could end up in foodstuffs.

29. Id.

I. Transmissible Spongiform Encephalopathies (TSE)

On February 25, 2006, the European Commission published Commission Regulation (EC) 339/2006 Amending Annex XI to Regulation (EC) 999/2001 of the European Parliament and of the Council as Regards the Rules for Importation of Live Bovine Animals and Products of Bovine, Ovine and Caprine Origin. According to this regulation, some countries for which the risk of TSE was previously considered as “highly unlikely”, are now added to the list of countries submitted to “TSE-related trade conditions.” Those countries are Brazil, Chile, El Salvador, Nicaragua, Botswana, Namibia and Swaziland.

J. Food Contaminants

On February 4, 2006, the European Commission published Commission Regulation (EC) No. 199/2006 Amending Regulation (EC) No. 466/2001 Setting Maximum Levels For Certain Contaminants in Foodstuffs as Regards Dioxins and Dioxin-like PCBs. Based upon scientific data available at the same time Regulation (EC) No. 466/2001 was adopted, only levels of dioxins had been set. In the light of new data, dioxin-like Polychlorinated biphenyls (PCBs) new levels have been set in the new regulation. From November 4, 2006, any food or feed in which dioxins and dioxin-like PCBs exceed the maximum levels laid down in Regulation (EC) No. 466/2001 as amended by Regulation (EC) No. 199/2006 will be forbidden from being placed on the European market.

31. Decision 2006/197, 2006 O.J. (L 70) 82.
33. Regulation 339/2006, whereas 1,2, at 5.
34. Regulation 339/2006, whereas 1,2, at 5.
II. PENDING DRAFT REGULATIONS

A. Labeling: Health Claims

On May 16, 2006, the European Parliament adopted during their second reading the Proposal for a Regulation on the use of nutrition and health claims made on foods issued by the Commission in July 2003. The Council is yet to agree on the amended text by the Parliament. The new legislation is expected to be finally adopted in the December 2006.

B. Food Fortification with Vitamins and Minerals

On May 16, 2006, the European Parliament also adopted during their second reading the Proposal for regulation of the addition of vitamins, minerals and other substances to foods issued by the Commission in November 2003. The new regulation is also expected to be finally adopted by the Council in the December 2006.

C. Food Additives


The proposed amendments to these two directives include more stringent requirements for nitrites and nitrates in meat\(^4\) (in line with a European Court of Justice ruling of 2000\(^4\) and a subsequent scientific opinion from the European Food Safety Authority published in September 2003 on the levels of these substances which can be considered safe in meat\(^5\)). The proposed amended legislation also withdraws some permitted additives, allow the use of new food additives and extend permitted uses of some other food additives.\(^6\) Additionally it is to formalize the temporary European Commission Decision banning the use of certain gelling agents in jelly mini cups, which have been identified as a choking risk.\(^7\)

D. Metrology

In February 2006, the European Parliament approved with amendments the Commission Proposal for a directive of the European Parliament and of the Council Laying Down Rules on Nominal Quantities for Pre-packed products, Repealing Council Directives 75/106/EEC and 80/232/EC, and Amending Council Directive 76/211/EEC.\(^8\) This new regulation aims at deregulating package sizes for pre-packaged products for most sectors while keeping mandatory nominal quantities only for a limited number of sectors. In April 2006, the Commission prepared an amended proposal ac-


III. CASE LAW

A. Judgments Issued

1. Shallots

On January 10, 2006, following the submission of request for a preliminary ruling deferred to it by the French Administrative Supreme Court ("Conseil d'Etat"), the European Court of Justice (ECJ), held that the French Order of May 17, 1990 on the marketing of shallots, which authorizes only vegetables grown by vegetative multiplication to be sold in France under the name "échalotte" (shallot), excluding the vegetables grown from seeds and marketed in other Member States under the same name shallot, is contrary to Article 28 of the EC Treaty and the principle of the free movement of goods.\footnote{Case C-147/04, De Groot en Slot Allium BV and Bejo Zaden BV v. Ministre de l'Economie, des Finances et de l'Industrie and Ministre de l'Agriculture, de l'Alimentation, de la Peche et des Affaires rurales (French Ministry of Economy and French Ministry of Agriculture), 2006 WL 43924, [2006] ECR 1-245, Celex No. 604J0147, EU: Case C-147/04, ECJ (Jan 10, 2006), available at (only in French for the time being): http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=fr&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&doco=doco&docjo=docjo&numaff=&datefs=&datefe=&nomusuel=&domaine=&mots=%C3%A9chalote&resmax=100.} The ECJ added that an indication of the method of production of the shallots will be sufficient to inform consumers.\footnote{Id.}

2. Decision of the European Ombudsman

On April 12, 2006, the European Ombudsman has issued a decision on a complaint against the European Commission which allegedly failed to take the necessary steps in order to make Germany
comply with two judgments of the ECJ regarding its packaging legislation for certain drinks (Case C-463/01 and Case C-309/02).\textsuperscript{52}

In its rulings in Case C-463/01—considered by the Ombudsman to be the only one relevant within the scope of Article 228 (1) of the EC Treaty—the ECJ had ruled that the German Packaging Regulation regarding an obligatory deposit and return system for non-reusable packaging for mineral water, beer and soft drinks constituted a barrier to intra-Community trade.\textsuperscript{55}

In his decision, the Ombudsman concluded that the Commission wrongly interpreted the obligations incumbent on it pursuant to Article 228 of the EC Treaty by failing to provide convincing arguments to show that no further steps to make Germany comply with the judgment of the Court of Justice in Case C-463/01 were necessary.\textsuperscript{54} Therefore, it is an instance of “maladministration.”\textsuperscript{55}

The Ombudsman further noted that the Commission had in the meantime closed the infringement case that led to the judgment of the ECJ in Case C-463/01. However, in the other case, an infringement procedure still appears to be ongoing. The Ombudsman therefore considered that his views could usefully be taken into consideration by the Commission in its assessment of this latter case. It therefore did not appear to be necessary to consider trying to bring about a friendly solution or making a draft recommendation in this case.

IV. OTHER RELEVANT NEWS

A. Unofficial Documents and Announcements

1. Novel Foods

On June 2, 2006, an online consultation on the revision of Regulation (EC) No. 258/97 of the European Parliament and Coun-
cil Concerning Novel Foods and Novel Food Ingredients was launched by the European Commission to gather input from all interested parties (consumers, food industry, Member States, etc.) in order to carry out an impact assessment for a future legislative proposal to revise the current regulation. Such revision is considered necessary for several reasons, including to improve the present authorization procedure and to facilitate both internal and external trade in foodstuffs. The consultation is to end on August 1, 2006.

2. Food Labeling

In February 2006, the European Commission's Health & Consumer Protection Directorate (DG SANCO) has issued a consultative document on food labeling to address the issues of competitiveness, consumer information and better regulation in order to redefine the foundations of its approach and launch a dialogue with the stakeholders. Interested stakeholders were to send their comments to the Commission by June 16, 2006.

3. Nutrition Labeling

Following a previous consultation conducted in 2003, the European Commission has launched a new consultation in May 2006 on a discussion paper on revision of technical issues raided by Council


57. EXPLANATORY DOCUMENT, supra note 56.

58. Id.


60. Id.

61. EUROPEAN COMMISSION, HEALTH AND CONSUMER PROTECTION DIRECTORATE-GENERAL, DIRECTIVE 90/496/EEC ON NUTRITION LABELLING FOR FOODSTUFFS:
Directive 90/496/EEC On Nutrition Labelling for Foodstuffs. Stakeholders are to send their comments by July 14, 2006. According to this discussion paper, the main issues raised to Directive 90/496/EEC relate to updating the Dietary Reference Values for vitamins and minerals, the definitions of nutrients, energy conversion factors, and tolerances for nutrient declarations.

In the meantime, the Confederation of the Food and Drinks Industries of the EU (CIAA) has developed voluntary labeling guidelines for nutritional information on packaged goods. These recommendations have been prepared in line with the requirements set in Directive 90/496/EEC.

4. Food Supplements

In February 2006, the European Food Safety Authority issued guidelines on Tolerable upper intake levels for vitamins and minerals. In June 2006, the European Commission issued a Discussion Paper on the issues raised by the setting of maximum and minimum amounts for vitamins and minerals in foodstuffs. Interested stakeholders are to send their comments to the Commission by September 30, 2006.


on which the European Parliament recently voted in favor but which still needs to be adopted by the Council.

5. Food Hygiene

On January 5, 2006, the European Commission published a new version of the Guidance Document on Certain Key Questions Related to Import Requirements and the New Rules on Food Hygiene and on Official Food Controls.66

6. Genetically Modified Organisms (GMOs)

In February 2006, the European Commission’s Joint Research Centre published a new report on the co-existence of GM and non-GM crops and seeds so as to identify how farmers can reduce the “adventitious”—unintended and unavoidable—presence of genetically modified material in non-genetically modified harvests.67

7. Aspartame

Following the controversial results of the study carried out on the artificial sweetener aspartame during the summer of 2005 by the Italian scientific Ramazzini Institute, the European Food Safety Authority reconfirmed the safety of this sweetener in an opinion of May 3, 2006 after having carried out a new evaluation on the carcinogenicity of aspartame.

8. Obesity

The members of the EU Platform met on Diet, Physical Activity and Health met on March 14, 2006,68 July 6, 2006.69 The purpose of

68. EU PLATFORM ON DIET, PHYSICAL ACTIVITY AND HEALTH, PLENARY MEETING TUESDAY 14 MARCH 2006 SUMMARY REPORT, available at
the platform is designed to promote concrete actions designed to contain or reverse current trends rather than an informational outlet;" the Platform meets every two months for plenary meetings so as to monitor overall progress and discuss issues."

9. BSE

In March 2006, the Standing Committee on the Food Chain and Animal Health adopted unanimously a favorable opinion on a European Commission proposal to lift the embargo on United Kingdom (UK) exports of live cattle, beef and beef products. The ban on the export of UK beef had been issued in March 1996 (with certain derogations introduced in 1999), due to the high incidence of BSE cases in the UK at the time. Once the proposal is adopted and published in the Official Journal, the UK will be able to export live cattle born after August 1996, and bovine meat and products produced after June 15, 2005, under the same terms as other Member States.


71. Id.