

Working Group of the Advisory Group on the Food Chain and Animal and Plant Health

21 December 2015

Summery Record

Participants:

DG SANTE, European Commission (Jacques Humieres, Dora Szentpaly-Kleis, Yvette Azzopardi)

EDA – European Dairy Association

EHPM – European Federation of Associations of Health Product Manufacturers

ELC – Federation of European Speciality Food Ingredients Industry

ESSNA – European Specialist Sports Nutrition Alliance

EU Athletes

EuropeActive

EUVEPRO – European Vegetable Protein Federation

Foodsupplements Europe

SNE – Specialised Nutrition European Commission

UEAPME – The European Association of Craft, Small – and Medium sized Enterprises

UNESDA – Union of European Beverages Association

1. OPENING OF THE MEETING AND ADOPTION OF THE AGENDA

The COM opened the meeting and welcomed the participants while explaining the objective of the meeting. Interested parties should have the opportunity to provide Directorate General for Health and Food Safety with relevant information, comments and recommendations in view of the preparation of the report on the necessity, if any, of specific provisions for food intended for sportspeople. COM presented the agenda which was then adopted.

COM explained that Article 13 of Regulation (EU) No 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control¹ requires the Commission to present a report to the European Parliament and to the Council, after consulting the European Food Safety Authority (EFSA), on the necessity, if any, of special provisions for food intended for sportspeople.

COM stated that as required the European Food Safety Authority (EFSA) was consulted and provided a scientific and technical assistance regarding sports food. In accordance with the

¹ OJ L 181, 29.6.2013, p. 35

request of the Commission EFSA compiled existing scientific advice in the area of nutrition and health claims and Dietary References values for adults that are relevant to sportspeople².

COM further explained that in preparation of the drafting of the report required by Article 13 of Regulation (EU) No 609/2013, and in order to collect useful data and information on the market of sports food the Commission services commissioned an external contractor to complete a relevant market study, including case studies. This market study was carried out by an external contractor (Food Chain Evolution Consortium) between January 2015 and July 2015. In the context of this study the external contractor conveyed a consumer survey in order to gather information regarding consumer behaviour, understanding and consumption habits. Further to this survey an extensive survey was carried out amongst the national competent authorities of the Member States, as well. Relevant stakeholders were also consulted for the purpose of the study by the external contractor.

2. PRESENTATION OF THE WORKING DOCUMENT PREPARED BY THE COMMISSION SERVICES ON FOOD INTENDED FOR SPORTSPEOPLE

2.1. Presentation of the findings of the study on food intended for sportspeople

On the basis of the Working Document the COM presented the findings of the study. It gave an overview about the (1) different categories of the products, (2) the consumers of sports food, (3) the value of the market, (4) the market structure, (5) distribution channels, (6) marketing techniques, and (7) consumer understanding.

Following this, SNE expressed concerns regarding the categories introduced by the study, and specially that life style user, as one of the consumers group presented in the Working Document of the COM should be not considered for the purpose of the report. COM replied that it would be difficult to ignore the fact the sports food are also used by this type of consumers. For this reason the study needed to take also account of this group.

UNESDA explained that sports drinks are not only consumed by sports people. In addition it explained that the difficulty to establish categorisation for sports food needs to be acknowledged. For this reason it cannot be said that one or the other categorisation is better or less good.

ESSNA explained that they consider the introduced categories of sports food for the purpose of the study as common classification.

2.2. Aspects to be considered in the context of sports food after 20 July 2016

COM explained that after 20 July 2016 when Directive 2009/39/EC on foodstuffs intended for particular national uses will be repealed, in the absence of specific legislation sports food classified currently as food intended for particular nutritional use would need to comply in general as it is the case already nowadays with Regulation (EC) No 178/2002 (so called

² EFSA Scientific and technical assistance on food intended for sportspeople, 29.09.2015, <http://www.efsa.europa.eu/en/supporting/pub/871e>

'General Food Law') and according to the case with the requirements of some of the following horizontal food law legislation: (1) Regulation (EC) No 1924/2006 on nutrition and health claims made on foods; (2) Regulation (EC) No 1925/2006 on the addition of vitamins and minerals and of certain other substances to foods (so called 'fortified food'); (3) Regulation (EU) No 1169/2011 on the provision of food information to consumers; (4) Directive 2002/46/EC on food supplements³; and (5) Regulation (EC) No 258/97 on novel foods and novel food ingredients⁴.

In this context it should be considered how food safety, consumer information and legal clarity relevant for sports food currently classified as food intended for particular nutritional use are affected under the above mentioned legislations.

Following the comments of SNE and EU Athletes stating that the Working Document does not refer to doping aspects, COM explained that the use of doping substances falling under the definition of food could only be considered, in the context of the food safety legislation, under the angle of their safety as food. Indeed, Regulation (EC) No 178/2002 (so-called General Food Law) which lays down the requirement that food placed on the market needs to be safe, i.e. not injurious to health and fit for human consumption. Following this requirement food safety must be ensured by definition. In other words, the use of a substance considered safe according to the food safety legislation, but prohibited by the rules applicable to sport competition, is not relevant to the food safety legislation. COM added that one additional mean to ensure food safety is to provide information on the products in line with the different pieces of European food law legislations.

ESSNA agreed with the COM that providing the necessary and not misleading information to the consumers is an important aspect in respect to food safety.

UNESDA expressed that nutrient profiles can be considered as important part of the information provided to consumers but there is uncertainty in their respect. COM replied that such profiles have not been adopted, yet. COM used the opportunity to give an update in this context on the evaluation exercise taking place regarding Regulation (EC) No 1924/2006. This exercise will look into the aspects of nutrient profiles and botanicals.

On the question of EHPM if there is any margin of manoeuvre for Member States to regulate sports food in the absence of specific legislation at national level COM explained that – as in all cases also here – the general rules of the Treaty apply. More particularly if some elements are not fully harmonised at European level the introduction of national rules need to be justified on the basis of Article 36 of the Treaty. Member States have to notify the COM which assesses the rules in light of the Treaty and of the case law of the European Court of Justice.

With respect to the aspect of the legal name that a product has to bear, SNE stated that it is important that the name 'sports bar' currently used on products is considered as the name of

³ Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51)

⁴ Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ L 43, 14.2.1997, p. 1)

the food and is not interpreted by Member States differently. In this context COM explained that any food present on the market needs to have a name. If such name is not defined in specific legislation a descriptive name can be provided as foreseen by Regulation (EU) No 1169/2011.

With respect to the use of claims COM explained that information falling under the definition of nutrition and health claims provided for sports food on voluntary basis will have to comply with Regulation (EC) No 1924/2006. Consequently, only nutrition and health claims authorised pursuant to that Regulation will be allowed for use on sports food after July 2016. In this context COM underlined that in the case of health claims when operators submit an application from the scientific point of view it is important that the evidence on which the claim is based is provided for the target group. It can be assured only in this way that an authorised health claim can refer to the target group of sportspeople.

SNE stated that laying down a definition for sports food and recognising them as a specific category of products would be crucial and this would help also in respect of the authorisation of health and nutrition claims on such products. It also stated that there is the need for urgent implementation of guidelines and discussions with Member States in order to clarify aspects related to the future legal status of sports food and to the applicable rules.

ESSNA explained that according to their opinion Regulation (EC) No 1924/2006 provides a sufficient basis to communicate information on sports food. In addition it underlined that laying down a definition for sports food would be a very hard exercise and not preferred by them.

COM took note of all comments and explained that all relevant aspects which need to be considered in the context of sports food and if necessary discussion with Member States will take place after the adoption of the report in order to ensure uniform interpretation of the legislations.

Regarding compositional aspects relevant for sports food COM explained that in the absence of specific provisions after 20 July 2016 sports food would most probably be considered, as the case may be, either as food supplements in accordance with Directive 2002/46/EC or as fortified foods in accordance with the provisions of Regulation (EC) No 1925/2006. Consequently, they would need to comply with the relevant compositional requirements set out in those legislations.

It further stated that in this context consideration should be given to Article 6(6) of Regulation (EC) No 1925/2006 which requires that vitamins and minerals if added to the food should be present at least in a significant amount as defined in Regulation (EU) No 1169/2011. However, in sport food vitamins and minerals are sometimes added at lower level than that significant amount, to ensure that the composition of the product best addresses the requirements of the body when carrying out sports activity. COM pointed out that, although it has never been used up to now, Regulation (EC) No 1925/2006 provides the possibility of granting derogation to the requirement of the 'significant amount' in justified cases for certain categories of food.

COM further outlined that with respect to the addition of substances other than vitamins and minerals, no harmonisation took place up to now for fortified foods under Regulation (EC) No 1925/2006 and for food supplements under Directive 2002/46/EC. Hence Member States have the possibility to introduce national rules in this respect. The situation is similar regarding maximum level of vitamins and minerals where harmonisation has not yet taken place either. In the absence of specific rules for sports food after 20 July 2016 such national provisions would apply to this kind of products in compliance with Articles 34 to 36 of the Treaty on the functioning of the European Union, as to any other food products today classified as food supplements or fortified foods.

To this point SNE stated that laying down a definition for sports food would be also needed in order to ensure that the derogation provided by Article 6(6) of Regulation (EC) No 1925/2006 can be used. It was also mentioned that Directive 2009/39/EC has provided a less restrictive use of additional substances than it would be the case under Regulation (EC) No 1925/2006 where Member States have the possibility to introduce national rules in this respect. In addition it stated that it would be necessary to clarify that Member States does not require re-notification of substances under horizontal rules in case the use of such substances in sports food was already allowed under the framework of Directive 2009/39/EC.

UNESDA asked the COM on the process of introducing derogation from the requirement of significant amount on the basis of Article 6(6) of Regulation (EC) 1925/2006. More particularly it asked whether such a process can be finalised by July 2016.

COM took note of these comments and explained that the decision on re-notification requirements belongs to the responsibility of the Member States. COM explained in this context, that the instrument of notification is not a pre-authorisation, but it used for monitoring purposes. With respect to the process and timeline related to granting derogation from the requirement of significant amount in case of addition of vitamins and minerals COM explained that the process refers to PRAC measures. In addition such derogation needs also a basis, which shall be provided by the report. COM stated that interested parties will be consulted and also a TBT notification is required in this case. However, it referred to the fact that Regulation (EU) No 609/2013 lays down transition rules for foodstuffs intended for particular nutritional uses, which allows that such products may continue be marketed after the date of application of the Regulation i.e. 20 July 2016 until stocks of such food are exhausted.

UNESDA commented, with the support of SNE, that regarding the procedure for granting a derogation from the requirement of addition of vitamins and minerals in a significant amount to foods intended for sportspeople some guidelines would be useful.

COM replied that these aspects have been identified by the COM services and insofar as the legal framework allows it, COM intends to introduce measures in order to address these elements. It underlined that operators can request the application of Article 6(6) of Regulation 1925/2006.

At the end of the meeting the COM stated that after this meeting of the Working Group of the Advisory Group, which allowed to collect the views of the stakeholders on the different aspects related to the future legislative status of food intended for sportspeople the report will be finalised. The report will take the points discussed into account and its adoption process should start as soon as possible in the beginning of next year.