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Standing Committee on Plants, Animals, Food and Feed

Section *General Food Law*

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SUMMARY REPORT

A.01 Update of state of play of the Farm to Fork Strategy – Front-of-pack nutrition labelling, nutrient profiles, origin labelling and date marking.

The Commission opened the meeting by providing an update on the state of play of the Farm to Fork Strategy and the feedback received during the Inception Impact Assessment (IIA) on Front-of-pack nutrition labelling (FOPNL), nutrient profiles, origin labelling and date marking.

The Commission first summarised the large number of contributions and reactions received on the IIA from businesses, public health and consumer NGOs, academia, nutritionists, citizens and public authorities, showing the high interest of stakeholders in the topics. The Commission further highlighted that the results of the consultation show that the IIA covers the majority of the issues expressed by stakeholders and that the policy options and possible impacts appear to be adequate for the next steps.

Then the Commission outlined the different steps of the exercise, namely:

- Launch of the study supporting the Impact Assessment (IA) (evaluation and selection of the contractor)
- Performing stakeholder consultations (e.g. online public consultation, targeted consultations with Member States and stakeholders),
- Finalisation of the study and the IA,
- Drafting the legislative proposal to start the internal process for adoption.

Responding to a question from Member State representative regarding the indicative date of the launch for tenders, the Commission clarified that the plan is to launch the call for external contractors before summer 2021.

Another Member State representative inquired whether the alcohol labelling initiative as part of the Europe's Beating Cancer Plan will include a public feedback mechanism. The Commission explained that an IIA and feedback mechanism for alcohol labelling will be launched at some point as part of the plan to introduce alcohol labelling in the revision of Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC Regulation).

A.02 Information point on EU-UK readiness and preparedness as from 1 January 2021.

In view of the end of the transition period provided in the EU-UK Withdrawal Agreement on 31 December 2020 and as part of the Commission's actions to ensure readiness following the UK withdrawal from the Internal Market and the EU Customs Union (among others) at the exception of Northern Ireland that remain aligned to certain provisions of EU law, the Commission invited Member States to pose questions relating to actions needed to implement the Withdrawal Agreement in the field of food information to consumers, nutrition and health claims, food for specific groups, food supplements, food fortification and natural mineral waters.

The Commission received questions from the NL and NO and provided the following replies.

The Netherlands posed the questions below:

– *The Netherlands Food and Consumer Product Safety Authority (NVWA) has had several requests from British producers to recognise their waters. Unfortunately, we have no experience in the process of recognising natural mineral waters from third countries and we have not enough knowledge of the organisation of the official supervision on natural mineral waters and spring waters in the UK.*

Could you inform us about the organisation of the supervision in the UK (England, Wales, Scotland and Northern Ireland)?

Which organisations are the responsible authorities (according article 1 (2) second subparagraph of Directive 2009/54/EC) that are involved in recognising natural mineral waters and of spring waters and which are performing the official controls for the verification of compliance with the rules. Is there an overview of those authorities?

Natural mineral water policy responsibility in the UK is held by:

Food Standards Agency (FSA) in Northern Ireland and Wales

Department for Environment, Food and Rural Affairs (DEFRA) in England

Food Standards Scotland (FSS) in Scotland.

You may find further information on the responsible authorities for the recognition of natural mineral waters and spring waters in the UK at: https://www.gov.uk/guidance/recognised-natural-mineral-waters-in-the-uk#who-to-notify-about-a-new-mineral-water-or-to-update-details

– *We assume there is no difference left between the NMW recognition rules for the UK and other third countries; is this correct?*

Yes. Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a "third country". Following the end of the transition period foreseen in the Withdrawal Agreement, as of 1 January 2021 Directive 2009/54/EC on the exploitation and marketing of natural mineral waters no longer applies to the United Kingdom, with the exception of Northern Ireland. Therefore, the rules that apply to natural mineral waters extracted from third countries fully apply to waters extracted in the UK with the exception of Northern Ireland.

– *We received a Certificate of Recognition issued by Aberdeenshire Council, Westburn Rd, Aberdeen. How do we verify whether this is the (or a) competent authority for the recognition of NMW sources in the third country UK (Scotland), mentioned in article 1 (2), second subparagraph of Directive 2009/54/EC? In the list with EU member states competent authorities (labelling-nutrition_mineral-waters_list_comp-auth.pdf (europa.eu)), DEFRA was mentioned as the CA; has this been changed due to Brexit?*

It is up to the authorities of the third country to set out the authorities responsible for the recognition of natural mineral waters. We advise you to contact Food Standards Scotland at https://www.foodstandards.gov.scot/contact-us

- *The Netherlands does not have any experience in the recognition of NMW origination from third countries. Do you confirm article 1 (2), second subparagraph of Directive 2009/54/EC expects us to recognise a NWR once the responsible UK authority has certified that:*
    - *the NMW satisfies the provisions of Annex I, Section I, and*
    - *that regular checks are made on the application of the provisions of Annex II, point 2?*

Yes.

- *Is physical verification by the Dutch competent authorities needed or is verification dedicated to the Directorate for Health and food audits and analysis? How do other MS arrange this?*

Directive 2009/54/EC does not require physical verification of the compliance of the water with its provisions by the competent authority of the Member State for the recognition of a product as natural mineral water. According to Article 1(2) second para of Directive 2009/54/EC waters extracted from the ground of a third country may be recognised as natural mineral waters only if the responsible authority in the country of extraction has certified that they satisfy the provisions of Annex I, Section I, and that regular checks are made on the application of the provisions of Annex II, point 2. However, the competent national authorities may perform physical verifications, as part of their monitoring and enforcement responsibilities.

The waters referred to in the first subparagraph may be so recognised only if the responsible authority in the country of extraction has certified that they satisfy the provisions of Annex I, Section I, and that regular checks are made on the application of the provisions of Annex II, point 2.

- *The certificate we received fulfils all requirements for recognition of a NMW, except for selenium. For Se it is certified that the NMW meets a maximum limit of 0,1 mg/l, while 0,010 mg/l is the actual legal limit. Is there any exception from this legal limit, for third countries in general or specifically for the UK? We expect this is not the case and the difference is caused by a mistake, but before assuming this (and acting accordingly) we would like to verify this with you.*

The waters extracted from the ground of third countries may be recognised as Natural Mineral Waters by the responsible authority of a Member State only if the responsible authority in the country of extraction has certified that they satisfy the provisions of Annex I, Section I. No exception is foreseen for waters extracted from the ground of third countries, including the UK.

Norway posed the questions below:

- *After the end of the transition period, waters extracted from the ground of, and recognised by the United Kingdom as natural mineral waters are extracted from the ground of a third country and are no longer authorised for import into the Union as natural mineral waters, unless they are recognised as such by the responsible authority of another Member State.*

  Which Member States have a legal obligation to recognise the products?

  Would this be considered a legal obligation for the Member States where the product is already on the market?

  Would this be considered a legal obligation for the Member State if the product is new on the market in this Member State?

  Can Member States refuse to recognise products from the UK out of priority reasons?

  Can one Member State forward a demand of recognition to the Member State where the products are going to be sold?

Directive 2009/54/EC does not prescribe specific procedures regarding the recognition of Natural Mineral Waters (NMW), which comply with the substantive requirements set by the Directive. Rather, it remains the responsibility of Member States to adopt appropriate procedures to ensure the effective application of the substantive rules of the Directive. The rules setting the procedural requirements for the recognition of NMW is national law.

According to Article 1(2) of Directive 2009/54/EC, waters extracted from the ground of a third country, imported into the European Union have to be recognised as NMW by the responsible authority of a Member State. As the Directive does not provide for any restrictions with regard to the Member States' national authorities that recognise the natural mineral waters, food business operators may apply for the recognition of their NMW by the competent authority of any Member State. The placement on the market of a NMW in the Member State that recognised it as such is not a requirement for the validity of the recognition. Member States' national authorities' obligation to recognise such products, following the reception of an application for a product that complies with the provisions of Directive 2009/54/EC, stems from the principle of good administration and their responsibility to ensure the enforcement of the provisions of the Directive.

Whether the product had already been on the market is irrelevant for the responsibilities of Member States with regard to recognition of natural mineral waters, with the exception of Article 1(2) third paragraph of Directive 2009/54/EC.

Directive 2009/54/EC does not provide for a procedure of 'forwarding' requests for recognition of natural mineral waters to other Member States. Taking into consideration that the procedural requirements for the recognition is set in national law, and the fact that there may be slight differences in the procedural requirements from Member State to Member State, an 'automatic' forwarding of an application for recognition from one Member State to another, without the consent of the applicant, would be against the principle of good administration.

– *This Directive also concerns waters extracted from the ground of a third country, imported into the Community and recognised as natural mineral waters by the responsible authority of a Member State.*

An individual bottle of natural mineral water extracted from the UK ground and recognised by the United Kingdom and sold before the end of the transition period to a UK-based wholesaler can still be distributed further into the EU according to natural_mineral_waters_en.pdf (europa.eu). According to our knowledge a recognition is still being required for these products before entering the EU. Is this in accordance to the regulation?

After 31.12.2020, waters extracted from the ground of the United Kingdom, with the exception of Northern Ireland, or from the ground of a third country, and recognised by the United Kingdom as natural mineral waters are no longer authorised for import into the Union as natural mineral waters, unless they are recognised as such by the responsible authority of a Member State. However, Article 41(1) of the Withdrawal Agreement provides that an existing and individually identifiable good lawfully placed on the market in the EU or the United Kingdom before the end of the transition period may be further made available on the market of the EU or of the United Kingdom and circulate between these two markets until it reaches its end user.

Therefore, individually identifiable bottles with Natural Mineral Waters manufactured in the UK before 1.1.2021 may be sold in the EU. However, any products extracted from the same source and placed on the market after 31.12.2020 have to be recognised as natural mineral waters by the competent authority of a Member State to be placed lawfully on the EU market.

B.01 Exchange of views and possible opinion of the Committee on a draft Commission Implementing Regulation (EU) amending Implementing Regulation (EU) No 307/2012 as regards transparency and confidentiality requirements for the EU risk assessment of substances under scrutiny.

The Commission presented the draft Commission Implementing Regulation amending Commission Regulation (EU) No 307/2012 as regards transparency and confidentiality requirements for the EU risk assessment of substances under scrutiny.

The Commission informed Member States about the outcome of the feedback consultation on this draft. The consultation period ran from 12 March 2021 until 9 April 2021, during which the Commission received comments from 7 stakeholders (3 business associations, 1 research institute, 3 citizens), although only 3 of the contributions were relevant.

The contributions received:

- Expressed support for the amendment allowing pre-submission advice.
- Requested “agreed upon” guidelines by EFSA on the methodology, the characteristics of botanical mixtures, the nature of the studies, the data to be generated.
- Asked that the notification obligation only applies to pre-commercial studies.
- Expressed support for the extension of the timeline for the submission of data, and asked for a further extension when chronic toxicity, or carcinogenicity studies are required.

The Commission explained how those comments had been taken into account and presented the draft measure to Member States. The Commission explained that the methodology, nature of studies and data required to prove the safety of a substance depend on the harmful effects that the substance may possibly cause. The Commission also noted that the notification obligation applies with regard to studies commissioned or carried out in order to demonstrate the safety of a substance listed in Part C of Annex III to Regulation (EC) No 1925/2006. Finally, the Commission explained that a further extension of the timeline for the submission of data was not possible in view of Article 8(5) of Regulation (EC) No 1925/2006.

Following up on the presentation, a Member State representative asked whether Member States are considered interested parties in the meaning of Article 8 of Regulation 1925/2006 and are subject to the transparency and confidentiality requirements under the draft Regulation.

The Commission replied that according to Article 5b of the draft Regulation under discussion the obligation to notify studies is linked with the submission of a file to EFSA in order to demonstrate the safety of a substance, in accordance with Article 8(4) of Regulation 1925/2006. The notification obligation would not apply to any studies submitted to EFSA in the framework of a public consultation performed in accordance with Article 32c of Regulation (EC) No 178/2002. Moreover, it would not apply to studies carried out, or commissioned by Member States and submitted to the Commission to support a request to initiate the Article 8 procedure for a substance, in the framework of Article 8(2) of Regulation 1925/2006.

Finally, the Commission informed the delegations of its intention to obtain the vote on this draft Implementing Regulation by written procedure.

Vote taken by written procedure: Favourable opinion

M.01 Substances placed under Union scrutiny under Regulation (EU) 2021/468.

Spain asked whether preparations listed in Annex III Part C to Regulation (EU) 2021/468 may be marketed while such substances are under Union scrutiny.

The Commission replied that until the final decision is taken by the COM, preparations placed under Part C can continue to be marketed, provided that they do not contain the prohibited substances placed under Part A.

M.02 Use of fortified ingredients.

Ireland asked whether ingredients fortified in accordance with Regulation (EC) No 1925/2006 used in the preparation of foods must meet the minimum fortification requirements set under this Regulation.

The Commission informed the Member States that it will reply after the meeting.

M.03 Notification 2021/44/DE.

Sweden inquired whether the German notification 2021/44/DE of the Ordinance adapting national legislation to provisions of Union law on flavourings and foods containing flavourings contains a mutual recognition clause. Germany informed other Member States that they have to consult internally and committed to provide a reply after the meeting.

M.04 Codex Circular Letter on Allergen Labelling.

Sweden inquired about the Commission's reply regarding the Codex Circular Letter on Allergen Labelling. The Commission explained that the reply to the Codex questions is drafted and will be soon sent to the Member States for consultation.