



Expert Group on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control

Summary report

Brussels, 14 December 2015

Chairman: Mr Jacques Humieres

1. Presentation of the study on food intended for sportspeople by the external contractor

The COM welcomed the experts by recalling the context of the meeting: 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 (hereinafter 'FSG Regulation') requires the Commission after consulting the European Food Safety Authority (EFSA) to present a report to the European Parliament and to the Council on the necessity, if any, of provisions for food intended for sportspeople. This request is a consequence of the fact that Regulation (EU) No 609/2013 repeals Directive 2009/39/EC on foodstuffs intended for particular nutritional uses and some sports foods are placed on the market under that framework nowadays but are not included in the scope of Regulation (EU) No 609/2013. Consequently, in the absence of specific legislation, such products would need to comply with the horizontal rules of food law after 20 July 2016.

In preparation of the drafting of the report, in order to collect useful data and information on the market of sports food, the Commission services commissioned an external contractor to carry out a relevant market study, including case studies. This market study was carried out by the Food Chain Evaluation Consortium (FCEC Study) between January 2015 and July 2015. In the context of this study, the external contractor carried out 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. Relevant stakeholders were also consulted for the purpose of the study by the external contractor.

The external contractor presented to the experts the findings of the study.

Following the presentation, some Member States' experts asked clarification on the products included in the study. It was explained that energy drinks and weight loss products, considered as borderline products to sports food, were not included in the scope of the study.

COM explained that the study will be published together with the report.

2. Presentation and discussion on the Working Document prepared by the Commission services on food intended for sportspeople

¹ OJ L 181, 29.6.2013, p. 35

In the second part of the meeting the COM presented the aspects to be considered in the context of the report, when assessing if specific provisions are necessary for sports food. More precisely, it needs to be analysed how food safety, consumer information and legal clarity will be ensured under horizontal rules of food law for sports foods classified nowadays as food intended for particular nutritional uses under Directive 2009/39/EC. In this context the COM underlined that, regardless of the conclusion of the report, such sports foods will have to comply with horizontal legislation of food law after 20 July 2016 when Directive 2009/39/EC is repealed.

Consumer information

COM explained that after 20 July 2016 consumer information on sports food would need to be provided in accordance with the rules of Regulation (EU) No 1169/2011 on the provision of food information to consumers. Furthermore, 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 on nutrition and health claims made on foods. These pieces of legislation will be relevant when providing information on the instructions for use, on the product denomination and on the particular nutritional characteristics of sports food.

The majority of Member States expressed the view that the mentioned information could be satisfactorily provided under Regulation (EU) 1169/2011 and Regulation (EC) No 1924/2006. However, it was underlined that there are gaps in the implementation of such legal measures that need to be addressed as soon as possible with respect to sports food. One Member State contested the suitability of horizontal provisions of food law for sports foods regarding the provision of consumer information and also more generally.

Composition

COM explained that after 20 July 2016 the composition of sports food will have to comply – depending on the nature of the product – either with the provisions of Directive 2002/46/EC on food supplements or with those of Regulation (EC) No 1925/2006 on so-called fortified foods. It underlined that in this context particular attention should be given to the requirement laid down in Regulation (EC) No 1925/2006 whereby vitamins and minerals added to the food should reach at least the "significant amounts" as defined in Regulation (EU) no 1169/2011. This is particularly relevant since sports food often do not comply with this requirement because of the products' specificities for their intended use. COM pointed out that Regulation (EC) No 1925/2006 provides the possibility of granting derogations to this requirement in justified cases for certain categories of food.

In addition to this aspect COM explained that because of the fact that no harmonisation took place so far for substances other than vitamins and minerals in fortified foods under Regulation (EC) No 1925/2006 and in food supplements under Directive 2002/46/EC national rules introduced in this respect will have to be taken into account. This situation is also valid for the maximum level of vitamins and minerals where harmonisation has not taken place either.

One Member States' delegation expressed the view that sports food can be governed by horizontal rules of food law. However such horizontal rules need full implementation in order to avoid proliferation of national rules.

Notification, views of Member States and interested parties

COM explained that Member States may require notification of food supplements and fortified food for the purpose of monitoring and such requirements will apply to sports food after 20 July 2016.

COM reported that on the basis of the findings of the survey carried out amongst national competent authorities in the context of the study the majority of Member States believe that the existing horizontal rules of food law are either quite suitable or very suitable for regulating sports food. Only few Member States have recognised the need for specific rules for sports food.

COM also reported that operators are clearly divided on the question whether specific legislation is necessary for sports food or whether sports food should be governed by horizontal rules of food law. An industry group, in favour of specific legislation, believes that under horizontal rules of food law the quality of the product and the communication on sports food cannot be guaranteed. For this reason it would be necessary, either under horizontal or specific legislation, to recognise the specific status of sports food.

Another industry group considers that the applicable horizontal rules are in theory sufficient to govern the different aspects (e.g. food safety, composition, and information) related to food intended for sportspeople. However, this group of industry acknowledges that in practice some specific aspects, in particular regarding nutrition and health claims, are not adequately addressed under the horizontal rules of food law.

Member States took note of these findings.

COM concluded by asking Member States to submit any further comments which have not yet been expressed and underlined that these should be sent to the COM as soon as possible before the Christmas break. COM further explained that it intends to finalise the report in the coming weeks before launching internal consultation procedures.

3. AOB

Upon request of several delegations, COM gave an update on the state-of-play regarding the three delegated acts foreseen by the FSG Regulation on infant formula and follow-on formula, processed cereal-based food and baby food and food for special medical purposes. It explained that the delegated acts were adopted by the Commission on 25 September and are currently undergoing the scrutiny of the European Parliament and the Council.

COM explained that internal work on the fourth delegated act foreseen by the FSG Regulation on total diet replacement for weight control should be finished in the first months of 2016 and the procedure for its adoption will be launched straight after.

COM informed Member States that it intends to hold an Expert Group meeting on different questions related to the application of Regulation (EU) No 609/2013 at the beginning of next year in order to facilitate the transition to the new legal framework after 20 July 2016. Member States were asked to submit any additional questions they might have in this respect.