



Plenary sitting

A8-0267/2018

19.7.2018

REPORT

on dual quality of products in the single market
(2018/2008(INI))

Committee on the Internal Market and Consumer Protection

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on dual quality of products in the single market (2018/2008(INI))

The European Parliament,

- having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council¹,
- having regard to Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004²,
- having regard to Regulation (EU) 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004³,
- having regard to the Commission Notice of 26 September 2017 entitled ‘The application of EU food and consumer protection law to issues of Dual Quality of products – The specific case of food’,
- having regard to the Commission staff working document of 25 May 2016 on guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices (SWD(2016)0163),
- having regard to the Commission communication of 25 May 2016 on a comprehensive approach to stimulating cross-border e-Commerce for Europe’s citizens and businesses (COM(2016)0320),
- having regard to the Commission communication of 24 October 2017 entitled ‘Commission Work Programme 2018: An agenda for a more united, stronger and more democratic Europe’ (COM(2017)0650),
- having regard to President Jean-Claude Juncker’s State of the Union speech of 13 September 2017,
- having regard to the conclusions by the President of the European Council of 9 March

¹ OJ L 149, 11.6.2005, p. 22.

² OJ L 345, 27.12.2017, p. 1.

³ OJ L 304, 22.11.2011, p. 18.

2017, in particular paragraph 3 thereof,

- having regard to the outcome of the 3 524th meeting of the Agriculture and Fisheries Council of 6 March 2017,
- having regard to the minutes of the 2 203rd meeting of the Commission of 8 March 2017,
- having regard to the briefing paper on misleading packaging practices produced by its Policy Department A in January 2012,
- having regard to its resolution of 11 June 2013 on a new agenda for European Consumer Policy¹,
- having regard to its resolution of 22 May 2012 on a strategy for strengthening the rights of vulnerable consumers², in particular paragraph 6 thereof,
- having regard to its resolution of 4 February 2014 on the implementation of the Unfair Commercial Practices Directive 2005/29/EC³,
- having regard to its resolution of 7 June 2016 on unfair trading practices in the food supply chain⁴,
- having regard to its resolution of 19 January 2016 on the Annual report on EU Competition Policy⁵, in particular paragraph 14 thereof,
- having regard to its resolution of 14 February 2017 on the annual report on EU competition policy⁶, in particular paragraph 178 thereof,
- having regard to its major interpellation of 15 March 2017 on differences in declarations, composition and taste of products in central/eastern and western markets of the EU⁷,
- having regard to the European Parliamentary Research Service briefing of June 2017 entitled ‘Dual quality of branded food products: Addressing a possible east-west divide’,
- having regard to the survey on foodstuffs and Czech consumers carried out by the Czech Agriculture and Food Inspection Authority in February 2016,
- having regard to the special study on the issue of dual quality and the composition of products marketed within the European Union’s single market from the perspective of consumer protection law (particularly unfair commercial practices), competition law (especially unfair competition) and industrial property rights, produced by the Faculty

¹ OJ C 65, 19.2.2016, p. 2.

² OJ C 264E, 13.9.2013, p. 11.

³ OJ C 93, 24.3.2017, p. 27.

⁴ OJ C 86, 6.3.2018, p. 40.

⁵ OJ C 11, 12.1.2018, p. 2.

⁶ Texts adopted, P8_TA(2017)0027.

⁷ O-000019/2017.

of Law of Palacký University, Olomouc, in 2017,

- having regard to the various surveys, studies and tests carried out in the last few years by the food inspection authorities in a number of Member States in Central and Eastern Europe,
 - having regard to the Nielsen report of November 2014 on the state of private label around the world,
 - having regard to the Commission communication of 11 April 2018 on A New Deal for Consumers (COM(2018)0183),
 - having regard to the Commission’s proposal for a directive of the European Parliament and of the Council of 11 April 2018 on better enforcement and modernisation of EU consumer protection rules (COM(2018)0185),
 - having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety¹,
 - having regard to Article 17(2) of the Charter of Fundamental Rights of the European Union on the protection of intellectual property,
 - having regard to the joint letter from the Republic of Croatia, the Czech Republic, Hungary, Lithuania, the Republic of Poland and the Slovak Republic to the Commission of 23 March 2018 concerning the issue of dual quality of products in the context of the New Deal for Consumers,
 - having regard to the results of the comparative studies carried out by consumer protection authorities and organisations in several EU Member States,
 - having regard to the Commission proposal to update Directive 2005/29/EC on unfair commercial practices (UCPD) in order to make explicit that national authorities can assess and address misleading commercial practices that involve the marketing of products as identical in several EU countries when their composition or characteristics are significantly different,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Agriculture and Rural Development (A8-0267/2018),
- A. whereas when promoting, selling or supplying products, companies should provide consumers with accurate and easy-to-understand information on the exact product composition, including on local products and recipes, in order to enable them to make

¹ OJ L 31, 1.2.2002, p. 1.

an informed purchasing decision;

- B. whereas a key principle for brands should be that consumers have confidence in the composition, value and quality of a product; whereas it is the duty of manufacturers, therefore, to ensure that these expectations are met;
- C. whereas consumers are not aware that products from the same brand and with the same packaging are adjusted to local preferences and tastes, and whereas the varying quality of products raises concerns about some Member States being treated differently from others; whereas the European Union has already developed labels in order to meet specific expectations of consumers and to take account of production specificities recognised through the use of quality terms;
- D. whereas Directive 2005/29/EC on unfair commercial practices (UCPD) is the Union's main legislative tool for ensuring that consumers are not exposed to misleading advertising and other unfair practices in business-to-consumer transactions, including the marketing of identically branded products in a way that has the potential to mislead consumers;
- E. whereas unfair commercial practices can be formulated in the UCPD in such a way that they are prohibited under all circumstances or under certain circumstances; whereas, according to the Commission's findings, listing a practice in Annex I to the UCPD, where appropriate, leads to greater legal certainty and thus fairer competition among producers on the market;
- F. whereas consumers make an associative link between brand, product and quality and, accordingly, expect products of the same brand and/or that are identical in appearance to be equally identical in quality, whether they are sold in their own country or in another Member State;
- G. whereas consumers also make an associative link between the brand and the label/packaging of an agricultural or food product and quality, and, accordingly, expect products of the same brand that are marketed under the same label or identical in appearance to be equally identical in both quality and composition, whether they are sold in their own country or in another Member State; whereas all farmers in the European Union produce products to the same high standards, and customers expect this uniformity of quality to extend to other products within the food chain, regardless of the jurisdiction in which they reside;
- H. whereas all EU citizens deserve equal treatment when it comes to food and non-food products sold on the single market;
- I. whereas unfair practices in this respect must be eliminated in order to avoid misleading consumers, and whereas only a strong synergy at EU level can solve this cross-border issue;
- J. whereas the assessment of whether a commercial practice is unfair under the UCPD must be performed on a case-by-case basis by Member States, except in the case of the practices listed in Annex I;

- K. whereas President Juncker stressed in his 2017 State of the Union Address that it is not acceptable that in some parts of Europe people are sold food of lower quality than in other countries, despite the packaging and branding being identical;
- L. whereas there have been substantial differences in the implementation of the UCPD from one Member State to another, while the methodological approaches and effectiveness of the resolution and enforcement of the directive varies significantly between Member States;
- M. whereas the brand often plays the most important role in decisions on the value of a product;
- N. whereas a strengthened and more efficient enforcement cooperation framework would boost consumer trust and reduce consumer harm;
- O. whereas all consumers in the EU have the same rights, and whereas analyses show that certain producers and manufacturers have sold products of different quality standards under the same brand and with a deceptively identical appearance, with certain products in some countries containing less of the main ingredient or lower quality ingredients substituting higher quality ones; whereas this problem is more widespread in the Member States that have joined the EU since 2004; whereas the analyses found instances of the same products or those with a deceptively identical appearance and of a lower quality or with a different taste, consistency or other sensory characteristics being sold at prices varying considerably from one country to another; whereas even if this does not breach free market economy principles or infringe current rules on labelling or other food law, it is still an abuse of brand identity and thus hinders the principle that all consumers are treated equally;
- P. whereas there have been cases of substantial differences in products such as baby food, which brings into question the principles and claims of manufacturers, who claim that they are adjusting their products to meet local preferences; whereas some laboratory findings confirm that lower quality products may contain less healthy combinations of ingredients, thus hindering the principle of equal treatment of all consumers; whereas some producer and manufacturer representatives have agreed to amend their product recipes in some countries so that identical products are offered across the single market;
- Q. whereas these unacceptable practices are brought about by well-known agri-food multinationals seeking to maximise their profit margins by exploiting the differences in purchasing power from one Member State to the next;
- R. whereas in its New Deal for Consumers proposal, a targeted revision of the EU consumer directives following on from the Fitness Check of EU consumer and marketing laws, the Commission suggested updating the UCPD in order to make explicit the ability of national authorities to assess and address misleading commercial practices involving the marketing of products as identical in different Member States, when their composition or characteristics are in reality significantly different;
- S. whereas while consumers should not be misled, product differentiation and innovation should not be restricted as such;

- T. whereas the single market has brought major benefits to operators in the food supply chain, and whereas the food trade has an increasingly significant cross-border dimension and is of particular importance for the functioning of the single market;
- U. whereas in order to fully reap the benefits of the internal market, it is crucial that existing EU food and consumer legislation be better applied so as to identify and address unjustified dual standards and thus protect consumers from misleading information and commercial practices;
- V. whereas there is a continuous need to strengthen the role of consumer associations in this regard; whereas consumer associations play a unique role in guaranteeing consumer confidence and should be further supported through additional legal and economic measures and capacity building;
- W. whereas proven differences in ingredients in comparable products could in the long term pose a risk to consumers' health, particularly in the case of vulnerable consumers such as children or people with dietary and/or health issues, thereby contributing to a deterioration in the well-being of citizens; whereas this is the case, for example, where the level of fat and/or sugar is higher than expected, where fats of animal origin are replaced by fats of vegetable origin or vice versa, where sugar is replaced with artificial sweeteners, or where salt content is increased; whereas labelling that does not give an accurate picture of the additives used, or the number of substitutes for basic ingredients, misleads consumers and may pose a risk to their health;
- X. whereas there are no legislative regulations on dual quality at EU level, which makes it impossible to compare quality or identify cases of dual quality and means that there are no instruments that might be used to remedy the situation; whereas shortcomings in the implementation and enforcement of applicable EU food law requirements, for instance in the labelling of mechanically separated meat¹ or the use of food additives², have regularly been reported by the Commission's Health and Food Audits and Analysis services;
- Y. whereas differences in composition potentially affecting consumer health may be found not only in foodstuffs, but also in cosmetics, hygiene products and cleaning products;
- Z. whereas reformulation activities to reduce fat, sugar and salt content in food are lagging behind in many Central, Eastern and South-Eastern European countries;
1. Underlines that the results of numerous tests and surveys conducted in several Member States, predominantly in Central and Eastern Europe, with differing methodologies for laboratory testing, have proven that there are differences of various magnitudes, *inter alia* in composition and the ingredients used, between products which are advertised and distributed in the single market under the same brand and with seemingly identical packaging, to the detriment of consumers; notes that according to a survey conducted for a national competent authority, the vast majority of consumers are concerned about such differences; therefore concludes that based on the findings of these tests and surveys, consumers are concerned about discrimination between different markets in the

¹ http://ec.europa.eu/food/audits-analysis/overview_reports/details.cfm?rep_id=76

² http://ec.europa.eu/food/audits-analysis/overview_reports/details.cfm?rep_id=115

Member States; underlines that any such kind of discrimination is unacceptable and that all EU consumers should enjoy access to the same level of product quality;

2. Highlights that the cases of such significant differences concern not only food products but frequently also non-food products, including detergents, cosmetics, toiletries and products intended for babies;
3. Recalls that Parliament called on the Commission in 2013 to carry out a meaningful investigation to evaluate whether there the existing Union legislation needed to be adjusted, and to inform Parliament and consumers of the results;
4. Welcomes the recent initiatives announced by the Commission to address this issue, in particular its commitment to delivering a common testing methodology and allocating a budget for its preparation and enforcement and for the collection of further reliable and comparable evidence, and to updating the UCPD and launching the Knowledge Centre for Food Fraud and Quality;
5. Takes note of the mandate given by the European Council to the High Level Forum for a Better Functioning Food Supply Chain in order to address the issue of dual quality; encourages Member States and their competent authorities to actively participate in ongoing initiatives, including the development and integration into their working practices of a common testing methodology and the collection of further evidence; stresses the need for those parties representing consumers' interests to be actively involved and to be permitted to have opinions delivered on their behalf, including the representatives of consumer organisations, manufacturers and research organisations that have conducted product tests in Member States; believes that Parliament should be involved in all ongoing initiatives that may have an impact on attempts to address the issue of dual quality;
6. Recommends that the Member States concerned draw up their own assessment of the methodology and effectiveness of enforcement of the UCPD and other existing legislation on the issue of the dual quality of food and other products and submit them to the Commission for an objective assessment of the seriousness of the problem;
7. Welcomes Parliament's adoption of a pilot project for 2018, which involves a series of market investigations into several categories of consumer products with a view to assessing different aspects of dual quality; expects the project to be conducted and published in time, as initially planned; believes that the project should also be extended into 2019 so as to secure a greater breadth of knowledge and to cover the non-food sector; calls for MEPs to be afforded greater involvement in overseeing the project; encourages Parliament, the Commission and the Member States to make use of all the available tools, including pilot and national projects, in order to further assess different aspects of dual product quality;
8. Stresses that comprehensive information on the public authority responsible for taking action and on relevant administrative or judicial proceedings, including the possibility for members of the public to file online complaints, is vital for the effective enforcement of the UCPD; views as negative, therefore, the lack of information in the Member States concerned which, in spite of the concerns expressed by the Member States about the need to address the dual product quality issue, do not make this

information available on the websites of the responsible authorities;

9. Underlines that the Commission has already received notification of a new national labelling measure designed to warn consumers of differences in the composition of foodstuffs;
10. Welcomes the fact that, in order to further improve consumer protection in the EU and provide support for businesses, the Commission has launched an online training programme to help companies better understand and enforce consumer rights in the EU;

Commission Notice on the application of EU consumer protection law to issues of dual quality of products

11. Takes note of the Commission Notice on the application of EU food and consumer protection law to issues of dual quality of products; points out that this notice is intended to help national authorities to determine whether a company is breaking EU food and consumer laws when selling products of dual quality in different countries, and to advise them on how to cooperate with one another; is concerned that the notice's step-by-step approach for the identification by national authorities of whether producers are in breach of EU law currently lacks any practical application by the authorities, which could mean that consumers' rights are being violated;
12. Agrees with the Commission that in the single market, where consumers have a general understanding of the principles of free circulation and equal access to goods, they do not, *a priori*, expect branded products sold in different countries to be differentiated; recalls that according to the Commission, studies made on brand loyalty demonstrate that, in the minds of consumers, brands act as a certificate for controlled and constant quality; further agrees with the Commission that this explains why some consumers may expect branded products to be of equivalent quality if not exactly the same wherever and whenever purchased, and expect brand owners to inform them when they decide to change the composition of their products;
13. Considers, therefore, that the provision of any additional information, albeit within the principal field of vision of a package, is insufficient unless the consumer clearly understands that the product in question differs from seemingly identical products of a same brand sold in another Member State;
14. Further agrees with the Commission, in this context, that the producers do not necessarily have to offer identical products across different geographical areas and that the free movement of goods does not mean that every product must be identical everywhere within the single market; emphasises that business operators are permitted to market and sell goods of differing compositions and characteristics on the basis of legitimate factors provided that they fully respect EU legislation; stresses, however, that these products should not diverge in quality when they are offered to consumers on different markets;
15. Considers that providing accurate and easy-to-understand information to consumers is key to tackling dual quality of products; is convinced that in the event of a company intending to place on the market of different Member States a product that differs in certain characteristics, such a product cannot be labelled and branded in a seemingly

identical manner;

16. Notes that there might be acceptable differences in the composition of a single brand's product and that products may differ on account of regional consumer preferences, the sourcing of local ingredients, requirements of national law, or reformulation objectives; stresses that the intention is not to lay down or harmonise food quality requirements and that it is not desirable to prescribe to manufacturers the exact composition of the various products; believes, however, that consumer preferences should not be used as an excuse to lower quality or offer different quality grades on different markets; stresses that consumers must be clearly informed and aware of this adjustment for each individual product and not only in general terms that this established practice exists;
17. Considers that the notice is perceived as primarily intended for foodstuffs; believes that provisions on the application of consumer protection law should be applied to all food and non-food products available in the single market in general, and that product labels must be legible for consumers and fully informative;
18. Draws attention to the Commission's guidance from 2016 on the application of the UCPD, which states that: 'goods of the same brand and having the same or similar packaging may differ as to their composition depending on the place of manufacture and the destination market, i.e. they may vary from one Member State to another' and that 'under the UCPD, commercial practices marketing products with a different composition are not unfair per se'; emphasises the importance of the Commission's guidance documents in facilitating a proper and coherent application of the UCPD; therefore calls on the Commission to clarify the relationship between the notice, the guidance and the paper drafted by the internal market subgroup of the High Level Forum for a Better Functioning Food Supply Chain;
19. Notes that there may be different requirements for the control methods of the national competent authorities; underlines that there are various analyses that have already been conducted which could serve as a basis for designing and implementing the common testing methodology, even if their methodologies differed and their results were not assessed in the same way; considers that the aim of the work to develop a methodology led by the Commission's Joint Research Centre (JRC) should be clearly stated so as to ensure a unified interpretation of the resulting methodology, including a definition of 'significant difference', and to enable the competent authorities to use it; points out that establishing which of the various products is the most standard and thus the 'product of reference' could actually impede the overall assessment as it may be too difficult to determine;
20. Welcomes the Commission's efforts to assist national enforcement authorities in identifying unfair commercial practices in the marketing of products; calls on the Commission to coordinate national competent authorities in this regard; underlines that the aim of such methodology is to ensure the collection of reliable and comparable evidence by the Member States on a common basis and to contribute to an overall assessment of how serious and widespread the issue of dual quality on the Single Market is; recalls that the factual nature of unfair practices is likely to continue to be judged only on a case-by-case basis, since the extent of the act of misleading the consumer is always a matter of subjective judgment by the competent authority or court;

21. Welcomes the Commission's decision to invite the competent authorities to perform more market tests within the Member States that involve product comparisons across different regions and countries; point out, however, that according to the Commission, such tests should be carried out with a common testing approach, which has not yet been fully developed; stresses the need to stick to the timetable so that the results of the testing carried out under a common testing approach are completed, are published in all official EU languages in a publicly available database, and are analysed at the earliest possible date but no later than by the end of 2018; emphasises, moreover, the need to disclose these results promptly for the purposes of informing consumers and producers in order to raise awareness and thus help to reduce incidences of dual product quality;

Other aspects of dual quality

22. Underlines that private labels have become an essential staple in consumers' shopping baskets and that their market share has increased across most product categories in most Member States over the past decade; believes that private labels should not give the impression of a branded product so as to prevent consumer confusion; reasserts that the issue of private labels requires particular attention from the Commission, with a view to ending the confusion between private labels and branded products; notes that the single market is accessible to producers and manufacturers, but that it is also very competitive, with some brands ubiquitously known or well perceived across the Union;
23. Recalls that Parliament has repeatedly called on the Commission to determine whether dual quality has negative repercussions for local and regional production, in particular SMEs; regrets that no data has been presented by the Commission so far;
24. Underlines that the counterfeiting of branded products exposes consumers to health and safety risks, undermines consumer confidence in brands and leads to a loss of revenue for producers; notes that the range of counterfeit products recovered in the EU remains broad and encompasses nearly all types of goods;
25. Is concerned about restrictions placed on traders when it comes to purchasing goods that may have a negative effect on consumer choice; urges the Commission to identify the factors that contribute to a fragmentation of the single market in goods and illegitimately restrict consumers' ability to benefit fully from the single market, with a particular focus on territorial supply constraints and their implications; invites the Commission to make use of competition law, if applicable, in order to tackle such practices;
26. Points out that national competent authorities can select samples and perform tests only on the territory of their Member State; stresses the need for enhanced, effective, transparent and swift cross-border cooperation and data-sharing, including exchange on potentially non-compliant products and information on possible unfair practices, between national consumer protection and food authorities, consumer associations and the Commission in order to tackle dual quality and improve and approximate the enforcement of the legislation; calls on the Commission and the Member States to engage in such cooperation more intensively; welcomes the adoption of the revised Consumer Protection Cooperation (CPC) Regulation, which strengthens investigation

and enforcement powers, improves information and data exchange and access to any relevant information and establishes harmonised rules setting out the procedures for the coordination of investigation and enforcement measures in this regard;

27. Recognises the usefulness of the ‘sweeps’, which serve as an important form of enforcement coordination under the CPC Regulation, and calls on the Commission and Member States to further strengthen them and broaden their scope;

Recommendations and further steps

28. Emphasises the value of broad and timely public debate that leads to increased consumer awareness about products and their characteristics; notes that some manufacturers and owners of private labels have already announced changes to recipes or the use of a single production standard at EU level; stresses the importance of the role of industry in improving transparency and clarity with regard to product composition and quality and any changes thereto; welcomes the Commission’s initiative to develop a code of conduct in this regard; calls, for the sake of their own interests, for both producers and retailers to be granted even greater involvement, in order to help find an effective remedy to the present situation as soon as possible without recourse to enforcement procedures, and to enable European consumers to access products of the same quality throughout the entire single market; invites manufacturers to consider including a logo on the packaging that would indicate that the content and quality of the same brand is the same across Member States;
29. Invites consumer organisations, civil society organisations and the notified national bodies responsible for enforcement of the UCPD and other relevant legislation to play a more active role in the public debate and in informing consumers; is convinced that consumer organisations could make a significant contribution to tackling the problem of dual quality; calls on the Commission and the Member States to bolster their support for national consumer organisations through financial and legal mechanisms, so they can build capacity, develop their testing activities, perform comparative tests and, in tandem with the competent authorities, help to track and expose cases of unfair product differentiation; believes, moreover, that an enhanced cross-border exchange of information between consumer associations should be promoted;
30. Considers that on the basis of previous experiences, competent authorities have been unable to tackle effectively any specific cases of dual quality at national level alone or enforce existing legislation, or have attempted to do so only to a minimal extent, owing in part to an absence of an explicit legal provision at EU level; recalls that the Member States are responsible for enforcing the UCPD and that they should therefore do so in order to ensure that consumers are not misled by unfair marketing practices; stresses that the Member States should ensure that the competent national authorities possess the adequate technical, financial and human capabilities in order to ensure effective enforcement; calls on the Member States to provide consumers with a space for the submission of complaints and their further investigation, and to inform consumers as far as possible of their rights and options as regards the enforcement of existing legislation and the obligations of vendors to inform them of the composition and, where applicable, the origin of products;

31. Draws attention to the fact that the issue of dual quality is directly related to the essence of the functioning of the single market and consumer trust, both of which are at stake, and therefore requires, *inter alia*, a solution at Union level via directly enforceable measures; is convinced that given the possibility of action at national level, Union-level action would safeguard the integrity of the single market; invites the Commission to map out existing national standards for food and non-food products in the EU and to assess their relevance to cases of dual quality in the single market;
32. Calls for the urgent development of capacities and mechanisms at EU level in a specialised monitoring and supervisory unit in an existing EU body (JRC, European Food Safety Authority (EFSA) or other), keeping bureaucracy to a minimum, to monitor consistency in composition and proportional use of ingredients in identically branded and packaged food products and to assess comparative laboratory analyses to identify these unfair commercial practices in the marketing of food products;
33. Welcomes the Commission's New Deal for Consumers proposal, which seeks to tackle dual quality of products by amending Article 6 of the UCPD to designate as a misleading commercial practice the marketing of a product as being identical to the same product marketed in several other Member States, when those products have a different composition or characteristics; notes, however, that the proposal also contains some unclear provisions that require clarification in order to ensure proper interpretation and application;
34. Emphasises that the outcome of the legislative process should be a clear definition of what can be considered dual quality and how each case should be assessed and addressed by the competent authorities; stresses, in this regard, that the open list of so-called 'legitimate factors' could jeopardise the ability of the competent authorities to undertake assessments and apply the law; is concerned that the use of the concept of 'defined consumer preferences' in assessing whether a differentiation in product composition can or cannot be justified may lead to conflicting interpretations between competent authorities;
35. Calls on the Commission to extend the mandate given to the JRC to work on a Europe-wide harmonised methodology for comparing the characteristics of non-food products and on guidelines for improving product transparency within one year, and to evaluate the results of tests; points out that the JRC should also, for the purposes of exchanging best practices in the area, strive to cooperate with Member States' authorities which have already undertaken their own product testing but have not yet communicated the results to the national authorities of other Member States;
36. Points out that the safety and quality of food, and preventing consumers from being misled, are matters of the highest priority; reminds the Commission of its commitment to better monitoring and enhancing the correct application of EU legislation; considers that the competent national authorities should monitor compliance with the applicable law in these areas effectively;
37. Encourages the Commission to set up a specialised directorate under the existing competent EU agency, with professionals in the field, to carry out checks in manufacturers' factories and conduct audits of the production flow in order to verify whether the composition of the product corresponds to what has been indicated by the

manufacturer in cases where a suspicion of dual quality arises;

38. Welcomes the Commission's proposal to improve the transparency of scientific studies in the field of food safety in response to expressions of public concern, in order to boost access to the information required to make purchasing decisions backed by a reliable, science-based risk assessment;
39. Calls on the national food authorities to establish case by case whether suspected discriminatory practices are indeed illegal, on the basis of the provisions of the UCPD and their interplay with the fair information requirements set out in Regulation No 1169/2011 on the provision of food information to consumers;
40. Notes that all EU citizens are affected by dual quality practices, including when they travel between Member States;
41. Stresses, however, that substantial differences in products for babies, such as food for infants and young children, cannot be justified on the grounds of regional taste preferences alone;
42. Strongly rejects the claim made by some producers that changes in composition and/or quality are made so that prices conform to consumer expectations; highlights that various studies have shown that products of lower quality are often more expensive than their counterparts of higher quality elsewhere in the EU;
43. Strongly encourages the use of the circular economy principle for product packaging and stresses that if product packaging in one Member State adheres to this principle, then concerted efforts should be made by the producer to ensure that this is the case for all their products marketed under the same brand and in the same type of packaging across the EU and beyond;
44. Stresses that some cases of dual quality products result from a lack of enforcement of EU law; calls on Member State authorities to enforce, as a matter of urgency, existing EU rules on food labelling, including in relation to mechanically separated meat, for example;

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45. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

Although the brand name, packaging design and marketing look at a first glance are the same, several researches conducted in different Member States have revealed in the EU Single Market products, which have clearly different compositions from the point of view of the recipe, the basic raw material used or its share in the product, all this depending on the country of their purchase. Moreover, it cannot be ruled out that these findings on dual quality of products relate only to food and beverages, but may also apply to consumer goods like detergents or hygiene supplies.

The issue of dual quality in different Member States or in different regional and local markets may be, according to a legal study conducted by the experts of the Faculty of Law of University Palackého Olomouc, seen in following activities:

- manufacturer places products on the market with varying flavors and compositions (i.e. different main ingredient) but with the same or similar (indistinguishable for the consumer) packaging appearance,
- a manufacturer places products of differing qualities on the market but with the same or similar (indistinguishable for the consumer) packaging appearance,
- a manufacturer places products of differing weights on the market but with the same or similar (indistinguishable for the consumer) packaging appearance,
- when launching a new product on a particular market, a manufacturer uses a product with a higher quality composition (e.g. higher meat quantity or quality of ingredients in the product) in order to attract consumers' attention and "teach" consumers to buy/adopt the product; after a certain period, however, a "recipe change" occurs without any obvious change in the product's packaging (except for the product composition given in small print on the back of the label).

The manufacturer carries out all of these activities without highlighting to the consumer clearly, emphatically, transparently and without misleading, the fact that the product is another product of different composition, weight, quality or other related characteristics.

This all leads to a situation where a consumer from one country staying in the territory of another state cannot be sure that a product they know of certain characteristics from their home country corresponds to the product he/she is buying in the state they currently stay in.

Position of the Rapporteur

The Rapporteur started to follow the issue of dual quality closely in 2011 when a study carried out by the 'Association of Consumers in Slovak Republic' showed that the composition of six branded food products and their prices varied substantially between seven EU countries. As a follow up to this study, the Rapporteur for the first time approached the Commission with an interpellation whether, in the Commission's point of view, this dual quality is a problem related to the functioning of the Single Market and consumer protection.

In 2015, the Rapporteur co-organized a survey conducted by the University of Chemistry and

Technology Prague that compared the qualitative characteristics of the 24 products originating from the retail markets of the Czech Republic and Germany in order to assess their conformity or lack thereof. Substantial disparities were found in one third of the samples (for instance, one product's main component was mechanically separated poultry meat, sold in Czech Republic, although in the German market, it contained pork meat). The study also questioned the relevance of the often used arguments of differing taste and price preferences in different countries, because prices of involved products almost did not differ and, according to certified sensory panel, taste preferences did not correspond to the market that products were supposedly adjusted to.

The Rapporteur's intention is by no means to unify products in the Single Market or to prescribe manufacturers to change the compositions of their products or to determine the exact composition of the individual products. Moreover, the Rapporteur is also aware that there may be objective factors that affect the resulting compositions of products.

The rapporteur is however convinced that the principle of equal access to high-quality goods in a non-discriminatory way in the Single Market should be a true right of all European citizens. If this is not the case, the essence of the functioning of the Single Market and consumer trust in the Single Market could be seriously damaged.

Recent initiatives announced by the Commission to address this issue, in particular its commitment to deliver a common testing methodology at European level, are welcomed by the Rapporteur. Given the fact that dual quality of products is related to the functioning of the Single Market, it is clear that European data and a common approach are needed. That is why the Rapporteur already in 2013 suggested via the European Parliament's resolution on new agenda for European Consumer Policy to call on the Commission to carry out a meaningful investigation into the dual quality issue that would make it possible to evaluate whether there is a need for adjustment of existing Union legislation.

The rapporteur stresses that consumers should be precisely and transparently informed that the product he or she has purchased or knows from another Member State is different in order to avoid misleading of the consumer and his/her overall impression of the product of purchase. It is also important to raise consumer awareness about products, their characteristics and composition.

According to the Rapporteur, the sale of what the consumer can easily perceive as identical products with intentionally different composition to consumers in different parts of the EU is an unfair practice and should therefore be unacceptable. The Rapporteur therefore believes that an addition of another type of misleading commercial practice to the Annex I of the Unfair Commercial Practices Directive represents the most effective way to address any obvious particular cases of dual quality throughout the whole European Union.

22.6.2018

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on the Internal Market and Consumer Protection

on dual quality of products in the single market
(2018/2008(INI))

Rapporteur for opinion (*): Biljana Borzan

(*) Associated committee – Rule 54 of the Rules of Procedure

SUGGESTIONS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety¹,
- having regard to Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers²,
- having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market³,
- having regard to Article 17(2) of the Charter of Fundamental Rights of the European Union on the protection of intellectual property,
- having regard to the Commission Notice of 26 September 2017 on the application of EU food and consumer protection law to issues of Dual Quality of products – The specific case

¹ OJ L 31, 1.2.2002, p. 1.

² OJ L 304, 22.11.2011, p. 18.

³ OJ L 149, 11.6.2005, p. 22.

of food (C(2017)6532),

- having regard to the joint letter from the Republic of Croatia, the Czech Republic, Hungary, Lithuania, the Republic of Poland and the Slovak Republic to the Commission of 23 March 2018 concerning the issue of dual quality of products in the context of the New Deal for Consumers,
 - having regard to Commission President Jean-Claude Juncker’s State of the Union speech of 13 September 2017, in which he stressed that it is unacceptable that in some parts of the EU people are sold food products of lower quality than in others, despite the packaging and branding being identical,
 - having regard to the conclusions of the meeting of the Agriculture and Fisheries Council of 6 March 2017,
 - having regard to the Commission communication of 11 April 2018 on a New Deal for Consumers (COM(2018)0183),
 - having regard to the proposal for a Directive of the European Parliament and of the Council on better enforcement and modernisation of EU consumer protection rules (COM(2018)0185),
 - having regard to the results of the comparative studies carried out by consumer protection authorities and organisations in several EU Member States,
 - having regard to the Commission proposal to update Directive 2005/29/EC on unfair commercial practices (UCPD) in order to make explicit that national authorities can assess and address misleading commercial practices that involve the marketing of products as identical in several EU countries when their composition or characteristics are significantly different,
 - having regard to its major interpellation of 15 March 2017 on the differences in declarations, composition and taste of products in central/eastern and western markets of the EU (O-000019/2017),
 - having regard to its resolution of 11 June 2013 on a new agenda for European Consumer Policy¹,
- A. whereas results of analyses conducted in several Member States have proven that there are significant differences in the composition and quality of certain products marketed under the same brand and with the same packaging, and that are advertised in the same way across the EU; whereas those differences are often due to the use of cheaper and of lower quality ingredients, which are often also of lower nutritional value;
- B. whereas these analyses also show that certain products include less of the main ingredient, ingredients that are considered to be less healthy and of poorer quality, and ingredients that have different taste, consistency and other sensory characteristics;
- C. whereas at the abovementioned Agriculture and Fisheries Council meeting, several Member States presented the results of studies showing that products were being sold in the EU with

¹ OJ C 65, 19.2.2016, p. 2.

the same name and the same packaging but with different levels of quality, a different taste and/or different ingredients, and pointed out that this practice may mislead consumers and creates unfair competition;

- D. whereas products of the same brand may have different characteristics deriving from legitimate factors such as consumer preference in destination regions, the geographical location of the place of production, specific local requirements, and differences in sourcing raw materials owing to their geographical or seasonal availability;
- E. whereas the safety and quality of food, and protection of consumers from being misled, are the top priorities;
- F. whereas proven differences in ingredients in comparable products could in the long term pose a risk to consumers' health, particularly in the case of vulnerable consumers such as children and people with dietary and/or health issues, thereby contributing to a deterioration in the well-being of citizens; whereas this is the case for example where the level of fat and/or sugar is higher than expected, where fats of animal origin are replaced by fats of vegetable origin or vice versa, where sugar is replaced with artificial sweeteners, or where salt content is increased; whereas labelling that does not give an accurate picture of the additives used, or the number of substitutes for basic ingredients, misleads consumers and may also pose a risk to their health;
- G. whereas there are no legislative regulations on dual quality at EU level, which makes it impossible to compare quality or identify cases of dual quality and means that there are no instruments that might be used to remedy the situation; whereas shortcomings in the implementation and enforcement of applicable EU food law requirements, for instance in the labelling of mechanically separated meat¹ or the use of food additives², have regularly been reported by the Commission's Health and Food Audits and Analysis services; whereas generally, manufacturers of food and other consumer goods can take advantage of diverging interpretations of EU legislation and/or its poor implementation and enforcement by national competent authorities to adapt their products, to the detriment of consumers; whereas the varying content of products marketed under the same brand and with the same packaging diminishes consumer trust and undermines the reputation of the EU regulatory framework;
- H. whereas the presence of products on the EU single market that are marketed as identical in several Member States but that have a significantly different composition or characteristics completely undermines the basic principles on which the single market is based; whereas consumers in the internal market should benefit from the same level of protection in all Member States;
- I. whereas differences in composition potentially affecting consumer health may be found not only in foodstuffs, but also in cosmetics, hygiene products and cleaning products;
- J. whereas reformulation activities to reduce fat, sugar and salt content in food are lagging behind in many Central, Eastern and South-Eastern European countries;
- K. whereas brands have a significant impact on consumer perception of products, their value and their quality; whereas consumers do not expect a priori that branded products sold in

¹ http://ec.europa.eu/food/audits-analysis/overview_reports/details.cfm?rep_id=76

² http://ec.europa.eu/food/audits-analysis/overview_reports/details.cfm?rep_id=115

different countries within the single market might have different characteristics;

- L. whereas consumers in different Member States, and/or those who travel between Member States, are unable to assess by themselves the potential differences in the taste and composition of certain products when those differences are not recorded on the product label, and are therefore unable to make an informed purchasing decision owing to a lack of relevant information, which may distort their economic behaviour;
 - M. whereas several public opinion surveys have shown that consumers are upset by such differences in quality, which make them feel like second-class EU citizens;
1. Welcomes the allocation of EUR 2 million for the development of a common testing methodology, and the inclusion in the EU budget for 2018 of a pilot project that aims to assess different aspects of dual quality for several categories of products; urges Member States and national authorities to actively participate in ongoing initiatives to facilitate the process and to integrate this methodology into their working practices; highlights the importance of the in-depth and timely analysis of food, but also non-food, products and urges the Commission to allocate financial resources with a view to carrying out comparative testing during a market surveillance period of at least two years in order to deter manufacturers who have engaged in this misleading practice;
 2. Encourages the Commission to set up a specialised directorate under the existing competent EU agency, with professionals in the field, to carry out checks in manufacturers' factories and conduct audits of the production flow in order to verify whether the composition of the product corresponds to what has been indicated by the manufacturer in cases where a suspicion of dual quality arises; calls for this new directorate to establish an online platform in the form of a European public register, which would be subdivided into one section containing information on all the products that are found by the competent authorities to be of dual quality and another section containing information provided voluntarily by manufacturers on products marketed in the EU; stresses that the information should be easily accessible, for easy comparison, in order to enable consumers to make informed decisions before making a purchase;
 3. Takes note of the publication by the Commission of an EU harmonised methodology for selecting, sampling and testing foods to assess their quality-related characteristics; highlights the commitment to making EU-wide test results available by the end of this year; calls for Members of the European Parliament to have greater involvement in the process; emphasises that in addition to a uniform methodology for the testing of dual quality of food and drink products, a uniform methodology for evaluating the test results and interpreting the findings must also be developed;
 4. Welcomes the debate on dual quality within the High Level Forum for a Better Functioning Food Supply Chain; stresses the need to involve as many stakeholders as possible;
 5. Welcomes the Commission's proposal to improve the transparency of scientific studies in the field of food safety in response to expressions of public concern, in order to boost access to the information required to make purchasing decisions backed by a reliable, science-based risk assessment;
 6. Regrets that the Commission Notice on the application of EU food and consumer protection law to issues of dual quality of food products lacks ambition, since consumer protection legislation should apply to all products in general, and that the notice proposes steps that are

insufficient to tackle the problem of dual quality of products in the single market; stresses that it is important to develop clear and efficient guidance and support for consumer authorities, and that corrective action is urgently needed in order to combat discriminatory practices against consumers; warns that consumers must not be misled and calls on the national food authorities to establish case by case whether these practices are illegal, on the basis of the provisions of the UCPD and their interplay with the fair information requirements set out in Regulation No 1169/2011 on the provision of food information to consumers;

7. Is concerned about territorial constraints experienced by traders when purchasing goods; calls on the Commission to urgently investigate unfair business-to-business (B2B) practices, such as when suppliers force supermarkets to source their products from a particular factory, which may prevent consumers from buying potentially higher quality products from another Member State and distort the single market;
8. Notes that local producers have difficulty in accessing the common market; calls on the Commission to determine whether dual quality has negative repercussions for local and regional production;
9. Highlights the importance of raising consumer awareness and improving access to information; believes that providing this information should be compulsory, rather than simply voluntary; calls on the Commission and the relevant national bodies to organise communication campaigns targeting consumers across the EU, with a particular focus on western Member States in which awareness may be lower; notes that all EU citizens are affected by dual quality practices, including when they travel between Member States; welcomes the statements made by some manufacturers that they would change their recipes; calls for assurances that any such changes will not result in the lowering of product quality in any Member State; stresses the role of industry in providing clear and correct consumer information on packaging, in ending discriminatory practices and in restoring consumer trust; welcomes the Commission initiative to facilitate the development of a code of conduct by producers and brand associations;
10. Stresses that it is inappropriate to standardise the taste of food across the EU and the recipes used to make it, since food recipes also reflect the diversity of regional taste preferences in the EU; stresses, however, that substantial differences in products for babies, such as food for infants and young children, cannot be justified on grounds of regional taste preferences alone; acknowledges the argument that other products might in some cases differ for legitimate reasons; stresses, however, that consumers should be clearly and promptly informed of any differences; takes the view that foods of the same brand may occasionally differ in taste and recipe on account of certain conditions on local markets within the EU, and that the use of local raw materials and the need to take into account national law or reformulation objectives can result in differences;
11. Underlines the importance of civil society in analysing, challenging and raising awareness about dual quality practices; calls for increased support for national consumer organisations, particularly in countries where they are still relatively weak, so that they can build capacity, develop their testing activities and contribute, alongside competent authorities, to monitoring and exposing situations of unfair product differentiation; calls for better protection of institutional and individual whistle-blowers in the field of food safety and consumer rights;

12. Stresses that arguments citing consumer preferences and food reformulation when not accompanied by sufficient and suitable information, such as on compliance with relevant national rules, can in no way justify the placing of products of dual quality on the market, given that these products do not reflect general consumer interest and that consumer preferences are not determined transparently;
13. Strongly rejects the claim made by some producers that changes in composition and/or quality are made so that prices conform to consumer expectations; highlights that various studies have shown that products of lower quality are often more expensive than their counterparts of higher quality elsewhere in the EU;
14. Considers that, in the single market, there should, in principle, be no difference in quality or nutritional value between products marketed in a specific and identical type of packaging; notes that products of the same brand may, however, have different characteristics deriving from legitimate factors, such as geographical location of production, specific local requirements or differences in sourcing of raw materials owing to their geographical or seasonal availability, but that consumers should be duly informed in a clear and visible manner on the product packaging of any variation in composition and characteristics compared to the original recipe; calls on the Commission to propose the amendment of legislation on the labelling of products to this end;
15. Strongly encourages the use of the circular economy principle for product packaging and stresses that if product packaging in one Member State adheres to this principle, then concerted efforts should be made by the producer to ensure that this is the case for all their products marketed under the same brand and in the same type of packaging across the EU and beyond;
16. Insists on the importance of the notion of a ‘product of reference’, against which consumer expectations are to be measured; highlights that consumers must be adequately informed about the composition of the products they buy, so that they do not buy a product whose composition differs from that which they have in mind;
17. Stresses that some cases of dual quality products result from a lack of enforcement of EU law; calls on Member State authorities to enforce existing EU rules on food labelling as a matter of urgency, including in relation to mechanically separated meat, for example;
18. Welcomes the recent Commission initiatives to address the issue of dual quality, in particular the update of the UCPD within the proposal on consumer protection known as the New Deal for Consumers; regrets however, that the proposed amendment to Article 6 of the UCPD may not lead to greater legal certainty; believes that amending Annex I to the UCPD by adding the practice of dual quality to the blacklist is the most effective way to tackle cases of dual quality on the market; calls on the Commission to provide a legal framework enabling consumers to seek redress from producers when consumer rights have been violated;
19. Notes that dual quality of products not only concerns food products, but also extends to many different sectors such as the cosmetics sector; calls for further efforts to establish non-discriminatory practices between Member States and rules for all products on the internal market;
20. Highlights the need for effective and comprehensive legislation with clear instructions on tackling the issue of dual quality.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	20.6.2018
Result of final vote	+: 51 -: 9 0: 3
Members present for the final vote	Marco Affronte, Margrete Auken, Pilar Ayuso, Zoltán Balczó, Simona Bonafè, Biljana Borzan, Paul Brannen, Soledad Cabezón Ruiz, Nessa Childers, Birgit Collin-Langen, Miriam Dalli, Mark Demesmaeker, Stefan Eck, Bas Eickhout, José Inácio Faria, Francesc Gambús, Elisabetta Gardini, Gerben-Jan Gerbrandy, Arne Gericke, Jens Gieseke, Julie Girling, Sylvie Goddyn, Françoise Grossetête, Andrzej Grzyb, Jytte Guteland, György Hölvényi, Anneli Jäätteenmäki, Jean-François Jalkh, Benedek Jávor, Karin Kadenbach, Kateřina Konečná, Urszula Krupa, Giovanni La Via, Jo Leinen, Peter Liese, Lukas Mandl, Valentinas Mazuronis, Joëlle Mélin, Susanne Melior, Miroslav Mikolášik, Massimo Paolucci, Bolesław G. Piecha, Pavel Poc, John Procter, Frédérique Ries, Annie Schreijer-Pierik, Renate Sommer, Claudiu Ciprian Tănăsescu, Ivica Tolić, Estefanía Torres Martínez, Adina-Ioana Vălean, Jadwiga Wiśniewska, Damiano Zoffoli
Substitutes present for the final vote	Herbert Dorfmann, Eleonora Evi, Eleonora Forenza, Peter Jahr, Norbert Lins, Christel Schaldemose, Bart Staes, Dubravka Šuica
Substitutes under Rule 200(2) present for the final vote	Clare Moody, Thomas Waitz

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

51	+
ALDE:	Gerben-Jan Gerbrandy, Anneli Jäätteenmäki, Valentinas Mazuronis, Frédérique Ries
ECR:	Mark Demesmaecker, Arne Gericke, Urszula Krupa, Bolesław G. Piecha, John Procter, Jadwiga Wiśniewska
EFDD:	Eleonora Evi
GUE/NGL:	Stefan Eck, Eleonora Forenza, Kateřina Konečná, Estefanía Torres Martínez
NI :	Zoltán Balczó
PPE:	Pilar Ayuso, Birgit Collin-Langen, José Inácio Faria, Françoise Grossetête, Andrzej Grzyb, György Hölvényi, Peter Jahr, Giovanni La Via, Peter Liese, Norbert Lins, Miroslav Mikolášik, Annie Schreijer-Pierik, Dubravka Šuica, Ivica Tolić, Adina-Ioana Vălean
S&D:	Biljana Borzan, Paul Brannen, Soledad Cabezón Ruiz, Nessa Childers, Miriam Dalli, Jytte Guteland, Karin Kadenbach, Jo Leinen, Susanne Melior, Clare Moody, Massimo Paolucci, Pavel Poc, Christel Schaldemose, Claudiu Ciprian Tănăsescu
VERTS/ALE:	Marco Affronte, Margrete Auken, Bas Eickhout, Benedek Jávor, Bart Staes, Thomas Waitz

9	-
ENF	Sylvie Goddyn, Jean-François Jalkh, Joëlle Mélin
EPP	Herbert Dorfmann, Elisabetta Gardini, Jens Gieseke, Julie Girling, Lukas Mandl, Renate Sommer

3	0
EPP	Francesc Gambús
S&D:	Simona Bonafè, Damiano Zoffoli

Key to symbols:

+ : in favour

- : against

0 : abstention

17.5.2018

OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT

for the Committee on the Internal Market and Consumer Protection

on dual quality of products in the single market
(2018/2008(INI))

Rapporteur for opinion: Momchil Nekov

SUGGESTIONS

The Committee on Agriculture and Rural Development calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas consumers make an associative link between the brand and label or packaging of an agricultural or food product and quality, and expect products of the same brand marketed under the same label or identical in appearance to be identical also in terms of quality and composition whether they are sold in their own country or in another Member State; whereas all farmers in the European Union produce products to the same high standards, and customers expect this uniformity of quality to extend to other products of the food chain, regardless of the jurisdiction in which they reside;
- B. whereas unfair practices in this respect must be eliminated in order to avoid misleading consumers, and whereas only a strong synergy at EU level can solve this cross-border issue;
- C. whereas comparative organoleptic tests and analyses of product content and labelling involving the comparison of products with the same products from other countries have recently been carried out in approved laboratories in a number of EU countries, including Bulgaria, the Czech Republic, Croatia, Hungary, Slovenia and Slovakia on certain products marketed in these countries; whereas no European consumer should be treated as a second-class citizen in the single market by being offered products under the same brand but of lower quality than in other Member States;
- D. whereas Member States are not individually in a position to compare all food products with those available in other Member States; whereas a robust European methodology accepted by all actors in the food supply chain is necessary and a common EU body or

notification or data-sharing system could provide instant access to information about a product's composition and ingredients; whereas the Commission's continuing discussions and full involvement of stakeholders – such as consumer organisations, agri-food manufacturers, and national authorities within the Consumer Protection Cooperation Network – are essential to the development of a common methodology for comparative tests of food products in different Member States in order to shed more light on the scope of the problem;

- E. whereas all consumers in the EU have the same rights, and whereas analyses show that certain producers and manufacturers have sold products of different quality standards under the same brand and with a deceptively identical appearance, with certain products in some countries containing less of the main ingredient or lower quality ingredients substituting higher quality ones; whereas this problem is more widespread in the Member States that have joined the EU since 2004; whereas the analyses found instances of the same products or those with deceptively identical appearance and of a lower quality or with a different taste, consistency or other sensory characteristics being sold at prices varying considerably from one country to another; whereas even if this does not breach free market economy principles or infringe current rules on labelling or other food law, this is an abuse of brand identity and thus hinders the principle that all consumers are treated equally;
- F. whereas there have been cases of substantial differences in products such as baby food, which brings into question the principles and claims of manufacturers, who claim that they are adjusting their products to meet local preferences; whereas some laboratory findings confirm that lower quality products may contain less healthy combinations of ingredients, thus hindering the principle of equal treatment of all consumers; whereas some producer and manufacturer representatives have agreed to amend their product recipes in some countries so that identical products are offered across the single market;
- G. whereas these unacceptable practices are brought about by well-known agri-food multinationals seeking to maximise their profit margins by exploiting the differences in purchasing power from one Member State to the next;
- H. whereas consumers are not aware that products from the same brand and with the same packaging are adjusted to local preferences and tastes, and whereas the varying quality of products raises concerns about some Member States being treated differently from others; whereas the European Union has already developed labels in order to meet specific expectations of consumers and to take account of production specificities recognised through the use of quality terms;
- 1. Welcomes the allocation of EUR 2 million for the Joint Research Centre (JRC) to develop a more robust European methodology accepted by different actors, to establish guidelines for a harmonised testing approach and to use the methodology to conduct comparative testing of food products in different Member States; notes that high-level analyses have already been conducted, which should be taken into consideration in designing and implementing this methodology; expects the testing to be completed as soon as possible, preferably in 2018; calls on the relevant Member State authorities to actively take part in this testing and to integrate this methodology into their working practices;

2. Recalls that current legislation allows goods to be sold with different compositions or characteristics, provided they fully respect EU regulations and are not marketed in a way that has the potential to mislead the consumer; outlines that consumers have a certain perception of the main characteristics of branded products and that differences in specific legitimate expectations of a product must be highlighted, in particular when a product significantly deviates from these expectations; stresses that specific measures should be taken as soon as possible to ban practices not fully justified by the need to source local ingredients, by locally adapted taste preferences, or by efforts to improve public health through nutrient reformulation, and made clear to the consumer;
3. Calls on the Commission, in view of the allocation of European funding for analyses, to make it compulsory for the findings thereof to be made public in all official EU languages, so that consumers can be properly informed about the quality of the products in question and make their choices accordingly;
4. Welcomes the public interest in the topic in the countries where analyses were conducted, and notes that citizens' trust in the functioning of the single market is at stake, which could have negative impact both on the Union and on the various stakeholders involved, including producers and manufacturers;
5. Notes that the single market is accessible to producers and manufacturers, but that it is also very competitive, with some brands ubiquitously known or well perceived across the Union;
6. Notes that local producers and manufacturers have difficulties in partaking in the common market, which is due, among other reasons, to lack of sufficient resources or market access and serious competition on the market;
7. Considers that the EU needs to improve the existing legislative framework which sets out the provisions needed to ensure that consumers are informed about food products and not misled by unfair business-to-consumer practices when making a purchasing decision, also in response to European citizens' and sectoral concerns about different products having a deceptively identical appearance but different quality standards and/or ingredients being sold under the same brand in different Member States, in the light of the detrimental effect of this practice on the functioning of the single market;
8. Considers that, in the meantime, Member State authorities and consumer protection organisations should make full use of existing recourse to legal action as outlined in the Commission Notice of 26 September 2017 on the application of EU food and consumer protection law to issues of dual quality of products (2017/C 327/01¹) in order to avoid disruption of the single market;
9. Believes also that the practice of 'one brand, one product, different content and proportional composition' has to be stopped by means of an amendment to Article 6 and the list of practices in Annex I to Directive 2005/29/EC² of 11 May 2005 concerning unfair business-to-consumer commercial practices; strongly advocates that such legislative changes be introduced to ensure that products of the same brand but of

¹ OJ C 327, 29.9.2017, p. 1.

² OJ L 149, 11.6.2005, p. 22.

different quality or with different ingredients are marketed under different labels and that economic operators guilty of continued unfair practices be severely penalised and possibly banned from certain markets;

10. Calls on the Member States and their respective authorities and laboratories to conduct and interpret analyses comparing composition of foods – in particular products of international brands and private label products – in accordance with commonly agreed standards such as those developed by the JRC within the framework of the paragraph above, to give producers and manufacturers the possibility to comment on findings before their publication, and to communicate results in an objective and transparent way, making full reports accessible to the public;
11. Is of the opinion that manufacturers should not wait for the new legislation to be put in place but be proactive in taking appropriate measures to ensure transparency as regards the composition of their products and ensuring full respect for consumers; supports the active involvement of citizens in identifying and tackling dual-quality products through a European alert system; considers that, until the practice changes, a system could be introduced for indicating that a local recipe has been used in the preparation of specific products in a way that respects the right to informed consumer choice and can raise the profile of manufacturers' initiatives concerning the use of traditional local practices; calls on the Commission to further develop the concept of a 'reference product' against which locally or regionally adapted recipes may be compared and the differences made explicit to the consumer, and a public database for consumer information purposes giving the specific criteria used by manufacturers and producers for products with 'different recipes' in a given Member State combined with the reasons for employing such strategies; in this context, commends the initiative of those producers and manufacturers that have announced that they would amend their recipes;
12. Supports producer and manufacturer initiatives on specific product labelling, and recalls that European legislation already allows the introduction of quality labels, such as 'protected designation of origin' (PDO) and 'protected geographical indication' (PGI) for products which have a specific link with a specific region, 'traditional speciality guaranteed' (TSG) for products characterised by a traditional production process, or mountain products or products from the outermost regions of the EU; stresses that such systems respect both the consumer's right to an informed choice and the proper functioning of the single market; believes that one of the means of combating abuse linked to branding is the promotion of short supply chains in the food industry and the creation of local quality brands; recognises that when agricultural food items and their quality are called into question, it reflects negatively on farmers and the food processing system; calls on the Member States, and in particular national consumer and food authorities, to ensure compliance with the EU consumer *acquis* and to enforce the European safety and food labelling legislation at national level;
13. Invites manufacturers to consider including a logo on the packaging that would indicate that the content and quality of the same brand and packaging is the same across Member States;
14. Calls for the urgent development of capacities and mechanisms at EU level in a specialised monitoring and supervisory unit in an existing EU body (JRC, European

Food Safety Authority (EFSA) or other), keeping bureaucracy to a minimum, to monitor consistency in composition and proportional use of ingredients in identically branded and packaged food products and to assess comparative laboratory analyses to identify these unfair commercial practices in the marketing of food products;

15. Calls for better cooperation of national authorities within the framework of existing legal provisions such as the Consumer Protection Cooperation Network, if needed with the support of existing European institutions, in particular EFSA, the Consumers, Health, Agriculture and Food Executive Agency (CHAFAEA) and the JRC;
16. Underlines the importance of civil society in raising public awareness of manufacturers' and producers' unfair practices, and calls for more support for civic activity and institutional and individual whistle-blowers in the fields of food safety and consumer rights;
17. Is concerned that 'no or slow action' from the side of the EU runs the risk of alienating citizens from the EU by not taking concrete actions in the short term to tackle this issue.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	16.5.2018
Result of final vote	+: 41 -: 1 0: 1
Members present for the final vote	John Stuart Agnew, Clara Eugenia Aguilera García, Eric Andrieu, José Bové, Daniel Buda, Nicola Caputo, Matt Carthy, Jacques Colombier, Michel Dantin, Paolo De Castro, Albert Deß, Herbert Dorfmann, Norbert Erdős, Luke Ming Flanagan, Beata Gosiewska, Anja Hazekamp, Esther Herranz García, Jan Huitema, Peter Jahr, Ivan Jakovčić, Jarosław Kalinowski, Zbigniew Kuźmiuk, Philippe Loiseau, Mairead McGuinness, Ulrike Müller, James Nicholson, Maria Noichl, Laurențiu Rebega, Bronis Ropé, Maria Lidia Senra Rodríguez, Ricardo Serrão Santos, Czesław Adam Siekierski, Maria Gabriela Zoană, Marco Zullo
Substitutes present for the final vote	Paul Brannen, Elsi Katainen, Gabriel Mato, Susanne Melior, Momchil Nekov, Annie Schreijer-Pierik, Ramón Luis Valcárcel Siso, Thomas Waitz
Substitutes under Rule 200(2) present for the final vote	Birgit Collin-Langen

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

41	+
ALDE	Jan Huitema, Ivan Jakovčić, Elsi Katainen, Ulrike Müller
ECR	Beata Gosiewska, Zbigniew Kuźmiuk, James Nicholson, Laurențiu Rebega
EFDD	Marco Zullo
ENF	Jacques Colombier, Philippe Loiseau
GUE/NGL	Matt Carthy, Luke Ming Flanagan, Anja Hazekamp, Maria Lidia Senra Rodríguez
PPE	Daniel Buda, Birgit Collin-Langen, Michel Dantin, Albert Deß, Herbert Dorfmann, Norbert Erdős, Esther Herranz García, Peter Jahr, Jarosław Kalinowski, Gabriel Mato, Mairead McGuinness, Annie Schreijer-Pierik, Czesław Adam Siekierski, Ramón Luis Valcárcel Siso
S&D	Clara Eugenia Aguilera García, Eric Andrieu, Paul Brannen, Nicola Caputo, Susanne Melior, Momchil Nekov, Maria Noichl, Ricardo Serrão Santos, Maria Gabriela Zoană
Verts/ALE	José Bové, Bronis Ropė, Thomas Waitz

1	-
EFDD	John Stuart Agnew

1	0
S&D	Paolo De Castro

Key to symbols:

+ : in favour

- : against

0 : abstention

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
ANEC
BEUC
Czech Confederation of Commerce and Tourism
dTest
EuroCommerce
European Heart Network
FoodDrinkEurope
Henkel
Independent Retail Europe
International Association for Soaps, Detergents and Maintenance Products
Nestlé
Potravinářská komora České republiky
Trade union in the food industry of the Czech Republic
University of Chemistry and Technology Prague
Verbraucherzentrale

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	12.7.2018
Result of final vote	+: 33 -: 3 0: 1
Members present for the final vote	John Stuart Agnew, Dita Charanzová, Carlos Coelho, Sergio Gaetano Cofferati, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Dennis de Jong, Pascal Durand, Maria Grapini, Liisa Jaakonsaari, Eva Maydell, Marlene Mizzi, Nosheena Mobarik, Jiří Pospíšil, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Ivan Štefanec, Catherine Stihler, Richard Sulík, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Mihai Țurcanu, Anneleen Van Bossuyt, Marco Zullo
Substitutes present for the final vote	Biljana Borzan, Birgit Collin-Langen, Julia Reda, Marc Tarabella, Matthijs van Miltenburg, Sabine Verheyen
Substitutes under Rule 200(2) present for the final vote	Asim Ademov, Isabella De Monte, Sylvie Goddyn, Kateřina Konečná

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

33	+
ALDE	Dita Charanzová, Matthijs van Miltenburg, Jasenko Selimovic
ECR	Daniel Dalton, Nosheena Mobarik, Richard Sulík, Anneleen Van Bossuyt
EFDD	Marco Zullo
GUE/NGL	Kateřina Konečná
PPE	Asim Ademov, Carlos Coelho, Birgit Collin-Langen, Anna Maria Corazza Bildt, Eva Maydell, Jiří Pospíšil, Andreas Schwab, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Mihai Țurcanu, Sabine Verheyen
S&D	Biljana Borzan, Sergio Gaetano Cofferati, Nicola Danti, Isabella De Monte, Maria Grapini, Liisa Jaakonsaari, Marlene Mizzi, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Marc Tarabella
VERTS/ALE	Pascal Durand, Julia Reda

3	-
EFDD	John Stuart Agnew
ENF	Sylvie Goddyn, Mylène Troszczynski

1	0
GUE/NGL	Dennis de Jong

Key to symbols:

+ : in favour

- : against

0 : abstention