



2018/2008(INI)

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

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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 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,

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.

- 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 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

¹ OJ C 65, 19.2.2016, p. 2.

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 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

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

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 Demesmaeker, Arne Gericke, Urszula Krupa, Boleslaw 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