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DRAFT REPORT

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

Committee on the Internal Market and Consumer Protection

Rapporteur: Olga Sehnalová

Rapporteur for the opinion (*):
Biljana Borzan, Committee on the Environment, Public Health and Food
Safety

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

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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,
- 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 Policy⁴,
 - having regard to its resolution of 22 May 2012 on a strategy for strengthening the rights of vulnerable consumers⁵, 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/EC⁶,
 - having regard to its resolution of 7 June 2016 on unfair trading practices in the food supply chain⁷,
 - having regard to its resolution of 19 January 2016 on the Annual report on EU Competition Policy⁸, in particular paragraph 14 thereof,
 - having regard to its resolution of 14 February 2017 on the annual report on EU competition policy⁹, 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 EU¹⁰,
 - 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

⁴ OJ C 65, 19.2.2016, p. 2.

⁵ OJ C 264E, 13.9.2013, p. 11.

⁶ OJ C 93, 24.3.2017, p. 27.

⁷ Texts adopted, P8_TA(2016)0250.

⁸ OJ C 11, 12.1.2018, p. 2.

⁹ Texts adopted, P8_TA(2017)0027.

¹⁰ O-000019/2017.

of Law of Palacký University, Olomouc, in 2017,

- having regard to the Nielsen report of November 2014 on the state of private label around the world,
 - 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 (A8-0000/2018),
- A. whereas when promoting, selling or supplying products, companies should provide consumers with accurate information to enable them to make an informed buying decision;
- B. 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;
- C. 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 to the UCPD;
- D. whereas there have been substantial differences in the implementation of the UCPD from one Member State to another;
- E. whereas in its 2018 Work Programme, the Commission announced plans to propose 'A New Deal for Consumers', a targeted revision of the EU consumer directives following on from the Fitness Check of EU consumer and marketing laws;
- F. 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;
1. Underlines that results of various tests conducted in several Member States have proven that there are differences between products which are advertised and distributed in the single market under the same brand and with the same packaging;
 2. Highlights that the cases reported concern not only food products but also non-food products, including detergents, cosmetics, toiletries and products intended for babies;
 3. Recalls that Parliament called on the Commission back in 2013 to carry out a meaningful investigation into this issue to evaluate whether there is a need for the adjustment of existing Union legislation, and to inform Parliament and consumers of the results;
 4. Welcomes, therefore, 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 collection of further evidence;

5. Takes note of the mandate given to the High Level Forum for a Better Functioning Food Supply Chain to address the issue of dual quality; encourages Member States and their competent authorities to actively participate in ongoing initiatives, including the development of a common methodology and collection of further evidence;
6. Welcomes the adoption by Parliament of a pilot project for 2018 that will involve a series of market investigations into several categories of consumer products to assess different aspects of dual quality;
7. Underlines that the Commission has already received notification of national labeling measures designed to warn consumers of differences in the composition of foodstuffs;

Commission Notice

8. Takes note of the Commission Notice on the application of EU food and consumer laws to dual quality products; points out that the Notice's step-by-step approach for the identification by national authorities of whether producers are in breach of EU law currently seems inapplicable;
9. 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, consumers do not, a priori, expect branded products sold in different countries to differ from each other;
10. 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 products in general;
11. Emphasises the importance of the guidance documents issued by the Commission in facilitating proper and coherent application of the UCPD; calls, therefore, on the Commission to clarify the relationship between the Notice and the guidance;
12. Notes that there may be different requirements for the control methods of the national competent authorities; considers that the aim of the work to develop a methodology led by the Commission's Joint Research Centre should be clearly stated so as to prevent conflicting interpretations;
13. Stresses the need to stick to the timetable so that the results of the testing carried out under a common testing approach are made available and analysed by end of this year;

Other aspects of dual quality

14. 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;

15. 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 factors that contribute to a fragmentation of the single market in goods, in particular territorial supply constraints and their implications;
16. Points out that national competent authorities can select samples and perform tests only on the territory of their Member State; stresses the importance, therefore, of enhanced, effective and transparent cooperation between national consumer protection and food authorities and the Commission; welcomes the adoption of the revised Consumer Protection Cooperation Regulation¹¹ in this regard;

Recommendations and further steps

17. Emphasises the value of 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; highlights the role of industry in improving transparency with regard to product composition;
 18. Invites consumer organisations to play an active role in the public debate and in informing consumers;
 19. Believes that the experiences of competent authorities thus far suggest that they have been unable individually to tackle effectively any specific cases of dual quality at national level;
 20. 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 and therefore requires a solution at Union level, preferably 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;
 21. Recalls that Annex I to the UCPD was drawn up to enable the identification of certain unfair practices and the provision of a more immediate response; agrees with the Commission that listing a practice in Annex I leads to greater legal certainty;
 22. Calls on the Commission, therefore, to amend Annex I to the UCPD by introducing another item onto the ‘blacklist’;
 23. Calls on the Commission to extend the mandate given to the Joint Research Centre to work on a harmonised methodology for comparing characteristics of non-food products in the near future;
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24. Instructs its President to forward this resolution to the Council and the Commission.

¹¹ Regulation (EU) 2017/2394; OJ L 345, 27.12.2017, p. 1.

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.

**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 draft report:

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