

Our global Food & Drink Team actively monitors regulatory, policy and case law developments in the food, drink and related sectors around the world. Below is an overview of such developments in the European Union.

### Trade Negotiations

#### Transatlantic Trade and Investment Partnership and Broader Trade Negotiations

Throughout Europe, companies are pushing for progress on negotiation of multilateral and bilateral trade agreements, including the Transatlantic Trade and Investment Partnership (TTIP), and the EU Japan Free trade agreement, amongst others. Food and drink companies have generally been in favour of the trade talks, which are said to enhance export opportunities for European food and drink products on traditional markets and ensure access to emerging markets.

However, in the EU, there has been some resistance by EU negotiators resulting from claims that these trade agreements will result in lower food safety standards. Whilst these claims have been firmly refuted by the European Commission (EC), including in their 2015 publication, *The Top 10 Myths about TTIP: Separating Fact from Fiction*, a number of consumer groups have lobbied strongly against TTIP on these grounds.

The main issues for food companies centre on genetically modified organisms (**GMOs**): the EC has recently allowed member states 'opt-outs' on imports of genetically-modified food and feed, frustrating the Office of the United States Trade Representative and US food federations.

We anticipate that food federations and companies on both sides of the Atlantic will focus on GMO specific issues and market access barriers, as well as other issues as part of the trade negotiations.

#### Common Agricultural Policy Reform

Meetings are ongoing between EU officials regarding proposed changes to the common agricultural policy (CAP) designed to address global agricultural challenges and encourage market orientation. As part of the reform, 31 March 2015 saw the end of the EU's dairy quota regime. Officials say this will provide opportunities for both milk producers and producers of value-added dairy products due to a removal of production restrictions.

We anticipate that there will be questions asked and clarification required on how the reform applies in practice.

### Biofuels and Indirect Land-Use Change

The EU and many food producers and manufacturers want to ensure that the use of food crops in the production of conventional biofuels is limited, and encourage alternatives to food-based biofuels. The European Parliament gave final approval on 28 April 2015<sup>1</sup> to a law that limits the use of crop-based biofuel in the transport sector. This will limit energy consumption harmful biofuels produced from crops grown on agricultural land to 7%, whilst allowing member states to set lower national limits where desired. Member states will have until 2017 to transpose the EU law into national legislation.

We anticipate that biofuels legislation will impact the operations of food companies in the EU.

### Fat Tax

A number of EU member states (including France and Hungary) have introduced specific taxes on sugar, salt and fat. The issue has resurfaced at the EU level as a recently published EC report<sup>2</sup> demonstrates that such taxes do cause reductions in consumption of "unhealthy" products.

We anticipate that food and drink companies may wish to challenge tax initiatives implemented on these grounds under EU internal market rules.

### Waste Management

The EC has withdrawn its legislative proposal to review the Waste Framework Directive and the Packaging Waste Directive. However, the EC is drafting an alternative proposal. The UK has also been discussing similar legislative initiatives.

We anticipate that there will be questions on any new standards adopted.

1. <http://www.europarl.europa.eu/news/en/news-room/content/20150424IPR45730/html/Parliament-supports-shift-towards-advanced-biofuels>
2. Food taxes and their impact on competitiveness in the agri-food sector, 12 July 2014, compiled for the European Competitiveness and Sustainable Industrial Policy Consortium

## Labelling

### Allergen Labelling

The EC has introduced rules requiring mandatory labelling of food and drink to include details of allergen information. This applies to both pre-packed and non-pre-packed foods. The regulation came into force in December 2014.

### Nutritional Labelling

In April 2015, the French National Assembly voted through a healthcare bill<sup>3</sup> which will include a voluntary nutritional labelling scheme. This may evolve into a scheme similar to the UK's voluntary traffic light labelling system.

Starting December 2016, nutritional labelling will be mandatory in the EU for most pre-packed foods<sup>4</sup>. There will be some exceptions, although members of European Parliament (MEPs) recently voted for the EC to overhaul food labelling exemptions for alcohol and specifically to make legislation before end of 2016 to require calorie content information to be given on alcoholic drinks.

### Other Labelling Initiatives

The EC will soon be publishing a report considering whether the EU should include alcohol labelling within current food and nutritional labelling rules, and on how to address meat origin labelling.

We anticipate that a number of labelling initiatives will be adopted or discussed at the EU level. These have potential for a significant impact on labelling across the EU.

## Prosecution and Enforcement and Food Fraud

Lately, the UK courts have handed down a number of prosecutions and fines in relation to food offences. This has included:

- a £1.5 million fine imposed on a company serving food unfit for human consumption, which resulted in one death and 33 falling ill;
- a restaurant owner charged with manslaughter after a customer with a severe peanut allergy died due to suffering a reaction to a takeaway (peanuts and almonds had been substituted for cumin)<sup>5</sup>; and
- a prosecution in relation to the horsemeat scandal (although the fine in that case was particularly low at £8,000).

Penalties may therefore become a topic of interest, particularly as fines in the UK Magistrates Courts for many offences (including food) are now unlimited. Similarly, France is boosting penal prosecution for breach of the "principe de précaution" in respect of food security.

We anticipate that companies doing business across the EU will want to re-assess their multi-jurisdictional regulatory programs and approach to government investigations in light of the increased enforcement consequences.

## Class Actions in the EU

Class action regimes are being introduced in more jurisdictions, including pending changes at EU and UK levels. Most European jurisdictions now have at least an opt-in system, allowing a harmed consumer to join a case, but requiring an active step to do so. There have been concerns that class actions could be used against food and drink retailers and manufacturers in connection with obesity-linked diseases, for example in connection with the amount of sugar in foods, and additionally with respect to food labelling. Such actions are prolific in the US and, with changes in the law at EU and national level to make class actions more accessible, there is potential for such actions to be brought in member states.

It is difficult to anticipate the potential for class actions within the EU at the moment. Until the picture is more clear, companies should ensure full legal and regulatory compliance to protect against future actions should they arise.

3. <http://www.eurofoodlaw.com/country-reports/eu-member-states/france/french-national-assembly-backs-voluntary-nutritional-labelling-1.htm>
4. Regulation (EU) No 1169/2011 of the European Parliament and of the Council
5. <https://www.thecaterer.com/articles/356524/restaurant-owner-charged-with-manslaughter-over-peanut-death>

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