

**The mislabelling of horsemeat as beef – originally uncovered in the UK, Ireland, France and Sweden – now appears to affect as many as 16 EU Member States and has led to products being pulled from retail shelves and warehouses, causing multimillion Euro losses to businesses. Emergency talks were held in Brussels this week between national Ministers of the 27 Member States to discuss emergency measures to solve this new food crisis.**

Food labelling is strictly regulated by EU law. Article 8 of Regulation 178/2002/EC<sup>1</sup> specifies that EU food laws must aim to protect the interests of consumers and provide a basis for consumers to make informed choices by preventing “fraudulent or deceptive practices”, any “adulteration of food” and any other practices which may mislead. In addition, Article 16 of the same regulation specifies that “the labelling, advertising and presentation of food or feed, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, shall not mislead consumers.”

These principles are confirmed and further specified in Directive 2000/13/EC, soon to be replaced by Regulation 1169/2011<sup>2</sup>, which requires the labelling and methods used must not be such as could mislead the purchaser to a material degree, particularly as to the characteristics of the foodstuff and, specifically, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production. These standards are monitored by the European Commission’s DG for Health and Consumers (SANCO) at an EU level and by the relevant national competent authorities tasked with enforcement at Member State level.

Naturally, safety requirements in both EU food legislation and in the general framework for defective products established in Directive 85/374/EEC<sup>3</sup> apply on top of pure labelling rules. In a statement issued on 13 February, EU Commissioner Tonio Borg, who has responsibility for consumer and health protection in the EU, mentioned that no safety issues have arisen so far, although tests are still on-going to identify the possible presence of residues of veterinary drugs. The European Food Safety Authority (EFSA) in Parma, which provides scientific support to the European Commission and the Member States, has declared that it will be on hand should safety concerns arise in this case.

Currently, Poland and Romania remain the two alleged countries of origin for the mislabelled horsemeat. In Poland, food inspection and labelling is supervised by the Agricultural and Food Quality Inspection (*Inspekcja Jakości Handlowej Artykułów Rolno-Spożywczych*), part of the Ministry of Agriculture and Rural Development. So far, the agency has yet to confirm any cases of this alleged mislabelling. In Romania, food inspection and labelling is supervised by the National Authority for Veterinary and Aliments Safety (*Autoritatea Nationala Sanitar Veterinara si pentru Siguranta Alimentelor*) and National Authority for Consumer Protection (*Autoritatea Nationala pentru Protectia Consumatorilor*). Currently, Romanian officials deny liability, claiming that the product was correctly labelled in Romania as horsemeat. In the UK, the Food Standards Agency (FSA) and the police have entered two meat premises, one in West Yorkshire and the other in West Wales, involved in the alleged supply of horse meat. In response, the FSA has ordered food businesses to carry out tests on all processed beef products, with the first results expected to be returned to the FSA this week.

Given the reports of clear evidence for mislabelling, and the significant losses incurred by companies involved in the trade, claims for damages are inevitable. If a Polish producer is found to have mislabelled meat products, it may be liable to its customers for nonconformity of goods within the contract. Damages may be claimed for actual loss, the loss of current profits, future profits and the loss of goodwill as a result of the mislabelling. In Romania, if the same situation arises, damages may be claimed for actual loss, loss of business and loss of reputation.

Squire Sanders has an extensive pan-European practice involved in food safety and labelling issues. We have represented many food business operators in the past including, amongst others, such matters as health claims regarding dairy products, the regulation of Asian-style food as well as for fresh and packaged fruit and food contamination from oils not for human consumption.

1 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 safety, OJ L 31, 1.2.2002, p. 1–24.

2 Regulation (EU) No 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 608/2004, OJ L 304, 22.11.2011, p. 18.

3 Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, p. 29.

For further information or assistance, please get in touch with one of the identified contacts.

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