



Position Paper

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EDA position in response to the COM consultation on marketing standards

Answers and additional comments on survey for business stakeholders¹

EVALUATION OF MARKETING STANDARDS (CONTAINED IN THE CMO REGULATION, THE “BREAKFAST DIRECTIVES” AND CMO SECONDARY LEGISLATION) Tender N°AGRI-2017-EVAL-09

EDA welcomes the current Commission consultation of business stakeholders on the evaluation of marketing standards. The EDA paper aims at giving more background to the EDA responses to the online survey.

EDA also remains available for an in-depth individual interview, jointly with members, including dairy company representatives.

A. Identification and profilation of survey respondent – EDA

EU Marketing standards in the dairy sector

Brief evolution of EU Marketing standards for dairy

EU marketing standards are a set of rules to ensure that the market is supplied with agricultural products of a standardised and satisfactory quality to meet consumer expectations, to facilitate trading and to ensure a level playing field for EU food business operators (FBOs).

On 2 July 1987, considering the specific qualities of milk, the Council of the European Communities introduced a specific protection of the designations used in marketing of milk and milk products². This Regulation first established a clear ‘EU’ definition of ‘milk’, as well as conditions for fair competition between milk and competing products in the field of product designation, labelling and advertising. Later on, in 1994 and 1997, Council Regulations (EC) No 2991/94³ and No 2597/97⁴ introduced further standards related to spreadable fats intended for human consumption and for drinking milk.

¹ <https://q.opinioni.net/access/survey.php?proj=648797&tk=xcUA4y&lang=en>

² Regulation (EEC) No 1898/87 on the protection of designations used in marketing of milk and milk products

³ Council Regulation (EC) No 2991/94 of 5 December 1994 laying down standards for spreadable fats - Today incorporated in Regulation (EC) No 1234/2007

⁴ Council Regulation (EC) No 2597/97 of 18 December 1997 laying down additional rules on the common organization of the market in milk and milk products for drinking milk



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The protection introduced in the European Union initially in 1987 and then in 1994 reflected the recommendations adopted by the joint FAO/WHO Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products. Gradually, the Code⁵ has been detailed in several standards for milk and milk products which have been divided in four categories:

- Standards for milk products
- Horizontal cheese standards
- Individual cheese standards
- General texts for milk and milk products

The majority of these standards have been implemented within various EU Common Market Organization (CMO) Regulations, notably, in Regulation (EC) No 1234/2007 and then in Regulation (EU) No 1308/2013 in accordance to the rule laid down in article 5.3 of Regulation (EC) No 178/2002 on the application of international standards in EU food law. The implementation of relevant CODEX standards within the EU rules on the common organization of agricultural markets guarantees today coherence between international and European marketing standards.

Current scope of EU marketing standards for dairy

The 'historical' scope of protected definitions, designations and sales descriptions for milk and milk products and marketing standards for spreadable fats intended for human consumption has been outlined in the recitals of:

- Regulation (EEC) No 1898/87
- Regulation (EC) No 2991/94
- Regulation (EC) No 2597/97.

The simplification of CMO rules operated by Regulation (EC) No 1234/2007 re-iterated the 'historical' and consolidated scope of the above-mentioned regulations. Its Recital 51 stated:

"Several legal instruments have been put in place to regulate the marketing and designation of milk, milk products and fats. They pursue the objective of improving the position of milk and milk products on the market on the one hand and ensuring a fair competition between spreadable fats of milk and non-milk origin on the other, both to the benefit of producers and consumers. The rules contained in Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in marketing milk and milk products are aimed at protecting the consumer and at establishing conditions of competition between milk products and competing products in the field of product designation, labelling and advertising which avoid any distortion. Council Regulation (EC) No 2597/97 of 18 December 1997 laying down additional rules on the common organisation of the market in milk and milk products for drinking milk provides for rules aimed at guaranteeing a high quality of drinking milk and products which fulfil consumers' needs and wishes, thus stabilising the market concerned and providing the consumer with high quality drinking milk. Council Regulation (EC) No 2991/94 of 5 December 1994 laying down standards for spreadable fats sets out the marketing standards for the milk and non-milk products concerned with a clear and distinct classification accompanied by rules on designation. In line with the objectives of the present Regulation, these rules should be maintained."

Today, these objectives have been transferred and integrated into the cross-sectoral goals related to marketing standards laid down in recitals 64 to 78 of the current CMO Regulation (EU) No 1308/2013.

Existing EU marketing standards for dairy

The existing EU marketing standards are based on Article 43 of the Treaty on the Functioning of the European Union (hereafter TFEU) and laid down in Article 75, 78 and Annex VII, Parts III, IV and VII and Annex VII, Appendix II of Council Regulation (EU) No 1308/2013 of 17 December 2013.

In the CMO, Article 75 Paragraph 1 specifically refers to marketing standards for spreadable fats intended for human consumption and Article 78, Paragraph 1 in conjunction with Annex VII, Part III, IV and VII relates to the definitions, designations and sales descriptions for milk and milk products intended for human consumption.

⁵ Code of Principles Concerning Milk and Milk Products



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The rules mentioned above are further described in secondary CMO legislation, in particular, Commission Regulation (EC) No 445/2007⁶ and Commission Decision No 2010/791⁷.

B. Effectiveness of marketing standards

Effectiveness of EU marketing standards: the extent to which the objectives pursued by marketing standards are achieved in practice. Objectives of EU marketing standards:

- ensuring that the market is supplied with agricultural products of a standardised and satisfactory quality to meet consumer expectations;
- facilitating trading of agricultural products;
- ensuring a level playing field for EU producers of agricultural products.

B.8. EDA believes that the current framework of EU marketing standards has been fully successful in contributing to improve the economic conditions for production in terms of:

- a) **Reduction of quality-related issues in the production stage**
- b) **Increased scope for differential product valorisation**
- c) **Access to new and/or more remunerative marketing channels**

a) Reduction of quality-related issues in the production stage

As previously outlined, since 1987 and as recalled by recitals 64 and 65 of Council Regulation (EU) No 1308/2013, the application of protected definitions, designations and sales descriptions for milk and milk products and standards for the marketing of spreadable fats intended for human consumption (hereafter “marketing standards for dairy”) allows EU dairies to compete on the quality of their products rather than on the composition, without lowering the specific characteristics of their production. Defined and standardised dairy products constitute a guarantee for traders and consumers of the intrinsic qualities of the dairy products they sell or purchase.

Example on vertical marketing standards for dairy:

As stated in recital 64 of Regulation (EU) No 1308/2013, the existing marketing standards for spreadable fats contribute to improving the economic conditions for the production and marketing and the quality of these products. Within the current CMO rules, the spreadable fats’ standard authorises the name ‘butter’ only for products complying with strict compositional criteria in fat: e.g. 80-82% full fat butter - 60-62% reduced fat butter etc. Therefore, a product between 62% and 80% of fat content cannot legally be named “butter”. This standard for spreadable fats creates a harmonised and fair level playing field for producers, clarity for consumers on the product they purchase while guaranteeing a quality standard for butter within the EU.

Comparison examples from other areas:

- Sausages and other prepared meals where with time a change of quality becomes visible – less and less meat.
- Fat crises (2002-2003 or 2007-2008) when edible ice producers went from dairy fat to plant fat in their products and changed nothing else in their products other than the ingredient list – still illustrating cows and mentioning ‘cream’ and ‘milk’ on pack so that consumer thought that 100% of the protein and the fat was still milk based.
- Marzipan and many other sweeteners with less almonds/apricot kernels and more and more sugar.

⁶ COMMISSION REGULATION (EC) No 445/2007 of 23 April 2007 laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products

⁷ EU Commission Decision 2010/791/EU of 20 December 2010 listing the products referred to in the second subparagraph of point III of Annex XII to Council Regulation (EC) No 1234/2007 (now Council Regulation (EU) No 1308/2013)



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Meeting the expectations of consumers of receiving adequate and transparent information

Protected definitions, designations and sales descriptions for milk and milk products and marketing standards for spreadable fats intended for human consumption play an important role when it comes to informing consumers on product characteristics and protecting them from deception. Marketing standards for dairy products have therefore guaranteed over the last 30 years transparent and adequate information to consumers as outlined as an objective in recitals 70 and 72 of Regulation (EU) No 1308/2013. Since their introduction, marketing standards for dairy products have safeguarded the certainty of consumers' choice binding dairy products' specificities to well-known quality and compositional standards. Hence, these standards have strengthened consumers' protection all across Europe against unintended purchases and the threat of misleading products' information.

Example:

The definition of milk in the CMO Regulation authorises only the standardisation of fat. Other physical treatments or modifications in composition are allowed, provided that (1) the modification is restricted to an addition and/or withdrawal of natural milk constituents (2) the modification is mentioned in the name of the product.

With the development of new technologies, it is possible now to extract from milk many constituents (e.g. minor whey proteins with high nutritional properties). The definition of milk protects the consumer from the marketing of milk whose constituents have been removed without the consumer having been properly informed. Such protected definitions, e.g. the definition of milk, maintain the natural image of milk and milk products therefore avoiding false competition and not misleading the consumer on the true nature of their purchase.

Legal conclusions of the ECJ:

The legal conclusions of the European Court of Justice (hereafter ECJ) reiterated how marketing standards for dairy help consumers receiving adequate and transparent information on their purchase.

- In the case "*Diät-Käse*" (C-101/98):

The Court considered that products, including "cheese", may be described using the designation "milk products" only if they are products derived exclusively from milk and provided that no milk constituent has been replaced, even partially, during the manufacturing process. The ECJ added that this prohibition was introduced because of the need to protect consumers and to avoid any confusion between milk products and other food products, including those consisting partly of milk components.⁸

The Court noted that the legislator, in the light of the principle of proportionality, clearly considered that only a strict ban on the use of the designation "cheese" for products derived from milk from which the natural milk fat has been removed could with certainty prevent any confusion that might arise in the mind of the consumer as a result of the use of the word "cheese", even if accompanied by written explanations⁹.

- In the case "*Tofu Town*" (C-422/16)

In this case, the ECJ stressed the fact that, in marketing or advertising, the possibility to use the term "milk" and the designations reserved exclusively for milk products is available only to products which meet the requirements laid down by Annex VII, Part III, to Regulation No 1308/2013. Furthermore, these rules are a guarantee for the producers of those products of undistorted conditions for competition, and to consumers that the products designated by those designations meet all the same standards of quality, protecting them against any confusion as to the composition of the products they intend to purchase¹⁰.

Therefore, the effectiveness of marketing standards for dairy for the last 30 years and the above-mentioned legal conclusions of the ECJ demonstrate how these rules protect consumers from the marketing of products whose dairy constituents are absent or have been removed without adequately informing consumers.

⁸ (C-101/98) point 32

⁹ (C-101/98) point 29-33

¹⁰ Point 48 C-422/16



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consumers that the products designated by those designations meet all the same standards of quality, protecting them against any confusion as to the composition of the products they intend to purchase¹¹.

Example of the current situation in the EU market of the misuse of protected dairy denominations:



This product uses the terms “Riz au lait” and the wording “dairy free”. The product goes against the rule laid down in Annex VII, Part III, Point 3 of Regulation (EU) No 1308/2013 related to the use of dairy terms in composite products. Such products could use the term milk and the designations used for milk products only when milk or milk products are an essential part either in terms of quality or for the characterisation of the product. As stated on the front-of-pack this product does not contain milk or milk products and therefore goes against the rules on protected dairy terms according to Regulation (EU) No 1308/2013.

Therefore, for the European dairy industry, the continuity in the protection over the last 30 years and the correct application of marketing standards for dairy products demonstrate the effectiveness of the rules for the sector, in particular, a long-lasting and clear level playing field for dairy FBOs and standardised and high-quality production.

B9. EDA considers that the current framework of EU marketing standards has been fully successful in contributing to improve the economic conditions for business-to-business marketing in terms of:

- a) **Reduction of quality-related issues in the intermediate distribution stages**
- b) **Reduction of transaction costs in business-to-business relationships**
- c) **Scope for developing innovative business-to-business marketing practices**
- d) **Removal of barriers to intra-EU trade**

As stated in the recitals of Regulation (EEC) No 1898/87: “competing products enjoy a competitive advantage in terms of production cost due to the fact that many of them are frequently manufactured from raw materials imported at zero duty rates, whereas milk products have a higher production cost which is dictated by the need to safeguard agricultural producer incomes”. In particular:

- Marketing standards for dairy products improve the economic conditions for production and are essential to facilitate trade by setting common trading references.
- Marketing standards for dairy facilitate the proper functioning of the internal market and hence are the basis for the success of the European dairy sector, as backbone for the rural areas and provider of valuable nutrition.
- Marketing standards for dairy prevent the use of dairy denominations for non-dairy products and give important information on products along the chain ensuring a fair income to all who produce the clearly defined material milk or produce or trade dairy products.

B10. EDA considers that that the current framework of EU marketing standards has been fully successful in contributing to improve the economic conditions for business-to-consumer marketing in terms of:

- **Reduction of quality-related issues in the final distribution stage**

¹¹ Point 48 C-422/16



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- **More balanced quality/price ratios**
- **Scope for developing innovative business-to-consumer marketing practices**

B11. Have differences between Member States in the definition and/or implementation of marketing standards caused situations of unfair competition / non-level playing field among operators of different Member States?

b) Yes, but only in a few cases.

For example, the cases when plant-based drinks/products are wrongly using protected dairy terms. See also above page 5-6.

In answering this question, the following issue should be considered: the potential of abuse by market actors

Potential abuses by market actors might lead to misleading the consumer. The consumer may buy something he does not want or may even be allergic to. e.g. buying a soy product thinking it is a milk product.

This has been recognized by the European Court of Justice in the TofuTown-case, in which the Court referred to recitals 64 and 74 of the CMO-regulation in point 43, and stated as regards dairy products: “[...] the objectives pursued by the provisions at issue consist, in particular, in improving the economic conditions for the production and marketing as well as the quality of such products. The application of such standards is therefore in the interest of producers, traders and consumers, to protect consumers and to maintain conditions for allowing competition. Those provisions, in so far as they provide that only the products which comply with the requirements they lay down can be designated by the term ‘milk’ and the designations reserved exclusively for milk products even if those designations are expanded upon by explanations or descriptions such as those at issue in the main proceedings, contribute to the attainment of those objectives.”

And subsequently in point 44: “In the absence of such limits, those designations would not enable products with the particular characteristics related to the natural composition of animal milk to be identified with certainty, which would be contrary to the protection of consumers because of the likelihood of confusion which would be created. That would also be contrary to the objective of improving the economic conditions for production and marketing and the quality of ‘milk’ and ‘milk products’.”

Example:



This product uses an intentionally misspelt dairy term (mylk instead of milk) which is clearly understood by the consumer as referring to milk. Although the word has been misspelt, we consider this to go against the intentions of the rules on protected dairy denominations (Article 78 and Annex VII, Part III of the last (CMO) Regulation (EU) No 1308/2013). If the use of the word “milk” is not allowed, then the use of the word “mylk” should not be allowed either.

The product uses “dairy free” wording at the bottom of the front-of-pack. As concluded by the ECJ in the rulings C-101/98 and C422/16, descriptive or clarifying additions indicating the plant origin of the product concerned have no influence on the rules on protected dairy terms.

A possible future protection for definitions, designations and sales descriptions of milk and milk products:

To further the protection and prevent existing misunderstanding especially at consumer level, EDA would like to propose to take into account the strict and clear protection of the article 13 of the Quality Regulation (EU) No 1151/2012 since only a wide protection could consistently avoid the misuse of the rules of Article 78 and Annex VII, Parts III, of Regulation (EU) No 1308/2013.



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In detail: EDA would suggest the replacement of the wording in Annex VII Part III No. 6 subpar. 1 by the one of Article 13 par. 1 of Regulation (EU) No 1151/2012 as the way forward for the future protection of definitions, designations and sales descriptions for milk and milk products.

B12. Have differential requirements imposed by EU marketing standards on specific typologies of operators caused situations of unfair competition / non-level playing field among operators?

b) Yes, but only in a few cases.

For example, the cases when retailers, coffee shops are using protected dairy terms for plant-based drinks/products (see also above page 5-6)

C. Efficiency of marketing standards

Efficiency of EU marketing standards: the best relationship between resources employed and results achieved in pursuing a given objective through the marketing standards. The legislation lays down obligations and responsibilities for food business operators to ensure compliance with the rules laid down in the marketing standards across the various product groups. Below we are asking you some questions regarding the costs of fulfilling these obligations and responsibilities.

C1. EDA considers that the current cost of compliance across the dairy category is fully justifiable, i.e. proportionate to the results achieved by the marketing standards

The current situation for dairy FBOs:

The investments to comply with marketing standards for dairy products were done a long time ago and the dairy sector has complied and counted on this harmonized framework since then. Therefore, now, after 30 years of continuity of the objectives and of the rules of various CMO Regulations, the costs for the dairy industry are rather low compared to the benefits for the whole chain, from producers to consumers.

Moreover, marketing standards for dairy products are quite simple compared to marketing standards for other products. They do not create any burden on operators, e.g. there are no requirements on sizing and grading of products as for instance for fruits and vegetables and no mandatory preconditions for the manufacturing process. Today, because of the continuity in the last 30 years of marketing standards rules for dairy, there are no additional costs associated with the compliance with these standards.

Marketing standards for dairy products represent a milestone for the entire European dairy sector. Legal battles in clarifying the differences to plant-based products misuses of these standards would mean enormous costs to be carried by dairy FBOs if any modification of the current status quo in marketing standards for dairy will occur.

An increased cost for controlling authorities might also be possible if any change in the current legal framework occurs, as, today, it is clear for authorities what products are and contain or on what controls and tests should focus on.

C2. EDA considers that amongst the following sub-categories, there are no burdensome costs for food business operators:

- **Changes/adaptations required to production process/systems for ensuring compliance (one-off + any updates required)**
- **Costs of performing compliance checks (on-going)**
- **Training**
- **Reporting requirements (on-going)**

C3. EDA considers that marketing standards fully contribute to the following benefits for food business operators:

- **Improved product quality**
- **Improved market access**
- **Higher prices**



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- **Improved controls by enforcement authorities**
- **Level-playing field between operators**

C4. EDA considers that that marketing standards have no an impact on price volatility.

C5. EDA considers there is there no potential for harmonisation of control and reporting requirements to simplify and gain in efficiency of enforcement, but without jeopardising effectiveness.

The European dairy industry wishes to stress the importance of the current framework of marketing standards for dairy.

The first potential risk associated with the removal of e.g. marketing standards for spreadable fats intended for human consumption is that some Members States might develop national and divergent standards and regulations, with negative effect on the European Single Market and the harmonized standardised quality of 'butter' across Europe.

The second consequence of a weakening in marketing standards rules for dairy products would be the destruction of the current balance and the reshuffle of all operators and their economic basis (all along the supply chain). Furthermore, changing clear and consolidated requirements would mean a huge change of the Single Market characteristics and confusion for those looking for a dairy product, and those looking for a non-dairy product (at all stages of the food chain) created by misuse of dairy protected terms.

Thirdly, an abolishment or change in the current framework of marketing standards for dairy might cause a 15% reduction in the overall turnover for the dairy sector. E.g. The general turnover for the dairy sector in 2015 was 164.7 billion euros. A potential shift in the legal framework of marketing standards for dairy could lead therefore to a reduction of 24.7 billion euros taking as reference the year 2015.¹²

D. Relevance of marketing standards

Relevance of EU marketing standards: the extent to which marketing standards are pertinent to needs, problems and issues.

D.1. EDA considers that the current legislative framework setting marketing standards still fully responds to the actual needs, problems and issues of business operators.

D.2. EDA considers that the current legislative framework setting marketing standards has fully addressed new needs, problems and issues emerged for business operators after the setting of the standards themselves.

D.3. EDA considers that the current legislative framework setting marketing standards has fully addressed the needs, problems and issues of business operators in practice.

D.4. EDA considers that the definitions provided by EU marketing standards for dairy products have fully allowed to address the original needs, problems and issues specific to the dairy sector.

D.5. EDA considers that definitions provided by EU marketing standards for dairy products have fully allowed to address new needs, problems and issues specific to the dairy sector emerged after the setting of the standards themselves.

D.6. EDA considers that that the reserved terms provided by EU marketing standards for dairy products have fully allowed to address the original needs, problems and issues specific to the dairy sector.

D.7. EDA considers that the reserved terms provided by EU marketing standards for dairy products have fully allowed to address new needs, problems and issues specific to the dairy sector emerged after the setting of the standards themselves.

¹² Eurostat - http://www.fooddrinkurope.eu/uploads/publications_documents/Data_and_trends_Interactive_PDF_NEW.pdf



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D.8. EDA considers that that the absence of an EU definition of “cheese” has left some needs unaddressed (original and/or emerged after the setting of the relevant standards) of the dairy sector?

Dairy: relevance of existing definitions and reserved terms, absence of an EU definition of Cheese;

Marketing standards for dairy are set to encourage high quality production, facilitate trade within the dairy supply chain by setting common trading references, improve profitability of the whole dairy sector and protect consumer interests and information guaranteeing that dairy products are made out of milk and milk products.

The EU product definitions establish the composition of evaporated milk, milk powder and spreadable fats. Such an EU definition does not exist for cheese. With more than 50% of the European milk processed into cheese, cheese is the core dairy product when it comes to adding value to European milk at both the internal market and the global market level.

In the view of EDA it would be only natural that a discussion of an EU definition for cheese should take the International Codex Definition as starting point. This definition has been approved by the EU on behalf of all member states, and it is the impression that most Member States base the cheese definition in their national legislation on the Codex definition, however in some cases with minor amendments or additions. EDA would of course be only too willing to assist in this process.

E. Coherence of marketing standards

Coherence of EU marketing standards: the extent to which marketing standards do not contradict other measures with similar objectives.

E.1. EDA considers that the implementation of EU marketing standards has not caused unexpected or unintended effects in terms of generation of food waste (e.g. variation of waste volume and/or characteristics).

E.2. EDA considers that the implementation of EU marketing standards has not caused unexpected or unintended effects in terms of animal welfare (e.g. variation in the uptake of stricter animal welfare standards).

E.3. EDA considers that the implementation of EU marketing standards has not caused unexpected or unintended effects in terms of abuse by market actors (e.g. application of discriminatory practices towards suppliers).

E.4. EDA considers that the implementation of EU marketing standards has not caused unexpected or unintended effects other than generation of food waste, animal welfare and abuse by market actors.

E.6. EDA considers that the implementation of EU marketing standards has not caused effects (e.g. improvement in average product quality levels) which are likely to have arisen even if EU marketing standards had not been established, since those effects have mainly been determined by other factors than EU marketing standards.

E.7. Please describe briefly notable cases of effects which are likely to have arisen even if EU marketing standards had not been established. (maximum 600 characters, spaces included):

EDA is available to discuss the topic in an in-depth interview.

E.8. EDA considers that marketing standards (ensuring that the market is supplied with agricultural products of a standardised and satisfactory quality to meet consumer expectations; facilitating trading; ensuring a level playing field for EU producers) across all the covered sectors and products are fully coherent between each other.



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E.9. EDA considers that marketing standards which are specific to individual sectors/products are fully coherent between each other.

Marketing standards for the dairy sector have demonstrated for the last 30 years to be coherent between each other and to effectively guarantee the achievement of the objectives pursued. Composite products are a good example to show the consistency between the various instruments of EU marketing standards.

E.11. EDA considers that the general and operational objectives of EU marketing standards are fully coherent with the objectives of the EU rules on food safety.

EDA would like to stress that there is no contradiction between the CMO rules on marketing standards for dairy and origin, quality or food safety EU schemes.

The coherence among these policies originate from their complementary. E.g. marketing standards for dairy products constitute a guarantee for traders and consumers of the intrinsic qualities of the dairy products they sell or purchase i.e. clarity regarding e.g. allergens, residue limits etc. which are essential information if related to food safety concerns.

E.12. EDA considers that the general and operational objectives of EU marketing standards are fully coherent with the objectives of the EU rules on provision of food information to consumers.

See also above reply to question E.11.

E.13. EDA considers that the general and operational objectives of EU marketing standards are fully coherent with the objectives of the EU rules on geographical indications.

See also above reply to question E.11.

E.14. EDA considers that the general and operational objectives of EU marketing standards are fully coherent with the objectives of the EU rules on organic products.

See also above reply to question E.11.

E.15. EDA considers that the general and operational objectives of EU marketing standards are fully coherent with the objectives of relevant EU rules other than those on food safety, provision of food information to consumers, geographical indications and organic products.

See also above reply to question E.11.

E.17. EDA considers that the general and operational objectives of EU marketing standards are fully coherent with the objectives of international marketing standards (e.g. those developed by Codex Alimentarius, UNECE, etc.)

The EU and its Member States have actively contributed to the development of international standards for dairy products according to Article 13 Regulation (EC) No 178/2002. Many of these standards have been implemented both on a European level according to the rule laid down in Article 5(3) of Regulation (EC) No 178/2002 on the implementation of international standards in EU food law and on a global level creating a harmonised level playing field both within and outside the EU.

Example

The protection introduced in the European Union by Regulation (EEC) No 1898/87 directly reflected the recommendations adopted by the joint FAO/WHO Committee of Government Experts on the "Code of Principles Concerning Milk and Milk Products". The Code was amended then in 1999 by the "Codex General Standard on the Use of Dairy Terms" 206-1999 Codex standards GSUDT – and this was the very basis for the global work on food standards and creation of the Codex.



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E. 18. EDA considers that the general and operational objectives of EU marketing standards are fully coherent with the objectives of private marketing standards (e.g. those developed by BRC, IFS, Global GAP, etc.)

No private standards (except in the UK) exist in dairy on marketing as all is based on the EU legislative rules.

F. EU added value of marketing standards

EU added value from establishing EU marketing standards: the value resulting from applying policy measures at EU level which is additional to the value that would have resulted from applying similar measures at regional or national level by public authorities or the private sector.

F.1. EDA considers that separate EU marketing standards are justifiable and provide added value with respect to international marketing standards.

F.2. EDA considers that separate EU marketing standards are justifiable and provide added value with respect to the applicable private marketing standards (e.g. those developed by BRC, IFS, Global GAP, etc.)

F.3. EDA considers that establishing EU marketing standards also for the sectors and products currently not covered would not provide opportunities for cost reduction to business stakeholders (producers, processors, traders, retailers)

F.4. EDA considers that establishing EU marketing standards also for the sectors and products currently not covered would not provide opportunities for tackling unaddressed needs of business stakeholders (producers, processors, traders, retailers)

F.5. EDA considers that establishing EU marketing standards also for the sectors and products currently not covered would not provide opportunities for increased benefits to business stakeholders (producers, processors, traders, retailers)



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Annex

EDA guidelines on protection of dairy terms:

http://eda.euromilk.org/uploads/media/EDA_Press_Release_Protection_of_Dairy_Terms_EDA_Guidelines.pdf

EDA- Copa-Cogeca- Eucolait call for dairy produce to be protected in future EU legislation against misleading sales descriptions:

http://eda.euromilk.org/fileadmin/user_upload/Public_Documents/Press_Room_PR_and_EDA_in_the_media_/Protection_of_dairy_against_misleading_sales_descriptions_Joint_PR_-_April_2018.pdf

EDA press release on the ECJ court judgement on protection of dairy terms:

http://eda.euromilk.org/fileadmin/user_upload/Public_Documents/Press_Room_PR_and_EDA_in_the_media_/EDA_Press_Release_30_years_of_dairy_terms_protection_170704.pdf

EDA position of 2016:

EU product definitions/marketing standards support the dairy dynamics

EU product definitions/marketing standards are essential to facilitate trade by setting common trading references and they play an important role when it comes to inform consumers on product characteristics and protect them from deception.

EU product definitions/EU marketing standards are set to encourage high quality production, facilitate trade within the dairy supply chain, improve profitability of the whole dairy sector and protect consumer interests. For the European dairy sector specifically, the protection of dairy terms and EU product definitions/EU marketing standards assure the smooth functioning of the internal market for the dairy sector, guarantee high quality production through the protection of dairy terms, improve the competitiveness of the whole dairy sector and protect the consumer interests for the high value nutritional products.

Within the EU, product definitions/marketing standards facilitate the proper functioning of the internal market and hence are the basis for the success of the European dairy sector, as backbone for the rural areas and provider of valuable nutrition.

Protection of dairy terms and product definitions/marketing standards - the current legal framework

At European level, the protection of dairy terms applies to all dairy products, guaranteeing that dairy products are made out of milk and milk products. In addition, the EU product definitions/EU marketing standards established for quite some specific dairy products detail their definition. Such an EU definition does not exist for cheese.

With more than 50% of the European milk processed into cheese, cheese is the core dairy product when it comes to adding value to European milk at both the internal market and the global market level.

The protection of dairy terms and the product definitions/marketing standards are anchored in the framework of the Common Agricultural Policy.

Council Regulation (EU) No 1308/2013 of 17 December 2013 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) has maintained the sectoral approach provided by the previous Common Market Organisations on the marketing standards for almost 30 years within the Union.



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Beyond the market intervention schemes, the specific standards for dairy have proven of crucial importance for the smooth functioning of the internal market for milk and dairy products. The EU single market is the EU's most valuable asset and – with more than 85% of the European milk consumed within the Union – the main instrument to propel Europe's dairy sector forward.

For the whole dairy supply chain, the utmost importance of the protection of dairy terms and the product definitions/marketing standards for our sector and its future development are an evidence.

Towards the completion of the EU Single Market – towards an EU definition of cheese

Following the Communication from the EU Commission on agricultural product quality policy and subsequent debates, it seems appropriate to elaborate an EU definition of cheese, in order to take into account the expectations of consumers and to contribute to the improvement of the economic conditions for the production and marketing of agricultural products and their quality.

A definition of cheese can contribute to improving the economic conditions for the production and marketing and the quality of such product. The application of such standard is therefore in the interest of producers, traders and consumers.

Such a definition of cheese is necessary in order to adapt to constantly changing market conditions, evolving consumer demands and in order to avoid creating obstacles to product innovation. The definition of cheese should take into account, inter alia, the true nature and essential characteristics of the product concerned and lay down a definition and common rules governing the composition, manufacturing specifications and labelling of cheese, so as to ensure its free movement within the EU.

Furthermore, differences between national laws concerning cheese do not allow a level playing field and could hinder fair competition or create technical barriers to trade, and thereby have a direct effect on the functioning of the Common Market.

A definition of cheese has to take into account the expectations of the consumers, the specificity of the dairy sector and recommendations of International bodies. In order to meet the international standards according Art. 5 (3) Regulation (EC) No 178/2002, the definition of cheese should base itself as a general rule on the Codex Alimentarius.

The EU and its Member States have actively contributed to the development of an international standard for cheese according Art. 13 Regulation (EC) No 178/2002. Therefore, the Codex General Standard for Cheese (adopted in 1999 and revised in 2013, CODEX STAN 283-1978 – see annex) is an acknowledged basis for such an EU definition.

As the experience shows and in accordance with the principles of subsidiarity and proportionality established by Article 5 (3) of the Treaty on the Functioning of the European Union (TFEU), the objective of laying down a common definition and rules for cheese and bringing the provisions into line with general EU legislation on foodstuffs cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Union. A definition of cheese is needed to complete the internal market for dairy products.

A legal framework for the future

The existing definitions/marketing standards for dairy products are rightly based on Art. 43 Treaty on the Functioning of the European Union (TFEU) and within the agricultural market competence.

To keep this legal basis is essential for safeguarding the interests of the whole dairy chain, from the dairy farmers and their processing companies up to the consumers relying on high quality and healthy products within our Single Market.

The CAP will be under re-evaluation, and the existing scheme of the protection of dairy terms and the definitions/marketing standards as well as new definitions, like a definition of cheese, must continue to have a solid legal basis within the CAP framework.

The European Dairy would be very pleased to discuss the importance of the protection of dairy terms and definitions/marketing standards with the European Commission at any time.