

DG GROW
Meeting between DG Timo Pesonen and [REDACTED] from
FoodDrinkEurope
Timo's office, 12 June 2019, 15:00
The future actions of the EC in the food sector and the High Level Forum
for a Better Functioning Food Supply Chain

BRIEFING NOTE <i>(Commission Internal)</i>

Scene setter/Context of the meeting:

You are meeting Ms [REDACTED], [REDACTED] of FoodDrinkEurope – the EU association representing the interests of the food and drinks industry. FoodDrinkEurope requested this meeting to: 1) exchange views on the contribution of the food and drinks industry to European growth and jobs, 2) share with you their priorities and ideas for the next five years and 3) discuss the the High Level Forum for a Better Functioning Food Supply Chain (HLF).

Regarding their priorities, in their latest publication “*Let’s step up to the plate - Europe’s Food and Drink Industry Priorities for the EU Institution 2019 – 2024*” they call for a stronger promotion of the single market, better enforcement of rules in place, creation of a Commission Directorate-General for food and a strong industrial agenda. They also ask the Commission to contribute to the creation of policies that are conducive to innovation and greater consumer choice.

With regard to the HLF, over the last 4 years FoodDrinkEurope has been one of its most active members. However, they decided not to endorse its final report even before the circulation of its final draft. The reason for their opposition was that the report was not aligned with their views on several issues, in particular in the area of territorial supply constraints and dual food quality.

DG GROW believes that the Forum is built on the ability to find common ground between different positions. Most other industry organisations accepted the text (including several of FoodDrinkEurope’s sector members), recognising its overall balance and value even without agreeing with 100% of its

content. FoodDrinkEurope not only did not endorse the report, it also actively lobbied other Forum Members to oppose its adoption. This put a strain on our relationship with them, and we believe that they are trying to restore it now.

Objective of the meeting:

- Listen to FoodDrinkEurope's ideas on what DG GROW should be doing in the next five years.
- Express reservations over the FoodDrinkEurope's handling of the final report of the HLF.
- Show openness towards their positions, while stating firmly that DG GROW will continue to act in the areas identified as priority by the Commission and the overwhelming majority of HLF Members.

KEY messages

- We would like to thank FoodDrinkEurope for their active participation in the HLF. This has been much appreciated.
- Despite differences of opinions between some HLF members, the debate has shown many commonalities. We stand behind the value of the ideas reflected in the final report of the HLF.
- The Single Market is and will remain a corner stone of our food policy. We will continue working together to defend it.
- We remain committed to tackling all remaining barriers in the Single Market for food, regardless of whether they originate in national rules or business practices.
- We look forward to continue our cooperation with FoodDrinkEurope during the next Commission mandate, as we believe that stakeholder involvement in our policies is of vital importance.

Line to take

Contribution of the food industry to growth and jobs

1. The effective and frictionless functioning of the Single Market is essential to promote growth, jobs and consumer welfare. Thanks to the four freedoms, European consumers can enjoy diverse, safe and affordable food products.
2. We welcome FoodDrinkEurope's commitments to "step up to the plate", especially on the sustainability agenda. We would like to see concrete ideas on how the food business in Europe can contribute to the fight against climate change. We are ready to help you promote and communicate such actions.
3. We need to remain sustainably competitive. We need to focus on how the European food industry can compete with our main international competitors in the next decades, without losing its core values.
4. We plan to intensify our efforts on the trade agenda, hoping to facilitate the access to markets for European food exporters.
5. Overall, we want to create environment allowing the European food supply chain to remain a global champion in the next decades.

The High Level Forum for a Better Functioning Food Supply Chain (HLF)

1. The current HLF is working until the end of 2019. There are ongoing projects on the Foodeuro and the consumers' perception of dual quality.
2. The final report is an important document, as it shows a strong consensus of an overwhelming majority of its members (45 out of 50), including most of the key-actors in the food supply chain. For this reason we will seriously

consider its findings in all future food policy actions, but will not limit ourselves to this.

3. The Commission services are committed for implementing the two pilot projects on Dual Food Quality promoted by the Parliament and further initiatives for protecting consumers could be promoted in the future.
4. The HLF was mandated by the Commission, with the support of the European Council, to work on “Dual Food Quality”. This issue is not going to go away, and the food industry should be prepared to show stronger engagement on this topic. The same goes for the issue of Territorial Supply Constraints, as the recent ABInBev case shows.

Supply Chain Initiative (SCI)

1. The Commission has continuously supported and promoted the SCI over the last years and will continue to do so.
2. However, I am not alone in saying that the SCI could and should do more.
3. My services met recently with the [REDACTED] of the Supply Chain Initiative - [REDACTED], and he was clear that he wished to be busier.
4. Supply Chain Initiative needs to step up its efforts to link with the national platforms if it wants to remain relevant.
5. A more active Supply Chain Initiative would have a greater chance to attract the interest of farmers associations and convince them to join the Initiative.

Industry4Europe Coalition

1. We welcome the Industry4Europe and FoodDrinkEurope efforts to promote the role of industry at the core of future EU policies and engage in a dialogue about the

transformation of industry, including your active involvement in EU Industry Days.

2. We are currently in the reflection process related to new industrial strategy, including results of Industry 2030 roundtable.

Defensives / Q&A

Question: Why did the HLF focus on problems rather than on a more positive agenda?

Answer: The Commission gave Forum Members a lot of freedom in agenda setting for this Forum. The main issues part of the HLF Working Programme were the result of a broad debate involving all members. The only exception to this has been the issue of “dual quality”, where the HLF, in line with its mission, was consulted by the Commission – a powerful, high-level mandate that was welcomed by FoodDrinkEurope. In its deliberations, the HLF was obviously influenced by the current political agenda and was mandated to foster dialogue on issues of high political visibility and meaning to EU consumers. Nonetheless, the HLF delivered on topics such as digitalisation and the FoodEuro which are concrete issues, widely accepted to be of importance for the future of the food chain. This HLF managed to make a significant difference in the right direction.

Having said that, the logic of this platform is that the Commission facilitates the work of the Forum, and its Members are its main drivers. In other words, the work of the Forum is driven largely by the input of its Members.

Question: We do not think that the voices of the food industry are adequately reflected in the report

Answer: The HLF has 50 Members and everyone view is important, regardless the turnover of their members. During each meeting of the Sherpa and expert groups Commission

colleagues went a long way to enable all Members to express their views and to reflect these views accurately in meeting reports and working documents. A consensus-based approach has been practiced by the Secretariat of the Forum very diligently. We always took note of all opinions and we acted as honest brokers to deliver a fair picture of the overall views of Members. Over the last four years, the Forum had 3 plenary meetings, 8 Sherpa meetings and 10 expert group meetings. When opinions or recommendations included in the final report of the HFL were not unanimously supported by Members, this was unambiguously highlighted in the report, which received the endorsement of the HLF with the support of 45 Members, including 19 out of 22 stakeholder representatives amongst which several FoodDrinkEurope member organisations.

Question: Will there be another High Level Forum for a Better Functioning Food Supply Chain?

Answer: The decision to renew the Forum in whatever form lies with the next Commission. It is therefore very difficult to speculate about this at this stage. However, it is certain that the Commission will listen to the opinions of the current Forum Members in this respect. Should there be a successor to the current HLF, we will work to ensure that its composition, working methods and Member engagement enable it to “step up to the plate” successfully.

Question: What will be DG GROW’s priority in the food sector for the next five years?

Answer: This is for the next Commission to shape. What we can say at this stage is that we are delivering on the work streams that are already underway. This includes price transparency, with the pilot phase of the foodeuro project. Besides, we would like to deepen our analysis of the territorial supply constraints, and we have commissioned a study in this area. Moreover, we will keep looking for solutions to address the current fragmentation on food labelling, both origin and nutritional. Finally, we will continue our

close cooperation with the JRC on proposing solutions to better understand the issue of dual food quality in Europe.

Environmental impact, including climate change, and consumers protection, both healthy nutrition and misleading practices, are rising concerns that should be addressed.

Moreover, we would like to focus not only on solving internal market problems, but also to explore global opportunities for the EU food industry. We need to promote conditions enabling our industry is able to compete with our global competitors on a level playing field, without sacrificing its values. We will work with all participants in the chain, including FoodDrinkEurope to get concrete ideas on how to help our biggest manufacturing sector to thrive.

Background information

Name of the Director who has cleared the briefing: Carlo Pettinelli

BASIS request ID: Basis (GROW/6731)

Room, time: tbc, 12 June 2019, 15:00

Participants: DG Timo Pesonen, [REDACTED]

Name of main contact person: [REDACTED]

Telephone number: [REDACTED]

Directorate/Unit: [REDACTED]

General information about food supply chain

The food supply chain involves the stages and operators from primary producers to final consumers, including processing and packaging (e.g. canning). The food and drinks industry is the largest manufacturing sector in Europe, both in terms of turnover and employment

Over the last years tensions between stakeholders in the food supply chain increased, due to various factors.

Farmers are having a difficult time adjusting to the economic transformation happening in their sector: modernisation, climate challenges and progressive reduction of CAP funding has left them particularly vulnerable. Many European farmers are small operators and are not organised well enough; therefore they are frequently left with small profit margins and low bargaining power.

Processors in the food supply chain come in various shapes and sizes. There are plenty of SMEs (98% of food enterprises), however there are also large multinationals such as Nestlé, Coca-Cola and Mars. FoodDrinkEurope represents the interests of large processors and SMEs alike: it has a threefold membership: national federations, sector organisations (e.g. dairy, spirits, pasta, coffee, confectionery, meat processing, sugar, pet food, etc.), and a number of large individual companies.

Several of FoodDrinkEurope's sector members (as well as other organisations representing different stages of the food supply chain) are members of the HLF. In reality it is often the large companies that have a predominant influence in FoodDrinkEurope's internal decision making. For the past years the large processors have been reportedly enjoying the largest margins in the food supply chain. However, recently they are being challenged by the emergence of retailer's own brands (private labels).

Distributors/retailers are an important stakeholder in the food sector, and they are used to making profit on low margins. However, recently brick and mortar retail is being challenged by various factors (emergence of online platforms selling food such as Amazon, decreasing economic viability of small and medium retail, slow digitalisation, price wars). Still big retail chains are seen by farmers as consolidated giants with high bargaining power, often imposing unfair practices.

In recent years, consumer preferences when choosing food have shifted and become more complex. While remaining significant, the importance of price in purchasing decisions has decreased due to the emergence of factors such as nutritional value,

health impact, origin, environmental footprint, animal welfare standards and social fairness. This has had a significant impact on business models, as industry is trying to cater for those needs.

The High Level Forum for a Better Functioning Food Supply Chain

The High Level Forum for a Better Functioning Food Supply Chain (HLF) is a formal expert group of the Commission which gathers stakeholders representing the entire food supply chain and all Member States (50 members in total). The HLF worked during the period 2010-2014 and had its mandate extended for 2015-2019. It is chaired by the Commission. Ms Bieńkowska is the lead Commissioner, Commissioners Hogan and Jourová participated in HLF plenary meetings.

The HLF's objective is to assist the Commission with the development of policy in the food sector, contributing to a better functioning food supply chain. The HLF Work Programme adopted in 2016 set 3 priority areas of work: better trading practices (in relations among actors in the chain), food chain competitiveness and price transparency. The issue of dual quality of food was added in 2017 on the initiative of the Commission with the endorsement of the European Council. It has been, together with Unfair Trading Practices (UTPs), the most politically sensitive issue discussed in the HLF.

The work of the HLF has been organised at different levels: an annual plenary meeting at Commissioner/Ministerial level (giving political guidance and validating the work), Sherpa group meetings (preparing the plenary discussions) and several expert groups. The expert groups focused on the following matters; 1) Barriers in the internal market for food 2) Digitalisation in the food chain 3) Food price indicators (FoodEuro) 4) Dual quality of food 5) Private labels. Each of the groups developed a set of recommendations and deliverables.

The HLF has made a significant contribution in all its areas of work, acting as the only EU-wide platform involving the entire food chain. It has been designated as the primary forum for dialogue on two sensitive issues: unfair trading practices and dual food quality.

The final report of the HLF, reflecting its work and achievements, was presented to the HLF plenary meeting in November 2018. While gathering a high level of support for the majority of issues, some sensitive matters such as dual food quality were contested by certain members.

On dual food quality, a compromise text was carefully crafted in close cooperation especially with the most concerned MSs (SK, CZ, HU). The set of recommendations reflected a balanced, pro-consumer approach without prejudice to the on-going trilogues on dual quality in the 'New Deal for Consumers'. Despite the Commission's mediation efforts, the final wording proved unacceptable for SK ('deliverables not ambitious enough, not working towards the abolition of the phenomenon' – surprisingly, given that we specifically accepted all the comments SK sent us) and AT (for the opposite reasons, wording too far-reaching). Furthermore The EU Association of Food and Drink Industries (FoodDrinkEurope) and its members Clitravi and PFP did not endorse the report on the grounds that “the discussions and the resulting report neither

promote nor enhance the competitiveness of the food industry” (possibly linked to their dissatisfaction on sensitive issues such as territorial supply constraints and dual quality).

In conclusion, the work of the HLF has provided a valuable contribution to tangible deliverables, such as the 'FoodEuro project', the testing methodology for composition differences (dual quality), pioneer EU level exchanges on digitalising the food chain, sustainability and more. The only holistic place for dialogue on charged issues of immediate political importance, the HLF promoted better understanding among stakeholders, The report was endorsed by a majority of its members (45 out of 50).

Dual quality of food

Consumers from a number of EU countries have expressed their concerns regarding differences in the composition and sensory profile of several food products when compared to products sold under the same brand in other Member States. Several studies carried out at national level confirmed that in the Single Market there are products with a similar or identical brand, which are sold with a slightly or significantly different composition. This issue has gained prominence on the political agenda of the Commission.

The conclusions of the European Council of 9 March 2017 mention that: "The European Council welcomes the decision of the Commission to address the issue of dual quality of foodstuffs in the Internal Market in the High Level Forum for a better functioning food supply chain."

In his 2017 State of the Union Address, President Juncker explicitly referred to the issue of dual food quality and stated that *"in a Union of equals, there can be no second-class consumers. I cannot accept that in some parts of Europe, people are sold food of lower quality than in other countries, despite the packaging and branding being identical"*.

Responding to this call for action, on 11 April 2018 the Commission (DG JUST) adopted a proposal for an amendment of the Unfair Commercial Practices Directive (UCPD) made under the New Deal for Consumers initiative. This amendments makes explicit that marketing products as identical, while they have significantly different composition, may constitute a misleading commercial practice.

The HLF promoted a bridge-building dialogue between Member States, stakeholders and consumer representatives on this issue. Dual food quality was on the agenda of one plenary meeting in 2017, five Sherpa meetings and two expert group meetings. The discussions in the Forum have contributed to increasing a shared understanding of the issue. The Commission used the Forum as a primary platform to interact with stakeholders and Member States about its actions aimed a tackling dual food quality.

The Forum developed a set of recommendations, which are incorporated in the final report. They are designed to advise stakeholders in the food supply chain on the best ways to approach differences in composition and characteristics of identically branded food products (including private labels) in the Single Market.

DG GROW works closely with JRC and DG JUST on various projects that intend to bring clarity and knowledge on the phenomenon of dual quality and propose ways to address this issue.

Territorial Supply Constraints

Territorial supply constraints (TSCs) are practices set by private operators which may limit retailers' possibilities to purchase products from whom and where they wish within the Single Market. There are growing indications that territorial supply constraints may drive market segmentation, limit competition and likely cause discrepancies between wholesale and consumer prices or the choice of products offered to consumers across the EU. Nevertheless, more hard evidence is needed to confirm this. TSCs can take different forms:

- Buyers based in one Member State dealing with a multi-national supplier are not given the choice to decide from which national entity of the suppliers the goods should preferably be sourced and are instead referred to a specific national subsidiary, making parallel imports impossible.
- Buyers may face restrictions on quantities provided by suppliers to avoid them supplying their own subsidiaries in other Member States.
- Suppliers engage deliberately in other types of obstacles that hamper parallel trading of products (e.g. unjustified modifications of product recipes, different labelling or packing sizes and restricting the range of products that may be available in a Member State).

Recently, The European Commission has fined AB InBev (beer conglomerate) €200,409,000 for breaching EU antitrust rules. AB InBev, the world's biggest beer company, abused its dominant position on the Belgian beer market by hindering cheaper imports of its Jupiler beer from the Netherlands and France into Belgium, which is an example of territorial supply constraints.

Unfortunately, not all the territorial supply constraints fall within the scope of competition law. For this reason, DG GROW is investigating the possibility of deploying other measures that could address this issue. DG GROW is currently conducting a study on territorial supply constraints that was financed partially from the budget of the High Level Forum.

Mandatory Origin Labelling

Several Member States have recently introduced various national rules imposing mandatory labelling requirements for the geographical origin of certain food products. The justification given by these States is the need to inform domestic consumers about the origin of the products and to limit the risk of consumers being misled as to the origin of the product. They argue that there is a strong consumer interest in origin labelling and that there is a correlation between the quality of a product and its geographical origin. However, there are indications that those measures could have the additional effect of boosting domestic production to the detriment of products coming from other Member States. A 2015 Commission report concluded that mandatory origin labelling at the EU level and even more at the level of a country is highly complex to implement in many areas of food, leading to substantial increases of costs of production, which ultimately would be passed on to consumers.

While consumers generally seem largely favourable towards mandatory rules on origin labelling, the recent emergence of various, diverging national labelling schemes risks

creating a fragmentation of the Single Market. National origin labelling rules might therefore create a barrier to the cross-border marketing of food products.

The fragmentation of the single market rules on origin labelling remains a key concern for DG GROW. Currently we advocate for a European solution to this issue.

Directive on unfair trading practices in the food supply chain

Unfair trading practices (UTPs) are business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing. The food supply chain is vulnerable to UTPs due to significant imbalances between small and large operators. Often farmers and small processors in the food supply chain do not have sufficient bargaining power to protect their businesses from potentially unfair practices.

Although many Member States already had different national rules on UTPs, in some countries there is no or only ineffective specific protection against UTPs. Following extensive discussions in the HLF (FoodDrink Europe taking an active, positive role in them) and in the Agricultural Markets Task Forces, in April 2018 the Commission adopted a proposal for a Directive which will, for the first time, ensure a standard level of protection across all EU countries. The Directive was adopted in April 2019 and will apply in full at the latest on 1 November 2021.

Supply Chain Initiative

The Supply Chain Initiative (SCI) is a voluntary scheme developed in the context of the HLF. Its purpose is to promote good practices in the food supply chain as a basis for fair commercial dealings.

The SCI is designed for companies operating at any point along the food and drink supply chain, irrespective of their size and their geographical location in the EU. When joining the initiative, companies commit to fair trading practices by integrating the Principles of Good Practice into their day-to-day operations and monitoring their application. At the time of registration, companies also confirm that they comply with their process commitments and support the application of the Principles of Good Practice. The SCI requires that companies address disputes in a fair and transparent manner whilst reassuring the complaining party that it will not be subject to retaliation.

Following-up on a commitment made at the Forum in December 2016, the Governance Group of the SCI appointed its first independent Chair. This change of the governance structure was seen as a step to reinforce the impartiality of the decision making in the SCI and ensure the confidentiality of the dispute resolutions.

Following the adoption of an EU Directive on UTPs and the existence of national legislation in this field in most Member States, the SCI is expected to continue to play an important role as a platform for dialogue between the sectors in the food supply chain at the EU as well as at the national level, as the SCI also operates with national platforms. Yet, it has not been very active in the last year due to various reasons (not enough political drive behind it, lack of vision, refusal by COPA-COGECA to participate).

Industry4Europe Coalition

Industry4Europe is a large coalition of organisations dedicated to campaigning for an ambitious EU industrial strategy. With 147 member organisations – particularly industry associations – from across the EU and spanning most sectors of the economy, Industry4Europe is helping to set the vision for the long-term future of the EU's industrial and manufacturing strategy. In March it presented the Joint Call ahead of the European Council, which set out to convince the Heads of State and Government to make a pledge to put industry at the top of the political agenda of the EU during the next institutional cycle (2019-2024).

They advocate for:

- Shortlisting industry as a top priority of the next 5 years Commission Work Programme
- Appointment of a dedicated VP for industry
- Ambitious long-term EU industrial strategy

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