

MINUTES	Ref: LLWG/24/034
Meeting date: 7 March 2024	
Group Meeting: Minutes Labelling & Legislation WG	
Location: Teams	

ATTENDEES

Lorraine Eve	Tesco
Ash Stretton	M&S
Sarah Wood	ALDI
Mathew Willis	Morrisons
Aaron Fawcett	Co-op
Roger Preissner	Co-op
Jared Winder	WH Smith
Jean Marshall	Waitrose
Chris Newbold	Ocado
Brodie TuckerWhittall	Fortnum & Mason
Rhythm Sharma	SPAR
Jennifer Nyamekye	IKEA
Katie Hipwell	Starbucks
Alison Dobbs	Starbucks
Sandeep Topiwala	Dominos
Ann Burrell	Boots
John Counihan	Musgrave
Christina Corbett	Lidl
Christina Baskaran	DEFRA
Phineas Hodson	DEFRA
Andrew Stimpson	DEFRA

Andrea Martinez-Inchausti	BRC
Devina Sankhla	BRC

1. NOT FOR EU LABELLING

The group engaged with the DEFRA team who joined the meeting to discuss the consultation on the marketing of retail goods draft regulation and next steps.

Christina Baskaran (Head of Business Engagement and Comms) and Andrew Stimpson (Border Strategy Team Leader) and Phineas Hodson (Assistant Director) joined the meeting.

DEFRA opened the discussion by introducing the consultation and explaining that what they want to get out of it is good quality data so a proper impact assessment can be produced. The group explained that most companies will not be able to respond to the questionnaire they have produced and instead will submit a written response. There are too many caveats which make it too difficult to tick the boxes provided. Companies are working through what the introduction of this labelling will mean for them, and therefore they do not currently have any data to provide. Companies moving products to NI, have agreed and implemented commercial routes and logistical processes to support these. These future provisions will challenge many of those, so those companies and companies exporting to EU countries are going to have decide what this means for them and what changes they need implement.

It is also difficult to quantify impact when some of the key information is not available such as the list of products which are in scope.

DEFRA was told that implementation of these provisions will not be a one of cost. Many companies will need to produce an additional SKU and change their trading arrangements. They will need to segregate the two lines, which will require having additional space and new processes to manage have two SKUs, e.g. managing volume estimations, different picking station, etc. The cost of handling mistakes made – sending the wrong version, will also have to considered.

Members emphasised that those costs will end up being paid by the consumer.

DEFRA was asked about wholesale and products moved from business to business for further processing. Although those products are not aimed at the final consumer, they are in scope on the bases that they are looking to align the requirements with NIRMS. This has big implications and most of the businesses supplying ingredients are not aware that these provisions will apply to them.

There was also a discussion on the fact that retailers cannot manage the brands.

DEFRA kept coming back to the point that companies must make sure that when responding to the consultation they raise all their issues and views. This was challenged since those have been raised with many senior government officials over the last year, and it has not made any difference, so how is this consultation different? They explained that while the main decision to move forward with the 'Not for EU' labelling has been made, there are some implementation elements which can be influenced, for example the exemptions.

Members felt everything was being done in reverse.

Several other issues were discussed:

- On exemptions we explained we did not support the small or local business exemption and if the impact assessment was done properly, it will show that the impact on bigger businesses, specifically those who have to run two SKUs is disproportionately larger.
- Awareness of these future provisions or even of the consultation is very poor. Many retailers and brands have never heard of it. The Government must be better at disseminating information.
- Retailers have started receiving strong messages from customers who do not want to purchase products with the 'Not for EU' statements. A clear campaign explaining the meaning must be run. The impact on customer services can be large due to the number of queries retailers are likely to receive. These are going to be complex to respond to.
- Products in scope – this is not a static list. In addition to the products in phase 1,2 and 3 in the SPS regulation, there are products which will need temporary labelling if based on risk and additional official control is imposed by Europe. It is unclear how this labelling will be managed.
- DEFRA is working on the list of products in phase 2 and 3. There is no set timing for publication.
- Another cost will come from the resources required to deal with enforcement challenging why certain things are labelled and other very similar products are not. Stores will not have the answers to these questions.
- The big impact will come in October 2024 when the physical lanes come in and HMRC starts operating control certificates.
- Placement on the market – the Regulation makes reference to foods placed on the market having to be labelled. Some of these products will not end up on shelves in GB, they may be placed on the GB market for movement to be moved through the red lane. This was not the intention. The Regulation should make reference to foods needed to be labelled when placed on sleeves or foods destined for the GB consumer.
- The inconsistencies in the NI market at the moment are huge. For example, some retailers shelf-edge ticket and some others do not. It is difficult to know whether there is a legitimate reason for this.
- Impact on ROI – We briefly discussed whether the ROI authorities have raised the impact that these provisions may have on supply and disruption of their food market.

The BRC draft position will be reviewed and some of the points discussed added.

2. FOLIC ACID FORTIFICATION

The meeting with DEFRA and the devolved administrations to discuss pragmatic implementation takes place on 18 March. Ahead of this meeting, BRC has had some conversations with the millers and other industry bodies. A couple of days ago the UK Flour Millers explained their members' preferred position is for under-declaration. The FDF has now stated that this is also their members preferred position. DEFRA and the devolved are already reluctant to provide formal pragmatism of enforcement, and this will more complicated if we do not all come up with an agreed position.

Our agreed position is for over-declaration to avoid possible issues with those claiming to be allergic to folic acid and there are reputational risk associated with not telling consumers what is in their food.

The issue is on the agenda for the supermarket primary authority group on 9 April.

A question was asked about the transitional period. DEFRA had clarified that from October 2024 to October 2026 products must be compliant with the current or with the new provisions. The provisions are applicable to flour produced and imported into this country. The provisions do not apply to products containing flour imported into UK, e.g. bread, morning goods, biscuits, etc.

BRC has discussed voluntary fortification of products like margarine and breakfast cereals. DHSC has clarified they would like those products to continue to be voluntarily fortified. This has been factored in the modelling. We have asked DHSC to re-issue a note with this expectation, since the agreement on voluntary folic acid fortification is now more 10 years old and it is impossible to find in the government website.

3. FSA VEGAN vs FREE-FROM CAMPAIGN

The FSA campaign launched on 5 March. It was a pity they did not engage businesses in the campaign.

The head of CTSI, who are one of the key partners in the campaign, had some not very supportive comments on the campaign. He felt it was not enough and a consistent legal definition for vegan and vegetarian is needed.

FSA suggested DEFRA were considering the development of a legal definition. They have asked trade organisations to express an interest if they wanted to be involved in a project to consider these definitions. During a recent discussion with DEFRA's labelling team they suggested that resource is limited and therefore they might not be able to support this project, however they hinted at whether the definitions by the Vegan and Vegetarian societies should be adopted as the common national definition.

Members were not happy with this.

In Denmark the term vegan has recently been protected under the convention of human rights.

<https://www.euroveg.eu/veganism-determined-a-protected-belief-by-danish-court/>

4. DAIRY & MEAT ALTERNATIVE DESCRIPTORS

Paul Maryland (TSO) has taken on board many of the comments received on the latest draft of the dairy alternative guidance. He agrees the document is too long and it lacks clarity in places. He has not acknowledged they have over interpreted some elements. But he accepts that they cannot push the document forward in the manner they intended. He feels we make a good point about the document being more widely available and to start with education not with a challenge. This is the reason why he is reaching out to FSA and DEFRA to be involved in next steps.

The issue is on the agenda for the next supermarket primary authority group on 9 April.

The next issue is the meat industry wants to start work on guidance on the use of meat descriptors on plant-based products. The first scoping meeting is on 18 March. Andrea will feedback from that session.

5. HONEY, JUICES AND JAMS

The draft regulation amending some breakfast directives – honey, jams and juices – is being discussed in first reading triologue in Europe. The Commission compromise text has been informally supported by Council and Parliament. The next steps are for these 2 European institutions to formally adopt the text. The Parliament will vote it in plenary in April. If supported, the Council will discuss it at their next meeting.

Andrea had put together a briefing summarising the changes. There are some provisions which are to come in the future, but the two more imminent ones relate to:

- Honey - Country or countries of origin should be indicated on the label together with the percentage of each origin, in the case of blends, with a tolerance of 5 % for each individual share within the blend, calculated on the basis of the operator's traceability documentation.
- Marmalade - the term 'citrus marmalade' should be used across the Union for the product until now defined as 'marmalade' in order to distinguish the two product categories; where the term "citrus" could be exchanged for the name of the citrus fruit(s) used.

Once the provisions are adopted in Europe in the next few months, they will be directly applicable in Northern Ireland. The other administrations will need to decide whether the law should be changed in GB.

6. ALLERGENS IN LOOSE FOODS

The FSA Board agreed to recommend to Ministers the law is changed, and a new requirement is introduced to make the provision of allergen information in writing for loose foods, mandatory.

FSA has written to Ministers. However, they are aware that nothing is likely to happen, specially in England, since it takes time to produce and agree a piece of legislation, and there is a very limited amount of time ahead of the next election on England. For this reason, they are progressing with the development of guidance.

They have asked a consultant to assess best practice in the market, to look at what information is currently being given and to conduct a few interviews with small companies. The consultant will return findings to FSA by the beginning of April. Based on this FSA will start developing their thinking. Once they have some ideas, they will set up a series of stakeholder meetings to discuss and further develop those ideas.

One thing to watch out is how far they would want to go on the guidance document on the manner in which the information is to be provided. Despite the Board being clear that the future law should not prescribe format, officials were keen to make sure consumers were being presented with consistent information.

FSA also proposed the use of some personas to help small businesses understand the challenges different people may present and the challenges each position in the business may encounter, e.g. kitchen staff and a waiter. BRC has explained to FSA that these are not likely to be useful for big retailers.

7. OTHER UPDATES

PRECISION BREEDING – A meeting was taking place the following day (8 March). Several subgroups have been set up. One element which one of the reps at this meeting wanted to make sure was clarified was the suggestion that trade certificates for precision bred organisms are required. This makes sense. However, we should avoid needing certification to proof that a product is not precision bred. We must avoid going down that route. Members felt that made sense.

In 10 years' time when precision breeding becomes main stream it would be difficult to know what is what, especially if labelling is not required. This information will be covered in product specs.

We have to avoid consumer insecurity leading this industry in the same way as GM.

ZION – After a discussion with the head of the additives team confirming that a withdrawal was required for products in which this substance has been used, we put together a letter which has now been sent to FSA CEO, Emily Miles, asking for this decision to be reconsidered. Originally the letter was going to be cosigned with FDF, but they decided it is not a big issue for their members. Devina is looking for information on products affected and levels of stock.

CBD OIL – They were supposed to have published their guidance or approach going forward by now, however the resource who was working on it, left the FSA a few weeks ago, so this is delayed. They could not estimate when will they be in a position to publish. Their priority continues to be to support the Committee in their assessment of the applications. A few weeks ago they send an update stating they had gone back the companies whose applications they were looking into, asking for further information to progress with the assessment. It does not feel like they are going to publish an opinion on any application any time soon.

COOL – The Government is planning to publish a consultation on providing country of origin in a clearer manner, e.g. on front of pack, extending the legal requirement to some products (those covered in the 2010 principles), and labelling method of production. The consultation will launch on 12 March, and will have no implications, since this administration does not have time to move forward any legislative changes.

Label costs – One of the elements which the WRAP project looking at label changes will feed into, is an update of the work DEFRA did about 10 years ago quantifying the cost of label changes. Members were surprised that with the exemption of one, none of them have been asked for information on the costs of changing labels.

Election and Labour manifesto – The Labour manifesto had not yet been published, and so far they have been very quiet about how they intent to approach agriculture issues. Below are some of the issues they have mentioned:

- **Seek a veterinary agreement with the European Union:** to cut red tape and costs at our borders and get our great British food exports moving again.
- **Ensure at least half of all food in hospitals, schools and prisons is British:** use the government's own purchasing power to back British produce with local or sustainably produced food: at least 50% of food used in hospitals, schools and kitchens to be British.
- **Turn on GB Energy:** a new publicly owned energy company that will harness clean home-grown British power to deliver cheaper bills for farmers.
- **Rewire Britain:** allowing farmers to rapidly plug their renewable energy into the grid.
- **Flood Resilience Taskforce:** reduce the flood risk of our farms through a Cobra-style taskforce for delivering drainage systems, flood defences and natural flood management schemes.

Codex – there are a number of Codex papers which we should see for comments in the next few weeks. They will require a very quick turnaround, but some are important because they are at the last stage of the process before agreement. These include – alcohol labelling, e-WG on the transmission of information by means other than the label and food labelling in emergencies.

MSM – the guidance published by FSA for comments will result in some ingredients which are currently not classified as MSM to become MSM. This has implications since some retailers have policies against the use of MSM ingredients. If it moves ahead, changes will need to be made to some products composition.

Smoke flavourings – Members asked for an update on the state of the approval process for smoke flavourings. When will we have a definitive list and what are the implications. Some members had looked into it and felt that even if allowed, some of these flavourings will be permitted at such low levels they will not impart any proper flavour. Going back to traditional smoking has strong consequences.

Change to the date of 4 April – the alternative date of the 17 April was suggested. Members will be consulted.