

HOTREC remarks on the Commission proposal for a Regulation of the European Parliament and the Council on the provision of food information to consumers (COM (2008) 40 final)

HOTREC¹, the umbrella organisation representing the hospitality industry at EU level, is very concerned about the impact that the Commission proposal for a “Regulation on the provision of food information to consumers” (COM(2008) 40 final) is likely to have on the activities of hospitality enterprises. If the text is adopted as such, hotels, restaurants, cafés and similar establishments serving food would be directly subject to all mandatory information requirements provided for by the Regulation.

- *Complying with these requirements will impose very heavy burdens and costs on all these establishments, especially on the smallest.*
- *A great number of them will not be able to cope with these complex rules and will simply be driven out of business.*
- *Staying in business will only be possible by*
 - *Cutting on the variety of dishes offered;*
 - *Using pre-packed and pre-labelled ingredients instead of fresh products from the daily market;*
 - *“Standardising” menus and dishes; and*
 - *Raising prices for consumers.*
- *The resulting dramatic decrease in the diversity of dishes offered will*
 - *Reduce the choice for consumers; and*
 - *Definitively harm the European culinary heritage!*

The principle of subsidiarity, enshrined in the Treaty, should be respected. The current regime for “non-prepacked food” (covering food served in restaurants and similar) should not be changed! EU labelling requirements should not apply to meals prepared and served locally, without impact on the internal market.

It is therefore vital that the European Parliament and the Member States review thoroughly the Commission proposal, taking into account the specificities of the hospitality industry, which is composed of over 92% of micro-businesses (employing less than 10 people).

¹ HOTREC represents the hotel, restaurant and café industry at European level. It counts 1.6 million businesses, with 92% of them being micro enterprises employing less than 10 people. The micro and small enterprises (having less than 50 employees) in the hospitality industry representing 99% of businesses make up some 62% of value added. The industry provides some 9 million jobs in the EU alone. HOTREC brings together 40 National Associations representing the interest of the industry in 25 different European countries.

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I. Introduction – the current situation

So far, EU legislation (Directive 2000/13/EC) did not impose any direct obligation in relation to labelling as far as meals served in restaurants are concerned.

Art. 14 of **Directive 2000/13/EC**, which lays down common labelling requirements applicable to all foods to be delivered to the final consumer and to foods supplied by mass caterers, specifies that:

*“Where foodstuffs are offered for sale...without pre-packing... the **Member States** shall adopt **detailed rules** concerning the manner in which the particulars... are to be shown”*

This means that, **under current rules** (Directive 2000/13), **Member States may – but are not obliged to – introduce information requirements in relation to non pre-packed foods sold by mass caterers.**

In its answer to a recent parliamentary question on food information, the European Commission clarified that:

“European Community legislation on the labelling of foodstuffs, i.e. Directive 2000/13/EC, based on Art. 95 of the EC Treaty, is applicable to foodstuffs to be delivered as such [i.e. “not prepared”] to the ultimate consumer, to restaurants and to mass caterers. Meals “prepared” by mass caterers are therefore out of the scope of such legislation.”²

The Commission further explained that:

*“The harmonised EU legislation was mainly developed for ensuring the functioning of the internal market. **Selling unpacked food** or packaging food on the sales premises at the consumers’ request **has, therefore, been considered to be a matter for national authorities to regulate.**”³*

² See answer given by Commissioner Kyprianou to parliamentary question P-1898/07, May 2007 (our translation from French)

³ See answer given by Commissioner Kyprianou to parliamentary question E-3848/07, October 2007

In its reply to the DG SANCO stakeholders consultation on labelling, competitiveness and consumer information (May 2006), HOTREC urged the Commission to maintain – in the forthcoming legislative proposal – the current approach according to which EU labelling rules do not apply to food served in restaurants.

II. The new Commission proposal – (COM (2008) 40 final)

The new text put forward by the Commission completely reverses the current approach. If the proposed Regulation were to be adopted as it stands, hotels, restaurants, cafés and similar establishments (mass caterers providing non-prepacked foods) would be directly subject to all mandatory information requirements provided for by the Regulation.

a. Scope of the proposal

According to Art. 1§3 (“*Subject matter and scope*”), the new proposal applies to all stages of the food chain. **The food supplied by mass caterers would not be excluded from the scope of the legislation:**

“3. This Regulation applies to all stages of the food chain, where the activities of food businesses concern the provision of food information to consumers. It shall apply to all foods intended for the final consumer, including foods delivered by mass caterers and foods intended for supply to mass caterers”.

Restaurants are clearly included by Art. 2§2 in the definition of mass caterers:

“(d) ‘mass caterers’ means any establishment (including a vehicle or a fixed or mobile stall), such as restaurants, canteens, schools and hospitals, where, in the course of a business, food is prepared for delivery to the final consumer and is ready for consumption without further preparation”.

b. Mandatory information

Chapter IV of the proposal lays down detailed rules on the mandatory information which has to be provided to the consumers. In particular, **Art. 9 and Art. 10** list the information which, subject to some exceptions, shall be **mandatory**, including:

- (a) name of the food;
- (b) the list of ingredients;
- (c) any ingredient (listed in Annex II) causing allergies or intolerances and substances derived therefrom;
- (d) quantity of certain ingredients or categories of ingredients;
- (e) net quantity of the food;
- (f) date of minimum durability or “use by” date;
- (i) the country of origin or place of provenance where failure to indicate this might mislead the consumers (...)
- (k) with respect to beverages containing more than 1,2% by volume of alcohol, the actual alcoholic strength by volume;
- (l) a nutrition declaration (including, according to Art. 29, energy value, fats, saturates, carbohydrates, sugars and salt).

Art. 13§1 indicates that “*mandatory information shall be available and shall be easily accessible in accordance with this Regulation for all foods*”. In this context, food covers **also drinks**.

c. Mandatory information in relation to non-prepacked foods

Art. 13§4 refers to Art. 41 concerning the information to be made available for non-prepacked food. **Art. 41** (“*National measures for non-prepacked food*”) reads as follows:

“1. Where foods are offered for sale to the final consumer or to mass caterers without prepackaging, or where foods are packed on the sales premises at the consumer’s request or prepacked for direct sale, the Member States may adopt detailed rules concerning the manner in which the particulars specified in Articles 9 and 10 are to be shown.

2. Member States may decide not to require the provision of some of the particulars referred to in paragraph 1, other than those referred to in Article 9(1) (c) [information on allergens], provided that the consumer or mass caterer still receives sufficient information.

3. Member States shall communicate to the Commission the text of the measures referred to in paragraphs 1 and 2 without delay”

Thus, mass caterers such as restaurants, canteens, etc. will have, as a minimum, to provide information on allergens (listed in Annex II) but it will be up to the Member States to adopt detailed rules concerning the manner in which this information should be provided. **Unless Member States decide otherwise, mass caterers will also have to provide information on all the particulars mentioned in Art. 9 and Art. 10.**

III. Concerns and remarks by HOTREC

a. In relation to labelling of meals served in restaurants

HOTREC believes that, for practical reasons, it is unwise to extend food labelling obligations to restaurants. It is simply unrealistic to foresee the application of complex and detailed requirements (Art. 9 and Art.10) to non-prepacked foods sold by catering businesses. Meals served in “traditional” restaurants cannot be subject to the information requirements applicable to the food processed by food manufacturers and sold in shops.

Restaurants tend to change their menus and/or suppliers on a regular basis, according to the market offering. Food labelling would be unworkable with menu-cards, which would need to be constantly re-written and re-printed. It would be impossible to list all ingredients on the menus: menus would become as thick as recipe books! This is all the more so as menu-cards are often written in various languages (e.g. in case of tourist destinations).

In addition, it would be extremely difficult for traditional restaurants to provide a nutrition declaration for the meals they serve. It may be possible in case of standardised food preparation (e.g. for quick-service restaurants offering a limited number of dishes) but, undoubtedly, **it would not be feasible for the overwhelming majority of traditional restaurants whose menus vary every month/week/day depending on the market offer.** Such restaurants tend to have on their menus a great number of dishes based on elaborated

and varying recipes. They would need to hire a nutritionist and to consult him/her on a daily basis: this would result in additional **costs unbearable for small and micro enterprises**.

Beyond the costs elements, these **requirements would also make menu-cards overly complicated** and, therefore, much less attractive and **difficult to understand for customers**. Most restaurant customers do not expect to find the same detailed information on menus as on pre-packaging foods sold in shops. After all, most of them are seeking a leisure experience that goes beyond simply acquiring food.

There is little demand from restaurant customers for detailed food information, and where a customer requests specific information on the composition of a dish, the staff or the chef are available to explain what foodstuffs are used and the recipe followed.

b. In relation to allergens information

HOTREC and its national associations fully share the concerns of public authorities in relation to the incidence of food allergies (currently estimated to affect between 1% and 2% of adults according to the figures quoted in the Impact Assessment Report⁴).

However, as far as the requirement to provide allergens information for non-prepacked foods is concerned, in view of the **length and complexity of Annex II⁵**, HOTREC fears that such an obligation would be unworkable and impose extremely heavy burdens on micro businesses.

The list of **allergens** (14 ingredients) is very long and includes **ingredients** that are **very common** in most restaurant dishes (cereals, eggs, fish, milk, nuts, etc. as well as the products derived therefrom). Furthermore, the **denomination** of certain allergens (as well as the related exceptions) is so **complex** that it makes it extremely difficult to identify them when possibly contained in some pre-mixed/already made components.

In addition, as a result of possible changes in prevalence and patterns of food allergies, other ingredients may soon have to be added to the list in Annex II. It is important to bear in mind that, in principle, **any food can cause an allergic reaction**. Moreover, *“the occurrence of food allergies changes with age and varies across different geographical areas, for example, because of different dietary patterns”*.⁶

The **risk of allergen cross-contamination during cooking** is also a major problem. If such a risk is unavoidable even in the case of standardised food production in large factories, it cannot be excluded in the case of meals cooked in restaurants' kitchens, where chefs have to prepare, at the same time, various dishes containing common allergenic ingredients (e.g. eggs, nuts, fish, milk, etc.).

Although HOTREC fully understands the objective of the proposal (protecting consumers suffering from severe food allergies), it considers that mandatory allergen labelling is simply unworkable for meals served by traditional restaurants, for the reasons explained above. It is the responsibility of the consumer who is allergic to inform the waiter in the restaurant. The staff or the chef will then have to check and explain the various components of the dishes.

⁴ See Impact Assessment Report accompanying the Commission proposal (SEC(2008) 92), page 50

⁵ The list of allergens comprises cereals containing gluten (wheat, rye, barley, oats, spelt, kamut and their hybridized strains), crustaceans, eggs, fish, peanuts, soybeans, milk, nuts (almond, hazelnut, walnut, cashew, pecan nut, Brazil nut, pistachio nut, macadamia nut and Queensland nut), celery, mustard, sesame seeds and sulphur dioxide and sulphites at more than 10mg/kg or 10mg/litre

⁶ *“The percentage of people with food allergy in the community”*, by Pia Nørhede, p.1, www.europrevall.org

c. Subsidiarity principle

HOTREC and its national associations are of the firm opinion that EU legislation should not regulate the provision of information with regard to meals served in restaurants. As gastronomic traditions and consumer expectations vary greatly from country to country, the decision to adopt **rules concerning the labelling of non-prepacked food should be left to Member States**, in accordance with the subsidiarity principle. Indeed, such rules do not have any impact on the “smooth functioning” of the internal market.

The fact that the proposed Regulation allows Member States to adopt “*detailed rules concerning the manner in which mandatory information are to be shown*” (Art. 41) only confirms that this issue should be left to public authorities at national level.

In recital 41, the Commission itself admits that “*Member States should retain the right, depending on local practical conditions and circumstances, to lay down rules in respect of the provision of information concerning non-prepacked foods*”.

However, its current proposal covers all foods. With the shift in the legal instrument from a Directive to a *Regulation*, all the mandatory requirements (Art. 9 and Art.10) will be “automatically” applicable to meals served by restaurants, unless Member States decide that such requirements (with the exception of information on allergens, which should always be mentioned) do not apply to non-prepacked food. As a consequence, Member States will have to adopt national measures to allow for derogation and communicate them to the Commission.

HOTREC is of the strong opinion that such an approach is in clear contradiction with the subsidiarity principle.

d. Impact Assessment Report and effect on competitiveness

In the Impact Assessment Report accompanying the proposal, the Commission admits that: “*the nature of products offered at catering outlets with frequently changing recipes and ingredients, makes it however difficult to keep information up to date*” (page 49).

In the Report, the Commission fully acknowledges that “*there are difficulties in providing information at point of sale*” for non-prepacked food and it admits that “*there might be additional costs [for non-prepacked foods operators] in obtaining information as well as passing it on to consumers*” (page 20).

Still according to this Report, for catering establishments and retail outlets – the business sectors affected by the introduction of this new information requirement – “*the overall cost is likely to be significant*”.

As far as restaurants are concerned, the Commission estimates that “*some training for the staff would probably be required for the staff to be able to provide accurate and reliable allergen information*” (page 49).

Unfortunately, the impact assessment does not provide precise data concerning the costs that catering establishments would have to bear due to the new legislation; it just explains that “*operational costs [...] are difficult to quantify*” as there is “*little literature available on the costs of labelling food sold loose*”. As regards **restaurants**, information on food products would have to be given at the point of sale in various manner, for example included in “*the written menus or on clearly visible displays (specific booklets or displays with additional*

information". In this respect, the impact assessment points out that ***"no systematic research has however answered the question of how much such a provision would cost"*** (page 49).

Although the Commission acknowledges that the requirement of informing on allergenic ingredients would ***"clearly impact on SMEs as most specialised food retailers and restaurants are small or even micro companies"***, very surprisingly it considers that ***"there is however no evidence that SMEs would be disadvantaged by such a Regulation"*** (page 50).

Whereas the Report touches in an appropriate manner on certain aspects of the impact on small and micro-businesses, it does not bring the findings to a clear conclusion.

e. Conclusions

HOTREC fully agrees with EU policy-makers that it is important to provide correct food information to consumers to enable them to make informed choices. However, HOTREC and its national associations consider that, for practical reasons, it would be impossible for catering businesses (restaurants, cafés, etc.) to comply with all the information requirements set out by the Commission proposal.

HOTREC urges the European Parliament and the Member States to take into account the specificities of the hospitality industry and therefore amend the text, so as to maintain the current approach in relation to non-prepacked foods sold by mass caterers. EU labelling rules should not apply to foods served in restaurants. As there is no consequence for the internal market, the current regime for non-prepacked foods should not be changed!

**Extract from the Commission proposal for a
“Regulation on the provision of food information to consumers”
(COM 2008) 40 final)**

Article 9

List of mandatory particulars

1. In accordance with Articles 10 to 34 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory.

- (a) the name of the food;
- (b) the list of ingredients;
- (c) any ingredient listed in Annex II causing allergies or intolerances, and any substance derived therefrom;
- (d) the quantity of certain ingredients or categories of ingredients;
- (e) the net quantity of the food;
- (f) the date of minimum durability or the ‘use by’ date;
- (g) any special storage conditions or conditions of use;
- (h) the name or business name and address of the manufacturer or packager, or of a seller established within the Community;
- (i) the country of origin or place of provenance where failure to indicate this might mislead the consumer to a material degree as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance; in such cases the indication shall be in accordance with the rules laid down in Article 35(3) and (4) and those established in accordance with Article 35(5);
- (j) instructions for use when it would be impossible to make appropriate use of the food in the absence of such instructions;
- (k) with respect to beverages containing more than 1,2 % by volume of alcohol, the actual alcoholic strength by volume;
- (l) a nutrition declaration.

2. The particulars referred to in paragraph 1 shall be indicated with words and numbers unless the consumers are informed, as regards one or more particulars, by other forms of expression established by implementing measures adopted by the Commission. Those measures designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted, in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

3. The Commission may amend the list of mandatory particulars laid down in paragraph 1. Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Article 10

Additional mandatory particulars for specific types or categories of food

1. In addition to the particulars listed in Article 9(1) additional mandatory particulars for specific types or categories of food are laid down in Annex III.

2. The Commission may amend Annex III. Those measures designed to amend nonessential elements of this Regulation by supplementing it shall be adopted, in accordance with the regulatory procedure with scrutiny referred to in Article 49(4).

ANNEX II
INGREDIENTS CAUSING ALLERGIES OR INTOLERANCES

1. Cereals containing gluten (namely wheat, rye, barley, oats, spelt, kamut or their hybridised strains) and products thereof, except:
 - (a) wheat based glucose syrups including dextrose;
 - (b) wheat based maltodextrins;
 - (c) glucose syrups based on barley;
 - (d) cereals used for making distillates or ethyl alcohol of agricultural origin for spirit drinks and other beverages containing more than 1,2 % by volume of alcohol.
2. Crustaceans and products thereof.
3. Eggs and products thereof.
4. Fish and products thereof, except:
 - (a) fish gelatine used as carrier for vitamin or carotenoid preparations;
 - (b) fish gelatine or Isinglass used as fining agent in beer and wine.
5. Peanuts and products thereof.
6. Soybeans and products thereof, except:
 - (a) fully refined soybean oil and fat 1;
 - (b) natural mixed tocopherols (E306), natural D-alpha tocopherol, natural D-alpha tocopherol acetate, natural D-alpha tocopherol succinate from soybean sources;
 - (c) vegetable oils derived phytosterols and phytosterol esters from soybean sources;
 - (d) plant stanol ester produced from vegetable oil sterols from soybean sources.
7. Milk and products thereof (including lactose), except:
 - (a) whey used for making distillates or ethyl alcohol of agricultural origin for spirit drinks and other beverages containing more than 1,2 % by volume of alcohol;
 - (b) lactitol.
8. Nuts, namely almonds (*Amygdalus communis L.*), hazelnuts (*Corylus avellana*), walnuts (*Juglans regia*), cashews (*Anacardium occidentale*), pecan nuts (*Carya illinoensis (Wangenh.) K. Koch*), Brazil nuts (*Bertholletia excelsa*), pistachio nuts (*Pistacia vera*), macadamia nuts and Queensland nuts (*Macadamia ternifolia*), and products thereof, except:
 - (a) nuts used for making distillates or ethyl alcohol of agricultural origin for spirit drinks and other beverages containing more than 1,2 % by volume of alcohol.
9. Celery and products thereof.
10. Mustard and products thereof.
11. Sesame seeds and products thereof.
12. Sulphur dioxide and sulphites at concentrations of more than 10 mg/kg or 10 mg/litre expressed as SO₂.
13. Lupin and products thereof.
14. Molluscs and products thereof.