

SUBMITTED VIA THE ONLINE TRIS PROCEDURE

Mr. Giuseppe Casella
Head of TRIS Unit
DG GROW B/2
European Commission
Rue de la Loi, 200
B-1049 Brussels

19 September 2018

Dear Mr Casella

Notification 2018/9010/N: Draft Regulation (certain "other substances" than vitamins and minerals) amending the Norwegian Regulation on the addition of vitamins, minerals and certain other substances to foods

In relation to the above-mentioned notification from Norway, as UNESDA, representing the European soft drinks industry, we are pleased to have the opportunity to share our comments with you.

1. Warning labelling

Firstly, we refer to the requirement for the labelling of a warning statement for caffeine: *'A daily intake of 400 mg of caffeine from all sources should not be exceeded'* for certain categories of foodstuffs, including categories of soft drinks falling within UNESDA's scope, specified in the annex as:

- 'Energy drinks and other water-based non-alcoholic, carbonated and non-carbonated beverages with an amount of added caffeine that exceeds 15 mg/100ml';
- 'Sports drinks (carbohydrate electrolyte drinks)'; and
- 'Sports drinks ... carbohydrate-electrolyte drinks which also contain protein/fat, for which the protein content is at least 20% of the energy content of the product and the energy content is at least 420 kJ/100 ml (100 kcal/100ml)'.

Harmonised food labelling legislation at EU level - i.e. EU Regulation 1169/2011 on Food Information to Consumers - sets out extensive labelling provisions, including additional labelling for beverages containing more than 150 mg/litre of caffeine. This Regulation requires the wording *'High caffeine content. Not recommended for children or pregnant or breast-feeding women'* to be placed in the same field of vision as the name of the beverage, followed by an indication of its caffeine content.

Regulation 1169/2011 has been transposed into Norwegian law and provides clear provisions in Articles 38 and 39 for deviating from EU harmonised labelling. These provisions stipulate that additional national labelling to EU harmonised labelling requirements is only possible if justified by

well-documented arguments and based on evidence that most consumers attach significant value to the provision of such information. No such arguments or evidence have been provided in relation to this additional warning labelling.

The proposal from Norway for the above-mentioned additional warning statement goes beyond EU requirements and therefore poses a threat of a barrier to trade:

- Firstly, implementing the requirement implies that impacted food manufacturers will have to change the labelling on existing products - a time-consuming and expensive task for companies.
- Secondly, food manufacturers generally aim to design labels that can be used in several countries at the same time, out of both financial and environmental considerations. Specific national requirements, such as this, will clearly add unjustified complexity and obstacles in the way of any such strategies.
- In addition, the warning labelling requirement also implies discrimination against some product categories which contain caffeine, notably energy drinks, by singling them out and thus would have a competition-distorting effect on the market.

The European Food Safety Authority (EFSA) confirmed in its scientific opinions¹ that caffeine from all sources, including energy drinks, is safe and that caffeine in combination with other typical constituents of energy drinks is safe.

A labelling requirement, as proposed in the draft that targets arbitrary specific group of caffeine-containing products without a scientific and legal basis, is discriminatory and market distorting without achieving the draft's purpose. Furthermore, as several types of widely consumed caffeine-containing products, such as coffee and tea, are not required to carry this labelling, the proposed statement is misleading and useless information for the consumer. The draft includes no explanation as to the necessity of this labelling requirement or any justification for proposing such a measure equivalent to a quantitative restriction according to Art 34 TFEU. It lacks a detailed assessment as to the applicability of Art 38 et seq. and the possibility to derogate from Regulation (EU) 1169/2011 on the grounds of consumer protection or public health.

2. Maximum amount of caffeine permitted

It is proposed that the maximum permitted addition of caffeine should be 10mg/100ml for the following two categories:

- (i) Sports drinks (Category I) carbohydrate-electrolyte drinks; and
- (ii) Sports drinks (Category II) (carbohydrate-electrolyte drinks which also contain protein/fat ...).

Firstly, these sub-categories do not reflect the sub-categorisation of foodstuffs as set out in the EU Additives Regulation 1333/2008 and secondly the maximum amount permitted of caffeine is not in line with the EU Flavouring Regulation 1334/2008 which allows up to 15mg/100ml (150mg/l litre) of caffeine to be used as a flavouring substance in all soft drinks.

There is no scientific reason for limiting the use of caffeine to 10mg/100ml. De facto, this requirement will provide a technical barrier to trade given that it is not in line with EU legislation.

¹ EFSA Fact Sheet Caffeine:

http://www.efsa.europa.eu/sites/default/files/corporate_publications/files/efsaexplainscaffeine150527.pdf

3. Transition period

A transition period of 6 months is envisaged which is too short to allow companies to adjust to the additional labelling requirement. We would therefore recommend that the transition provision should be changed to at least 12 months, if the labelling requirement is indeed introduced.

Based on our comments outlined above, we would respectfully request the European Commission to urge Norway to revise the draft to:

- 1. Remove the warning labelling marking requirement from the draft regulation**
- 2. Remove the quantitative restrictions for the maximum amount of caffeine to be permitted in sports drinks**
- 3. Extend the transition period to at least 12 months.**

Should you require any additional information or wish to discuss further, please do not hesitate to let us know.

Kind regards,



Helen Benson
UNESDA