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The European Parliament calls for all imported fishery products to comply with EU standards, while international efforts to address IUU fishing continue

On 30 May 2018, the European Parliament adopted *European Parliament resolution of 30 May 2018 on the implementation of control measures for establishing the conformity of fisheries products with access criteria to the EU market* (hereinafter, Resolution), focusing, *inter alia*, on the EU's framework addressing illegal, unregulated and unreported (hereinafter, IUU) fishing. With respect to fishery imports into the EU, the Resolution states that "*the EU should require all imported products to comply with EU conservation and management standards, as well as the hygiene requirements imposed by EU legislation*". A few days later, on 5 June 2018, the Food and Agriculture Organization (hereinafter, FAO) of the United Nations marked the first '*International Day for the Fight Against IUU Fishing*', highlighting the current *momentum*, which is underlined by increased activities around the world to improve fisheries controls.

IUU fishing refers to fishing that is: 1) Illegal (*i.e.,* lacks authorisation, violates national laws or international obligations or does not comply with conservation and management measures); and/or 2) Unreported (*i.e.,* it is not properly reported under international, regional or national laws and regulations); and/or 3) Unregulated (*i.e.*, it is performed by vessels without national flag or that jeopardise fish stocks). According to the European Commission (hereinafter, Commission), between 11 and 26 million metric tonnes of fish are caught illegally each year around the world (*i.e.*, about 15% of global catches). The Commission bases its decisions on the EU's IUU Regulation, which entered into force in 2010, and on additional instruments adopted in November 2013 (see *Trade Perspectives*, Issue No. 23 of 13 December 2013). The EU is the world's largest market for fishery products and the Resolution notes that the EU absorbed 24% of global fishery imports in 2016. The IUU Regulation is the EU's key instrument in the fight against IUU fishing and aims at ensuring that only those fishery products that are certified be offered legal access to the EU market.

In its Resolution, the European Parliament notes that it is "*concerned that imports of [fisheries and aquaculture] products are subject to fewer controls, the primary controls being sanitary standards and the Illegal, Unreported and Unregulated Fishing (IUU) Regulation*". The Resolution appears to be guided by the desire to achieve a level playing field on the EU market, noting that "*different rules for placing fish on the market create a discriminatory market that adversely affects EU fishers and fish farmers, for which reason controls on fishery and aquaculture products should be increased and improved*". Arguably, such level

playing field should be achieved also vis-à-vis all import origins, in accordance with the Most-Favoured-Nation principle (MFN), and not just between imported and domestic products. In particular, the European Parliament appears concerned by the fact that the EU's IUU Regulation is only intended to ensure that the fishery product be caught in compliance with the applicable rules in the third country. Consequently, the Resolution notes that "*in order to ensure equitable treatment of imported and European fishery and aquaculture products […], the EU should require all imported products to comply with EU conservation and management standards, as well as the hygiene requirements imposed by EU legislation*".

However, in addition to the traceability requirements of the IUU fishing framework, fishery imports into the EU must already comply with the EU regulatory framework for food law, as well as with specific rules for fishery products. Imports of fishery products from non-EU countries must enter the EU via an approved Border Inspection Post under the authority of an official veterinarian in the respective EU Member State. Each consignment of fishery products is then subject to a systematic documentary check, identity check and, as appropriate, a physical check. The frequency of physical checks depends on the risk profile of the product and also on the results of previous checks. Consignments that are found to be non-compliant with EU legislation must then either be destroyed or, under certain conditions, re-dispatched within 60 days. For all fishery products, Article 6 of *Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin* provides that countries of origin must be on a positive list of eligible countries for the relevant product. The competent authority of the third country must guarantee that the relevant hygiene and public health requirements are met. While there may be an issue with the frequency and consistency of checks, which are under the responsibility of EU Member States' authorities, the same rules already apply.

On the other side, the adequate enforcement of the EU's IUU fishing framework, which does not always prevent the importation of illegally caught fish, to the detriment of the country in whose waters the fish was caught and also with anti-competitive consequences vis-à-vis compliant products (of domestic or imported origin), appears to be a real issue. The Resolution also refers to the issue of IUU fishing and EU trade agreements. In particular, it underlines "*that FTAs and other multilateral agreements with trade provisions negotiated by the Commission include reinforced chapters on sustainable development*". According to the Resolution, Chapters on Trade and Sustainable Development (hereinafter, TSD Chapters) should: 1) "*Explicitly reinforce the requirements of the IUU Regulation and oblige the third country to initiate a procedure to prevent IUU fish from entering its market, in order to keep them from arriving in the EU indirectly*"; and 2) "*Require the third country to ratify and implement effectively key international fishery instruments, such as the UN Convention on the Law of the Sea, the UN Fish Stocks Agreement, the UN Food and Agriculture Organisation (FAO) Port State Measures Agreement and the FAO Compliance Agreement, and to adhere to the standards of the relevant regional fisheries management organisations (RFMOs)*". In line with its previous position on the TSD Chapters, the Parliament notes that "*they should incorporate a binding dispute settlement mechanism […] complete with the possibility of applying sanctions in case of non-compliance with their international commitments*". Indeed, while the details remain under discussion, it appears timely that the increasing commitments contained in the TSD Chapters be combined with commercial benefits (*i.e.*, trade advantages or preferences) or, in case of non-compliance by either of the FTA parties, with compensation (*i.e.*, trade disadvantages or sanctions).

Finally, the Resolution even addresses the labelling of fishery products, urging the Commission to "*promptly examine the possibility of creating a label to identify the EU's fishery products*", noting that EU consumers might often make different choices if they were informed about the geographical origin of the product. This understanding appears to follow the trend of recent EU Member States' measures introducing country of origin labelling (hereinafter, COOL) for a variety of food products (see *Trade Perspectives*, Issue No. 16 of 8 September 2017). A common label for EU fishery products would avoid most of the concerns put forth for COOL at the EU Member States' level, in particular the piecemeal approach, which is fragmenting the EU Single Market and that is associated with high costs for

producers and with significant consequences for intra-EU trade flows. However, the Parliament appears to be unaware of the existing EU rules.

Article 35(1) of *Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products* provides that fishery and aquaculture products may be offered for sale to the final consumer or to a mass caterer only if appropriate marking or labelling indicates, *inter alia*, the area where the product was caught or farmed. Article 38(1) of *Regulation (EU) No 1379/2013* then provides more specific information on this labelling requirement, noting that the indication of the catch or production area, in accordance with Article 35(1), shall consist of the following: 1) In the case of fishery products caught at sea, the name in writing of the sub-area or division listed in the FAO fishing areas, as well as the name of such zone expressed in terms understandable to the consumer, or a map or pictogram showing that zone, or, by way of derogation from this requirement, for fishery products caught in waters other than the Northeast Atlantic (FAO Fishing Area 27) and the Mediterranean and Black Sea (FAO Fishing Area 37), the indication of the name of the FAO fishing area; 2) In the case of fishery products caught in freshwater, a reference to the body of water of origin in the Member State or third country of provenance of the product; and 3) In the case of aquaculture products, a reference to the Member State or third country in which the product reached more than half of its final weight or stayed for more than half of the rearing period or, in the case of shellfish, underwent final rearing or a cultivation stage of at least six months. Clearly, there is no need for an EU label for fishery products, as all fishery products must already provide detailed information on their origin.

In the meantime, the EU continues to verify compliance by its trading partners with the EU framework for combatting IUU fishing and works closely with the relevant authorities (see *Trade Perspectives*, Issues No. 7 of 6 April 2018, No. 21 of 17 November 2017, No. 16 of 8 September 2017 and No. 11 of 2 June 2017). In particular, Thailand and Viet Nam continue their efforts to improve fishery controls and management, as well as their dialogue with the EU. In May 2018, a working delegation of the Commission's Directorate-General for Maritime Affairs and Fisheries conducted a fact-finding mission to Viet Nam in order to inspect the implementation of recommendations related to the fight against IUU fishing. Viet Nam's Minister of Agriculture and Rural Development, Nguyen Xuan Cuong, affirmed that Viet Nam had been active in implementing the recommendations to ensure responsible and sustainable fisheries. On 23 October 2017, the EU had issued a '*yellow card*' to Viet Nam, a warning that would turn into a trade ban, should the issue not be sufficiently addressed. On the basis of the EU's IUU fishing regulation, third countries have six months to implement EU recommendations before another assessment takes place. The EU has yet to release the outcome of the May 2018 mission. Such outcome has already become known for Thailand, where the EU's yellow card, issued in 2015, will be maintained for the time being. Reportedly, the EU is still concerned by Thailand's fleet management and by a lack of law enforcement.

On a more global level, the FAO marked the first *International Day for the Fight Against IUU Fishing* on 5 June 2018. The date was chosen to commemorate the anniversary of the UN's Port State Measures Agreement (hereinafter, PSMA), which came into force on 5 June 2016. Most importantly, the PSMA requires fishing vessels to request permission to dock at a port and to inform the port of the details of their fishing operations. The permission to dock may be denied in case illegal fishing is suspected, which is intended to prevent illegally caught fish from entering the market. The FAO announced that, in addition to the 54 countries and the EU, that have already ratified the PSMA, many more countries were currently in the ratification process.

Addressing IUU fishing, by implementing and enforcing relevant legal frameworks, remains a global issue, which significantly affects trade. EU trading partners, particularly in South East Asia, are continuing their efforts to address the issue, in particular in view of avoiding the issuance of a '*red card*' by the EU (on the consequences, see *Trade Perspectives*, Issue No. 11 of 2 June 2017). The effective implementation of the EU's IUU fishing framework is also

important for other EU trading partners (in the ASEAN region and beyond) that are already complying with the framework and that are often complaining of having to compete on the EU market with products from other countries that are not complying with the IUU Framework and that are, therefore, distorting competition. Supporting the domestic EU fishery industry, while ensuring fair and non-discriminatory market access to products from all origins, should be the two additional concerns for EU regulators besides the core concern of ensuring compliance with the IUU framework. Politically motivated and seemingly '*protectionist*' initiatives, such as the recent Resolution by the European Parliament, risk doing more harm than good. There must be a level playing field, for purposes of market access to the EU and with respect to the applicable domestic rules and their enforcement. Interested stakeholders should closely follow EU debates on these issues and anticipate the upcoming EU decisions on the '*yellow cards*' currently issued to Thailand and Viet Nam.

UK proposes its '*backstop*' arrangement on customs to avoid a '*hard*' Irish border, while food safety in the post-'*Brexit*' UK continues to be a concern

On 7 June 2018, the UK Government published a technical note on '*Temporary customs arrangements*', providing its own '*backstop*' proposal aimed at avoiding a '*hard*' border (*i.e.*, the reintroduction of border controls and customs checkpoints) between Northern Ireland, which is part of the UK, and the Republic of Ireland, an EU Member State. The border issue remains one of the most critical issues to overcome and, under the proposal, the UK would remain part of the EU Customs Union until December 2021, one year after the end of the agreed transition period. At the same time, food safety in the post-'*Brexit*' UK continues to be an important concern. On 30 May 2018, the UK's Local Government Association (hereinafter, LGA), a politically-led, cross-party organisation that works on behalf of British local councils, published a statement warning that food safety standards would be put at risk if the UK's access to EU-wide food safety and animal health database systems were not continued after '*Brexit*'. With '*Brexit*' now a mere nine months away, businesses and citizens are still facing a large degree of uncertainty.

On 29 March 2017, the UK Government officially notified the EU of its intention to withdraw from the EU. Article 50 of the Treaty on the Functioning of the EU (TFEU) provides for a two-year period to negotiate the exit and, in its '*Brexit*' bill, the UK formally committed to leave the EU at 23:00 GMT on 29 March 2019. In December 2017, the EU and the UK agreed that sufficient progress had been made in the '*Brexit*' negotiations and agreed that negotiations could also cover the future relationship between the EU and the UK. On 23 March 2018, the European Council confirmed the agreement reached on a transition period, which would last from 29 March 2019 until 31 December 2020. The agreement on the transition period, and the rules contained therein, provide important clarifications for trading partners around the world and were a first step in reducing the vast amount of uncertainties surrounding '*Brexit*' (see *Trade Perspectives*, Issue No. 7 of 6 April 2018). Still, on 15 May 2018, the EU's Chief '*Brexit*' negotiator, Mr. Michel Barnier, stated that, since March, "*no significant progress*" had been made. On 8 June 2018, Mr. Barnier provided an update on the negotiations held during that week, referring to the '*backstop*' proposal and noting that there were two weeks left before the European Council, scheduled to take place on 28 and 29 June 2018.

On 28 February 2018, the EU had published its '*backstop*' proposal, providing that a '*common regulatory area*' between the EU and Northern Ireland would be established, should an EU-UK agreement on a future relationship fail to prevent a '*hard*' border. That proposal argued that Northern Ireland would remain an effective part of the EU's Customs Union, align with the EU on VAT, abide by EU rules on State aid, and remain under the jurisdiction of the Court of Justice of the EU. This proposal was immediately rejected by the UK Government, with Prime Minister Theresa May stating that such an arrangement would "*undermine the UK common market and threaten the constitutional integrity of the UK*". The '*temporary customs arrangement*' would apply beyond the already agreed transition period. The proposal states that for the UK it is *"clear that the future customs arrangement needs to*

deliver on the commitments made in relation to Northern Ireland. The UK expects the future arrangement to be in place by the end of December 2021 at the latest". The proposed '*temporary customs arrangement*' would eliminate tariffs, quotas, rules of origin and customs processes, including declarations on all UK-EU trade. The UK would still apply the EU's common external tariffs at the UK's external border, the Union Customs Code and other parts of the Common Commercial Policy to the extent required for the functioning of the temporary customs arrangement. However, according to the proposal, the UK would no longer be bound by the EU's Common Commercial Policy and would be able to pursue its own external trade policy, in particular, to negotiate, sign and ratify free trade agreements (hereinafter, FTAs) with third countries. The proposal made clear that the temporary customs arrangements "*should be time limited, and that it will be only in place until the future customs arrangement can be introduced*". On 8 June 2018, the EU's Chief '*Brexit*' negotiator stated that, while he welcomed the publication of the UK's proposal, he thought it raised more questions than it addressed and underlined the need to find a solution for this issue in the Withdrawal Agreement by the autumn of 2018.

On a separate note, on 30 May 2018, the UK's Local Government Association (LGA), which represents 415 UK authorities, including 370 councils in England and Wales, published a statement warning about the risks for food safety and public health if the UK did not ensure access to the EU-wide food safety and animal health database systems after '*Brexit*'. The LGA stated that the UK, as an EU Member State, is currently part of a "*European-wide framework of rules and systems based upon scientific evidence which ensures the traceability of high risk products – notably food, feed and animal products – and provides rapid access to intelligence about contamination of products, helping to build a picture about suspect suppliers*". According to the LGA, access to these intelligence systems is needed to detect suspect suppliers and to allow officers at the councils' level to have access to relevant information enabling them to protect public health. Currently, the UK contributes to, and is part of, the EU's databases that collect information and maintain the integrity of food and feed across the EU. This concerns, most notably, the EU's '*Rapid Alert System for Food and Feed*' (hereinafter, RASFF) and the EU's '*Trade Control and Expert System*' (hereinafter, TRACES).

The RASFF ensures that information be shared efficiently between its participants and provides a service to ensure that urgent notifications be sent, received and responded to collectively and efficiently. TRACES is the Commission's multilingual online management tool for all sanitary requirements on intra-EU trade and importation of animals, semen and embryo, food, feed and plants, which aims at reducing the impact of disease outbreaks and at ensuring a quick response to any sanitary alert, in order to ensure the protection of consumers, livestock and plants. The LGA noted that councils were "*warning of the increased risk to public health if regulators are not able to access these systems and are calling on the Government and the* [EU] *to ensure that, regardless of what form the final Brexit agreement takes, the UK's access to these key mechanisms is maintained*". According to the LGA, lack of access to such databases would significantly weaken local councils' ability to protect the UK's food system, increasing the risk of food scandals, which would undermine public confidence in the food industry and public controls. Moreover, the LGA noted that, "*after years of funding reductions for trading standards and environmental health*", UK local authorities did *"not have the capacity to increase checks to offset this risk, either at ports or inland, unless this is fully funded".* Indeed, many open questions remain as to the future regulatory framework in the UK and access to information is a key question that must be addressed.

A further issue that looks poised to have an impact on food safety is the general approach to regulating. Currently, the EU applies the '*precautionary principle*' in regulating, which aims at ensuring a higher level of consumer protection through preventative decision-taking in the case of risk. Already in May 2017, the UK House of Lords' EU Energy and Environment Subcommittee published a report titled '*Brexit: agriculture*'. The report refers to the regulation of pesticides as an area in which the opportunity for change exceeded the risks in a post-'*Brexit*' era. Potential improvements had been reported to the UK House of Lords by, *inter*

alia, the Crop Protection Association and the National Association of British and Irish Flour Millers, and the report summarised that "*A recurring theme was for the UK to move to a more risk-based approach to plant protection product regulation. The EU takes a 'precautionary approach' to regulating chemicals, which emphasises the hazard of a given substance to human and animal health*" (see *Trade Perspectives*, Issue No. 10 of 19 May 2017). Accordingly, '*hazard*' includes anything that can potentially cause damage, while the '*risk*' assessment aims at determining the actual '*risk*'. Taking a more '*risk-based*' approach could imply the allowance in the UK of certain chemical substances that are currently prohibited or strictly controlled under the EU regulatory framework, such as glyphosate. Revised regulatory standards on food, which would allow currently prohibited chemical substances or permit certain them at levels that exceed current EU standards, would considerably impact future trade between the EU and the UK, since those goods would likely no longer be allowed to enter the EU market. This would come at a very high cost for UK producers.

The UK Parliament's House of Commons and House of Lords are currently debating the UK's '*Brexit*' Withdrawal Bill. A number of amendments had been introduced by the House of Lords and, on 12 and 13 June 2018, the Bill returned to the House of Commons for consideration of those amendments. Both Houses will have to reach agreement before the Bill can become an Act of Parliament. On 12 June 2018, Amendment 3, supported by the UK Government and initially put forward by a group of 23 Tory Members of Parliament, was debated by the House of Commons. Amendment 3 provides that nine existing EU legal principles relevant to environmental law, including the '*precautionary principle*', would continue to apply in the UK after Brexit. If this were to become part of the final '*Brexit*' Withdrawal Bill, it would have an important impact on the UK's regulatory framework on agriculture and plant protection, significantly limiting the UK's scope to change its approach and excluding the shift to a risk-based approach. However, the House of Commons disagreed with this amendment and proposed two new amendments, one of which would require the Secretary of State to publish a draft Bill consisting of, *inter alia*, a set of environmental principles within a period of six months beginning with the day on which the Withdrawal Act is passed. The House of Lords will resume the debate on the Withdrawal Bill on 18 June 2018.

With respect to the issue of food safety and international trade, the Minister of State for Agriculture, Fisheries and Food within the UK's Department for Environment, Food & Rural Affairs, Mr. George Eustice, stated that food processing standards in the UK would be maintained post-'*Brexit*'. He underlined that the UK Government would "*not water down standards in pursuit of a trade deal*". In a recent report, the UK charity and independent think tank Green Alliance noted its concerns in case the UK Government were to be unable to reach a deal with the EU. The report stated that, if the UK unilaterally opened the UK market to imports from other countries, there would not only be an increase of non-EU food products, but also an increasing amount of imports of products subject to lower standards for food and agriculture. The report provides a number of recommendations to the UK Government, underlining that UK food and environmental standards should not be weakened in future trade agreements and that all food imports should meet the same standards as food produced in the UK. The UK's National Farmers Union welcomed the report and pointed out that the report was "*timely and important*".

Merely nine months away from '*Brexit*', many important issues still remain unresolved. While it is possible that such issues would be resolved in the coming months, uncertainty remains for businesses, farmers, traders, local authorities and consumers. The European Council summit, on 28 and 29 June 2018, had been designated as a deadline for the two key issues of the UK's customs relationship with the EU, as well as the issue of the Northern Ireland border, to be addressed and resolved. Considering the current state of negotiations, quite some progress still needs to be achieved in the coming two weeks for that to happen. All interested stakeholders in the UK, the EU and in third countries should closely monitor the developments and engage with their respective interlocutors.

'*Gluten-free*' logos and symbols in the EU – Products for *coeliac* people have become mainstream

A multitude of different '*gluten-free*' logos and symbols on food products, indicating that these products are free from gluten or have a very low gluten content, are currently coexisting in the EU. Since 2009, the EU maintains a legal framework in place for food manufacturers that wish to market their foods with '*gluten-free*' or '*very low gluten*' claims. However, a common '*gluten-free*' logo or symbol was not introduced in the EU and different logos and symbols are in use by manufacturers. The different types of '*gluten-free*' logos or symbols might cause confusion to *coeliac* people, in particular, outside of their home country.

People with *coeliac* disease suffer from a permanent intolerance to gluten. Wheat (*i.e.*, all Triticum species, such as durum wheat, spelt, and Khorasan wheat), rye and barley have been identified as grains that are scientifically reported to contain gluten, a protein fraction. The gluten present in those grains can cause adverse health effects, such as diarrhoea, constipation, vomiting, stomach cramps, mouth ulcers, fatigue and anaemia, to people intolerant to gluten and, therefore, such people should avoid its consumption. The food industry has, over time, developed a range of products presented as '*gluten-free*' or other similar terms. Differences between national provisions in EU Member States, concerning the conditions for the use of such product descriptions, have resulted in the adoption of harmonised rules on the use of the '*gluten-free*' and '*very low gluten*' claims, for the first time in 2009 and then updated in 2014.

Commission Implementing Regulation (EU) No 828/2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food applies since 20 July 2016. It lays down harmonised requirements for the provision of information to consumers on the absence or reduced presence of gluten in food. *Regulation (EU) No 828/2014* was established based on Article 36(3)(d) *Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers* (hereinafter, FIR), which lays down rules requiring the mandatory labelling for all foods of ingredients, such as gluten-containing ingredients, with a scientifically proven allergenic or intolerance effect. In order to ensure clarity and consistency, it was considered that all the rules applying to gluten should be set by the same piece of legislation and, for this reason, the FIR should also be the framework for the rules related to information on the absence of gluten in food. *Regulation (EU) No 828/2014* sets out the conditions under which foods may be labelled as '*gluten-free*' or '*very-low gluten*'. On 20 July 2016, the same day that *Regulation (EU) No 828/2014* entered into application, *Commission Regulation (EC) No 41/2009 concerning the composition and labelling of foodstuffs suitable for people intolerant to gluten*, adopted under the old legislative framework of *Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses*, was repealed. People with *coeliac* disease suffering from a permanent intolerance to gluten were legally considered to be a specific group of the population, which needs foodstuffs intended for particular nutritional uses that are intended to satisfy their particular nutritional requirements.

The Annex to *Regulation (EU) No 828/2014* provides the statements that are allowed to be made on the absence or reduced presence of gluten in food, as well as the conditions thereof. The statement '*gluten-free*' may only be made "*where the food as sold to the final consumer contains no more than 20 mg/kg of gluten*". The statement '*very low gluten*' may only be made "*where the food, consisting of or containing one or more ingredients made from wheat, rye, barley, oats or their crossbred varieties which have been specially processed to reduce the gluten content, contains no more than 100 mg/kg of gluten in the food as sold to the final consumer*". In addition, *Regulation (EU) No 828/2014* clarifies how operators may inform gluten-intolerant consumers of the difference between foods that are naturally free of gluten and products that are specifically formulated for them. According to Article 3(2) of *Regulation (EU) No 828/2014*, the statements '*suitable for people intolerant to gluten*' or '*suitable for coeliacs*' may accompany the statements provided for in the Annex.

According to Article 3(3) of *Regulation (EU) No 828/2014*, the statements '*specifically formulated for people intolerant to gluten*' or '*specifically formulated for coeliacs*' may accompany the statements if the food is specially produced, prepared and/or processed in order to: 1) Reduce the gluten content of one or more gluten-containing ingredients; or 2) Substitute the gluten-containing ingredients with other ingredients naturally free of gluten. *Regulation (EU) No 828/2014* did not change the substantial rules for using the '*gluten free*' and '*very low gluten*' statements that were previously laid down in *Regulation (EC) No 41/2009*. However, the new rules apply also to non-pre-packed foods, such as those served in restaurants, which were outside of the scope of the previous rules.

However, despite the harmonisation on the claims and statements, a common logo or symbol for '*gluten-free*' food has not yet been established, similar to, for example, the EU organic logo (*i.e.*, the so-called '*Euro-leaf*'), symbolising the union of '*Europe*' (the stars derived from the European Union's flag) and '*Nature*' (the stylised leaf and the green colour) and guaranteeing that the product bearing it is in full conformity with the conditions and regulations for the organic farming sector established by the EU. The private '*Crossed Grain*' standard, administered by the Association of European *Coeliac* Societies (hereinafter, AOECS), with the '*Crossed Grain*' trademark, is registered and protected across the EU, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Serbia and Switzerland. It guarantees that food products bearing the '*Crossed Grain*' symbol comply with the strict production standards required by the AOECS, which include an annual audit of the manufacturing facilities to ensure that the gluten content is kept to a maximum of 20 mg/kg throughout the manufacturing process.

Commission Implementing Regulation (EU) No 828/2014 provides in recital 10 that it should be possible for a food containing ingredients naturally free of gluten to bear terms indicating the absence of gluten, provided that the general conditions on fair information practices, set out in the FIR, are complied with. In particular, according to the FIR, food information should not be misleading by suggesting that the food possesses special characteristics when, in fact, all similar foods possess such characteristics. The wording of *Implementing Regulation (EU) No 828/2014* suggests that one can say, for example, '*naturally gluten-free*' when one adheres to fair information practices (*i.e.*, the claim is evidence-based) and does not mislead (for example, mineral water or fresh fruit may not be labelled as '*naturally gluten-free*' since all fresh fruits and mineral waters are gluten-free). In this context, *Commission Directive 2006/141/EC on infant formulae and follow-on formulae* prohibits the use of ingredients containing gluten in the manufacture of such foodstuffs. The German Working Group of Experts of Food Chemistry of the Federal States and the Federal Office for the Protection of Consumers and Food Security (*i.e.*, *Arbeitskreis Lebensmittelchemischer Sachverständiger der Länder und des Bundesamtes für Verbraucherschutz und Lebensmittelsicherheit*, or ALS, in its German acronym) was asked how a '*gluten-free*' claim could be made against this background and how the indication of '*gluten-free*' could be formulated on infant *formulae* and follow-on *formulae* foods. In its Opinion No. 2011/57, the ALS held that a '*gluten-free*' claim on infant *formulae* and follow-on *formulae* was misleading on the basis of § 11 Section 1, Sentence 2, No. 3 of the German Food and Feed Code (*i.e.*, *Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch*, or LFGB, in its German acronym), as it constitutes a so-called advertisement with a certainty. The ALS stated that consumers could be informed, for example, through statements such as '*produced without gluten-containing ingredients according to the law*'.

Recently, the Spanish Federation of *Coeliac* Associations (*i.e.*, *Federación de Asociaciones de Celíacos de España*, or FACE, in its Spanish acronym) announced that, in 2020, it would integrate its '*Controlled by FACE*' trademark (*Marca 'Controlado por FACE*') and logo into the European '*Crossed Grain*' License System (*i.e.*, *Espiga Barrada* in Spanish) and logo with the aim of unifying criteria and trying to facilitate the identification of products that are '*suitable for coeliacs*' and avoid confusion that the different types of statements or '*gluten-free*' symbols might cause to *coeliac* people outside their home country. FACE aims at complying with the '*Crossed Grain*' standard administered by the AOECS. As with the '*Crossed Grain*' scheme, companies that produce products certified with the '*Controlled by*

FACE' trademark must comply with rigorous safety controls, reviewed by external certification organisations for purposes of bearing the '*Controlled by FACE*' symbol. Until 31 December 2019, both trademarks will coexist in Spain. The 20 mg/kg of gluten range was established by the Codex Alimentarius and the EU as safe for people with *coeliac* disease. In fact, it originates in the *Codex Alimentarius* Standard for foods for special dietary use for persons intolerant to gluten (CODEX STAN 118-1979), which was adopted in 1979, as most recently amended in 2015.

A survey, carried out by *DuPont Nutrition and Health* in early 2018 in four EU Member States (*i.e.*, France, Italy, Spain and the UK), concluded that '*healthy living*' is already the main driver of '*gluten-free*' sales. The consumer survey focused on occasional consumers of gluten-free products as a lifestyle choice rather than a medical need. While only one in 100 people is estimated to suffer from *coeliac* disease, the number of healthy people, who have made the lifestyle decision to exclude gluten from their diets, continues to grow rapidly. According to *Euromonitor*, '*free-from*' diets continue to be a fast-growing trend, not only followed by *coeliac* patients, but also by the general health-conscious public, holding the belief that gluten-free products would help them overcome problems related to bloating or indigestion. *Euromonitor* valued the global market for '*gluten-free*' bread at USD 1.0 billion in 2015, accounting for 31% of all '*gluten-free*' food globally, with USD 953 million coming from developed countries, making it a mainstream choice for Western consumers, and more recently also in Asia and Latin America. In 2016, global sales of '*gluten-free*' food increased 12.6% year on year to USD 3.5 billion, compared with overall packaged foods growth of just over 4%, according to *Euromonitor*. The '*gluten-free*' retail market has expanded rapidly from USD 1.7 billion in 2011 and is forecast to reach USD 4.7 billion by 2020 according to *Euromonitor*. Products marketed as '*free-from*', in particular '*gluten-free*', are often sold at premium prices. Already in 2013, an US survey showed that 57% of consumers accept higher prices for gluten-free products, which are often twice as high compared to regular products. The survey also showed that '*gluten-free*' customers exist across all income levels.

Avoiding harmful ingredients is essential for the well-being of people that suffer from an allergy or intolerance, but '*free-from*' food is not beneficial *per se*. The current trend is arguably more dangerous for the pocket than good for health. Consuming products without gluten or without lactose is more expensive, but it does arguably not lead to any benefit for normal consumers' health, beyond trivialising a disease that one really does not have. Although the requirements for '*gluten-free*' and '*low in gluten*' statements and claims are identical all across the EU, different logos and symbols introduced by national and Europe-wide *Coeliac* associations, but also by retailers, may reportedly cause confusion to consumers. The introduction of an authoritative '*gluten-free*' symbol in the EU may be an option. However, there is no '*gluten-free*' foods scheme in the EU, comparable to the EU organic farming scheme, which guarantees that products bearing the organic logo are in full conformity with the conditions and regulations for the organic farming sector.

Recently Adopted EU Legislation

Market Access

- *Notice concerning the entry into force of the Agreement in the form of an Exchange of Letters between the European Union and Iceland concerning additional trade preferences in agricultural products*

Customs Law

- *Commission Implementing Decision (EU) 2018/874 of 14 June 2018 determining that a temporary suspension of the preferential customs duty pursuant to Article 15 of Regulation (EU) No 20/2013 of the European*

Parliament and of the Council is not appropriate for imports of bananas originating in Nicaragua

Trade Remedies

- *Commission Implementing Regulation (EU) 2018/823 of 4 June 2018 terminating the partial interim review of the countervailing measures applicable to imports of certain rainbow trout originating in the Republic of Turkey*

Food and Agricultural Law

- *Notice concerning the entry into force of the Agreement between the European Union and Iceland on the protection of geographical indications for agricultural products and foodstuffs*

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