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## **The European Commission's Proposal for a Regulation on Geographical Indications for Craft and Industrial Products: The crossroad between trade, development, and culture**

On 13 April 2022, the European Commission, published its *Proposal for a Regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754*, which would establish the first-ever EU-wide framework to protect the intellectual property of craft and industrial products based upon “*the originality and authenticity of traditional practices from their regions*”. In particular, the EU intends to improve the protection of geographical indications (hereinafter, GIs) applied to qualifying products both within and outside the EU market.

### ***The road towards the protection of non-agricultural products as GIs in the EU***

GIs serve to identify a product whose characteristics, quality, reputation, or other relevant properties relate to its geographical origin. The World Trade Organization (hereinafter, WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994 (hereinafter, TRIPs Agreement) defines *geographical indications* as “*indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin*”. The legal concept of GIs as an intellectual property right aims at providing legal protection against imitations and usurpations of products. The protection through GIs focuses on preventing the misuse of names, which could mislead consumers as to the origin of protected products and their quality or characteristics, which provide added utility and economic value. In the EU, there are around 800 non-agricultural products that are deeply rooted in certain regions and whose characteristics are inseparably linked to that geographical origin. It is such products that are intended to benefit from the proposed Regulation. Well known examples of such products include pottery from Bolesławiec (Poland), marble from Connemara (Ireland), or cutlery from Solingen (Germany).

Currently, the EU's legislation on GIs protects only foodstuffs, wines, spirit drinks, and aromatised wines. GIs for craft and industrial products are, however, protected in certain EU Member States, through domestic laws. Some EU Member States protect specific crafts, such

as Italy's law on the "*protection of artistic, traditional and quality ceramics*", while other EU Member States, such as France, have a full-fledged system with regional or national laws that protect all non-agricultural GI products. In 2011, the European Commission (hereinafter, Commission) Communication *A single market for Intellectual Property Rights* considered that the fragmentation of the legal framework for the protection of the names of non-agricultural products in the EU is deleterious to the functioning of the EU internal market and EU trade negotiations with third countries. That communication was followed by a series of studies by the Commission (*i.e.*, in 2013, 2019, and 2021). Regarding the economic value of GI protection for agricultural products, the Commission notes that, in 2020, the sales value of a product with a protected name was on average double that for similar products without such protection. The yearly sales value of GI-protected products is estimated at EUR 74.76 billion, from which over one fifth is attributed to exports to destinations outside the EU.

The Commission now seeks to, *inter alia*, extend the same economic benefits to non-agricultural products. A 2019 study by the European Parliamentary Research Service notes that, out of 90 non-agricultural products analysed and expected to benefit from the proposed Regulation, 72% rely on the domestic market as their main market (*i.e.*, 50% of sales or more are on the domestic market). The study further notes that "*at the same time, the great majority of products (84%) have an external market, either European or international: only 16% of the analysed products are exclusively sold on the domestic market*". Additionally, a study initiated by the Commission found that 55.1% of the non-agricultural products expected to benefit from the proposed Regulation suffer from pressure due to unfair competition from counterfeits. In that context, the Commission seeks to make it easier for producers to take action against fake products and to protect consumers from deception.

### **Benefits of the proposed Regulation**

The proposed Regulation would cover "*the registration, protection, control and enforcement of certain names that identify craft and industrial products with given quality, reputation or other characteristics linked to their geographical origin and, geographical indications*". The proposed Regulation defines craft products as "*products produced either totally by hand or with the aid of manual tools or by mechanical means, whenever the direct manual contribution is the most important component of the finished product*" and industrial products as "*products produced in a standardised way, typically on mass scale and through the use of machines*". Three conditions must be met for the name of a craft or industrial product to qualify for protection as a GI, namely that: 1) The product originates in a specific place, region, or country; 2) The product's given quality, reputation or other characteristic be essentially attributable to its geographical origin; and 3) At least one of the manufacturing steps of the product take place in the defined geographical area.

Under the proposed Regulation, only a '*producer group of a product*' can apply to register a proposed name of a GI, although flexibilities are provided where no producer group exists. Essentially, the registration of such GI would, *inter alia*, preclude, "*any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected geographical indication is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar*". This protection equally applies with respect to imports into the EU and to goods sold online through electronic commerce. The proposed Regulation suggests that producers using the GI "*monitor the commercial use of the geographical indication in the marketplace*". EU Member States would have to designate enforcement authorities tasked to, *inter alia*, take administrative and judicial steps to "*prevent or stop the use of names on products or services that are produced, operated or marketed in their territory*". Additionally, EU Member States would have to adopt "*rules on penalties applicable to non-compliance with, and infringements*" of, the proposed Regulation.

### **Consequences for EU trade negotiations and trading partners**

The proposed Regulation is expected to have an impact on the EU's internal and external trade. Notably, the EU is party to the *Geneva Act of the Lisbon Agreement on Appellations of*

*Origin and Geographical Indications* (hereinafter, Geneva Act) which, *inter alia*, establishes an international GI register for agricultural and non-agricultural products and requires the contracting parties to enact domestic laws providing for a framework for registering both local and foreign GIs. The proposed Regulation, therefore, can be seen as further implementing the Geneva Act. In this context, Article 17 of the proposed Regulation allows for the registration of GI names from third countries. In June 2012, the EU already agreed, in its bilateral agreement with Colombia and Peru, to protect two non-agricultural GI products, namely ‘*Guacamayas*’, which is a handicraft from Colombia, and ‘*Chulucanas*’, which is a type of pottery from Peru. Additionally, the modernisation of the trade pillar of the EU-Mexico Global Agreement provides, in *Annex III* to the Chapter on Intellectual Property, a list of non-agricultural products originating and protected in Mexico. These developments can be considered as major shift in EU policy, as GIs have been a sensitive issue in previous EU trade negotiations. The EU is currently engaged in trade negotiations with countries that have general laws for the protection of GIs for all sorts of products, such as India. These countries will likely have an interest in protecting their non-agricultural GI products within the EU.

### **A ‘TRIPs-plus’ protection**

GIs have been a major issue in international trade negotiations at the multilateral level as well. The TRIPs Agreement provides the overall legal framework for the protection of GIs around the world, including for non-agricultural GIs. Article 22(2) of the TRIPs Agreement provides that WTO Members are required to allow interested parties a means to prevent the use of a product name or designation, which misleads the public as to the geographical origin of a good, and to prevent any use of GIs that would constitute an “*act of unfair competition contrary to honest practices in industrial or commercial matters*”. While Article 23(1) of the TRIPs Agreement grants a particularly high standard of protection to geographical names of wines and spirits, that high level of protection does not extend to other agricultural products and non-agricultural products. In that regard, for wines and spirits, any use of misleading indications is prohibited, even if the true origin of the goods is stated, if the GI is used as a translation, or accompanied by expressions such as ‘*kind*’, ‘*style*’, or ‘*type*’. That gap was filled by Article 11 of the Geneva Act, which requires contracting parties to provide legal means to prevent any unauthorised use of the GI, for example where goods of the same kind as those to which the GI applies use, or are accompanied by, terms such as ‘*style*’, ‘*kind*’, ‘*type*’, ‘*imitation*’, ‘*method*’, ‘*as produced in*’, ‘*like*’, or ‘*similar*’. This TRIPs-plus protection has been implemented in Article 35 of the proposed Regulation.

### **What is in a name?**

As the proposed Regulation will now be reviewed by EU co-legislators in the European Parliament and the Council of the EU, interested stakeholders should closely monitor developments around GIs for craft and industrial products, and consider whether registering their products in the EU would add value and recognition to their products.

### **ASEAN Member States agreed to upgrade the ASEAN Trade in Goods Agreement (ATIGA): what developments should be considered?**

On 16 March 2022, at the 28<sup>th</sup> ASEAN Economic Ministers’ (AEM) Retreat, the ASEAN Economic Ministers announced the launch of negotiations to upgrade the *ASEAN Trade in Goods Agreement* (hereinafter, ATIGA), highlighting the need for ASEAN to accelerate its economic recovery following the *COVID-19* pandemic. At the same event, ASEAN Economic Ministers also adopted the *Guiding Principles for Negotiating the Upgrade of the ATIGA* (hereinafter, the Guiding Principles), which serve as the guidelines, terms, and, conditions for the negotiations of the upgrade of the ATIGA. The upgrade of the ATIGA is directed towards ensuring that the Agreement become more ‘*forward-looking*’ to address the current trade barriers and issues.

## ***The ATIGA in a nutshell***

The ATIGA is an agreement establishing a free trade area for trade in goods between the ten ASEAN Member States (*i.e.*, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam). The ATIGA is a product of deeper economic integration efforts for almost two decades amongst the ASEAN Member States (hereinafter, AMSs), a process that started in 1993 when Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand signed the ASEAN Free Trade Area (AFTA) to reduce or eliminate tariffs by introducing the Common Effective Preferential Tariff (CEPT). With the goal of establishing a single market and production base with the free flow of goods, the ATIGA was signed by all AMSs in 2009, and entered into force in 2010.

The ATIGA provides for a comprehensive coverage of commitments related to trade in goods and mechanisms for their implementation. The ATIGA includes, *inter alia*, chapters and provisions on tariff liberalisation, rules of origin, non-tariff measures (NTMs), trade remedies, trade facilitation, technical regulations, standards, and conformity assessment procedures, as well as sanitary and phytosanitary measures. The commitments on tariff liberalisation, which provide for the elimination of intra-ASEAN trade tariffs on almost all goods, have mostly been implemented. As of 2018, zero tariff rates apply to nearly 98% of all tariff lines, a significant increase from the previous level of 69% in 2009. The ATIGA has effectively helped to increase intra-ASEAN trade, from USD 500 billion in 2010 to USD 630 billion in 2019, although this figure represents only about 20% of total trade by ASEAN and has, incredibly, decreased since the launch of the ATIGA. The upgrading of the ATIGA represents a good opportunity to address this counterintuitive reality and tackle the problems that, when it comes to trade in goods, make ASEAN underperform and not fulfil its true potential in terms of regional socio-economic development and integration.

## ***The need to upgrade the ATIGA after a decade of implementation***

The AMSs deemed the launch of negotiations to upgrade the ATIGA as timely, considering the region is still recovering from the *COVID-19* pandemic and following the entry into force of the Regional Comprehensive Economic Partnership (RCEP) Agreement on 1 January 2022. The RCEP is an ASEAN-led FTA between the ten AMSs and their five regional trade partners (*i.e.*, China, South Korea, Australia, New Zealand, and Japan). As stated by ASEAN's *Secretary-General Dato Lim Jock Hoi*, "*the upgrade of the ATIGA should deepen economic integration with more comprehensive, modern, trade facilitative and stronger commitments than those offered by ASEAN to Dialogue Partners, including the RCEP, to enhance the competitiveness of ASEAN as a single market and production base and its attractiveness as a preferred production and investment hub*".

## ***The Guiding Principles for Negotiating the Upgrade of the ATIGA***

The *Guiding Principles for Negotiating the Upgrade of the ATIGA* highlight that the upgrade of the ATIGA should, *inter alia*, be comprehensive in scope and not only cover traditional trade in goods topics, but also emerging topics that are not covered in existing provisions of the ATIGA, so as to ensure that the upgraded ATIGA would become a "*modern, forward-looking Agreement and more responsive to regional and global developments*". For instance, in one of his recent statements, Singapore's *Minister of Trade and Industry, Gan Kim Yong*, indicated that one of the objectives of the ATIGA upgrade must be to discuss new issues, such as digitalisation and the green economy. In addition, the *Guiding Principles* explicitly state that the upgraded ATIGA would include provisions to facilitate trade, such as the elimination and prevention of the use of NTBs, the promotion of transparency to enhance intra-ASEAN trade, and the facilitation of AMSs' participation in global and regional supply chains.

## ***What does the ATIGA still lack?***

There are several developments occurring within ASEAN that should be considered in the negotiations for the upgrade of the ATIGA, such as ASEAN's economic integration agenda,

the recent conclusion of Preferential Trade Agreements (PTAs) involving AMSs, and current global crises, namely the *COVID-19* pandemic and Russia's war in Ukraine, which have caused disruptions to the global supply chain and trade.

AMSs, bilaterally or plurilaterally, have concluded PTAs that are more progressive in scope than the ATIGA. For instance, bilateral PTA such as the *Indonesia – Australia Comprehensive Economic Partnership Agreement (IA-CEPA)* and the *EU – Singapore Free Trade Agreement* include specific chapters on e-commerce. In addition, mega PTAs such as the RCEP and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), to which all or some ASEAN Member States (*i.e.*, Malaysia, Singapore, Viet Nam, and Brunei Darussalam in case of the CPTPP) are a party to, also contain chapters on e-commerce and on Small and Medium Enterprises (SMEs). Facilitating cross-border e-commerce trade and supporting local SMEs to take advantage of preferential trade agreements are two important areas that the ATIGA is currently not addressing.

In addition, the topic of sustainable development is becoming increasingly relevant and important in the context of trade and trade agreements. However, currently, the ATIGA does not contain a dedicated chapter or provision on this aspect. At the same time, an increasing number of PTAs involving AMSs do include a chapter on Trade and Sustainable Development, such as the EU-Singapore FTA, the EU-Viet Nam FTA, and the Indonesia-EFTA CEPA.

### ***Upgrades that could be included in the ATIGA***

Taking note of the recent developments in the region, the inclusion of emerging topics in the upgrade of the ATIGA appears crucial to address the ongoing challenges of the post *COVID-19* pandemic economy recovery. For instance, with the significance of e-commerce in an ASEAN region boasting over 440 million internet users in 2021, the issues of data protection, cross-border data flows, and digital standards should be considered to be incorporated into the ATIGA. In this context, ASEAN has launched a number of regional initiatives regarding the e-commerce sector, through the establishment of the *ASEAN Agreement on Electronic Commerce*, which entered into force in December 2021. However, the agreement does not contain strong commitments, but merely provides for enhanced cooperation on e-commerce and is currently limited to trade in services. AMSs could enhance their commitments to further facilitating trade in goods through e-commerce by including provisions on e-commerce trade facilitation (*i.e.*, through provisions on paperless trading, electronic authentication, and electronic signature, as provided under Section B of the RCEP). In addition, the AMSs could also consider including provisions on enhanced cooperation to assist SMEs in addressing obstacles to trade via e-commerce, as provided under Article 12.4 of the RCEP.

Other than addressing new and emerging issues in the ATIGA, the upgraded ATIGA should also further accelerate and deepen the implementation of digital trade facilitation measures through, for instance, the greater utilisation of the system of ASEAN Solutions for Investments, Services and Trade (*ASSIST*) and the expansion and full roll-out of the ASEAN Customs Transit System (*ACTS*), including by extending it to multimodal transport. The full implementation of these trade facilitation tools will help remove trade barriers within ASEAN, ensure transparency, increase legal certainty and commercial predictability, and support ASEAN's economic recovery and sustainable development.

### ***The ATIGA's transparency provisions could be the 'jewel in the crown'***

The ATIGA provides comprehensive transparency provisions to address other sources of trade distortions resulting from the application of NTMs. Articles 11 to 13 of the ATIGA provide for transparency and monitoring mechanisms through trade facilitation to identify and address the issues of NTMs and non-tariff barriers (NTBs). Article 13 of the ATIGA, in particular, mandates the establishment of the ASEAN Trade Repository (hereinafter, ATR), an integrated platform containing nine specific categories related to tariffs, NTMs, rules of origin, and trade administrative and customs rules and procedures. However, to date, the system of ASEAN

trade related regulatory transparency is not yet fully operationalised and utilised up to its potential and purpose.

While the [ATR](#) has been making steady progress with support by the European Union through the flagship ARISE Plus Programme, other features such as the system of mandatory notification of new or modified NTMs, ahead of their adoption, which could contribute to avoid NTBs, lower the disproportionate impact on trade that NTMs often have, and prevent long and costly dispute among AMSs, have remained largely unimplemented. Similarly, the [Guidelines for the Implementation of ASEAN Commitments on Non-Tariff Measures on Goods](#) (NTMs Guidelines), adopted in 2018 to build on the embryonic disciplines of the ATIGA, remain, for the most, part empty words. In turn, following the [Non-Tariff Measures Cost-Effectiveness Toolkit Handbook for ASEAN](#) (NTMs Toolkit) is not mandatory and adds to the new ASEAN initiatives that look promising but rarely deliver, to the growing frustration of ASEAN's private sector.

Beefed up trade-related regulatory transparency obligations, flanked by mechanisms that were to make it mandatory for AMSs to implement them in full and to start addressing the many NTBs that plague the region, as well as streamlining the growing number of NTMs, would give much needed oxygen to ASEAN while it seeks to recover from the *COVID-19* pandemic, achieve the objectives and promises of the ASEAN Economic Community (AEC), and grow intra-ASEAN trade, thereby providing the most natural opportunities of regional integration and socio-economic development.

### ***What to expect from the upgrade of the ATIGA?***

The launch of the negotiations for the upgrade of the ATIGA was welcomed by all AMSs, as a depiction of the AMSs' determination to strengthen their cooperation for the region's economic recovery. The negotiation of the upgrade of the ATIGA's gives ASEAN the opportunity to strengthen its position in global supply chains and increase its competitiveness in global trade. However, it remains to be seen how the negotiations will proceed and what new areas the upgraded ATIGA will cover.

Despite the news-grabbing declarations and good intentions, the litmus test will be whether or not the new or upgraded disciplines of the ATIGA will be able to address the old problems of intra-ASEAN trade, which are well known. The legal tools to achieve that are plenty and well-known. What may be lacking is the political will by AMSs to implement the obligations that they undertake. Therefore, it is important for interested stakeholders to stay informed on the ATIGA's negotiation progress and advocate with their respective AMSs' Government for greater implementation of existing obligations and better enforcement of current and future commitments.

### **The setting of nutrient profiles in the EU: New advice by the European Food Safety Authority (EFSA) to the European Commission**

On 19 April 2022, the European Food Safety Authority (hereinafter, EFSA) submitted to the European Commission (hereinafter, Commission) its [Scientific advice related to nutrient profiling for the development of harmonised mandatory front-of-pack nutrition labelling and the setting of nutrient profiles for restricting nutrition and health claims on foods](#). On 20 May 2020, the Commission had adopted the [Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system](#), as part of the [European Green Deal](#). The Strategy announced that, to promote sustainable food consumption and facilitate the shift to healthy and sustainable diets, the Commission would adopt measures to empower consumers to make informed, healthy and sustainable food choices, including through harmonised mandatory front-of-pack (hereinafter, FoP) nutrition labelling. The Strategy further announced that, in order to stimulate both sustainable food processing and reformulation, and to facilitate the shift to healthier diets, the

Commission would set nutrient profiles to restrict the promotion, via nutrition and health claims, of foods high in fat, sugars and salt.

The EFSA's new advice is, therefore, intended to inform the Commission's future plans for: 1) Developing an EU-wide system for FoP nutrition labelling; and 2) Conditions for restricting nutrition and health claims on foods. This article will look at the advice offered and will also discuss nutrient profiles being used in restricting advertisements for food and drinks that are high in fat, sugar and salt (hereinafter, HFSS foods).

### ***The EFSA's scientific advice on nutrient profiling***

The main findings behind the EFSA's new scientific advice are that *"saturated fats, sodium, and added/free sugars intakes exceed dietary recommendations in most European populations and excess intakes are associated with adverse health effects"* and that *"considering the high prevalence of overweight and obesity in Europe, a decrease in energy intake is of public health importance for European populations"*. The EFSA also states that *"Dietary fibre and potassium intakes are inadequate in most European adult populations and inadequate intakes are associated with adverse health effects"* and that *"Iron, calcium, vitamin D, folate and iodine intakes are inadequate in specific sub-populations"*.

According to the EFSA, *"the term 'nutrient profile' refers to the nutritional composition of a food or diet, whereas 'nutrient profiling' refers to the classification of foods based on their nutritional composition for specific purposes (e.g., nutrition education, product reformulation, product labelling to help consumers make informed dietary choices, regulation of health claims, restriction of advertisement to children)"*. The World Health Organization (hereinafter, WHO) defines nutrient profiling as *"the science of classifying or ranking foods according to their nutritional composition for reasons related to preventing disease and promoting health"*.

The EFSA advises that nutrient profiling has various applications, including for health and nutrition claims and for FoP nutrition labelling schemes. For its part, the WHO recognises three main approaches for applying nutrient profiling criteria for FoP labelling. The first typical approach is to enumerate the nutrient contribution that a food makes to recommended nutrient intakes (e.g., reference intakes). This approach, where information on individual nutrients is kept separate on FoP labels, is used in *"non-interpretive nutrient-specific"* FoP schemes, which do not give a summarised recommendation. The second common approach is to set threshold amounts, also known as *"cut-off points"*, for individual nutrients, which divide nutrient contributions into categories that are either graded (e.g., high, medium, and low in the case of the traffic lights label) or *"binary"* (e.g., *"meet the standard"* and *"do not meet the standard"* in the case of endorsement logos like the Swedish keyhole scheme). Here, information on individual nutrients is kept separate. For endorsement logos, products only display the logo when all relevant *"cut-off points"* for individual nutrients are met. The third typical approach is to apply algorithms to derive a consolidated score representing the products' overall nutritional profiles. This approach, wherein information on individual nutrients is combined, is used for summary graded indicator schemes, like *Nutri-Score* (for examples of the various approaches to FoP labels, see *Trade Perspectives, Issue No. 14 of 17 July 2020*).

The EFSA advises the Commission that the second and third approaches differ from the first by interpreting the level of nutrient contribution that a food makes to dietary recommendations, going beyond the mere provision of numeric information. The EFSA advises the Commission that *"applying nutrient profiling approaches for the purpose of front-of-pack nutrition labelling and for the purpose of restricting nutrition and health claims on foods is an exercise that should take into account dietary recommendations, public health considerations, generally acceptable scientific evidence on the relationship between diet, nutrition and health as well as other considerations of an industrial/commercial, cultural and dietary/culinary nature. Applying nutrient profiling approaches for front-of-pack labelling and for restricting claims should also stimulate product reformulation and should take into account the variability of dietary habits and traditions"*.

## ***The importance of setting nutrient profiles***

The Commission had requested the EFSA's scientific advice to inform both the development of a future EU-wide system for FoP nutrition labelling and the conditions for restricting nutrition and health claims on foods. Importantly, the EFSA was not asked to evaluate or propose a particular nutrient profiling model for either of these purposes.

*Regulation (EC) No 1924/2006 on nutrition and health claims made on foods* (hereinafter, NHCR) provides for the setting of “*specific nutrient profiles, including exemptions, which food or certain categories of food must comply with in order to bear nutrition or health claims and the conditions for the use of nutrition or health claims for foods or categories of foods with respect to the nutrient profiles*”. In this context, nutrient profiles refer to thresholds of nutrients (i.e., maximum levels of nutrients, such as saturated fats, salt and/or sugars) above which nutrition claims are restricted and health claims are prohibited. The objective of such nutrient profiles is to avoid a situation in which nutrition or health claims would mask the overall nutritional values of a food product, which could mislead consumers when trying to make healthy choices (see *Trade Perspectives, Issue No. 12 of 17 June 2016*).

On 20 May 2020, the Commission published the REFIT *evaluation* of the NHCR and concluded that the specific objective pursued by nutrient profiles, which is to prevent the presentation of a false, positive health message on foods that are high in fats, sugars and/or salt content, is still relevant today. This is because, in the absence of nutrient profiles, consumers continue to be exposed to foods purporting to be healthy, but which are, in fact, high in fats, sugars and/or salt. The Commission's evaluation further concluded that a “*level playing field between food operators has not been achieved because some operators have reformulated their products, possibly in preparation for the establishment of nutrient profiles, while other operators have not, creating unfair competition*” (see *Trade Perspectives, Issue No. 12 of 19 June 2020*).

## ***Mandatory FoP nutrition labelling scheme to be proposed by the end of 2022***

Regarding harmonised mandatory FoP nutrition labelling and the setting of nutrient profiles to restrict the promotion of foods that are high in salt, sugars and/or fat, by the end of 2022, alongside the *Farm to Fork Strategy* the Commission published a *Report to the European Parliament and the Council regarding the use of additional forms of expression and presentation of the nutrition declaration* (hereinafter, FOP Report). No specific FoP scheme has been recommended in the FOP Report, and it also appears that current FoP schemes providing information on the overall nutritional quality of foods, such as the *Nutri-Score*, do not appear to be appropriate for a harmonised mandatory FoP nutrition labelling scheme under the current legal framework of *Regulation (EU) No 1169/2011 on the provision of food information to consumers* (see *Trade Perspectives, Issue No. 11 of 5 June 2020*).

## ***Nutrient profiles for restrictions of advertisements for food and drinks that are high in fat, sugar and salt (HFSS)***

Nutrition profiles are also relevant in the context of *Directive (EU) 2018/1808 of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities* (Audiovisual Media Services Directive, hereinafter, AVMSD). While the proposal for an AVMSD foresaw provisions on restrictions of advertisements for HFSS foods and on related nutrient profiles for such foods (see *Trade Perspectives, Issue No. 11 of 2 June 2017*), under the AVMSD as actually adopted, EU Member States are merely “*encouraged to ensure that self- and co-regulation, including through codes of conduct, is used to effectively reduce the exposure of children to audiovisual commercial communications regarding foods and beverages that are high in salt, sugars, fat, saturated fats or trans-fatty acids or that otherwise do not fit those national or international nutritional guidelines*”. Importantly, Recital 28 of the AVMSD states that “*Certain widely recognised nutritional guidelines exist at national and international level, such as the World Health Organisation Regional Office for Europe's nutrient profile model, in*

*order to differentiate foods on the basis of their nutritional composition in the context of television advertising of foods to children”.*

An example from the UK shows the importance of nutrient profiles in practise. While no longer an EU Member State and bound by the AVMSD, the UK faces similar problems with advertising of foods to children. Regulations are [proposed](#) to come into force in the UK in October 2022, which would limit the in-store promotion of HFSS foods, along with the placement in locations such as checkouts, store entrances, aisle ends and in prominent positions, both in-store and online. From 2023, new regulations also intend to ban TV and online advertising before 9:00 pm. Reportedly, *Kellogg's*, an American food manufacturing company known for its breakfast cereals, is preparing a legal challenge against the UK Government's proposed HFSS scheme. *Kellogg's* claims that the rules unfairly represented breakfast cereals, by arguing that “*the formula used to measure the nutritional value of food was wrong when it came to breakfast cereals – the Nutrient Profiling Model (NPM) only accounted for portions of dry cereals and not for a bowl of cereal and milk*”. The [UK nutrient profiling model](#) was developed by the Food Standards Agency (FSA) from 2004 to 2005 as a tool to help *Ofcom*, the UK media and communications regulator, differentiate among foods and improve the balance of television advertising to children.

### **Outlook for the setting of nutrient profiles**

The EU has been planning to adopt nutrient profiles since the NHCR was adopted in 2006. The EU's *Farm to Fork Strategy* indicates that a proposal for harmonised mandatory FoP nutrition labelling, and for the setting of nutrient profiles to restrict the promotion of foods high in salt, sugars and/or fat, would be submitted in the fourth quarter of 2022. The EFSA's new scientific advice will inform the Commission's proposal alongside other evidence collected by the Commission. Developments in the EU, related to the development of nutrient profiles, should be closely monitored and operators should be prepared to participate in shaping potentially upcoming EU legislation by interacting with EU Institutions, Governments, relevant trade associations and affected stakeholders.

## **Recently adopted EU legislation**

### **Trade Law**

- [Commission Implementing Regulation \(EU\) 2022/704 of 5 May 2022 amending and correcting certain Annexes to Implementing Regulation \(EU\) 2021/404 as regards the entries for Canada, the United Kingdom and the United States in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds \( 1 \)](#)
- [Corrigendum to Council Regulation \(EU\) 2022/625 of 13 April 2022 amending Regulation \(EU\) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine \( OJ L 116, 13.4.2022 \)](#)
- [Commission Delegated Regulation \(EU\) 2022/699 of 3 May 2022 amending Regulation \(EU\) 2021/821 of the European Parliament and of the Council by removing Russia as a destination from the scope of Union general export authorisations](#)

## Food Law

- [Commission Implementing Regulation \(EU\) 2022/702 of 5 May 2022 concerning the authorisation of great mullein tincture as a feed additive for certain animal species \( 1 \)](#)
- [Commission Implementing Regulation \(EU\) 2022/703 of 5 May 2022 concerning the renewal of the authorisation of a preparation of \*Bacillus velezensis\* DSM 15544 as a feed additive for weaned piglets, the authorisation for all avian species and categories, amending Implementing Regulation \(EU\) 2016/897, Implementing Regulation \(EU\) 2017/2312 and Implementing Regulation \(EU\) 2018/1081 and repealing Regulation \(EU\) No 333/2010, Regulation \(EU\) No 184/2011 and Implementing Regulation \(EU\) 2019/893 \(holder of the authorisation: Asahi Biocycle Co. Ltd., represented in the Union by Pen & Tec Consulting S.L.U.\) \( 1 \)](#)

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