COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.6.2007
COM(2007) 360 final

# REPORT FROM THE COMMISSION TO THE COUNCIL

## on the evolution of the market in milk products and competing products

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## INTRODUCTION

Council Regulation (EEC) No 1898/87 on the protection of designations used in marketing of milk and milk products[1] lays down in its Article 4(3) the obligation for Member States to report every year, not later than 1 October, on developments in the market in milk products and competing products. The Commission shall subsequently present a report to the Council before the following 1 March.

However these communications have not been sent to the Commission for years and no report was therefore presented to the Council during those years. In 2006, the Commission asked the Member Sates again to provide input for such a report but only 10 Member States presented some information, most of them after the deadline laid down in Article 4(3), i.e. 1 October.

None were in a position to provide statistics on the market in products competing with milk and milk products, but in terms of other information Member States consider that quite often some designations may in fact mislead consumers. In retail shops milk products and competing products are frequently present on the same shelf, similar packaging may be used and the consumer may be misled by the competing product if it is not clearly identified as an alternative non-dairy product.

This report gives some information on the markets for milk products, with different situations in the various Member States producing different milk products or with a preference for a particular category of drinking milk.

Practically no data is available for competing products but there is a general feeling that the impact of such products is still marginal. The cheaper price is nevertheless working in favour of those products.

The industry appears to apply the labelling for competing products correctly but at retailers' level there is not always the same respect of the Regulation, with a clear risk of misleading the consumer as a consequence.

Regulation (EEC) No 1898/87 is still considered justified as it ensures both a correct labelling of milk and milk products and a level playing field for milk products and products competing with milk products. However, the annual reporting no longer seems justifiable.

1 OJ L 182, 3.7.1987, p. 36.

## EVOLUTION OF THE MARKET IN DAIRY PRODUCTS

It is well known that consumption trends show a decline of interest for the fat fraction of milk, due to health concerns and new consumption habits (such as less home-made cooking in smaller families), and a wider use of the protein fraction of the milk, in particular in the form of food ingredients.

The consumption of **basic products** such as butter and liquid milk has changed to more sophisticated products, fitting the consumer's choice. Instead of plain milk children now prefer flavoured milk, a trend clearly noticed in the school milk scheme. Milk, as such, has lost some attraction, but foods and drinks with dairy ingredients are very trendy: mixtures of fruit juices and milk or milk products, cappuccino and similar drinks, hot or cold, are now widely available and consumed.

Health concerns have led to availability of less fatty products, but the content of fat or sugar in some processed food, consumed instead of the basic products, may be at least as important as in the 'old' basic products.

Basic milk products may also be replaced by food with milk ingredients based mainly on the protein fraction. Whey products, once a by-product causing environmental disposal problems, are now presented in the category 'healthy foods' or as an essential part of dietary products. By the beginning of 2007 whey market prices were the highest ever recorded.

The **drinking milk** evolution clearly shows that consumers are showing growing interest for semi-skimmed or skimmed milk, and some Member States have been granted derogations allowing the marketing of drinking milk[2] with fat contents outside the usual categories (whole milk in the range 2.8 – 3.2%, instead of 3.5% minimum and semi-skimmed milk in the range 1.0 – 2.5% instead of 1.5 to 1.8%). These derogations limit the production and the marketing of such milk to the Member State concerned. A proposal has been presented to the Council in February 2007 to liberalise the fat content of the drinking milk within the EU, opening the internal market to milk produced in any Member State and offering a wider choice for consumers.

Drinking milk consumption habits are different in the Member States. For EU-25 aggregate whole milk represents more than 1/3 of the drinking milk produced, semi-skimmed milk represents more than 50% and skimmed milk represents 10%. National data however show wide differences, with some Member States where the consumption of skimmed milk is marginal, below 3%, and Denmark where this category represents 49% of the drinking milk.

| Drinking milk | **100%** |
|---|---|
| Whole milk | 36% |
| Semi-skimmed milk | 54% |
| Skimmed milk | 10% |

[2] Council Regulation (EEC) No 2597/97 laying down additional rules on the common organisation of the market in milk and milk products for drinking milk (OJ L 351, 23.12.1997, p. 13).

In the **spreadable fats** sector specific standards have been laid down[3] because margarine and blends but also dairy spreads, with a lower fat content (typical 40% or 60% fat), represent an alternative to butter (80 or 82% fat). Consumption data indicates that rather than the butter denomination it is the fat content which leads the consumer's choice. Butter still remains, however, as a top reference in quality, as may be demonstrated by the use of marketing denominations such as 'ice cream with butter flavour', without butter as an ingredient, or 'butter biscuits', where the consumer would not know for sure whether they are manufactured with butter or with other fats. It is worth noting that Poland reported higher butter sales in the weeks preceding the traditional holidays, while other fats are largely used for other occasions.

The choice of butter is also driven by economic considerations. The same happens with most dairy products where wealthier consumers tend to choose high-flavour and tasty products.

**Yoghurt** is a success product, showing a firm upwards production trend. Some basic, plain, unsweetened or sweetened products, have given place to flavoured yoghurt or products with added fruits, nuts or cereals. The fermented drinks categories are in general developing, in some probiotics are used. In the 'healthy food' sector the price does not appear to be the main parameter as products using arguments such as light or healthy food are significantly more expensive than products which do not claim a new property.

**Cheese** is another success story, showing continuous increases in production. Cheese is more and more consolidated as a major element in a regular diet due in particular to the increased product range with lower fat. New speciality cheeses, cheese widely used in sandwiches or salads, grated or in powder for culinary uses or in form of processed cheese have also stimulated the consumption as well as cheese being an alternative to meat products when consumers confidence was affected by sanitary crisis.
Furthermore, shorter ripening time and cheaper brands have contributed to some cheese products being increasingly affordable for more and more consumers.

The nutritional indications, such as the 'traffic light' colours used in the United Kingdom, may have some impact on the consumption of products such as cheeses. Many of them will bear the red light, meaning rich in fat. Such labelling does not however take into consideration the size of the usual portions but only the absolute fat value of the product.

## THE COMPETING PRODUCTS

In the preparation of this report the Commission Services have detected some products who do not respect the provisions of Regulation (EEC) No 1898/87 in particular the following designations were noticed:

– soy 'cheese',

– milk with royal jelly (seen on the internet),

– milk with soy isoflavones,

– milk with vegetable sterols.

[3] Council Regulation (EC) No 2991/94 laying down standards for spreadable fats (OJ L 316, 9.12.1994, p. 2).

Some Member States have different interpretations of Regulation (EEC) No 1898/87. While some do not allow those designations, others appear to take no action to avoid such abusive designations.

Member States did not report particular cases but it may be assumed that manufacturers of products based on soy, rice or oat, correctly label their products as soy, rice or oat drinks or products, even if in some cases they refer to the advantages of such products when compared to milk products (lactose or cholesterol free).

Cases of non-compliance with Regulation (EEC) No 1898/87 have rather been reported in the distribution and catering sectors.

Some retailers advertise their products by associating the protected milk designations with non dairy products, in folders or in-shop posters. Consumers may be misled by products which have the appearance of milk products, are located close to milk products or with unclear explanation of the ingredients of a particular product.

Ice cream with soy or rice 'milk' has also been noticed.

Even traditional manufacturers of milk products are among those who have developed products competing with milk products and consumers may be misled by the confidence they put in the brand, associated with milk products, and they do not necessary know what is inside the product they buy.

It has been reported that some food producers do not use designations on their products but associate their brand with some qualitative guarantees. This shows the confidence of the consumer in a brand rather than towards a product.

Consumers eating out are very much depending on reliable information from restaurants and similar establishments as they are not in a position to know whether they are served milk products or other products. Creams, sauces or desserts do not indicate the products used and even the coffee cream, in bulk or in individual portions, is not clearly identified as a milk product vis-à-vis a competing product.

Finally, magazines or health publications do not always use the protected designations correctly, e.g. using in description or recommendations the designation "soy milk" or other protected designations.

## INNOVATIONS

Dairy products seem to some extent to have lost their image of being necessary for children "in order to grow up healthy" and they are more and more seen and marketed as a source of pleasure associated with good food while providing essential nutrition elements, such as calcium.

Products labelled "bio" are now widely available in retail shops whereas they were expensive niche products some years ago. They are sold at a premium and may also represent a bigger return for milk producers.

Among the recent innovations in the milk products sector it is worth highlighting a product denominated *Labam* (fermented milk drink) answering to the habits of populations originating in the north of Africa.

## CONCLUSIONS

It is overall positive that consumers find in the market place products responding to their needs or preferences. However it is also essential that each consumer knows exactly what he is buying, avoiding any confusion.

Regulation (EEC) No 1898/87 has constituted a guarantee for the consumers and dairy producers that milk products are correctly designated while avoiding the use of protected designations by other products which could find a place on the same shelves. Fair competition should prevail, with the consumers being able to make their preferred choice based on full and reliable information. Dairy products manufacturers should be in a position to market their products in an environment of fair competition with competing products.

The labelling of competing products seems to be correctly applied by industry but retailers do not always use the same approach, with a clear risk of misleading the consumer as a consequence.

Some Member States are likely to have on their internal market products which are not in conformity with Regulation (EEC) No 1898/87. The Commission will closely follow up the application of this regulation while Member States are reminded that they shall act to enforce EU legislation and to prevent abuses.

Furthermore, some Member States may have on their market products referred to in the second paragraph of Article 3(1) of Regulation (EEC) No 1898/87. Such products are listed in Decision 88/566/EEC. Where appropriate, Member States are invited to contact the Commission with pertinent comments in order to have those designations analysed and, if justified, the Commission shall propose an amendment of the Decision referred to.

A limited amount of data is available for competing products but there is a general feeling that the impact of such products is still marginal. The cheaper price is nevertheless working in favour of those products.

Finally, the frequency for a report on products competing with milk products should be reconsidered as the value of annual reporting on the evolution of these markets may be questioned. A report every three to five years seems sufficient to follow the trends in consumption of those products. The Commission will therefore consider to submit accordingly a proposal for an amendment of Council Regulation (EEC) No 1898/87.