

## REGULATORY DEVELOPMENTS REGARDING FOOD LAW



Lexidale Watch presents to you a tailored-made Report, created by our experts, which provides you with an overview of the most recent legal developments affecting your company, Foodco. This document contains relevant advances in the fields of health, competition, and consumer protection law in the United Kingdom and the Netherlands. Furthermore, special attention is paid to food regulation in the European Commission and the United States.

If you require any further information or guidance in relation to these recent developments, please contact your country representative. Moreover, Lexidale experts can aid FoodCo in developing a corporate strategy in light of the changes presented.



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## The United Kingdom

- New Rules for Advertising in the UK

2014 will bring some changes to the restrictions, regulations and rights of redress for advertising in the UK, that all businesses should be aware of. Since FoodCo advertises to consumers in the UK, the following changes may be important to you:

*Expected Jul / Aug 2014: Glasgow 2014 ambush marketing restrictions*

The Glasgow Commonwealth Games (Trading and Advertising) (Scotland) Regulations 2013 will restrict trading in open public places and advertising activity in defined event zones during specified prohibited times. The regulations are modeled on those introduced for the London 2012 Olympics.

*2014: Consumer private rights of redress*

The draft Consumer Protection from Unfair Trading (Amendment) Regulations 2013 are expected to come into force in 2014. They will give consumers rights to claim damages against businesses for misleading and aggressive practices. Currently, breaches of the Consumer Protection from Unfair Trading Regulations 2008 are not directly enforceable by consumers. Under the new legislation, consumers will have additional rights to a refund, a discount and/or additional damages.

### *What does this mean for you?*

⇒ FoodCo must reassess their advertising strategy and consider amendments that may have to be made in light of the upcoming Commonwealth Games, in order to comply with the new Regulations.

- Reduction in Tax Rate

Good news for corporate tax rates; the UK's main rate of corporation tax will reduce from 23% to 21%, highlighting the government's ongoing commitment to encouraging business growth.

Effective April 1, 2014, the UK will then have the lowest tax rate of any major western economy.

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- New legislation (the EU Food Information for Consumers Regulation 1169/2011) will be introduced

This new Food Labeling Regulation will replace current UK law and brings EU rules on general and nutrition labeling together into a single regulation to simplify and consolidate existing labeling legislation.

Transitional arrangements mean that most requirements do not apply until (expected) December 2014 and nutrition labeling will become mandatory in 2016. The Food Information to Consumers Regulation introduces considerable changes to nearly all food labels in the UK, including nutrition information, origin labeling, the manner of allergen labeling, and minimum font size.

### *What does this mean for you?*

- ⇒ FoodCo will have to amend its current food labels in order to comply with this Regulation.
- ⇒ FoodCo must ensure that all its frozen pre-packed foods contain a label stating country of origin of the product and detailed allergy and intolerance information in the list of ingredients.
- ⇒ Furthermore, the font size of obligatory information on FoodCo's labels must be increased to a minimum of 1.2mm, instead of the current 0.9mm.
- ⇒ With the compliance date of 13 December 2014 for most provisions nearly less than 12 months away, FoodCo will need to allocate sufficient time to develop artwork, ensure that it is suitable for printing with packaging suppliers, and review and approve it for compliance



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- Draft Water Bill

The [Draft Water Bill](#) launched on the 10 July 2012 by Defra (The Department for Environment, Food and Rural Affairs), outlines the Government's plans for a competitive Anglo-Scottish water market for non-household customers, aimed at improving service, pricing and innovation across the sector.

On 27 June 2013, the Water Bill was publicized by Defra. The legislation announced that all non-domestic water customers in England will be able to choose a water and waste water supplier, with a projected economic benefit of £2 billion over the next 30 years.

### *What does this mean for you?*

This draft bill is encouraging for FoodCo and other consumers. It proposed:

- ⇒ Making market entry easy for customer focused new entrants.
- ⇒ Collaboration between regulators in Scotland and England to create a seamless market across borders.
- ⇒ Putting customers at the heart of market development proposals through a 'High Level Working Group'.
- ⇒ Creation of codes and charging regimes to protect customers.
- ⇒ All non-domestic customers in England and Scotland will be eligible to be part of this market; and a date has been set of 1 April 2017 to deliver the new market.

### *What happens next?*

- ⇒ The Second Reading of the Bill is expected to take place before the House of Lords rises for summer recess on the 18th July 2014, which will be the first opportunity Members of Parliament get to debate the Bill.
- ⇒ The Committee Stages of the Bill, which is when the Bill is examined line-by-line, will not take place until after the House has returned in September 2014.
- ⇒ Once the Committee Stages are completed, there will be a Report and Third Reading of the Bill, which often take place on the same day, and then the Bill will begin its passage through the House of Lords.

**We will continue to keep you informed of developments as the Bill progresses through Parliament and to future developments regarding this Bill that may affect FoodCo.**



## The Netherlands

- Accord to reduce calories per product

The ambition of the government and the public sector are described in the Accord, aiming to reduce the amount of calories per product by 2020. The focus is on product composition. Reducing fat and sugar in products will lower the amount of calories. Specific attention is paid to the amount of salt, (saturated) fat and calories.

In the near future, more collective agreements will be made by retail and producers, depending on the product category.

- ♦ Accord regarding Improvement of the Product Composition

### *What does this mean for you?*

- ⇒ In the near future, the Government of the Netherlands will establish a website where the concrete agreements for specific product categories will be published.
- ⇒ Need for participation in negotiations in order to voice displeasure about upcoming agreements.
- ⇒ Keep up to date with new agreements.
- ⇒ Your Lexidale representative will inform you as soon as new agreements are established, as well as when the proposed website is online. For further details on how and where you can participate in negotiations, please contact [your Lexidale representative](#).

- Company and Commodity Boards terminated by the end of 2014

The Company and Commodity Boards promote the interest of trade branches by drawing up regulations, advising the government, undertaking research and providing information for the particular branch. In short, these statutory industrial organisations form the link between the business world and the government.

These Company and Commodity Boards oblige firms to make a payment in order to promote the interest of the firms. However, the obligatory fee for Boards was terminated on 1 January 2014.

- ♦ Company and Commodity Boards

### *What does this mean for you?*

- ⇒ The Dutch Government will take over the public tasks. For example, the government will promote food security. The tasks of promotion and education, formerly done by the Boards will be on the shoulders of the businesses themselves.
- ⇒ There might be the risk that by the termination of the Boards, the government and businesses have lost a negotiation table for topics outside the CAO. However, for FoodCo this is mainly a positive development since the expenses of the Boards are no longer in place, which will save FoodCo around €99, 000. [[see specific calculation](#)].
- ⇒ This is important to take into account when considering your annual budget for expanding.

## The European Union

### • New EU law on food information to consumers

The new EU Regulation 1169/11 on the provision of food information changes existing legislation on food labelling. The new rules will apply from **13 December 2014**. The obligation to provide nutrition information will apply from **13 December 2016**.

The new law combines 2 Directives into one legislation:

- ◆ [2000/13/EC](#) - labelling, presentation and advertising of foodstuffs;
- ◆ [90/496/EEC](#) - nutrition labelling for foodstuffs.

### *What does this mean for you?*

- ⇒ Mandatory nutrition information on processed foods;
- ⇒ Mandatory origin labelling of unprocessed meat from pigs, sheep, goats and poultry;
- ⇒ Highlighting allergens e.g. peanuts or milk in the list of ingredients;
- ⇒ Better legibility i.e. minimum size of text;
- ⇒ Requirements on information on allergens also cover non pre-packed foods including those sold in restaurants and cafés.

### • Next steps on origin labelling

The Commission presented to the ministers a report on the feasibility of extending mandatory origin labelling for all meat used as an ingredient. The report was published in December last year.

There are still diverging views among the member states as regards the scenarios assessed by the report. While many delegations were in favour of introducing mandatory labelling, a number of them would like the labelling to indicate the specific EU member state or the specific third country whereas some others would prefer it to indicate EU/non-EU origin. However some others argued for maintaining origin labelling on a voluntary basis (i.e. status quo).

The report weighs up the need for the consumer to be informed and the feasibility of introducing mandatory origin labelling, and provides a cost-benefit analysis including the impact on the single market and on international trade. This report is of particular importance in the light of the fraudulent mislabelling of beef products in the EU reveal revealed at the beginning of last year.

By 13 December 2014, the Commission must submit reports to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for the following foods:

- ⇒ Types of meat other than beef, swine, sheep, goat and poultry;
- ⇒ Milk and milk used as an ingredient in dairy products;
- ⇒ Unprocessed foods;
- ⇒ Single ingredient products;

Ingredients that constitute over 50% of a food.

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- ORGANIC FOOD – Council consideration: New proposal on organic farming

The following is an extract from the Minutes of the Agriculture and Fisheries Council meeting held on the 24 March 2014:

The Commission presented to the ministers a proposal for a regulation on organic production and labelling of organic products. In December last year, the Council was briefed on the main results of the public consultation on organic farming conducted by the Commission.

The Commission proposes a review of the legal and political aspects of organic production and farming in Europe. The proposal acknowledges that the current EU policy on organic production has drawbacks (complex legislation and unclear provisions, deficiencies in the control system and in the trade regime, significant administrative burden, lack of opportunities for EU producers, etc.). Both the current legislation on organic farming and the European organic action plan should be modernized.

The Presidency will start examination of the legislative proposal in the coming weeks.



*What  
does  
this  
mean for you?*

Based on the main elements of the Commission's new proposal the following may affect FoodCo:

- ⇒ Production rules are harmonized. Exceptions are removed, except in very specific circumstances;
- ⇒ The agricultural ingredients used by FoodCo in the composition of organic processed products have to be exclusively organic;
- ⇒ Organic operators other than farmers or operators producing seaweed or aquaculture animals (except micro-enterprises) are required to develop a system for improving their environmental performance;
- ⇒ A system of group certification is introduced for small-scale farmers in the EU;



# The United States

- FDA Food Safety Modernization Act (FSMA)

The most sweeping reform the food safety laws in more than 70 years was signed into law by President Obama on January 4, 2011. It aims to ensure the U.S. food supply is safe by shifting the focus from responding to contamination to preventing it. The proposals aim to make nutritional information easier to read and understand as part of the drive to improve public health.

### *What does this mean for you?*

FoodCo's food facilities must (re)evaluate the hazards in their operations, implement and monitor effective measures to prevent contamination, and have a plan in place to take any corrective actions that are necessary. If FoodCo fails to comply with the above, they will face high fines.

For the first time, FDA will have mandatory recall authority for all food products. This is an alarming development, as a potential recall of FoodCo's produc(s) can have a detrimental effect on the company's finances and Brand Name.



- Proposed the nutri-

- FDA changes to tion fact panel.

The FDA plans to finalise the new rules by **2015**, giving operators a transitional period of **two years** to adapt their labels.

### *What does this mean for you?*

FoodCo must resign its fact panels by 2017 in accordance with the below requirements:

- ⇒ It will be mandatory for FoodCo to provide information about **“added sugars”** and an indication of the amount of Potassium and Vitamin D in its labeling. Furthermore, labels must indicated the “total fat”, “saturated fat” and “trans fat.”
- ⇒ FoodCo *does not* need to change its product makeup; it simply needs to properly label its products' contents.

- EU-US Transatlantic Trade and Investment Partnership (TTIP)

The TTIP proposes a free trade agreement between the European Union and the United States. It **may** be finalized by the **end of 2014**. The highly controversial deal is estimated to boost the EU's economy by €120 billion, the US economy by €90 billion. The TTIP is perhaps the most important development for FoodCo, as it dramatically changes the field.

***What does this mean for you?***

- ⇒ The elimination, as far as possible, of all customs duties means FoodCo can freely import its products to the EU. This will undoubtedly reduce FoodCo's import costs and thereby product cost.
- ⇒ The TTIP furthermore aims to reduce, or even to eliminate, what the specialized jargon refers to as non-tariff trade barriers. This refers to the constitutional and legal norms, rules and regulations liable to limit the scope of economic competition. This means that any existing legal barriers to FoodCo will most likely disappear, thereby reducing legal fees for the company. This means that FoodCo can import its product into the EU as if the EU was simply another State of the US.
- ⇒ Lastly, through TTIP private firms have a right of litigation against the laws and regulations of the various States, whenever these firms feel that these laws and regulations represent unnecessary obstacles to trade, access to public markets, investment and service-providing activities. This allows FoodCo can challenge legal barriers to the sale and import of its products, such as the EU's policy against the imports of genetically modified food.





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