

# **Labelling of Genetically Modified Food Products in EU and protection of consumers' rights**

**Immaculada Barral**  
**Full Professor in Civil Law**  
**Faculty of Law**  
**University of Barcelona**

## **1. Introduction: strict labelling for genetically modified food products in EU.**

Compliance with consumer protection by means of strict labelling regulations has always been an important EU issue. Food products in EU have to be labelled properly to fulfil the legal information requirements, and must be safe. Such regulations also apply to genetically modified food products, but, in this case, the information right and the health and security rights of consumers' are settled with a specific regulation that impose to inform the consumer that the food product they are buying is a genetically modified organisms or contain genetically modified organisms as stated in Regulation 1823/2003: that is to say, in the EU, food that contains genetically modified organisms has to be correctly identified. This stance clearly differentiates the EU from other countries such as the USA. This decision is currently slowing down the standardisation of global GMO regulations.

Thus the idea of protecting consumers from some unknown risks of GMFP –

Genetically Modified Food Products- allowing them to decide whether to buy or not this products can be reasonable, the Regulation 1829/2003 offers some important limitations that can move backwards the idea of save guarding consumers interests in both health and safety and information rights, as we will try to show in this paper.

For this reason, we will first analyze these two types of consumers rights – paragraph 2-, and then how this labelling requirements for GMFP are settled – paragraf 3-, to discuss some gaps in the regulation –paragraph 4- that can be a challenge for the EU food regulation and the compliance with consumers rights.

## **2. GMO labelling and consumer's rights**

Consumer rights are starting to be a real point of start for consumer law, as beyond the idea that consumer law, from the point of view of private law, is only a special regulation for contracts and tort law. For that reason Deutch<sup>1</sup> states that consumer rights are a part of the human right to dignity that can enlarge to recognize some economic and social rights so as right to fair trade, right to fair contract and access to justice. We can see two main areas in this recognition of rights:

### **2.1 – The right to health and safety**

These are right of ample interpretation by the fact that it usually goes different from the so called economic rights that contemplate the consumer as facing a specific legal relationship and lean towards a patrimonial indemnity, as it is

---

<sup>1</sup> DEUTCH, S., “Are consumer rights human rights?”, Osgoode Hall Law Journal, 537k, 1994, pàg. 10 y ss.

clear in the case of economic rights that we will consider after this point.

The rights to health and security are abstract rights that the consumer has for the goods and services that the market offers him, these rights are of previous form to a particular legal relation and with preventive character. In effect, its purpose is to avoid an injury to the health of the people or that an accident happens that jeopardizes their security. These rights act with special force in relation with what the Spanish Law protecting consumers denominates 'generalized consumer goods': And among them we can emphasize the food. The EU has drawn a very strong regulation on food security, starting with R 178/2002 till the regulation of OMG: here the security apparatus appears to the maximum level, with previous authorizations to the commercialization in a context where food is treated as drug.

In all of them, the previous protection is essential so that the security mechanisms work and avoid the damage. In case of corporal damages then the consumer's protection lean towards the right to health such as sanitary rights. Whereas the compensation for the produced damages will be seen next referred to as economic rights.

## **2.2.- The so called economic rights**

In general, by these economic rights it is usually understood as all the rights of the consumers apart from the right to health. They tend towards the patrimonial indemnity and the consumer is contemplated in what part of the doctrine denominates consumer acts; by this we mean that the consumer is contemplated within a concrete legal relation that would normally be contractual but that it is possible that is not. In fact they have three great functions: contract fulfillment, compensation of the produced harm or avoidance of the unjust enrichment by the other side.

It is for that reason that the functionality of this type of rights depends on two tools, which sometimes are considered to be rights but that, if in fact they are, they would be instrumental: Right to the compensation of the damage and right to the information

These rights are the legal tools by means of which consumer laws attempts to protect the weaker party of a contract because he has little power to negotiate. The law in this case, tries to reestablish the balance in two forms with a large list of previous information requirements, to provide to the consumer, the characteristics of the good or service that is contracting for: the question is evident, for example, in the regulation of the unfair contract terms that are not understood to be binding unless the consumer has the chance to have knowledge of its content (art. 5 LCGC).

### **2.3.- GMFP and consumer rights: a step forward?**

In this context labelling regulations for GMFP stresses out this consumer's rights in the Regulation 1829/2003, regarding labelling of genetically modified food. In my opinion, the final scope of this text is respecting these two types of consumer rights:

1.-The right to information: the aim is to guide consumers' decisions on which food to consume, i.e. whether they accept or reject food containing GMO<sup>2</sup>.

In fact, precontractual information is aimed at complementing the market economy from the point of view of the weaker party. In other words, its function is to moderate the interaction of supply and demand in favour of demand. This re-establishes a certain degree of equilibrium between resources and the respective powers of companies and consumers. EU

---

<sup>2</sup> As established in paragraph 99 of the white paper on food safety.

legislation has its own logic for precontractual stage regulations when one of the parties is legally defined as a consumer. This differential treatment is justified by evidence of the imbalance between the two parties, which leads to the need for specific solutions favouring the “weak” party only.

The application of these consumer protection regulations breaks the main principles of traditional transactions (according to a liberalist economic doctrine); specifically the principles of equality between the two contracting parties (articles 1254 and 1256 CC in Spain) and freewill. In relation to this second principle, the liberalist doctrine of equality between the parties states that transactions should be carried out with a level of equality that does not exist today. Precontractual information has to be provided in the traditional process. EU legislation uses this process to redress the imbalance in transactions between company and consumer. In terms of food products, and GM food in particular, this process has brought about all of the labelling regulations. So, compliance with consumer information requirements by means of strict labelling regulations has always been an important EU issue, and this path has been followed in the GMFP in the Regulation 1829/2003.

2.-The right to health and safety: food safety is the cornerstone of European food rights. It has led to GMO regulations in which the analysis of all possible risks predominate. Such regulations are regularly updated. Information is established as a premise in the consumer’s free decision about whether or not to buy GM food.

In that very case, the right of health and security offers a very interesting approach as is using a traditional instrument for the economic rights protection: the previous information through labelling requirements. It goes without saying that in such a context, labelling of GM food products can be a main step towards consumer protection but, as we will show, the information right provided in the UE regulation is far from providing both a real choice of genetically modified food products among consumers because of some limits

in the application of the previous information right that R 1830/2003 foresees.

### **3.- Labelling GMFP in Regulation 1829/2003**

The laws regarding food products labelling in EU do not in themselves ensure that consumers receive the correct information about whether the specific food products that they wish to buy contain genetically modified organisms. The Directive 13/2000 regarding food products labelling do not mention any special labelling requirements facing this case<sup>3</sup>, and before 2003 was the only text applicable to the genetically modified food products.

Directive 13/2000 control both obligatory and optional information. Optional information includes nutritional and functional statements. The fact that a product is a GMO, has GMO ingredients or is derived from a GMO does not have to appear at the top of the obligatory information. It does not have to be stated in the name under which a product is sold (art. 1,a). The same name is given to genetically modified foodstuffs and non genetically modified food products (e.g. maize), except when a specific product does not have a standard equivalent, and in this case the authorisation to sold it will contain a name for the product to be used in the labelling.

It could appear in the compulsory information about the cultivation method of production, by means of Regulation 1804/1999, regarding labelling of organic food. This text allows products classed as organics to mention this whereas the non organic food can not have this mention, and in fact works as a quality item for organic food. The question become interesting if we consider the possibility of negative labelling for genetically modified organisms – i.e. this maize is not genetically modified- that would be applied especially to organic food. In this case the Commission does not admit this labelling when the GM

---

<sup>3</sup> So usually the member states do not have any internal law in this very sense, i.e. he case of the Spanish basic law in food labeling: the Royal Decree 1334/1999, with the general rule for food products labeling.

food stuff has not a homolog conventional<sup>4</sup>.

On the other hand, European regulations include the different information that is obligatory when labelling GMOs:

1. The control of consumer information begins during the product authorisation stage, which precedes specific GM labelling obligations.

2. EU regulations and Regulation 1829/2003 in particular include a special labelling system for GM foods. The basic idea is that labels must indicate that the food product is a GMO, contains GMOs, or is derived from a GMO so that the consumer can choose whether to eat it or not. This obligatory information is controlled by labelling regulations and has to be included on the product's package (art. 12 and 13).

#### **4.- Gaps in labelling GMO regarding consumer protection**

However, these precautions and the GMO labelling requirements are ineffective, as there are three limitations to the principle of obligatory information.

The obligation of mentioning an ingredient of an ingredient in the final product. This arises when the GM ingredient's weight is less than a specific percentage of the product weight. This percentage represents a cut off point, below which it is not a legal obligation to include the ingredient in the label. The R 1829/2003 states this cut off point in the 25% of the total weight of the product

- The positioning of this information. Although GMOs have to be declared, the information may be watered down by two provisions:

---

<sup>4</sup> COM (2006) 626 final, INFORME DE LA COMISIÓN AL CONSEJO Y AL PARLAMENTO EUROPEO sobre la aplicación del Reglamento (CE) nº 1829/2003 del Parlamento Europeo y del Consejo sobre alimentos y piensos modificados genéticamente del 25.10.2006.

1. Article 13.1d: The GM information can be included as a note at the end of the list of ingredients. The only stipulation is that the font size should be the same as that used in the list of ingredients.

2. Article 13.1e: There is another stipulation for GM information. It has to appear on the display in a way that is “visible and permanent”. However, the general regulations are modified for non-packaged products and include an exception. Products that are packaged in containers whose largest surface is no bigger than 10cm<sup>2</sup> follow the general rule for all food: the name under which the product is sold has to appear, along with the quantity of the product. This information has to appear on all small packages. However, it is not clear whether the fact that the product is a GMO has to appear on the package when the product is made up of one foodstuff only. This is serious omission, if we consider, for example, pre-packaged GM tomatoes sold to many supermarkets as white brands. In addition, such regulations do not seem to be justified.

To sum up, we can see that the obligatory labelling requirements have limited effectiveness for GM labelling and do not give accurate consumer information in this area. These problems can be added to those that have been detected in all of the EU labelling regulations. The limitations of these regulations were analysed in the consultative document compiled by DG SANCO on better regulation of consumer information<sup>5</sup>. An analysis of the published results of this document demonstrates that perhaps we need to move towards new techniques for protecting consumer decisions<sup>6</sup> that can go further than precontractual information.

---

<sup>5</sup> **Labelling: competitiveness, consumer information and better regulation for the EU**, DG SANCO Consultative Document, February 2006.

<sup>6</sup> On this topic: **Information-based principles for rethinking consumer protection policy**, Gillian K Hadfield; Robert Howse; Michael J Trebilcock, *Journal of Consumer Policy*; Jun 1998; 21, 2; ABI/INFORM Global, p. 131

---