

The Consumer Voice in Europe

DUAL PRODUCT QUALITY ACROSS EUROPE: STATE-OF-PLAY AND THE WAY FORWARD

Providing all of Europe's consumers with products of the fair quality they expect



Contact: Camille Perrin – food@beuc.eu

BUREAU EUROPEEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • consumers@beuc.eu • www.beuc.eu
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Why it matters to consumers

Recent tests found identically-branded and similar-looking products (mostly foodstuffs) are sold under different quality grades in various Member States, leading to consumer frustration. Wherever they live in the EU, consumers shall have confidence that the products they purchase are faithful to the expectations they derive from the branding, packaging and presentation.

Summary

As we have just celebrated the 25th anniversary of the EU Single Market, it is vital to ensure that all European consumers can fully benefit from it and equally access a wide range of products from the quality they expect.

Quality differentiation of identically-branded and similar-looking products must be considered unfair when it misleads consumers over a product's true characteristics.

Because 'dual quality' can have multiple root causes, BEUC recommends the following multi-pronged approach to addressing it:

- **Continue gathering evidence on the breadth of the phenomenon.** The announced EU-wide testing campaign based on a common methodology is welcome, but investigations should continue for products other than food.
- **Step up enforcement of existing EU legislation.** Diverging interpretations and/or levels of enforcement of existing EU food and consumer protection laws can lead to dual quality and must therefore be avoided.
- **Strengthen the consumer movement.** Consumer organisations, via their testing and campaigning activities, have a key role to play in tackling dual quality, but for that they need adequate resources.
- **Address any potential failure of the Single Market.** The European Commission shall investigate the impact on consumer choice, both in terms of price and quality, of contractual and non-contractual practices that restrict retailers' ability to source in the country of their choice. Where appropriate, it shall make use of competition law to tackle such practices.
- **Improve quality for all of Europe's consumers.** Some national food composition standards (e.g. prescribing a minimum fruit content in certain products) should be extended to the EU level. The EU should also do more to ensure all EU consumers ultimately benefit from a healthier food offer. For instance, they should swiftly adopt legally-binding restrictions on trans fats in food and steer national reformulation activities to reduce levels of fat, sugars and salt.

Table of Contents

1. Introduction	3
2. What evidence is there on dual quality?	3
2.1. Tests carried out to date	3
2.1.1. Tests by national governments and agencies	4
2.1.2. Tests by consumer organisations	4
2.2. Upcoming EU-wide testing campaign	5
3. The customer is always right – or are they?	6
3.1. Consumer preferences as a genuine driver of product differentiation.....	6
3.2. ... or a convenient excuse for offering lower quality?	6
3.3. Value for money?	7
3.4. More transparent recipe changes	7
3.5. The case of health-driven recipe adaptations	8
4. Uneven enforcement of EU laws	8
4.1. Food legislation.....	8
4.2. Unfair Commercial Practices	10
5. Powerful consumer organisations for empowered consumers.....	11
6. Territorial supply constraints: what role for EU antitrust law in the dual quality debate?	12
7. BEUC recommendations for addressing dual quality	12
7.1. Continue gathering evidence on the breadth of the phenomenon	12
7.2. Step up enforcement of existing EU legislation.....	13
7.3. Strengthen the consumer movement.....	13
7.4. Address any potential failure of the Single Market	14
7.5. Improve quality for all of Europe’s consumers	14

1. Introduction

'Dual quality' is a practice in which companies use different recipes, formulations or standards for items sold under the same brand name and with very similar-looking packaging. Depending on the market where they are sold, some products might be of lower nutritional value, contain inferior ingredients or have a lower efficacy. Cases have mostly been reported in relation to food¹, but there is evidence that it also concerns non-food products, including detergents (e.g. washing liquid) and toiletries (e.g. toothpaste, shampoo).

Examples of dual food quality include fish sticks with varying amounts of fish, biscuits produced with butter and palm oil as opposed to butter only, or canned luncheon meat made from mechanically separated meat instead of real meat. Mostly, food companies are suspected of selling products of lower quality in Eastern European countries, but differences within the West also exist.

Dual quality is not a new issue², although it has only recently gained wide attention on the EU political agenda. Following up on its President's declaration that "*there can be no second-class consumers*" in the EU³, the European Commission has already taken some steps to tackle it. Its Joint Research Centre has been tasked with developing a harmonised testing protocol to assess dual quality, which will be implemented in an EU-wide testing campaign in the second half of 2018. The Commission has offered financial support to national consumer protection authorities, so that they can run more comparative food tests. It has also published a legal notice⁴ to help Member States better apply existing EU food and consumer protection laws.

Examples of dual food quality:

- fish sticks with varying amounts of fish;
- biscuits produced with butter and palm oil as opposed to butter only;
- canned meat made from mechanically separated meat instead of real meat...

Product differentiation can be legitimate and even welcome when it caters to local consumer preferences. **Yet marketing products under the same brand and packaging, while altering the product composition at the detriment of consumers without telling them about it, must be considered an unfair commercial practice.** Whether it results from an inadequate enforcement of existing laws, a dysfunctional Single Market, a lack of strong consumer representation at the national level, or a mix of these factors, tackling the practice of dual quality requires action at multiple levels.

2. What evidence is there on dual quality?

2.1. Tests carried out to date

While the dual quality controversy is not new⁵, tests to investigate the extent of the problem have been relatively scarce up until recently. In the last couple of years, however, tests of products (mostly food and drinks) to look for possible differences in composition have multiplied.

¹ The present paper and BEUC's recommendations are therefore mainly focused on food-related dual quality, although some general considerations can be relevant to other types of consumer goods.

² A European Parliament [resolution](#) from 2013 on a 'New agenda for European Consumer Policy' already called on the European Commission to "carry out a meaningful investigation" into possible differences in the quality of products with the same brand and packaging distributed in the Single Market.

³ President Juncker's [State of the European Union Address 2017](#).

⁴ http://ec.europa.eu/newsroom/document.cfm?doc_id=47227

⁵ Members of the European Parliament [have been reporting](#) on consumer queries about product differences between Western and Eastern European markets since 2011.

2.1.1. Tests by national governments and agencies

In 2016, Slovakia⁶ compared 22 food products (incl. dairy products, meat and fish products, chocolate, tea, coffee, etc.) sold under the same brand name and with the same packaging (but in different languages) on the Austrian and Slovak markets. For 9 out of 22 products, no significant differences were found. For 3 products, only minor differences were noted. But for 10 out of 22, bigger differences were found: they included, for example, a lower fish content in fish sticks and a lower fruit content in an orange lemonade sold on the Slovak market.

Other Member States including Hungary, the Czech Republic, Lithuania, Slovenia, Romania and Bulgaria have also been carrying out tests. The results are partly available in an internal European Commission note⁷. They offer a contrasted picture, with difference rates compared to the product variants available in Germany or Austria ranging from zero in Slovenia to 70% in Lithuania (50% in the Czech Republic and 25% in Hungary).

The studies, however, vary widely in sampling size and methodology and as such are not comparable. The use of mechanically separated meat instead of 'real' meat⁸, lower amounts of characterising ingredients (e.g. fish in fish fingers, fruit in fruit yogurt) and the presence of distinct types of sweetening agents (sucrose vs. other sugars vs sweeteners) are among the most frequently reported recipe variations.

In Croatia, a survey jointly conducted by a Member of the European Parliament and the Croatian Food Safety Agency to compare products sold in Croatia and Germany unveiled differences in 53% of the tested items⁹. It also found that more than half of the dual quality cases also came with a difference in price, with the Croatian product being more expensive. A baby food, of which the Croatian recipe contained fewer vegetables and less rapeseed oil than its German version, has been reformulated in the meantime.



A survey comparing products sold in Croatia and Germany unveiled differences in 53% of the items. In more than half of cases, Croatian products were more expensive.

2.1.2. Tests by consumer organisations

In 2016, Czech consumer group dTest analysed 18 branded foodstuffs purchased on the German and Czech markets¹⁰. In most cases, they did not identify any difference in product composition. On the other hand, a comparison of retailer brand (private label) products revealed more pronounced differences between products of very similar packaging from two retailer groups operating on the Czech, German and/or Austrian markets.

⁶ See full results in Slovak <http://www.mpsr.sk/download.php?fiD=12627> and summary note circulated to the Council <http://data.consilium.europa.eu/doc/document/ST-6716-2017-INIT/en/pdf>

⁷ [Summary of studies on quality differentiation of products](#). Internal EC document obtained through access-to-document request via the 'Ask the EU' website.

⁸ Mechanically Separated Meat (MSM) is defined in Regulation (EC) No 853/2004 on hygiene rules for food of animal origin. MSM is derived from meat scraps left on animal carcasses once the main cuts have been removed. Once recovered, MSM can be used in other foods. As this meat differs in quality from fresh meat, it does not count towards a food's meat content and should not be labelled as meat in the list of ingredients (see Part B of Annex VII to regulation (EU) No 1169/2011).

⁹ [One Union – One Quality](#). Quality research of seemingly identical products in markets in old and new EU Member States. Survey carried out by MEP Biljana Borzan and Croatian Food Safety Agency (2017).

¹⁰ <https://www.dtest.cz/clanek-5156/rozdilna-kvalita-potravin-v-eu>

For instance, cooked ham sold in the Czech Republic was found to contain less meat, and sliced bread more additives and less whole-wheat flour than in Germany; one orange drink was made with no orange content, while the German and Austrian versions contained 3% orange concentrate¹¹. In some cases, consumers preferred the Czech variety of a product despite the inferior nutritional quality (e.g. a sausage contained less meat and more fat but was still considered tastier). Yet in other instances, the German/Austrian recipe was preferred (e.g. soft orange cakes with more chocolate coating and tastier filling).

In another comparative test (2017)¹², dTest found differences in the composition of frozen pizzas from a famous brand sold under the same packaging in Poland, Hungary, Italy, Austria and the Czech Republic. The Czech, Hungarian and Polish versions (all produced in a Polish factory for the Eastern EU market) had less ham and cheese than their Austrian and Italian counterparts (produced in a German factory for the Western EU market).

A test on laundry liquid and powdered detergents¹³ highlighted only minor differences in efficacy between products sold under the same brand – but in different packaging – on the Czech and German markets. Detergents sold in both countries turned out to have roughly the same washing effect. Nevertheless, compositional differences were noted in that the German detergents contained more phosphorus and fewer perfumes – which are potential allergens.

BEUC member Zveza Potrošnikov Slovenije (ZPS) too conducted tests on product quality differentiation¹⁴, as part of a project funded by the Ministry of Agriculture of Slovenia. ZPS sampled both branded and private label products on the Slovenian and Austrian markets.

The tests consisted in a comparison of the labelling and package presentation, a sensory analysis, and where necessary, a complementary chemical analysis. Out of 32 products, 7 (i.e. 20%) differed in quality – at the detriment of the Slovenian product (e.g. less meat in a pâté, more food additives in a lemonade, a cooked ham and a milk chocolate¹⁵, fewer strawberries in a yogurt). Differences were most often observed between private label products.

2.2. Upcoming EU-wide testing campaign

The European Commission's Joint Research Centre has been tasked¹⁶ with the development of a harmonised testing methodology to assess dual food quality. It shall suggest a common approach to the sampling, analysis and sensory evaluation of food products.

The protocol will be ready by the end of April 2018. An EU-wide coordinated testing campaign should then be launched in May, with at least 16 EU countries participating according to latest reports¹⁷. The results are expected by the end of 2018.

BEUC welcomes the EU-wide testing campaign based on a common methodology.

It will allow collecting further evidence of product differentiation across various Member States. It will be interesting to see whether differences which have been reported between eastern and western EU markets also occur between western EU markets, for instance. It is therefore essential that as many Member States as possible take part in the testing campaign. We look forward to the publication of the campaign findings and, together with our members, will be actively contributing to the ensuing discussion and interpretation of the results.

¹¹ [EPRS briefing](#) (June 2017). Dual quality of branded food products. Addressing a possible east-west divide.

¹² <https://www.dtest.cz/clanek-6076/mrazene-pizy-casto-nahrazuji-sunku-i-syr>

¹³ <https://www.dtest.cz/clanek-6072/test-dvoji-kvality-pracich-prostredku-2017>

¹⁴ https://issuu.com/ursa_smid/docs/projektna_naloga_dvojna_kakovost

¹⁵ Meanwhile, the company manufacturing the milk chocolate product has removed the extra additive in the Slovenian recipe, which is now the same as the German/Austrian one.

¹⁶ http://europa.eu/rapid/press-release_IP-17-3403_en.htm


¹⁷ [Press speakings](#) of Commissioner Jourová at a joint press conference on dual quality of food with Chair of Czech Parliament Agriculture committee Mr. Faltynek.

3. The customer is always right – or are they?

3.1. Consumer preferences as a genuine driver of product differentiation...

Europe is rich in culinary traditions, so consumption differences do exist. Producers are free to adapt their products to different tastes and markets, provided they comply with all applicable EU laws. Where such differentiation meets consumer expectations, it is obviously welcome.

One example is food fortification. German and Austrian consumers are not keen on products with added vitamins, as they prefer naturally-occurring vitamins from fruit and vegetables. The same is true in Denmark, where national authorities recommend that a healthy and balanced diet should suffice to reach an adequate vitamins intake. Breakfast cereals manufacturers have responded to this market demand and many do not fortify breakfast cereals. However, producers obviously believed that Czech consumers appreciate fortified food. This can explain why dTest's survey found the same breakfast cereals had added vitamins on the Czech market, but not on the German and Austrian ones¹⁸. Both products were sold at the same price.



Product differentiation is welcome when it meets consumer expectations, not when it misleads them about the true characteristics of a product.

Nevertheless, **whether a given product differentiation responds to local consumer demand must be assessed on a case-by-case basis and must be evidence-based.** The taste and preferences of consumers can evolve over time, for instance as they become more aware of diet-related diseases and the need to eat more healthily.

3.2. ... or a convenient excuse for offering lower quality?

The Belgian consumer group Test-Achats/Test-Aankoop successfully campaigned¹⁹ to get a dairy company add real fruit in a children's dessert. In February 2016, the organisation denounced the use of misleading fruit pictures on the product packaging whereas it only contained flavourings and no real fruit. They filed a complaint against the company with the Belgian public administration in charge of economic affairs.

The organisation based its complaint on a 2015 ruling by the EU Court of Justice²⁰, which stated that *"the labelling of a foodstuff must not mislead the consumer by giving the impression that a particular ingredient is present, even though it is not in fact present. The list of ingredients may, even though correct and comprehensive, not be capable of correcting sufficiently the consumer's erroneous or misleading impression that stems from such labelling"*. The Belgian authorities required from the dairy company that it either changed its recipe or removed the fruits on the packaging. The recipe was adapted to add 6% real fruit.

Meanwhile, the old fruit-free product was still on sale on the French market, supposedly because French mothers liked its taste better. It took an extra consumer campaign and a petition²¹ to get the company to add real fruit to the French recipe too. The recipe has now been adapted with fruit in most EU countries, although not yet in Portugal²².

¹⁸ <https://www.dtest.cz/clanek-5156/rozdilna-kvalita-potravin-v-eu>

¹⁹ See Test-Achats [article](#) 'Danonino, fruité suite à notre plainte' (May 2017).

²⁰ This [EUCJ ruling](#) was initiated by a complaint by the German, consumer association vzbv against a tea producer (Judgment in Case C-195/14 vzbv v Teekanne GmbH & Co. KG).

²¹ See [Foodwatch France](#), petition Danonino.

²² See Danone Portugal's [website](#) (consulted on 10 April 2018) and e-shopping website of Portuguese supermarket chains [Jumbo](#) and [Continente](#) (consulted on 10 April 2018).

Another example of industry's questionable use of the 'consumer preference' argument is the recent market check carried out by a local member of the German consumer organisation Verbraucherzentrale Bundesverband. They compared the labels of products advertising a new recipe to their former variants and found shocking cases of quality downgrading over time²³.

For instance, a well-known confectionery company was caught red-handed saving hazelnuts in a chocolate bar and adding flavours instead; another producer was found using fewer eggs in an egg salad, while adding two extra preservatives. The honey content in private label breakfast cereals was cut from 30% to 20%, and a pork meat product was bulked up with more water. When contacted by Verbraucherzentrale Hamburg, manufacturers pretended the recipe changes were responding to consumer preferences.

3.3. Value for money?

The food industry has also argued that the need for quality differentiation is triggered by the lower purchasing power of consumers in certain EU Member States, who may not otherwise be able to afford a higher quality grade of the product. This, however, is disputable and deserves substantiation.

Indeed, **consumers buying a foodstuff from a well-known brand may not expect that the quality has been 'adapted' to their national market.** In fact, they may prefer occasionally indulging themselves with the high-quality version of the product, rather than having no choice but to buy an inferior version of it.

Moreover, where consumers' purchasing power is the reason evoked for quality differentiation, **it should be investigated, to the extent feasible, whether the difference in price matches with the difference in quality.**

Arguably, food prices are determined by multiple factors, including market and socio-economic conditions, as well as product quality grades. Yet in some cases, e.g. in the Croatian tests, most products of inferior quality were found to be as or more expensive as the higher-quality variant sold in another Member State. This raises questions and can reinforce the unfairness sentiment. BEUC would therefore recommend that **the forthcoming EU-wide testing campaign coordinated by the JRC should also collect information on the price of foodstuffs** suspected of being sold under different quality grades in various Member States.

3.4. More transparent recipe changes

Consumers should receive complete and accurate information on what they are buying, so they can make an informed purchase decision. They should be able to trust that the product presentation honestly reflects what they will find inside.

'New recipe!'

This mention does not always mean the product has been improved. Tests in Germany have uncovered lowering quality over time.

The market check by Verbraucherzentrale Hamburg was made possible because the consumer group had stored old product labels from previous surveys since 2009. Most consumers, however, typically have no clue what the recipe change is when they read 'new recipe' on a packaging.

On the one hand, food manufacturers are generally prone to communicating on recipe changes when they move towards a cleaner label or add more fruit to their product. On the other hand, no producer would ever be open on the fact its new recipe has less meat and more water instead. **Food makers should systematically be more transparent on recipe changes – and not just when it suits their marketing strategy.**

²³ [Market check on quality downgrading](#) by Verbraucherzentrale Hamburg (March 2018).

3.5. The case of health-driven recipe adaptations

Producers can modify a product's recipe to improve its health profile. This is known as food 'reformulation'. According to EU legislation, where saturated fat, sugars and/or salt content decreases by at least 30% compared to the average product in the category²⁴, manufacturers can advertise it on the packaging. They typically do so to attract health-conscious consumers and boost sales.

In general, we believe that **food reformulation for nutrition and health purposes should be considered a topic distinct from dual quality**. Indeed, national reformulation activities largely result from varying levels of ambition and political leadership in Member States, not necessarily from food makers' deliberate differentiation strategies.

Moreover, it has been shown that a gradual, step-by-step reformulation 'by stealth' is often needed to secure consumer acceptance. In 2012, BEUC successfully campaigned against authorising 'small reduction claims'²⁵ advertising cuts in saturated fat, sugars or salt of less than 30% and comparing a food to its previous recipe. Allowing such claims could have discouraged the industry from further reformulating their products and made it more difficult for consumers to identify the healthier option in a given category. Our view remains unchanged today.

4. Uneven enforcement of EU laws

Manufacturers can take advantage of diverging interpretations of EU rules and/or their poor implementation and enforcement by some national authorities to adapt their product recipes at the detriment of consumers.

4.1. Food legislation

The Fitness Check of the General Food Law (EC) 178/2002²⁶ pointed at national differences in the implementation of EU food law. It also highlighted variable approaches to official food controls and to setting out penalties in case of food law breaches.



When national authorities interpret, implement and/or enforce the EU law differently, dual quality situations can emerge.

Several of the dual quality cases highlighted earlier in this paper relate to the presence of artificial sweeteners (i.e. food additives) instead of/in addition to sugars. For example, a branded iced tea was sweetened with sugars and steviol glycosides (i.e. a food additive) in the Croatian variant but contained no sweeteners in the German one. Such substitution can be the consequence of reformulation activities in Croatia. Yet, a reduction in sugar content should not necessarily be compensated with sweeteners if we are to help consumers curb their sweet tooth.

²⁴ See Regulation (EU) 1924/2006 on Nutrition and Health Claims.

²⁵ See BEUC [press release](#) 'Industry can do better: European Parliament should veto the « X% LESS » nutrition claim' (February 2012).

²⁶ https://ec.europa.eu/food/sites/food/files/gfl_fitc_comm_staff_work_doc_2018_part1_en.pdf

Regardless, EU law²⁷ requires that for foods containing both added sugars and sweeteners, the statement 'with sugar(s) and sweetener(s)' should be labelled along with the name of the food.²⁸ **Much too often, this statement is lost in the small print on the back of the pack, therefore failing to catch consumers' attention.** Had the statement been more prominent on the front of the bottle of the Croatian iced tea recipe, the presence of sweeteners (absent from the German variant) would have been made more obvious to consumers. We would therefore support requiring that the presence of sweeteners be more prominently indicated, i.e. on the front-of-pack.

The Belgian consumer organisation Test-Achats/Test-Aankoop recently pointed finger at food makers using sweeteners in products bearing the nutrition claim 'with no added sugars'²⁹. Indeed, according to the Belgian authorities' interpretation of EU legislation on nutrition and health claims (Regulation (EC) 1924/2006), such claim shall not be permitted on food containing *any* added sweetening agent, including sweeteners. Other national authorities, however, have a diverging interpretation and would consider it legal to use sweeteners in a food with a 'with no added sugars' claim³⁰. This could lead to differences in the composition of identically branded products sold in Belgium and other EU countries.

In some sausages and luncheon meat, real meat has been replaced with mechanically separated meat (MSM), a paste-like product made of the scraps of meat remaining on the bones. A correct enforcement of EU food labelling law shall mean that products containing MSM should not be labelled as '100% meat' (as was the case on one product from Croatia). Indeed, MSM does not even count as 'meat' under EU food labelling rules.

Moreover, the Food Information Regulation³¹ requires that consumers shall not be misled by a product appearance and description, when an ingredient they would expect in such type of food has been substituted with a different component or ingredient.³² In the case of a luncheon meat product marketed as the 'classic' recipe, whereas most of the meat has been replaced by cheaper MSM, one could argue this should be prominently mentioned on the packaging³³.

A tighter enforcement of the Food Information Regulation's provisions on the name of a food (under Art. 17) could also help tackle certain dual quality cases. When descriptive names are used, it should be effectively checked that they are comprehensive and detailed enough to accurately inform consumers on what they will find in the package.

Member States also interpret and enforce differently EU requirements on the use of food additives, for example. A 2017 EU Commission report on the use of food additives in the meat sector³⁴ found that many Member States poorly enforce EU rules, sometime due to an incorrect interpretation. This can have a direct impact on the presence (or absence) of certain food additives in products sold in a given EU country. BEUC highlighted this and other issues in a report published in 2015³⁵.

²⁷ Regulation (EU) 1169/2011 on Food Information to Consumers.

²⁸ See Regulation (EU) 1169/2011, Annex III, point 2.

²⁹ See Test-Achats [press release](#) 'Sans sucres ajoutés mais avec édulcorant ? Purement et simplement illégal' (February 2018).

³⁰ See for instance interpretation of Irish food authorities [here](#).

³¹ See Art. 7(1)(d)

³² See Regulation (EU) 1169/2011, Art. 7(1)(d).

³³ [Tulip luncheon meat 'classic'](#) sold in Romania mostly comprises chicken (39%) and pork (18%) MSM, and 13% pork meat. The [French version](#) of the product (with very similar appearance and also called 'classic', though it is renamed 'Délice de jambon' in French) mostly contains minced ham (41%) and pork meat (14%) and only 8% MSM.

³⁴ [Overview report](#) on the official control systems in place for food additives and smoke flavourings.

³⁵ BEUC (2015). [Close-up on the meat we eat](#).

4.2. Unfair Commercial Practices

Applied together with sector-specific EU law (e.g. food law), the EU Directive on Unfair Commercial Practices (Directive 2005/29/EC, UCPD) can also help tackle dual quality cases.

Manufacturers can freely market and sell products with different compositions or characteristics so long as they abide by all applicable EU laws. Under the UCPD, **a commercial practice will be considered unfair if the trader provides wrongful information or deceives the average consumer.**

On 11 April, as part of the 'New Deal for Consumers' package, the European Commission published a targeted amendment³⁶ to the UCPD to address dual quality of products. The proposed change makes it clear in the law that marketing products under the same brand and packaging but with a significantly different composition amounts to an unfair practice if it deceives consumers in their purchase decision. The UCPD update also empowers Member States to impose more dissuasive penalties in case of widespread infringements that affect consumers in several EU Member States. As such, national authorities will be able to sanction retailers and food makers found guilty of placing dual quality products on the EU market with a fine of up to 4% of their annual turnover.

The assessment of individual cases will be the responsibility of the national control authorities. To assist Member States checking whether a given differentiation strategy amounts to an unfair practice, the European Commission published a notice on the application of EU food and consumer protection law³⁷. Compliance with UCPD provisions will have to be assessed on a case-by-case basis.

BEUC welcomes the European Commission's clarification in the UCPD that **marketing products under the same brand and packaging but with a different composition shall be considered unfair if it misleads consumers.** This will oblige national authorities to consider such practices in the unfairness test and we expect it may also help tackling borderline cases of dual product quality.

We would however recommend that **competent authorities should be vigilant when evaluating how significant a product difference is.** The Commission could develop guidance to **clarify the meaning of 'significant' and ensure some minimum consistency** in individual Member States' assessment of particular cases. We would also urge national competent authorities to consult consumer organisations to inform their assessment of potential dual quality cases and the 'significance' of recipe changes.

As an example, our member ZPS tested identically-branded chocolate products with similar-looking packaging that they bought on the Austrian and Slovene markets. The only difference they found was an extra food additive (E476, an emulsifier used to maintain a homogeneous texture) in the product sold in most Slovenian stores. At first, this difference was thought to be likely non-significant.

³⁶

https://ec.europa.eu/info/sites/info/files/proposal_for_a_directive_on_better_enforcement_and_modernisation_of_eu_consumer_protection_rules.pdf

³⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2017:327:FULL&from=EN>

Yet, it emerged that the Austrian variant was also on sale in one Slovene store (with food information provided in Slovene language by means of a sticker label). Consumers to whom ZPS presented both variants noticed a sensory difference, which an organoleptic analysis later confirmed. The extra emulsifier used in the Slovenian product variant is marketed³⁸ as a cost-saving ingredient, enabling to achieve very small reductions in cocoa butter use whilst maintaining the desired product viscosity. Since ZPS test was published, the company producing the chocolate product has removed the extra food additive from the Slovenian recipe, which is now the same as the Austrian one.

Moreover, in its Fitness Check of EU consumer and marketing law³⁹ the European Commission also identified the need for a more effective and consistent enforcement of EU consumer legislation. Therefore, the Commission should work towards a more harmonised enforcement of the UCPD, that would guarantee effective means of compensation and redress to consumers in all EU Member States.

5. Powerful consumer organisations for empowered consumers

Consumer organisations, provided they have adequate resources, have a key role to play in tackling dual quality issues. Through their testing activities, they compare products and help consumers to figure out which ones have the highest quality.

Just as they help consumers to switch to cheaper energy suppliers or to choose the most suitable financial products, BEUC member organisations give independent information on food composition and nutritional value and help consumers in choosing accordingly. By exposing industry bad practices, they can push companies to change for the better, steering quality upwards (e.g. case of the dairy-based dessert for children, which now contains a small amount of real fruit after several consumer groups campaigned for it).

Where needed, consumer groups can also take court action to oblige producers to fix misleading food labels. Another BEUC member, the Austrian consumer organisation Verein für Konsumenteninformation (VKI) obtained many successes in court. For instance, they successfully sued a German producer for misleading consumers over the origin of a Greek-looking cheese⁴⁰. They also sued a coffee manufacturer for misleading consumers into believing its cappuccino pads contained roasted coffee – whereas they only contained instant coffee⁴¹. Where food business operators would not comply with the court decision, they were usually given a fine.

Sadly, BEUC members in Central, Eastern and South-Eastern EU (CESEE) countries are largely under-resourced, and as such cannot fulfil their mission to the same extent as their western EU counterparts. As the EU is discussing its budget for 2021-2027 (i.e. the next Multiannual Financial Framework, MFF), it should seek to increase the funds for consumer policy activities. **It should also work towards strengthening the consumer representation at both EU and national levels, especially in CESEE countries.** BEUC's response to the public consultation on the MFF outlines our recommendations in that respect⁴².

³⁸ <https://www.palsgaard.com/media/374756/manufacturers-overlook-cocoa-butter-savings.pdf>

³⁹ http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

⁴⁰ VKI [website](#).

⁴¹ VKI [website](#).

⁴² See BEUC's response to the consultation on EU funds in the field of investment, research, innovation, SMEs and the Single Market:

http://www.beuc.eu/publications/beuc-x-2018-015_the_new_multiannual_financial_framework.pdf

6. Territorial supply constraints: what role for EU antitrust law in the dual quality debate?

Territorial supply constraints (TSCs) are restrictions imposed by suppliers which limit retailers' ability to source centrally or in the country of their choice or negotiate better conditions (e.g. a cheaper price)⁴³. For instance, such ability can be limited by contractual and non-contractual factors such as the use of different labels for each national or regional market. TSCs hinder parallel imports, i.e. they prevent a retailer from purchasing goods in country A and selling them in country B.

Consequently, TSCs force retailers to purchase goods according to the national price scheme and range set by the manufacturer. Continuing with our example, a retailer operating in country A may be obliged to market the product variant of the manufacturer destined to country A, regardless of whether a higher-quality, cheaper variant exists in country B. **This can lead to absurd situations, whereby a retailer cannot offer certain products available from suppliers in other Member States, while consumers can purchase them online or by shopping abroad.**

A recent illustration of TSCs' impact on the price of products is the ongoing European Commission case against AB InBev case⁴⁴. The Commission suspects the beer company abused its dominant position on the Belgian beer market by deliberately hindering cheaper imports of two of its best-selling brands from the Netherlands and France into Belgium. In particular, the beer company removed the French text from its cans sold in the Netherlands and the Dutch text from its French cans to make them harder to sell in Belgium. It also limited the access of Dutch retailers also operating in Belgium to key products and promotions, if there was a chance that the Dutch retailers could import the products into Belgium.

TSCs may also prevent retailers from freely importing products sold in other Member States with a different quality grade into the local wholesale market.

Thus, BEUC would recommend the European Commission to investigate TSC's impact on consumer choice. We have just celebrated the 25th anniversary of the EU Single Market and the recent adoption of Regulation (EU) 2018/302 partly abolishes geo-blocking in the online world. In such a context, the EU should seek to use competition tools to address contractual and non-contractual practices which illegitimately restrict⁴⁵ consumers' ability to benefit fully from the Single Market in the offline world.

7. BEUC recommendations for addressing dual quality

7.1. Continue gathering evidence on the breadth of the phenomenon

We look forward to the findings of the EU-wide testing campaign based on the JRC-developed harmonised methodology. They should serve as a basis for an open discussion, involving consumer organisations, on the reasons for product differentiation practices and their impact on product quality and consumer choice.

⁴³ Presentation given by Eurocommerce at 3rd October 2017 Sherpa meeting of the High-Level Forum for a Better Functioning Food Supply Chain.

⁴⁴ European Commission [Press Release](#) (2017). Antitrust: Commission sends Statement of Objections to AB InBev for preventing cheaper imports of beer into Belgium

⁴⁵ Legitimate restrictions would cover national product adaptations stemming from different national rules, e.g. because of non-harmonised areas of EU legislation. This includes maximum limits for vitamins and minerals in food supplements, legal limits for trans fat content in oils and fat, national food composition standards, etc.

However, this campaign should not be a one-off. In the future, product differentiation practices across Member States should continue to be regularly monitored. We would welcome if the newly established JRC Knowledge Centre for Food Fraud and Quality⁴⁶ would take up that role.



BEUC's recipe for tackling dual quality:

1. *Keep gathering evidence of unfair product differentiation practices*
2. *Step up enforcement of existing EU rules*
3. *Beef up the consumer movement*
4. *Fix any Single Market failure*
5. *Boost quality for all of Europe's consumers*

National enforcement authorities should enhance their cooperation to facilitate cross-border product testing and comparison (as official control bodies from a given country cannot sample products across the border).

Finally, it will be important to investigate potential dual quality practices in consumer products other than food.

7.2. Step up enforcement of existing EU legislation

The European Commission is pivotal in reminding all EU Member States of their enforcement duty. In the food area, for instance, audit missions carried out by DG SANTE Directorate F (former Food & Veterinary Office) are instrumental in highlighting shortcomings in the implementation and enforcement by national authorities of EU rules.

The Commission should make greater publicity of the findings of the thematic overview reports, which focus on one piece of food legislation. They should follow up more diligently on their findings and recommendations.

To minimise the diverging interpretations of EU rules, the Commission should develop EU-level guidance documents. Consumer organisations should be properly consulted on the content of such guidelines.

7.3. Strengthen the consumer movement

When discussing its next Multiannual Financial Framework, the EU must seize the opportunity to strengthen the consumer movement. A properly funded consumer programme would make it possible for both EU- and national-level consumer organisations to apply for operational or project-based EU funding.

In many Member States, consumer organisations struggle to survive and have little or no resources to engage into product testing and comparison. As such they cannot fully play their consumer watchdog role. They must be better supported so they can exert greater pressure on businesses and hold them accountable for the quality of the market offer, as the several examples outlined in this paper have shown. Increased funding would also help them build capacity and better influence national and EU policy-making.

Additional resources would make it possible for consumer organisations in less affluent Member States to contribute, alongside with competent authorities, to tracking and highlighting situations of unfair product differentiation. As such, it would ensure that dual quality remains in focus even once EU-led activities have been completed.

⁴⁶ <https://ec.europa.eu/jrc/en/news/commission-launches-knowledge-centre-boost-food-quality-and-step-fight-against-food-fraud>

7.4. Address any potential failure of the Single Market

The European Commission shall investigate the impact of territorial supply constraints on consumer choice, both in terms of price and quality.

Where appropriate, it shall make use of competition law to tackle contractual and non-contractual practices that illegitimately restrict consumers' ability to benefit fully from the Single Market.

7.5. Improve quality for all of Europe's consumers

Eventually, what we want is for all consumers to enjoy higher quality of products and services.

In the food area, we would support setting up an inventory of national food composition standards that exist in various Member States. There is a trend today of dismantling national standards, on the alleged ground they would disadvantage the competitiveness of national producers vis-à-vis producers in other Member States where such minimum compositional requirements do not exist⁴⁷. Yet these national standards (such as the Austrian Food Codex and the German Lebensmittelbuch) guarantee a minimum quality (e.g. minimum fruit content) for all products on the market. Where appropriate, it could be considered extending some of these standards to the EU level.

For the quality of Europeans' food to be improved, **the EU must also step up its work on nutrition issues**. Firstly, the European Commission should swiftly come forward with legally-binding restrictions on the use of industrially-produced trans fats in food⁴⁸. As we know, Eastern Europeans remain more exposed to trans fats than their Western neighbours, and an EU-wide legal limit on trans fats is the most effective way to eliminate this dual situation.

Likewise, reformulation efforts to reduce fat, sugars and salt are lagging in many CESEE countries, as the EU soft drink association strikingly illustrated in a recent presentation⁴⁹. The EU should play a more active role in steering national reformulation activities so that all EU consumers ultimately benefit from a healthier food offer.

ENDS

⁴⁷ Test-Achats. *La loi mayonnaise*. Test-Achats 624, November 2017.

⁴⁸ BEUC [position paper](#) on trans fats.

⁴⁹ UNESDA [presentation](#) delivered at June 2017 meeting of EU Platform for Action on Diet, Physical Activity & Health. See map on slide 9 reporting on national agreements to cut sugar levels in soft drinks.