

Empowering Consumer Organisations – ECO Project (951669-ECO)

Position Paper – Empowering Consumer Organisations on Dual Food Quality

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Position Paper

Empowering Consumer Organisations on Dual Food Quality

The Consortium partners of the ECO project* are very grateful to the European Commission for providing consumer organisations with the opportunity to collaborate in order to jointly address the issue of Dual Food Quality¹.

While this practice can be found in every kind of products, it has been observed to be particularly present in foodstuffs in the past years. In the food sector, cases of “dual quality” are characterized by products sold under the same brand with identical or very similar packaging, but with different ingredients and quality depending on the European country where they are distributed. Under EU law and Single Market principles, trading companies are free to differentiate their products for different markets, according to several criteria (eg. local preferences). Nonetheless, in the absence of legal, legitimate and objective reasons for such cases, **European consumers should not be misled by products being presented to them as identical.**

Throughout this one-year project funded by the Consumer Programme, the Consortium partners aimed to create a framework within which consumer organisations would be empowered to detect, analyse and tackle the issue of Dual Food Quality. This has been performed by shaping and publishing [training materials](#) accessible to all European Consumer Organisations, by [testing a sample of food products](#) to obtain a better vision of the situation on the EU market and by strengthening the [collaboration](#) and [joint advocacy capacity](#) of European Consumer organisations.

Upon completion of the project, the Consortium’s achievements and findings allowed to draw a set of provisional conclusions, as well as to define some recommendations for a strengthened European framework to comprehensively address the wide issue of Dual Food Quality in the EU.

The present document will thus describe a) **a few considerations and observations based on the project results**; b) **a set of recommendations**.

We hope that our experience and this contribution can be useful to define future pathways to improve the EU’s regulatory framework and capacity of efficient action with regards to Dual Food Quality.

¹ **Dual Food Quality** (ie. Dual quality in food products) is defined as “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”.

A) General considerations

→ Regarding Consumer Organisations' involvement in product-testing for dual food quality

Despite playing a crucial role as independent product-testers and certification bodies for dual quality in the framework of the project and, more generally, in society, European Consumer Organisations are facing several challenges that prevent them from efficiently providing a comprehensive solution to the issue of dual food quality:

- Financial capacity challenges

The ECO project aims to empower European Consumer Organisations in learning more about the issue of Dual Food Quality and having the capacity to themselves launch and conduct testing campaigns. It is however apparent that **the average financial capacity of said consumer organisations is an obstacle** to the growth and development of a harmonized and effective product testing, analysis and reporting methodology, as they do not have enough funds nor manpower to effectively run their daily activities, and thus match the ambitions and workload required by such a methodology.

While the Consortium is convinced that European Consumer organisations have and will continue to benefit from the knowledge gathered in the produced Training Materials, they will probably not be exploited to their full potential due to the difficult situation of consumer organisations throughout the EU unless further structural measures are taken to increasingly support the continuity of activities of European consumer organisations.

- Accessibility of empowering material

In addition, the multilingual dimension of the European Union is a valuable asset which however can in some cases make the running of initiatives more complex. Indeed, while the consortium has been able to translate the Training Materials into 3 languages on top of the working language English (Italian, French, Romanian), further versions would be necessary for all consumer organisations to have an equal opportunity to make use of the produced outputs.

→ Regarding the ECO testing campaign on food products for cases of dual quality

- Limited access to information on food products from national markets across the EU

The Consortium was eager to perform a testing campaign on a large variety of products to help completing the initial efforts produced by the JRC in their report on [Results of an EU wide comparison of quality related characteristics of food products](#). The ECO project compiled a large database of 250 European products to be studied, each of which would be widely available in at least 3 EU Member States. This database served as a basis for the launch of the testing campaign during which data to compare the

branding, the ingredients and nutritional values of the selected food products were gathered in large amounts, mainly from the three national markets (Italy, Belgium, Romania). As only but a few additional consumer organisations were able to join the consortium to perform these testing activities (*see paragraphs above*), access to data was confined to a limited number of national markets. Consequently, while some issues with differing ingredients under identical branding were found, these results can hardly provide general conclusions for the whole EU due to the lack of geographical representativeness.

➔ Regarding the legal definition of Dual Food Quality

- *A vague legal framework, a misleading situation for European consumers*

Article 6 of the [Unfair Commercial Practices Directive \(UCPD\) 2005/29/EC](#), as amended by [Directive \(EU\) 2019/2161](#)², lays down that the marketing of a good (thus including food products) in one Member State, as being identical to a good marketed in other Member States, while that good has significantly different composition or characteristics, can constitute a misleading commercial practice on the basis of a case-by-case assessment, unless justified by legitimate and objective factors.

While a comprehensive list of such factors is not further developed in the UCPD Directive, the EC notice of 29 September 2017 [‘on the application of EU food and consumer protection law to issues of Dual Quality of products – The specific case of food’](#) provides a list of situations where Food Business Operators (FBOs) – provided that they behave according to professional diligence – are *a priori* authorized to tailor their products in different Member States:

- In cases where sensory optimisations are needed to fit dietary habits of a region;
- In cases where the seasonal and/or geographical availability of raw materials (or specific local requirements) makes it difficult to avoid for producers;
- In cases where new recipes reflecting technological progress or reformulation policies are introduced and cannot be simultaneously applied in all markets.
- In cases where the price elasticity of local demand makes FBOs adapt the composition of products.

The compliance to national legislation (specific requirements) and voluntary strategies to improve access to healthy and nutritious food can also be added to this list.

In this light, it is apparent that the **definition of dual quality for food products is extremely blurry** as all breaches are only examined on a case-by-case basis and as the Directive defines a list of (sometimes very vague) exceptions that is as wide as it is ambiguous. This situation leaves room for very different interpretations of cases of

² The transposition deadline of Directive (EU) 2019/2161 for the above-mentioned provision on legitimate and objective factors has been set to 28 November 2021, and EU Member States are required to apply the new measures as of 28 May 2022.

dual food quality according to each national UCPD and food authority, despite cross-border cooperation, and does not help consumers make informed and conscious choices. The process of clearly identifying cases of Dual Quality appears to still be a work in progress.

B) Recommendations

In light of the above and in view of further improve the fight against dual food quality in the EU, the Consortium has identified the requirements below, and calls on policy-makers at EU and Member States levels to take into consideration the following recommendations:

1. To address the need to increase the financial stability and build capacity of consumer organisations to face the organizational challenge of independently collect, analyse and digest data from food products, **the Consortium recommends to increase financial and operational instruments to support Consumer organisations across the EU in their independent data collection, analysis and reporting activities;**
2. Complementarily, to address the need to empower consumer organisations and consumers as individuals in assessing whether a product presents a case of dual food quality, **the Consortium recommends considering and exploring the idea of developing an EU-wide platform to register food products across the whole Single-Market Area.** Such a platform would allow consumers to compare foodstuffs in all their components (including nutritional values, ingredients, amounts of sugar, fat and salt, chemical additives, etc.) in different EU markets.
3. To ensure a harmonized understanding, across all EU Member States, of situations where dual food quality can be identified, **the Consortium recommends to further specify the legal definition of dual quality in food products**, especially as regards the legitimate and objective factors currently listed as exceptions. Furthermore, in the particular case of where “sensory optimisations to fit dietary habits of a region” are operated, the Consortium advises to either define this specification in further details in EU law, or preferably to request FBOs to apply the same recipes and formulation of food products to all markets.

CONCLUSION

All members of the project Consortium wish to express their gratitude for having been given the opportunity to work on the topic together. The Consortium will continue to disseminate the project [manual](#) for testing dual quality in food products, the [guidance](#) document, as well as the [common online platform](#) for Consumer Organisations.

The consortium is looking forward a continued discussion on the topic and further EU wide studies to make sure all EU consumers are equally protected and have access to products of the same high quality.

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** This position paper has been produced as a result of the work performed in the [ECO project](#) – Empowering Consumer Organisations: towards a harmonised approach tackling dual quality in food products (<https://www.fightdualfood.eu/>). This one-year long project aims to create a structure based on consumer organisations and able to alert and provide the relevant authorities (at national and EU level) with a full and accurate assessment on dual food quality in the EU. By raising the awareness of the relevant authorities on this issue and by providing them with full and accurate information, our project will help to tackle this problem.*



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