

TALLINN UNIVERSITY OF TECHNOLOGY

School of Business and Governance

Department of Law

Steve Sabri Matti Hadaya

**THE ISSUE OF DUAL QUALITY OF FOOD IN EUROPEAN
UNION AND THE SIGNIFICANCE OF THE NEW DEAL FOR
CONSUMERS IN OUTLAWING THE PRACTICE**

Bachelor's thesis

Programme HAJB08/14 — Law, specialisation 4 — European Union and International law

Supervisor: Jenna Uusitalo, MA in Law

Tallinn 2019

I declare that I have compiled the paper independently
and all works, important standpoints and data by other authors
have been properly referenced and the same paper
has not been previously been presented for grading.
The document length is 12890 words from the introduction to the end of summary.

Steve Hadaya

(signature, date)

Student code: 166368HAJB

Student e-mail address: hadayasteve@gmail.com

Supervisor: Jenna Uusitalo, MA in Law:

The paper conforms to requirements in force

.....

(signature, date)

Chairman of the Defence Committee:

Permitted to the defence

.....

(name, signature, date)

TABLE OF CONTENTS

ABSTRACT	4
INTRODUCTION	5
1. PRIMARY LAWS	9
2. REASONS WHY THE UNION FACES DUAL QUALITY.....	11
2.1. The free movement of goods	12
2.2. The Principle of Mutual Recognition and Article 36 of TFEU.....	14
2.3. The lack of specificity in Directive 2005/29 EC.....	15
2.4. The lack of food quality testing between Member States.....	18
3. DUAL QUALITY OF FOOD PRODUCTS AND ITS EFFECTS ON CONSUMERS	21
3.1. Trust	22
3.2. Legitimate expectations	23
4. EUROPEAN COMMISSION AND THE NEW DEAL FOR CONSUMERS	25
4.1. The amendments and the new methods provided by the New Deal for Consumers to outlaw the practice of dual food	26
4.1.1. Increasing Member States rights in protecting the legitimate interests of the consumers.....	27
4.1.2. Introducing effective penalties for violations of illegal practices by manufacturers.....	28
4.1.3. Increased quality testing.....	29
4.1.4. Stronger redress opportunities.....	31
4.1.5. Amendments to Article 6 of the UCPD	32
4.2. Importance of the New Deal for Consumers	33
5. SUGGESTED MEASURES AND PRACTICES IN ADDITION TO THE NEW DEAL FOR CONSUMERS	35
6. IMPORTANCE OF HARMONIZATION IN THE FIELD OF CONSUMER LAW	37
CONCLUSION.....	39
LIST OF REFERENCES.....	44

ABSTRACT

The European Union (EU) continues to face different standards in food. Although it would be ideal to have a common high-standard of food for Europeans, this is not the case at present. Dual food means that products in the Europe are sold with identical labelings and packaging but containing varying compositions as to their qualities. This is likely to mislead the average consumer by relying on a EU-wide product as being the same across the Internal Market.

There are several reasons why dual food exists in the Union. This paper examines the primary reasons from a legislative perspective for why dual food still exists within the EU and attempts to give the reader an understanding of those underlying reasons.

The EU is working towards combating dual food practices and ensuring that food products served in the Internal Market complies with a common high-standard. This study focuses on the importance of the New Deal for Consumers (New Deal) and highlights its importance in combating dual food practices. It shall be made clear in law that products labeled and packaged identically are of the same composition everywhere in the EU.

Finally, in the authors opinion, Article 36 of TFEU should evolve to cover the issue of dual food by making it possible to invoke the Article in matters of dual food. Member States should not have to tolerate such behavior and should have the right to restrict the importation of those goods that are of weaker quality than their counterparts of higher-quality served elsewhere in the Single Market.

European Law - Food Law - Consumer Protection - Unfair Commercial Practices - Equality

INTRODUCTION

It has become evident that manufacturers are selling inferior food products with identical labelings across the Internal Market.¹ The EU has named the phenomena as ‘Dual Food’. This has caught the European Commissions attention in the recent year and is a matter that has to come to an end.

The phenomenon is an issue that has touched more adversely generally to the new EU countries who have joined Europe after 2004, or generally to the Eastern-European countries.² It is a current problem that the EU faces and methods to outlaw dual food practices by manufacturers has to be created by EU and implemented in every Member State to tackle down such behavior by the manufacturers.

Such behavior is likely to break the trust of consumers around the Union of equals and is a practice that folds against the principles upon which the Union is built, such as, the principle of non-discrimination, solidarity, and equality. EU shall be seen as a uniform Union as opposed to a possible divide between the Member States.

As food sectors have rapidly internationalized and the market is no longer confined with regional or local goods,³ the need to enforce effective rules in supranational level is of high importance to combat dual food practices. Although the EU currently has some of the strongest rules on

¹ European Parliament. (2017). Briefing - *Dual quality of branded food products, Addressing a possible east-west divide*. PE 607.265. Accessible: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607265/EPRS_BRI\(2017\)607265_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607265/EPRS_BRI(2017)607265_EN.pdf) 19 February 2019, p 1.

² Stanciu. S. (2017). Food Quality in Romania. Compliant or Not with Food Quality in Western Europe?. Risk in Contemporary Economy. *Galati - Romania: Lumen Proceedings*, 18th edition. p 383-384.

³ Trienekens, J., & Zuurbier, P. (2007). Quality and safety standards in the food industry, developments and challenges. - *International journal of production economics*, Vol 113, No 1, 107-122. p 107-108.

consumer protection in the world, the need to strengthen the current rules has become evident due to recent cases.⁴

There are currently laws and policies in the EU that protect consumers from misleading actions by the manufacturers, but it seems that the current rules are not enough to tackle the problem directly, leaving a grey zone for the manufactures to continue such behavior. Thus, at present, the EU has no legal means to sanction manufacturers distributing, under the same brand, EU-wide food with inferior qualities.⁵

The paper will be limited to the Directive 2005/29 EC on Unfair Commercial Practices (UCPD), which is the main legislative tool safeguarding consumers from misleading advertising as well as other unfair practices in business-to-consumers transactions. Dual products that are marketed identically but vary in their compositions and has the potential to mislead consumers also fall under the boundaries of the directive. This paper will examine some of the main reasons why the practice is possible under the UCPD, and how will the New Deal for Consumers contribute to combat the practice. It follows that the hypothesis of this paper is that, at present, the Directive 2005/29 EC is not comprehensive enough to combat dual food practices, what is needed is stronger enforcement of the above-mentioned directive to tackle down the issue directly.

The research question that will be investigated is *‘to what extent does the Directive 2005/29 EC protect consumers from dual food practices and what further measures need to be taken to eliminate such practice by manufacturers?’* To achieve this result it will be necessary to recognize how in the Internal Market and under the UCPD manufacturers are able to practice such behavior. By understanding the emphasis of the free movement of goods and the principle of mutual recognition, the paper will provide with references on what kind of measures should be taken to combat dual food practices in addition to those suggestions on the UCPD. After going through those primary things that are permitting manufacturers to continue practicing the behavior, it will be necessary to introduce the reader with the New Deal for Consumers and to provide how will it contribute in resolving the matter.

⁴ Arvanitoyannis, I. S. Chorefaki, S. Tserkezou, P. (2005). An update of EU legislation (Directives and Regulations) on food-related issues (Safety, Hygiene, Packagin, Technology, GMOs, Additivies, Radiation, Labelling): presentation and comments. - *International Journal of Food Science and Technology*, Vol 40, 10, 1021-1112.

⁵ Stanciu (2017), *supra nota 2*, p 383-384.

The New Deal for Consumers is a proposition by the EU Commission to ensure better enforcement of EU consumer rights. It includes two proposed directives from which the other is the Modernization of EU Consumer Protection Rules. This proposition aims to amend four main EU directives that make up the core of EU consumer law. One of these directives is the UCPD and that will be the focus of this paper.

In a Union of equals, there should not be such practice dividing food to class A and class B. As the primary principles of EU are built upon the idea of equality between men. It is in the interest of the consumers that if a trader sells EU-wide products, containing differences in compositions between the Member States, it must be made clear to consumers and cannot be branded and packaged identically as it may have misleading implications on consumers.

The objective of the paper is to give the reader a good understanding of those things that have led to the practice and to discover ways of improvement by the EU in the field. At the end of this paper, the reader will have a sufficient understanding on how manufacturers have been able to practice such behavior and also understand the significance of the New Deal for Consumers in outlawing the practice.

The paper begins by introducing the primary laws governing the issue and move on to the more specific laws such as the UCPD. As this issue is a matter of EU as a whole, the primary laws are the ones that provide the Member States and the EU principle institutions with certain rights and limitations regarding consumer protection and therefore they are to provide the reader with a wider understanding, thus the bigger picture.

After going through the primary laws, the paper will proceed to examine how manufacturers have been able to practice such behavior. Under this sub-chapter, it will be necessary to realize how does the free movement of goods and the principle of mutual recognition are related to the issue. More importantly, it will be necessary to analyze what is the role of the present UCPD on protecting consumers from dual food practices.

From here on it will be necessary to briefly mention the effects caused to consumers from such practice. As this paper is closely linked to consumers, it is necessary to point out briefly the consumers take on the issue.

At this point, the reader will have a general knowledge about the laws governing the issue and will be able to understand why does the Union faces dual food. It follows that it will be necessary to go through the Commissions New Deal and to list down the changes that the New Deal for Consumers would provide. The primary propositions regarding dual products, and the significance in combating dual product practices will be discussed. This will be followed up with the authors suggestions on measures and practices to be taken in addition to the New Deal for Consumers.

Finally, the significance of harmonizing the policies in the EU level will be mentioned at the very end of the paper. Harmonized laws provide with more effective co-operation in trans-border issues and EU can generally achieve more effectively its goals by enforcing policies in supranational level. As dual food practices have affected Europeans on a large scale, enforcement in the EU level is crucial.

Before going further it has to be mentioned that the scope of this paper is solely limited to European Consumer law. It will not be necessary to go through provisions of intellectual property as this paper would exceed its scope. The author acknowledges that intellectual property also plays a part in dual products, but this paper is to give an understanding from the point of view of EU consumer protection law.

European Competition law will be also excluded from the application of this paper. This paper would exceed its scope if these two areas of law are included in the paper. Therefore, to provide a more specific paper these areas of law are left outside of the paper.

1. PRIMARY LAWS

It is important to start this paper by introducing the reader with the most relevant laws governing the area before the paper goes further. As the topic covers a wide area of law, one has to recognize the nexus between these laws before engaging in reading the paper. By understanding the nexus it is to provide the reader with a solid foundation upon understanding the role of the Commissions in ensuring an equal Union. Also, the primary laws are to provide a legal basis for further laws in the area of consumer protection law, - such as the proposal itself, the New Deal for Consumers.

A good starting point is to look at the EU primary laws regarding consumer protection. These are Articles 4(2)(f), 12, 114(3) and 169 of the European Union Treaty on Functioning (TFEU). Also, Article 38 of the Charter of Fundamental Rights of the European Union constitute the primary law.⁶

Article 169 of the TFEU states that the Union is to contribute to the attainment of a high level of consumer protection by measures it adopts pursuant to Article 114 thereof.⁷ It follows that Article 114 TFEU creates an obligation for the Commission to provide a high level of consumer protection for EU citizens. This implies that Article 169 supplements Article 114 of the TFEU by taking into account the proposals in Article 114 and creating an obligation for the Commission to ensure a high level of consumer protection.⁸

⁶ BEUC. (2018). *The Consumer Voice in Europe. Dual Product Quality Across Europe: State-Of-Play and the way forward*, p 5.

⁷ In accordance with the European Union Functioning Treaty Article 169

⁸ Valant, J. European Parliamentary Research Service (2015). *Consumer Protection in the EU; Policy overview*, PE 565.904, p 3-4.

Article 12 TFEU clarifies that consumer protection must be taken into account when defining and implementing other Union policies and activities,⁹ and it follows that Article 4(2)(f) provides that consumer protection is a shared competence, therefore allowing the Member States to take action as well if necessary for the creation of rules in this area.¹⁰ Finally, Article 38 from the Charter of Fundamental Rights of the European Union states that union policies shall ensure a high level of consumer protection.

These laws are all essential for consumer protection and they are the supremacy EU laws from which further laws, such as secondary laws are to be drawn. Also, the primary laws comprises of general principles which are fundamental for citizens of the EU. As a general principle, discrimination between different Member States is prohibited.¹¹

EU is built upon the idea of equality, democracy, human dignity, the rule of law and respect for human rights.¹² These values are embedded in the EU treaties and shall be protected effectively.

By having the above-mentioned principles and laws in mind, we can now proceed in this paper. In the next section, the main importance is to define how manufacturers have been able to practice such behavior, although EU as such has plenty of laws protecting consumers from misleading actions by manufacturers.

⁹ *Ibid.*, p 3-4.

¹⁰ Craig, P., de Búrca, G. (2015). *EU Law: Text, Cases, and Materials*, 6th ed. United Kingdom: Oxford University Press, p 83-84.

¹¹ Usher, J, A. (1998). *General Principles of EC Law*, USA: Addison Wesley Longman Inc, p 12.

¹² European Union; *Human rights and Democracy - Promoting and protecting human rights*. Accessible: https://europa.eu/european-union/topics/human-rights_en , 3 February 2019

2. REASONS WHY THE UNION FACES DUAL QUALITY

Firstly, it is necessary to clarify the definition of dual quality in food. In short, manufacturers label and package EU-wide products identically although the actual products differ. The products are sold in various Member States and they might differ due to quality related factors. It is unfair by its nature to divide food to different standards and moreover, to label the products identically to those goods of higher quality. This is likely to result in misleading implications on consumers as they are not aware of the weaker quality EU-wide products.

It must be however recalled that European economic integration did not foresee the growing need for consumer protection, and consequently, consumer protection did not play a significant role in the early days of EU.¹³ The shifting towards a more political Union has however brought emphasis on consumer protection nearly to every aspect in the Union as mentioned in Article 12 of TFEU.¹⁴

So far manufacturers and traders have been able to practice such behavior as there are no laws prohibiting the practice directly. There are however the primary laws as mentioned above, and secondary laws such as the UCPD, from which one can conclude that the behavior of dividing food to class A and class B is unfair as well as discriminatory by its nature and is likely to have misleading implications on consumers.

Out of these laws and policies, here are few key principal things that have allowed the progression of the practice. Firstly, the free movement of goods, which relies on the principle of mutual recognition, makes it in most cases mandatory to accept goods that have been lawfully marketed in one Member State. As it was settled in Dassonville Member States cannot enact trading rules that are capable of hindering, directly or indirectly, actually or potentially, intra-

¹³ Holland, D., Pope, H. (2004). *EU Food Law and Policy*, The Netherlands: Kluwer Law International B.V., p 5-6.

¹⁴ In accordance with the European Union Functioning Treaty Article 12

community trade resulting in quantitative restrictions.¹⁵ In other words, if a trading rule is capable of hindering the cross-border trade between the Member States it shall be prohibited.

The lack of specificity in the UCPD is also a big issue which has allowed the practice to continue. It is for this directive to explicitly prohibit such unfair practice. This paper will go through why does the current UCPD is weak in protecting the rights of consumers in matters of dual quality in food.

Finally, the lack of food quality testing between the Member States regarding similarly branded and packaged goods is undermined and poorly practiced in the authors opinion. Common methodologies of quality testing between the Member States should be created and the Member States should actively engage in them.

It will now be necessary to proceed to write about the above-mentioned things and illustrate why is their role so significant here. The primary laws mentioned above can be understood here as an umbrella covering the wider nexus, hence providing the legal basis for further laws and policies and guidance for understanding the Commissions role in ensuring an equal Union.

2.1. The free movement of goods

Importantly, the traders and manufacturers benefit from the free movement of good as it has made it possible to allocate goods easily from a Member State to another. About half of a Member States food supply is imported from the other EU Member States.¹⁶ The high level of imports causes concerns among the consumers over their foods, and the need to enforce protective measures have to be taken.

The main rules are stated in Articles 26 and 34 of the TFEU. The former states that the Internal Market shall comprise an area without internal frontiers in which the free movement of goods,

¹⁵ Judgement of the Court of 11 July 1974, *Dassonville*, C-8/74, EU:C:1974:82, Paragraph 5.

¹⁶ Leibovitch, H. E. (2008). Food Safety Regulation in the European Union: Toward an Unavoidable Centralization of Regulatory Powers. - *Texas International Law Journal*, Vol. 43:429, p 435.

persons, services, and capital is ensured in accordance with the provisions of the Treaties.¹⁷ It follows that Article 34 of TFEU provides that all measures having equivalent effects shall be prohibited between the Member States. The said articles lay the foundation for ensuring the functioning of the movement of goods in the Internal Market.

The free movement of good provides various benefits for the Union. Manufacturers can get their products out to European markets once it has been given clearance in one Member State. The issue of dual food, however, calls for restrictions to the freedom. As the behavior has continued the need to create protective rules has become evident. Although it can be argued that creating protective rules that give rise to tariffs or restricts the movement of good are against Article 26 of TFEU and Article 34 of TFEU and consequently disturb the smooth functioning of the Internal Market. It is nonetheless important that the Member States are not forced to accepted inferior food products into their respective territories.

As it is clear if a product has been lawfully marketed in one Member State, the sale of the product shall not be forbidden in the other Member States only if the restriction is justified under Article 36 of TFEU. To justify a restriction under Article 36 of TFEU the conditions are very strict, and the Member State has to always prove that the restriction is proportional and that the restriction could not be achieved by a less restrictive method.¹⁸

This leads to the principle of mutual recognition. As the Member States in most cases are forced to accept a lawfully marketed good sold in another Member State,¹⁹ it seems that the manufacturers selling inferior dual products within the EU have used the principle as a tool to continue such behavior.

¹⁷ In accordance with European Union Functioning Treaty Article 26

¹⁸ Holland., Pope (2004), *supra nota* 13, p 5-6.

¹⁹ MacMaoláin, C. (2007). *EU Food Law Protecting Consumers and Health in a Common Market*. USA and Canada: Hart Publishing, p 17-18.

2.2. The Principle of Mutual Recognition and Article 36 of TFEU

Member States cannot restrict the importation of the goods if they cannot justify the reasons why not to allow the goods into their territories. It follows, that so far studies regarding dual food and quality testing of similarly labeled food products between the Member States have not been carried out to the extent that the Member States would be able to justify the restriction based on an inferior quality of a given product. The justifications under Article 36 of TFEU have to be proportional and always accordance with principles of good governance.²⁰ Without evidences, invoking the respectful article poses a challenge for the Member States affected by the practice.

As Article 36 of TFEU deals with non-economic justifications,²¹ there would be a legitimate purpose to invoke the article in matters of dual food as the very nature of dual food is not economically orientated. Although one could argue that dual food is closely linked with economical grounds, justifications under 36 of TFEU always have an economic aspect to them, but nevertheless, it is clear that the primary emphasis here is not regarding economic grounds rather regarding consumer protection. It follows, that although consumer protection is not explicitly mentioned in the article itself, it can, however, be interpreted to cover consumer protection under the category of protection of health and life of humans.²²

It is important to note that the authors point here is not to be against the freedoms of EU, rather it is to provide the reader with an understanding of what are the major weaknesses or vulnerabilities that have allowed manufacturers to practice such behavior in the Internal Market. It is equally true that the principle of mutual recognition outweighs the negative effects caused by it and therefore it is a valuable principle for the Union.

As the principle of mutual recognition makes it in most cases mandatory to accept goods that have been lawfully manufactured in one Member State, Member States are not allowed to set any restrictions that would undermine the principle, only if justifiable under Article 36 of the

²⁰ Barnard, C. (2016). *The Substantive Law of the EU - The Four Freedoms*, 5th ed. United Kingdom: Oxford University Press, p 150.

²¹ Gormley, L. W. (2009). *Eu Law of Free Movement of Goods and Customs Union*, USA: Oxford University Press Inc, p 457.

²² Exceptions from EU Free Movement Law. (2016). /Eds. P. Koutrakos, N. N. Shuibhne, P. Syrpiis. USA: Hart Publishing, p 241.

TFEU as established. In the case of dual quality of food, manufacturers are still able to import differing goods containing inferior qualities across the Member States although they are not strictly the same, only by their packaging and labeling.

However, it is not always the case that the products are imported into a Member State. In some cases, the Member State has the manufacturer within their respective territories producing those goods of inferior quality. In the following cases, the UCPD is rather breached but not the free movement of goods. In other words, only when the inferior products are exported, and the principle of free movement of goods is used as a tool to distribute those products, has the principle been breached.

2.3. The lack of specificity in Directive 2005/29 EC

Continuing by examining the UCPD. The UCPD is an essential safeguard tool for every consumer in the EU which aims at regulating unfair commercial practices concerning business-to-consumer practices. Accordingly, the UCPD applies to unfair business-to-consumer commercial practices as laid down in Article 5.

The UCPD is horizontal in nature meaning it protects the economic interests of consumers.²³ The UCPD has radically impacted the Member States' consumer law regimes²⁴ and is once again a good illustration on how fundamental it is to enforce laws at EU level as opposed to the national level. While the UCPD aims at harmonizing the laws of the Member States,²⁵ it still leaves a wide margin of discretion to the Member States, thus allowing Member States some discretion in implementing the UCPD.²⁶ Member States bear the core responsibility of establishing agencies for monitoring markets and safeguarding consumers interests.²⁷ It follows, that the Member States should actively ensure that consumers are protected and therefore, enforce the directive to

²³ Commission Staff Working Document. (2016). *Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices*. SWD, 163 final. Accessible: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=EN>, 25 Feb 2019, p 6.

²⁴ Pázmány, P. (2014). *Unfair Commercial Practices - The Long Road to Harmonized Law Enforcement*, Budapest: PPCU Faculty of Law and Political Sciences. 19-36, p 19-20.

²⁵ González Vaqué, L. (2015). Directive 2005/29/EC on Unfair Commercial Practices and its Application to Food-Related Consumer Protection. *European Food & Feed Law Review*, Vol 10, 3, 210-221, p 210-11.

²⁶ Prechal, S. (2005). *Directives in EC Law, 2nd ed.* USA: Oxford University Press, p 13.

²⁷ Commission Staff Working Document 163 (2016), *Supra nota* 23, p 20-21.

a sufficient level. In order for consumers to rely on a directive, the Member States have to strengthen the enforcement of the UCPD and have an easily accessible redress procedure. If redress opportunities are near to impossible, consumers will likely restrain from spending time to challenge violations.

Although the directive is an essential tool for protecting consumers from unfair commercial practices, manufacturers have been able to continue to sell dual products without any consequences. There has not been an actual breach of the law, as the directive does not contain a direct clause prohibiting dual foods with inferior qualities. This calls for a more specified directive clarifying the current UCPD, resulting in a more beneficial, and stronger enforcement of Union law. It has to be made clear in law that dual food practices are prohibited and are contrary to professional diligence. If the following is realized, the EU could tackle the issue of dual food practices directly, leaving no room for misleading actions by manufacturers.

Under the UCPD, manufacturers are allowed to sell differing products in the Internal Market, as long as they do so in accordance with the applicable EU laws.²⁸ Thus, as the issue has not been directly addressed by the directive it is nearly impossible to sanction the manufacturers for breaking any applicable EU laws, as the EU at present does not have the legal means to do so.²⁹ Consequently, there have been claims against the ones selling inferior dual products. The defenses by the manufacturers have often had to do with cultural preferences, claims that the given product was manufactured using local ingredients,³⁰ or claims that the product was manufactured in a different country with different equipments.

Such defenses may be legitimate and in some cases, they have been considered acceptable.³¹ Still, it is clear that manufacturers keep selling consciously inferior dual products, by replacing some ingredients to inferior quality or replacing ingredients completely with something else. Having such significant difference in the composition of a product is likely to mislead an average

²⁸ European Parliament, (2017), *supra nota* 1, p 1.

²⁹ Stanciu (2017), *supra nota* 2, p 384.

³⁰ European Parliament, (2017), *supra nota* 1, p 1-8.

³¹ EU Commission Notice - on the application of EU food and consumer protection law to issues of Dual Quality of products - The specific case of food, OJ C 327/1., (2017). p 2.

consumer to purchase a product that he was not fully aware and as a consequence to suffer a disadvantage as a result of reliance on the product.

The UCPD addresses in Article 5(4) that a commercial practice is to be considered as unfair if the traders provide wrongful information which misleads the consumer or deceives the average consumer.³² This should be understood to cover the issue of dual quality products as consumers are misled to think that an EU-wide product is the exact same product that is sold in the other Member States too.

Article 5 of the UCPD is followed by Article 6 which states that any misleading actions likely to cause the average consumer to make a transaction decision that he would not have made had he been aware of the quality of product shall be regarded as misleading action.³³ This article is open for interpretation, but it still leaves a grey zone for manufacturers to continue selling inferior dual products. The article should, however, be understood to cover the issue of dual food and consequently, it should be applied to the relevant cases as to combat dual food practices. Consumers are generally not aware of the sub-standard products as it will be established in the next chapter. In line with Article 6 of the UCPD, consumers would not prefer to be deceived to buy inferior EU-wide products. The application of this article seems vital in matters of dual product practices.

Articles 5 and 6 of the UCPD play an important role in protecting consumers from misleading practices by manufacturers and at present are not comprehensive enough to prohibit dual quality products. As the very nature of dual quality is misleading, national courts and the Court of Justice of the European Union should have the legal means to punish the manufacturers that continue selling dual qualities, disregarding their professional diligence.

It is understandable that there are actual cultural preferences within the diverse Union, but it is equally true, that consumers around the Union would prefer high-quality food rather than an inferior version of it. It follows, that an inferior product is likely not to be seen as tailored to

³² BEUC (2018), *supra nota* 6, p 10-11.

³³ Directive (EU) 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair commercial practices. L149/22, Art 6.

meet actual cultural preferences and is likely rather to result in health-related matters. Although this is true, this paper is not to examine those health-related matters arising from dual quality products.

Despite the fact that the UCPD gives the Member States the rights to apply more protective rules regarding unfair commercial practices if they are necessary and proportional for the achievement of the directive's goals, manufacturers have been able to continue to sell inferior products in some of the Member States. Member States should be more active in creating protective laws as this possibility is provided by the directive. It is understandable that there are differences in the implementation of the UCPD, but the Member States should nevertheless comply with a sufficient level to ensure the effectiveness of the Union law.

Where the manufacturers have not used the principle of free movement of good as a tool to practice the behavior as mentioned, they have most likely used the grey zone provided by the UCPD to circumvent the rules. The UCPD tackles the issue as stated prior, indirectly by only referring to misleading action or unfair practices, but never giving an actual example of a dual product, or in other words, never tackling the issue directly by stating that manufacturers should not mislead the consumer by selling identically labeled and packaged EU-wide products with inferior qualities.

Finally, as it is clear, the UCPD is a valuable directive for the consumers in the EU but it nevertheless fails to prohibit dual foods. The UCPD should be amended to a more comprehensive directive to combat dual food practices.

2.4. The lack of food quality testing between Member States

In the authors opinion, common methods of testing similarly labeled food quality between the Member States is to a large extent weakly practiced in the EU. This conclusion is drawn upon the fact that so far Member States have not had the possibility to invoke Article 36 of TFEU due to the reason that they have lacked the evidence necessary to invoke the said article. Throughout the research, the author was unable to find cases where the importation of goods was restricted

because of the inferior quality of an EU-wide product and therefore, it seems that the authors opinion stated above is valid.

Since the proposition of the New Deal for Consumers, a harmonized testing campaign for testing food products between the Member States has already been established. If correctly implemented, the framework will provide on a case-by-case basis, information whether the provisions of the UCPD have been infringed.³⁴ So far, however, there is not a clear idea of how much can the goods differ between the Member States. This will, however, change in a case-by-case basis as soon as the methodology will start to provide data.

In 2016/2017 there were already studies carried out in the various countries of EU, most from which were adversely affected by dual food practices, and it became evident that there are significant differences in characteristics of identically branded and packaged EU-wide foods.³⁵ Although this is so, Member States used different approaches in collecting the samples as well as testing them and on the interpretation of the data.³⁶ The data gained resulted in not fully comparable data. It has to be therefore stressed how important it is to have a common harmonized methodology of quality testing which would provide with valuable comparable data.

Through a common methodology of testing similarly labeled food products, the data gained will help the competent National authorities to detect dual food products and therefore sanction those practicing dual food behavior. Moreover, the data should allow the Member States to restrict the importation of those goods of weaker qualities as to their counterparts labeled and packaged identically and sold elsewhere in the Single Market.

As a consequence of various incidents and food scandals, consumers call for safety, higher quality of food as well as transparency.³⁷ The harmonized methodology which would apply to

³⁴ European Commission. (2018). Framework for selecting and testing of food products to assess quality related characteristics: *EU harmonised testing methodology*, Accessible: https://ec.europa.eu/jrc/sites/jrcsh/files/eu_harmonised_testing_methodology_-_framework_for_selecting_and_testing_of_food_products_to_assess_quality_related_characteristics.pdf 31 March 2019, p 2.

³⁵ *Ibid.*, p 4.

³⁶ *Ibid.*, p 4.

³⁷ Aung, M. M., & Chang, Y. S. (2013). Traceability in a food supply chain: safety and quality perspective - *Food Control*, Vol. 39, 172-184. p 173.

quality-related characteristics of branded food products would ensure transparency and fairness to consumers.³⁸ Transparency would consequently raise consumers awareness of the food quality and thus would raise trust towards the Union.

Fortunately, Europe through the New Deal for Consumers will provide Member States with the means of assessing differences of products which are nevertheless offered under the same packaging and brand and are sold in the several EU Member States.³⁹ This will be touched upon below when discussing the procedures to be taken to tackle dual standards in food in line with the New Deal for Consumers.

The most crucial aspects that have allowed the progression of the practice has been discussed above. It will now be necessary to go through the New Deal for Consumers, but before that few words regarding the point of view of consumers will be mentioned.

³⁸ European Commission (2018), *supra nota* 34, p 3.

³⁹ *Ibid.*, p 2.

3. DUAL QUALITY OF FOOD PRODUCTS AND ITS EFFECTS ON CONSUMERS

Before the paper proceeds to discuss the appropriate steps necessary to tackle down the phenomena of dual quality of food products under the New Deal for Consumers, it is necessary to mention a few words about the effects of dual quality food practices on consumers. As this subject relates to consumers more than others, it is important to mention the main concerns from the point of view of consumers.

Consumers around the Union expect to receive equal treatment in different aspects of life. As food is fundamental for every citizen of the Union, it is important for consumers that there are no different standards in food, rather one common standard for the Union.

If consumers are not aware of sub-standard products in some markets, traders and manufacturers can also get away more easily as there will be no claims raised and moreover, consumers will not be able to exercise a real choice under the principle of certainty, rather they will be misled to purchase food of weaker quality. It follows that the less aware citizens are, the fewer claims there will be arisen. This is a fundamental aspect of any policy area. Therefore, making consumers more aware of dual standards in food, would able them to challenge the practice. Having consumers that are aware of their rights, and that are able to invoke the UCPD in relevant cases is vital to combat dual food practices. The Union and the Member States have to co-operate closely and find the means to make the public more aware of dual standards in food.

Protecting the weaker party in business-to-consumer transactions is in the interest of most of the consumer.⁴⁰ The laws should evolve to protect the consumers from the powerful manufacturers, and to set deterrents for manufacturers to start to comply with the European laws in the field.

⁴⁰ Hondius, E. (2004). The Protection of the Weak Party in a Harmonised European Contract Law. - *Journal of Consumer Policy*, Vol. 27, 3, 245-251. p 247.

3.1. Trust

Such practice by manufacturers is a pity for consumers around the EU as consumers lose trust in the Union. Consumers in the EU shall be treated equally as it is a fundamental right. It should be stressed that in a way or another consumers should be made more aware of the food products that they are consuming because, at the moment, most of the consumers do not pay attention to food labeling⁴¹ leaving them vulnerable for misleading action by manufacturers.

The primary responsibility, however, lies with the EU to harmonize and put in place rules that make it impossible for the manufacturers to sell inferior dual products. As consumers do not have the ways of assessing the quality of a given product,⁴² they trust that the EU would take care of this matter.

Despite the progression of food safety regulation, surveys conducted in the various EU countries have shown that European consumers are skeptical about the food safety regulatory system.⁴³ The varying quality in identically labeled goods has recently raised concerns among some of the Member States⁴⁴ and the EU has to find the means to resolve the matter. Stronger enforcement of the UCPD and more efficient co-operation would definitely reduce harm on consumers and raise consumers trust towards EU.⁴⁵

Consumers in the EU want the labels to be as comprehensive as possible and not to mislead them.⁴⁶ It is still upon to the consumers to be active in reading the labels through of the products they consume, although it would be ideal to have trust on EU-wide products being more or less identical, subject to only minimum differences regarding cultural preferences and other legitimate conditions.

⁴¹ European Parliament (2017), *supra nota* 1, p 6.

⁴² Rijswijk, W. V. Frewer, L. J. (2008). Consumer perception of food quality and safety and their relation to traceability. - *British Food Journal*, Vol. 110, Iss: 10, p 1039-1040.

⁴³ Leibovitch (2008), *supra nota* 16, p 435.

⁴⁴ European Parliament. (2018). *Dual quality products in the Single Market - European Parliament resolution of 14 September 2018 on dual quality of products in the Single Market*, (2018/2008(INI)). Accessible: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0357+0+DOC+PDF+V0//EN> 31 March 2019, p 4.

⁴⁵ *Ibid.*, p 5.

⁴⁶ Poli, S. (2004). The European Community and the Adoption of International Food Standards within the Codex alimentarius Commission. - *European Law Journal*, Vol. 10, No. 5, 613-630, p 627.

3.2. Legitimate expectations

Consumer buying EU-wide identically branded and packaged products, expect to receive the same product that is sold in another Member State.⁴⁷ As the case is not always as stated, consumers might suffer a disadvantage as a result of reliance on the product. It follows that treating some consumers as ‘second-class’ citizens in the EU is unfair and humiliating and does not correspond to the principles upon which the Union is built.

It should be recalled that in a Single Market where the free circulation of goods is ensured, consumers do not expect that identically branded products would differentiate in another Member State.⁴⁸ This does not mean on the other hand that the products would be identical across the different Member States. Indeed there are actual cultural preferences and other conditions determining the business operators to tailor their products.⁴⁹ However, a significantly weaker quality under the same brand crosses the line of reasonableness and such practice should come to an end as it cannot be foreseen by an average consumer.

Studies have demonstrated that consumers associate a brand with a level of constant and controller quality.⁵⁰ This explains why some consumers expect that an EU-wide identically branded and packaged product is of equivalent quality if not exactly the same.⁵¹ Manufacturers should actively ensure that these expectations are met. Consumers should nevertheless never expect that a food product available in the market complies with the relevant food safety requirements as this is not always the case.⁵²

Finally, the citizens of the EU expect that the EU creates the means to tackle down the phenomena. This expectation is based on a solid believe that the founding treaties of the Union including the primary laws mentioned above are to ensure an equal Union. Member States also

⁴⁷ European Commission (2017), *supra nota* 31, p 6-7.

⁴⁸ *Ibid.*, p 6-7.

⁴⁹ *Ibid.*, p 6-7.

⁵⁰ *Ibid.*, p 5-7.

⁵¹ *Ibid.*, p 5-7.

⁵² Fontes, M. A., & Giraud-Héraud, E., & Pinto, A. S. (2013). Consumers’ behaviour towards food safety: *A literature review*, hal-00912476, p 3.

bear the responsibility for ensuring an adequate level of protection by creating effective means on combating unfair commercial practices.⁵³

⁵³ Collins, H. (2005). The unfair commercial practices directive. - *European Review of Contract Law*. Vol. 1, 4, 417-441., p 424-425.

4. EUROPEAN COMMISSION AND THE NEW DEAL FOR CONSUMERS

A better functioning Internal Market cannot be achieved only by national laws.⁵⁴ Therefore actions at the EU level are necessary to take in line with the principle of subsidiarity.⁵⁵ As stated above, consumer protection is a shared competence⁵⁶ between the EU and the Member States and therefore, action by the EU is something that is urgently needed in the matter of dual quality.

As cases of illegal practice have affected consumers in the several EU Member States the EU requires appropriate enforcement by all Member States to tackle down the phenomena.⁵⁷ The EU-wide nature of the problem requires the EU to step in as the Member States cannot achieve more effective actions taken solely in national level.⁵⁸ To achieve effectiveness there needs to be a common as well as a uniform substantive legal framework.⁵⁹

The proposal is created in accordance with the primary laws as mentioned above. The proposal is in accordance with Article 38 of the Charter of Fundamental Rights according to which Union policies must ensure a high level of consumer protection. It is based on Article 114 of TFEU and also in Article 169 of TFEU. Therefore, there is a sound legal basis for creating the proposal.

Fortunately, after years of research, the issue of dual quality was addressed by the president of the EU Commission Jean-Claude Juncker. The president of EU Commission clearly underlined

⁵⁴ Council Directive (2005), *supra nota* 33, para. 23.

⁵⁵ *Ibid.*, para. 23.

⁵⁶ Valant (2015), *supra nota* 8, p 3.

⁵⁷ European Commission. (2018). *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules*. Brussels, 185 final, p 7-10.

⁵⁸ Valant (2015), *supra nota* 8, p 5.

⁵⁹ *Ibid.*, p 5.

in his State of the Union address on 2017 that he ‘will not stand such behavior in a union of equals’⁶⁰ and that there will be changes in legislation that will stop such practice.

Following up this on 11 April 2018 the Commission published the so-called New Deal for Consumers. It is a proposal by the EU commission to ensure that all the European consumers benefit from their rights under Union law.

As mentioned above, the New Deal for Consumers includes two proposed directives from which the other is the Modernization of EU Consumer Protection Rules. The Modernization of EU Consumer Protection Rules is a package under the New Deal for Consumers which intends to amend four EU directives that protect the economic interest of consumers in various consumer issues. Most of these amendments will concern the UCPD.⁶¹ It will be necessary to introduce the reader with only those proposals dealing with the UCPD and to highlight their importance in combating dual food practices. It follows that, for this paper, it is not necessary to discuss other things the New Deal for Consumers will introduce which are not relevant to this study.

4.1. The amendments and the new methods provided by the New Deal for Consumers to outlaw the practice of dual food

The New Deal for Consumers aims to empower consumers, promoting fairness and building trust across the Single Market. It shall be ensured that consumers are protected under Union law. The following propositions are to ensure effective implementation of consumer laws. Below will be presented a list, with those points provided by the New Deal for Consumers.

1) The New Deal will increase Member States rights in protecting consumers legitimate interests by replacing Article 3(5) of the UCPD; 2) The New Deal will provide with more effective penalties for infringements by replacing the UCPD’s Article 13; 3) the New Deal provides a harmonized methodology of assessing EU-wide products. This is to ensure that EU-wide products have similar characteristics and will not vary more than what is reasonable; 4) the New

⁶⁰ European Commission. (2017). *President Jean-Claude Juncker’s State of the Union Address 2017*. Accessible: http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm, 25 Feb 2019.

⁶¹ European Commission (2018), *supra nota 57*, p 1.

Deal will provide with similar redress opportunities, empowering individuals, victims of unfair commercial practices by inserting Article 11a to the UCPD; 5) finally, the New Deal intends to amend Article 6 of the UCPD to clarify the rules on misleading marketing, in other words, making it clear in law that marketing products identically throughout the Internal Market with significance differences counts as misleading practice.

The above-mentioned list consists of the primary propositions in line with the New Deal for Consumers in combating dual food practices. The paper will now highlight their significance and necessity in combating dual food practices.

4.1.1. Increasing Member States rights in protecting the legitimate interests of the consumers

The New Deal for Consumers aims at strengthening the enforcement of EU consumer law by providing the Member States with more rights in the area of law; 'National authorities must be equipped with stronger means to cut down any illegal practice, wherever it exists'.⁶² The rights that would be provided through the amendment of UCPD Articles' 3 Paragraph 5 would be in line with the principle of subsidiarity. It should not be stressed that it would distort the smooth functioning of the Internal Market as they are necessary to tackle down the phenomena. Member States will be from here on able to adopt provisions to protect the legitimate interest of consumers with regard to aggressive or misleading marketing or selling practices, such as dual products with inferior qualities.

The primary responsibility of ensuring that the provisions of the directive will be applied correctly and effectively is on the Member States. To combat dual food practices, it calls for effective implementation of the UCPD by the Member States. This may mean that the Member States may adopt further policies in the area of law. However, any further policy adopted shall protect the legitimate interests of consumers and shall be justified on grounds of public policy.

⁶² Juncker, J-C. European Commission (EC), Brussels., (2017). *State of the Union Address*. Accessible: http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm 3 February 2019

Although generally harmonization is to ensure effective coordination it is, however, necessary in some fields to grant Member States the right to create or impose even stricter laws than provided by the EU standards. The last section of this paper is dedicated to harmonization in this field of law and it will be necessary to mention the importance of harmonizing EU policies.

4.1.2. Introducing effective penalties for violations of illegal practices by manufacturers

At present, the penalties for infringements of consumer law are very different across the EU and they are often set at a low level.⁶³ Under the New Deal for Consumers, national authorities will have the powers to impose higher fines, at least up to 4% of trader's annual turnover in the Member State or the Member States concerned.

It is important to higher-up the penalties in an aim to outlaw the practice of dual food. Generally, low fines are not enough to stop big companies from continuing to practice 'bad' behavior. Deterrents need to be set to a sufficient level, where manufacturers want to avoid them.

The UCPD states in Article 13 that the Member States shall lay down penalties for infringements of national provisions in the application of the directive and shall take all necessary measures to ensure that these are enforced. The penalties must be effective, proportionate and dissuasive.

So far the UCPD had a penalty section on Article 13 as mentioned above, but through the proposal the section would be replaced by a much more comprehensive article that would provide the Member States the powers in accordance with the principle of national procedural autonomy⁶⁴ to decide the seriousness of the infringement by taking into consideration previous infringements by the trader, any other aggravating or mitigating factors applicable to the circumstances of the case, number of consumers affected and so on. From here on the Member States would be able to impose a reasonable fine or a different penalty depending on the circumstances. The amendment of the penalty section would oblige the Member States to

⁶³ BEUC. (2018). *Plugging The Gap In Consumer Rights, What A New Deal For Consumers Should Look Like In 2018*. Accessible: https://www.beuc.eu/publications/beuc-x-2018-023_what_a_new_deal_for_consumers_should_look_like_in_2018.pdf, 3 February 2019. p 15.

⁶⁴ Pázmány (2014), *supra nota* 24, p 23-24.

establish, if necessary, independent national regulatory agencies, that would safeguard the interests of consumers by taking the responsibility of ensuring the monitoring of markets.⁶⁵

4.1.3. Increased quality testing

Where there is co-operation,⁶⁶ quality testing of food will be more effective as the data gained will be shared between the Member States to ensure equal standards of food. Quality testing is equally important as co-operation between the Member States. On a case-by-case basis, it will eventually become evident where does the line go between a reasonable difference in identically labeled food and what amounts to misleading practice.

So far, quality testing of similar products has been barely practiced in the Internal Market.⁶⁷ Fortunately, recently few Member State had compared the quality of various identically labeled and packaged products that were sold across the Member States and found that there were significant differences on some products.⁶⁸ These results were one of the motives to create the New Deal for Consumers and also to prove the importance of quality testing.

For a well-functioning Internal Market, effective consumer protection is essential. Therefore, the EU has developed a comprehensive legislative framework safeguarding consumers interests. Recently, the European Commission has released in 2018 a new common methodology developed by the Joint Research Centre in close collaboration with stakeholders of the food supply chain and with experts from Member States' competent authorities for comparing the quality of food across the Internal Market.⁶⁹

⁶⁵ *Ibid.*, p 20-21.

⁶⁶ Increasing co-operation between Member States and third countries is also something that the New Deal for Consumers aims at. Although this would not update the UCPD, rather the current Regulation (EC) No 2006/2004 on consumer protection co-operation (The CPC regulation), it is worth mentioning that throughout effective co-operation e.g. data sharing, it will be more efficient to detect dual products with various differences on their characteristics within the Internal Market. It follows that a high level of consumer protection calls for effective co-operation between the principal authorities responsible of enforcing the provisions of the UCPD and also co-operation between third-countries as the food supply is no longer confined with regionally produced (EU) goods.

⁶⁷ Look chapter 2.4. on the lack of food quality testing between Member States, p 18.

⁶⁸ European Parliament (2017), *supra nota* 1, p 1-8.

⁶⁹ European Commission (EC) Press Release, Brussels., (2018). *Dual quality of food: European Commission releases common testing methodology*. IP/18/4122.

As it is the responsibility of competent National consumer protection authorities to ensure that the food complies with the common European standard and that the food placed on the Internal Market complies with the relevant EU legislation,⁷⁰ the testing methodology will remarkably help the competent authorities to detect products which fail to fulfill the relevant EU laws. It follows, that the data gained by the testing methodology shall be used for justifying restrictions on importations and invoking the UCPD against those practicing the bad behavior.

As the methodology is now developed, the next step under the coordination of the Joint Research Centre will be to establish laboratories across a number of EU Member States.⁷¹ Although the first results were expected to be published in late 2018, the results have not yet been made public. This might be due to the reason that the testing methodology needs to produce sound evidence and this is possible only on a case-by-case basis. Therefore, the first results might be of no real value yet and consequently kept private, as opposed to their publication. However, it may also be that the results have not yet been finalized for their publication.

The EU-wide testing campaign will allow the collection of further evidence of products that differentiate across the Internal Market.⁷² It will also be interesting to see if there are differences in identically labeled food also between other parts of EU as so far what has been reported is the east-western divide.⁷³

The methodology complements the New Deal for Consumers announced by the Commission. It will, therefore, prohibit the practice as it is misleading in the eyes of consumers and moreover it will deliver a fairer, common standard of food for everyone within Europe.

⁷⁰ Dual food: Testing protocol compares quality across EU. (2018). Accessible: <https://www.foodingredientsfirst.com/news/dual-food-testing-protocol-compares-quality-across-eu.html> 3 February 2019

⁷¹ European Commission (2018), *supra nota* 69, p 1-2.

⁷² BEUC (2018), *supra nota* 6, p 5.

⁷³ European Parliament (2017), *supra nota* 1, p 1-8.

4.1.4. Stronger redress opportunities

The Commissions Fitness Check Report published in 2017 provides the need to improve awareness among EU consumers and to enforce redress opportunities as well as to strengthen the existing legislation.⁷⁴ Through the proposition, it will be made possible to claim for remedies in all the EU Member States where consumers have been victims of unfair commercial practices.

As settled in the case law of the Court of Justice, the nature of a remedy that the national court provides must be effective, adequate and seen as a deterrent and therefore, must guarantee effective protection.⁷⁵ This is exactly what the New Deal for Consumers will provide. Having effective remedies is also not likely to be sufficient to ensure that consumers can benefit from them.

Consumer education and protection have been part of the general objective of the EU since the Treaty of Amsterdam in 1997.⁷⁶ The right of education is a legal right that has to be fulfilled jointly by the Member States and the European Community.⁷⁷ Consumer awareness of their rights especially in the new Member States in specific policy areas such as dual food need to be educated. Besides education, consumers bear the right for information⁷⁸ as without education and information redress opportunities would be of no use, the need to educate and inform consumers is equally important.

Through the New Deal for Consumers Article 11a will be inserted which provides with harmonized means of redress opportunities for consumers.⁷⁹ This will allow consumers to claim directly for remedies in matters of contractual and non-contractual disputes.

⁷⁴ European Commission (EC), (2017). *Justice and Consumers; Results of the Fitness Check of consumer and marketing law and of the evaluation of the Consumer Rights Directive*. Accessible: https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332 31 March 2019

⁷⁵ Horspool, M. (2003). *European Union Law*, 3rd ed. United Kingdom: Oxford University Press, p 196.

⁷⁶ Goldsmith, E. B., & Piscopo, S. (2014). Advances in consumer education. - *International Journal of Consumer Studies*, Vol. 38, No. 1, 52 - 61. p 52.

⁷⁷ *Ibid.*, p 52.

⁷⁸ Cheftel, J. C. (2005). Food and nutrition labelling in the European Union. - *Food Chemistry*, Vol. 93, No. 3, 531 - 550. p 531-532.

⁷⁹ European Commission (2018), *supra nota* 57, p 31-32.

As it was not possible in all Member States to claim effectively remedies,⁸⁰ through the New Deal for Consumers all consumers in all of the Member States will have a similar opportunity in accordance with the UCPD. This is an attempt to raise consumers rights and to equalize them between the Member States. Especially in those Member States where their national law is not sufficient on protecting consumers from dual food products, - the New Deal for Consumers will ensure that European consumers will be granted with similar redress opportunities under EU law in regards to unfair commercial practices.

4.1.5. Amendments to Article 6 of the UCPD

Finally, a crucial amendment regarding the New Deal for Consumers which aims at clarifying the rules of misleading marketing of dual quality. Under the proposition, Article 6 of UCPD referring to misleading actions would be extended to include in paragraph 2 the following; “Any marketing of a product as being identical to the same product marketed in several other Member States, while those products have significantly different composition or characteristics”,⁸¹ shall be regarded as misleading action.

The importance of this paragraph is pivotal, as it is the first time that the directive or any other instrument will address the issue of dual food directly. If Article 6 of the UCPD will be extended to include the paragraph mentioned above, contesting dual food practices will have a legal basis and manufacturers will run out of excuses to continue such behavior. The New Deal for Consumers will, therefore, make it clear in the law that marketing products under the same brand but with significant differences in their compositions amounts to an unfair practice as it misleads the consumer.⁸²

So far manufacturers have been able to use the grey zones of EU law as a way to ignore their actual obligations but now under the New Deal for Consumers, such practice will be made impossible. By addressing the issue directly, making it explicit in the framework of EU law.

⁸⁰ BEUC (2018), *supra nota* 63, p 10.

⁸¹ European Parliament. (2019). *Plenary sitting*, A8-0029/2019. Accessible: http://www.europarl.europa.eu/doceo/document/A-8-2019-0029_EN.html 31 March 2019, p 27.

⁸² BEUC (2018), *supra nota* 6, p 10-11.

4.2. Importance of the New Deal for Consumers

As food supply has increasingly globalized, the need for more comprehensive food safety system as well as the strengthening of the present laws becomes more evident.⁸³ The New Deal for Consumers will be a great step ahead, as a European movement, that will consequently bring the Member States together to tackle down the issue. EU's involvement in product safety, as well as consumer protection, has grown especially by means of harmonization⁸⁴ and the New Deal for Consumers is once again a good illustration of how fundamental it is to impose laws in the EU level, as opposed to the national level.

These procedures proposed would allow effective implementation of high-level consumer protection policies. If the New Deal for Consumers will not be enforced, creating similar means on combating dual food practices will likely take time, whereas fast action in EU level. The New Deal for Consumers is a strong response to the current issue of dual quality and would remarkably help the Member States to deal with the matter. Member States around Europe are not to tolerate such behavior and the New Deal for Consumers has to be enforced as soon as possible to ensure a Single Market with one equal standard of food.

The importance of the New Deal has been concluded through analyzing the grey whole and recognizing the need to take action as it was proposed by the New Deal for Consumers to tackle down dual standards in food. The New Deal for Consumers is without a doubt urgently needed to put in force as soon as possible in order to tackle down the phenomena of dual standards.

If increased quality testing, higher penalties, attempts to raise consumer awareness, equal redress opportunities, and the extension of Article 6 of the UCPD is realized, the EU will be in a better position to achieve its promises and guarantee equal treatment to all the citizens of the Union in this respect. As it is clear, most of these propositions introduced aim on amending the UCPD and are of high importance in ending the practice. Under the New Deal for Consumers, the propositions regarding UCPD would guarantee the manufacturers to comply with the relevant

⁸³ World Health Organization, Regional Office for South-East Asia. (2015). Food Safety: What you should know. SEA-NUT-196. Accessible: http://www.searo.who.int/entity/world_health_day/2015/whd-what-you-should-know/en/ 3 February 2019, p 3.

⁸⁴ European Union Law. (2014)./ Eds. Barnard C., Peers, S. United Kingdom: Oxford University Press, p 690.

field specific laws and the possibility to circumvent through the applicable EU laws would be minimized.

5. SUGGESTED MEASURES AND PRACTICES IN ADDITION TO THE NEW DEAL FOR CONSUMERS

At this point, the author wants to discuss a few thoughts of his, which could provide support to the New Deal for Consumers as additional measures to be taken. The New Deal for Consumers is a broad proposition and covers a wide area of subjects. In light of this, below are few further things to discuss.

Firstly, through the common methodology of quality testing, it would be ideal that Member States would be given the right to restrict the importation of goods under Article 36 of TFEU for goods that are of significant weaker quality than their counterparts of higher-quality goods elsewhere in the Single Market. This would be possible through evidence-based facts. Particularly, those evidences gained by the testing methodology. The principle of mutual recognition shall not affect adversely the Member States in matters of dual food. Also, as Article 36 of TFEU allows a wide range of justifications in the public interest, going beyond the limited list found in the Treaty,⁸⁵ there would be a legitimate purpose to invoke the Article in matters of dual food.

Secondly, if the New Deal for Consumers is not enforced, it should be seen as an instrument open for interpretation as to combat current problems. This means that Articles 5 and 6 regarding misleading actions and unfair practices, in particular, should evolve to cover the issue of dual food even though dual food is not directly mentioned in the UCPD. These articles clearly underline that consumers shall be able to make informed purchase decision and that consumers shall not be misled in buying falsely presented products. Therefore, the application of the UCPD in regards to dual food practices is vital.

⁸⁵ Weatherill, S. (2016). *Law and Values in the European Union*, United Kingdom: Oxford University Press, p 330-331.

Finally, in line with the European Parliaments invitation,⁸⁶ a logo should be created which provides that a given EU-wide product is the same across the EU Member States. This would consequently help consumers to identify similar EU-wide products without going through the labels. Although this is not solely the authors idea, the author strongly supports this idea and thinks that it would be useful. However, it is not necessary to have such a logo if the New Deal for Consumers is enforced, as EU-wide products will nevertheless have to be identical. In light of this, it is only necessary to have the logo if the New Deal for Consumers is not enforced; if the New Deal for Consumers is enforced, there will be no need to create such a logo.

⁸⁶ European Parliament (EP) Press Release, (2018). News - Consumer product quality: Parliament takes aim at dual standards. Accessible: <http://www.europarl.europa.eu/news/en/press-room/20180907IPR12460/consumer-product-quality-parliament-takes-aim-at-dual-standards> 31 March 2019

6. IMPORTANCE OF HARMONIZATION IN THE FIELD OF CONSUMER LAW

According to the primary laws, the Commission is responsible for ensuring that a high level of consumer protection is achieved in the Single Market. It follows that by harmonizing the laws of the Member States it is to provide better coordination as well as stronger enforcement of Union policies and importantly, with transparency to the consumers.

Without any doubts, the UCPD is one of the most important milestones on the road towards a harmonized consumer protection law in the Internal Market.⁸⁷ In fact, it was the UCPD in 2005 that indicated the need to strengthen the enforcement of trans-border consumer laws.⁸⁸ These harmonization measures aim at accomplishing compliance between business-to-consumer trade and to safeguard the consumers from unfair practices.

Moreover, by harmonizing the laws of the Member States, businesses can act with legal certainty as they will be able to rely on a single regulatory framework with clearly defined concepts,⁸⁹ rather than going through the application of private international law and figuring out the applicable law in each given situation. It is therefore beneficial for the businesses also practicing in the Single Market to have a common set of rules, as opposed to differing rules in the different Member States.

It should not be stressed that the harmonized methodology of food testing would create or affect the Internal Market adversely. Although it restricts the free movement of goods by creating *de facto* barriers to trade, compensatory measures for such freedom are necessary to take. This will

⁸⁷ Schurr, F A. (2007). *The relevance of the european consumer protection law for the development of the european contract law*. -Victoria University of Wellington Law Review Vol 38, 1, 131-144, p 142.

⁸⁸ Pázmány (2014), *supra nota* 24, p 23-24.

⁸⁹ Council Directive (2005), *supra nota* 33, para. 12.

also motivate manufacturers to comply with the EU laws and serve the same quality of food for all Europeans.

Finally, although the nature of a directive is relatively broad and hence leaves room for the Member States to implement it in various ways, Member States should nevertheless implement the directive without enacting rules hindering the free circulation of goods. The free circulation of goods is only ensured where there are common rules across the Internal Market and therefore although the Member States are allowed to create even stricter laws than provided by the EU standards, the rules cannot undermine the free movement of good nor can they be arbitrary policies. Only reasonable policies that can be foreseen and that are to support the implementation of EU policies are welcome.

CONCLUSION

The New Deal for Consumers is just a proposal and it needs to proceed through various stages in the principal institutions before approved and becoming EU legislation. The need for fast action in matters of dual quality in food products calls for harmonized means imposed in supranational level, thus the New Deal for Consumers. It is, therefore, essential that it goes through the necessary stages in the European Parliament and the Council and is enforced as soon as possible to combat dual food practices.

Member States are not to tolerate such behavior in a Union of equals and as realized in the paper the New Deal for Consumers will be a remarkable step in tackling down dual standards in food. Belonging to the Union shall not affect the Member States adversely, especially in matters of food as food is an intimate thing for every European consumer. It has to be ensured that the Internal Market functions well in good faith and where consumers are respected and treated equally. This calls for the enforcement of the New Deal for Consumers.

This paper was mainly to investigate how manufacturers have been able to practice such behavior in the first place and to provide how would the New Deal for Consumers contribute to combat the practice. As discovered, the lack of specificity of the UCPD constitutes one of the key thing allowing the progression of the practice.

The UCPD is frankly too vague to prohibit dual quality products. It seems that this is so because the respectful authors of the directive did not foresee the matter of dual quality arising in the Union and consequently the directive lacks the direct clause prohibiting dual products. The UCPD therefore at present protects the consumers poorly from dual products. Although this is so the UCPD is still a crucial instrument in protecting consumers from misleading actions in different matters.

It follows, that if the New Deal for Consumers will not be enforced, as suggested the UCPD should be seen as a living instrument, meaning that Articles 5 and 6 referring to misleading actions should be understood to cover the issue of dual food. The UCPD should be interpreted in a manner to cover the present issues in order to combat dual food practices. Its application regards dual product practices is vital and much needed. However, if the New Deal for Consumers will be enforced, fortunately, Article 6 will be extended to make it explicit that selling EU-wide goods with inferior qualities counts as misleading practice and is an infringement of the UCPD.

In line with the hypothesis, the author claimed that at present, the Directive 2005/29 EC is not comprehensive enough to combat dual food practices and what is needed is stronger enforcement of the above-mentioned directive to tackle down the issue directly. This, indeed, was established through the paper. The underlying reasons proving the authors hypothesis was mainly as to the vagueness of the UCPD. Further more, lack of consumer awareness and Member States levels of implementation as regards to the UCPD are permitting the practice to remain. Consumer awareness of their rights has to be improved in order for them to invoke Union law in relevant cases. The UCPD is of no significant value in cases of dual food practices, if the Member States do not take the necessary steps to protect consumers legitimate interests and actively seek to ensure the effective implementation of the Union law.

The UCPD solely is yet not the only thing allowing the continuation of the practice. The lack of quality control and the free movement of good are also involved in permitting the practice to happen. Although it is not always the case that the free movement of goods enable the manufacturers to export identically packaged and labeled inferior quality goods to another Member State, it is still necessary to take compensatory measures to restrict the freedom to ensure that the Member States will not have to put up with those inferior goods in their respective territories. The testing methodology established under the Joint Research Centre could be seen as the first step taken to compensate the great freedom.

Justifications based on various defenses shall not be accepted if the EU-wide product contains significantly inferior qualities than their counterparts of higher quality served elsewhere in the Internal Market. Only legitimate justifications subject to minimal differences shall be accepted. The non-exhaustive list of 'legitimate factors' on tailoring the goods, shall be assessed on a case-by-case basis. This is to ensure that every case is to be assessed on its own merits.

The Commissions harmonized methodology which is already in place should provide the Member States with evidence-based facts to restrict the importation of EU-wide goods containing inferior qualities. It will also provide with evidence-based facts to penalize those practicing the behavior. As it was not prior possible to justify a restriction on the grounds that the EU-wide product is not the same as opposed to their counterparts of higher quality, this will change on a case-by-case basis as soon as evidences start to flow. Through these evidences Member States should be able to invoke Article 36 of TFEU as the article is not exhausted and should evolve to cover the issue of dual food.

Once again it is to be pointed out that the paper is not to claim that there shall not be differences in EU-wide food. Rather, it is to claim that EU-wide products packaged and labeled identically containing significantly inferior qualities shall be prohibited as it is not accepted in a Union of equals to divide food for differing standards. Moreover, as such practice is likely to result in misleading implications on consumers and consumers in most cases will not be able to exercise a real choice, it is in the interest of the consumers that they are well protected from the powerful manufacturers. A common standard of food for all European Member States is crucial.

The New Deal for Consumers would provide the Member States with additional rights on taking effective action where there has been a breach of the applicable laws in matters of dual food. This will allow national authorities to adopt provisions protecting consumers legitimate interests with regard to aggressive or misleading commercial practices. Member States shall nevertheless create proportional means on combating misleading marketing or selling practices. To ensure that the rules and policies are proportional and have a legitimate basis, Member States shall notify the Commission without delay of any national provision applied on the basis of this right. Member States need to be seen as the guardians, ensuring that the rules flowing from the

Commission are effectively implemented to ensure a safer global food that is off one high standard.

Importantly, the need for more effective penalties was pointed out. The penalties need to be effective and proportional to be seen as deterrents that manufacturers want to avoid. Low fines are not enough to stop the practice as generally big companies can afford them. The proposal to amend Article 13 of the UCPD would provide National competent authorities with the rights to impose more effective penalties subject to various factors as disclosed above. Increased penalties for violations would definitely motivate manufacturers to comply with the UCPD.

The need to improve consumer awareness was also mentioned. It is equally important to have effective rules as well as conscious consumers that are able to exercise their rights under Union law. Therefore, contributions to raise consumers knowledge about dual food practices by awareness campaigns or public debates or by other means shall be taken in order to raise transparency among the consumers. It is primarily for the consumers to invoke the UCPD and therefore, the importance of consumer awareness is great.

Fortunately, the New Deal for Consumers will provide with similar redress opportunities to all the consumers in the different Member States. As it was disclosed redress opportunities differ in the respective Member States and the need to equalize these opportunities is crucial to ensure that consumers can take legal actions collectively or individually against manufacturers who fail to comply with the relevant EU laws. In particular, the EU-wide remedies would be directed against unfair commercial practices. The amendment of the redress clause would facilitate private enforcement by the consumers and consequently address undesirable behavior as deceptive.

Evidently, the differentiating consumer law regimes need to be harmonized in order to tackle down dual standards in food effectively. Member States need to share similar standards in quality control and other policy areas and actively engaging in co-operation between the competent authorities across the Unions Member States. Cross-border enforcement of the various consumer law regimes need to be improved in order to tackle down dual standards in food and the New

Deal for Consumers would remarkably help the Member States to deal with the increasing number of cross-border trade.

While the businesses and manufacturers may not welcome the New Deal for Consumers, consumers shall be protected in accordance with the primary laws and the Union policies shall ensure a market functioning in good faith were manufacturers abide by the EU laws in the field. For a well functioning Single Market, effective consumer protection is crucial. Therefore, the New Deal is to only serve for good and is an instrument to support the application of EU law.

To this end, the matter of dual food has been at the back of the discussion for years and the New Deal for Consumers is a strong response to the matter. In order to tackle down the phenomena effectively, it calls for all the Member States to come together in a good spirit in ending the practice. A strong synergy at EU level is vital to eliminate dual food practices. Without the New Deal for Consumers, the Member States will continue to face dual standards in food as creating similar propositions will be nearly impossible at the national level.

LIST OF REFERENCES

Books

1. Weatherill, S. (2016). *Law and Values in the European Union*, United Kingdom: Oxford University Press
2. Prechal, S. (2005). *Directives in EC Law, 2nd ed.* USA: Oxford University Press 15.
3. Exceptions from EU Free Movement Law. (2016). /Eds. P. Koutrakos, N. N. Shuibhne, P. Syrpis. USA: Hart Publishing
4. European Union Law. (2014)./ Eds. Barnard C., Peers, S. United Kingdom: Oxford University Press
5. Craig, P., de Búrca, G. (2015). *EU Law Text, Cases, and Materials, 6th ed.* United Kingdom: Oxford University Press
6. Holland, D., Pope, H. (2004). *EU Food Law and Policy*, The Netherlands: Kluwer Law International B.V.
7. Barnard, C. (2016). *The Substantive Law of the EU - The Four Freedoms, 5th ed.* United Kingdom: Oxford University Press
8. Horspool, M. (2003). *European Union Law*, 3rd ed. United Kingdom: Oxford University Press
9. Usher, J, A. (1998). *General Principles of EC Law*, USA: Addison Wesley Longman Inc. 18.
10. Gormley, L. W. (2009). *Eu Law of Free Movement of Goods and Customs Union*, USA: Oxford University Press Inc.
11. Pázmány, P. (2014). *Unfair Commercial Practices - The Long Road to Harmonized Law Enforcement*, Budapest: PPCU Faculty of Law and Political Sciences. 19-36.
12. MacMaoláin, C. (2007). *EU Food Law Protecting Consumers and Health in a Common Market*. USA and Canada: Hart Publishing

Articles

13. Schurr, F A. (2007). *The relevance of the european consumer protection law for the development of the european contract law*. - Victoria University of Wellington Law Review Vol 38, 1, 131-144.
14. González Vaqué, L. (2015). Directive 2005/29/EC on Unfair Commercial Practices and its Application to Food-Related Consumer Protection. *European Food & Feed Law Review*, Vol 10, 3, 210-221.
15. Arvanitoyannis, I. S. Chorefaki, S. Tserkezou, P. (2005). An update of EU legislation (Directives and Regulations) on food-related issues (Safety, Hygiene, Packagin, Technology, GMOs, Additivies, Radiation, Labelling): presentation and comments. - *International Journal of Food Science and Technology*, Vol 40, 10, 1021-1112.
16. Poli, S. (2004). The European Community and the Adoption of International Food Standards within the Codex alimentarius Commission. - *European Law Journal*, Vol. 10, No. 5, 613-630.
17. Collins, H. (2005). The unfair commercial practices directive. - *European Review of Contract Law*. Vol 1, 4, 417-441.
18. Hondius, E. (2004). The Protection of the Weak Party in a Harmonised European Contract Law. - *Journal of Consumer Policy*, Vol 27, 3, 245-251.
19. Goldsmith, E. B., & Piscopo, S. (2014). Advances in consumer education. - *International Journal of Consumer Studies*, Vol. 38, No. 1, 52 - 61.
20. Fontes, M. A., & Giraud-Héraud, E., & Pinto, A. S. (2013). Consumers' behaviour towards food safety: *A literature review*, hal-00912476.
21. Aung, M. M., & Chang, Y. S. (2013). Traceability in a food supply chain: safety and quality perspective - *Food Control*, Vol. 39, 172 - 184.
22. Cheftel, J. C. (2005). Food and nutrition labelling in the European Union. - *Food Chemistry*, Vol. 93, No. 3, 531 - 550.
23. Stanciu. S. (2017). Food Quality in Romania. Compliant or Not with Food Quality in Western Europe?. Risk in Contemporary Economy. *Galati - Romania: Lumen Proceedings*, 18th edition.
24. Trienekens, J., & Zuurbier, P. (2007). Quality and safety standards in the food industry, developments and challenges. - *International journal of production economics*, Vol 113, No 1, 107-122.
25. Rijswijk, W. V. Frewer, L. J. (2008). Consumer perception of food quality and safety and their relation to traceability. - *British Food Journal*, Vol. 110, Iss: 10, 1039-1040.

26. Leibovitch, H, E. (2008). Food Safety Regulation in the European Union: Toward an Unavoidable Centralization of Regulatory Powers. - *Texas International Law Journal*, Vol. 43:429.

Electronic Sources

27. BEUC. (2018). *Plugging The Gap In Consumer Rights, What A New Deal For Consumers Should Look Like In 2018*. Accessible: https://www.beuc.eu/publications/beuc-x-2018-023_what_a_new_deal_for_consumers_should_look_like_in_2018.pdf, 3 February 2019.
28. BEUC. (2018). *The Consumer Voice in Europe. Dual Product Quality Across Europe: State-Of-Play and the way forward*. Accessible: https://www.beuc.eu/publications/beuc-x-2018-031_beuc_position_paper_on_dual_quality.pdf, 19 March 2019.
29. Valant, J. European Parliamentary Research Service. (2015). *Consumer Protection in the EU; Policy overview*, PE 565.904. Accessible: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA\(2015\)565904_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf) 31 March 2019.
30. World Health Organization, Regional Office for South-East Asia. (2015). *Food Safety: What you should know*, SEA-NUT-196. Accessible: http://www.searo.who.int/entity/world_health_day/2015/whd-what-you-should-know/en/, 3 February 2019.
31. European Commission. (2018). *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules*. Brussels, 185 final. Accessible: https://ec.europa.eu/info/sites/info/files/proposal_for_a_directive_on_better_enforcement_and_modernisation_of_eu_consumer_protection_rules.pdf 31 March 2019.
32. European Parliament. (2018). *Dual quality products in the Single Market - European Parliament resolution of 14 September 2018 on dual quality of products in the Single Market*, (2018/2008(INI)). Accessible: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0357+0+DOC+PDF+V0//EN> 31 March 2019.
33. Commission Staff Working Document. (2016). *Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices*. SWD, 163 final. Accessible: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=EN>, 25 Feb 2019.
34. European Parliament (2017). *Briefing - Dual quality of branded food products, Addressing a possible east-west divide*. PE 607.265. Accessible: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607265/EPRS_BRI\(2017\)607265_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607265/EPRS_BRI(2017)607265_EN.pdf) 19 February 2019.

35. European Parliament. (2019). *Plenary sitting*, A8-0029/2019. Accessible: http://www.europarl.europa.eu/doceo/document/A-8-2019-0029_EN.html 31 March 2019.
36. European Commission. (2018). Framework for selecting and testing of food products to assess quality related characteristics: *EU harmonised testing methodology*. Accessible: https://ec.europa.eu/jrc/sites/jrcsh/files/eu_harmonised_testing_methodology_-_framework_for_selecting_and_testing_of_food_products_to_assess_quality_related_characteristics.pdf 31 March 2019

European Union Legislation

37. Treaty on the Functioning of European Union. - Official Journal C 326, 26/10/2012 P. 0001 - 0390
38. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair commercial practices. L149/22.

Other Sources

39. European Commission (EC) Press Release, Brussels., (2018). *Dual quality of food: European Commission releases common testing methodology*. IP/18/4122. Accessible: http://europa.eu/rapid/press-release_IP-18-4122_en.htm, 18 January 2019
40. EU Commission Notice - on the application of EU food and consumer protection law to issues of Dual Quality of products - The specific case of food, OJ C 327/1., (2017). Accessible: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2017.327.01.0001.01.ENG 31 March 2019
41. Juncker, J-C. European Commission (EC), Brussels., (2017). *State of the Union Address*. Accessible: http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm 3 February 2019
42. European Commission. (2017) *President Jean-Claude Juncker's State of the Union Address 2017*. Accessible: http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm, 25 Feb 2019.
43. European Commission (EC), (2017). *Justice and Consumers; Results of the Fitness Check of consumer and marketing law and of the evaluation of the Consumer Rights Directive*. Accessible: https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332 31 March 2019
44. Dual food: Testing protocol compares quality across EU. (2018). Accessible: <https://www.foodingredientsfirst.com/news/dual-food-testing-protocol-compares-quality-across-eu.html> 3 February 2019
45. European Union; *Human rights and Democracy - Promoting and protecting human rights*. Accessible: https://europa.eu/european-union/topics/human-rights_en 3 February 2019

46. European Parliament (EP) Press Release, (2018). News - Consumer product quality: Parliament takes aim at dual standards. Accessible: <http://www.europarl.europa.eu/news/en/press-room/20180907IPR12460/consumer-product-quality-parliament-takes-aim-at-dual-standards> 31 March 2019

European Commission Decisions

47. Judgement of the Court of 11 July 1974, *Dassonville*, C-8/74, EU:C:1974:82.