

Book Reviews

Advertising Food in Europe - A Comparative Law Analysis, by Aude Mahy (ed.)

Berlin: Lexxion, 2014
423pp., €159.00, hardback.

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During recent years, the interest in the laws regulating food advertising in European countries has grown. The reasons for this interest are to be found in the fact that while on the one hand many harmonized rules on food labelling and advertising have been established in recent years at the EU level, on the other hand, national differences still exist regarding the interpretation and application of these rules. In addition, in non-harmonized areas, Member States still have the power to adopt national legislation which may differ from country to country. It is true, that in cases of national laws, the principle of mutual recognition applies to products legally manufactured or marketed in other Member States, which guarantees free movement of goods, although we know that from a practical point its enforcement still faces difficulties.

The volume here reviewed provides a Comparative Law Analysis on the issue of food advertising in the EU and neighbouring countries (Norway and Switzerland). The volume itself finds its origins in a comparative law seminar that was held in December 2013 in Brussels. In summary it can be stated that the reader of this Comparative Law Analysis (academics, professionals, food operators, control authorities, judges, etc.) will certainly find useful the possibility to better understand the similarities and differences in the field of requirements related to food advertising in Europe. In particular, the information given in this volume, regarding which relevant EU and national laws concerning food advertising currently exist, and how these laws are interpreted and applied by national authorities and judges, certainly may assist in evaluating the conformity of both the commercial communication made on certain foodstuffs to the applicable laws and also the Member States' legislations to EU Law. The aim of the present review is to provide a summary of the contents, style, and merit of the book

“Advertising Food in Europe - A Comparative Law Analysis” (in the following referred to as “the volume”).

In this regard, we found it very helpful that in its introductory Chapter (Part I, Chapter 1), the editor, Aude Mahy, sets the scene by highlighting the problem that even if food law today is mainly regulated at the EU level, and although the free movement of goods is one of the most essential pillars of EU law, in reality, still many technical obstacles exist in regards to the advertising of foods. These obstacles, which may consist in specific national requirements concerning the labelling and/or advertising of a product (including food) as well as in differing national implementation and interpretation of harmonized EU laws (such as Regulation (EC) No. 178/2002¹, Directive 2005/29/EC², Directive No. 2000/13/EC³ and Regulation (EU) No.

- 1 Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, in OJ L 31, 1 February 2002, pp. 1–24; Article 16 Presentation “Without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food or feed, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, shall not mislead consumers”.
- 2 Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) (Text with EEA relevance), in OJ L 149, 11.6.2005, pp. 22–39.
- 3 Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, in OJ L 109, 6 May 2000, pp. 29–42. Article 2 “1. The labelling and methods used must not: (a) be such as could mislead the purchaser to a material degree, particularly: (i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production; (ii) by attributing to the foodstuff effects or properties which it does not possess; (iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics; (b) subject to Community provisions applicable to natural mineral waters and foodstuffs for particular nutritional uses, attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties (...)”.

1169/2011⁴ which enters into force on the 13 December 2014, as well as Regulation (EC) 1924/2006⁵ and Regulation (EU) 1151/2012⁶, may hamper the free circulation of foodstuffs within the EU, even in cases where the principle of mutual recognition is applicable. This chapter also gives an overview of the harmonized rules concerning the ban of unfair commercial practices set out by Directive 2005/29/EC, which applies to all kinds of products, insofar as there are no specific EU law provisions. The objective of this legislation is to protect consumers against misleading and aggressive marketing and to ensure them to be correctly informed, to be able to make informed choices and to guarantee that claims made on products are clear, accurate and substantiated. The business-to-business relationship is, instead, ruled by Directive 2006/114/EC⁷ that pursues the scope of protecting traders against misleading and unlawful comparative advertising.

Having clarified this, in Chapter 2 of Part I, the editor, Aude Mahy, explains the structure applied in the Comparative Law Analysis performed in Part II of the volume by experienced food law experts practicing in the specific country concerned. To summarize: Each part of the national chapters contained in Part II of the volume is divided into five sections. Section I is dedicated to "Possible Bans on Food Advertising", a sector that is only partially regulated at the EU level. Thus, the national chapters in Part II of the volume analyse the existing national provisions in the field of food advertising. The trends that are highlighted in this overview, taking into consideration the

different national legislations, demonstrate that some countries have their own national legislations regulating the advertising of foodstuffs, Food and Feed Acts, or not binding acts such as Codex on Food Law or codes of conduct that may be put in place by the industry and interpreted by self-regulatory bodies. Concerning specific national restrictions, the main product category whose advertising is clearly restricted in all Member States is that of alcoholic beverages, where the audio-visual communication on these products cannot be addressed to minors who represent a specific sector of the population safeguarded through national legislation that often protects also other consumer categories such as pregnant women, elderly or ill people.

Section II of each national chapter tackles the issue of misleading advertising, regulated at the EU level by the Directives Nos. 2005/29/EC and 2006/116/EC that provide a series of rules that, however, constitute minimum requirements only, so that Member States are allowed to apply stricter rules. Therefore, for each country included in the volume, in Section II the existing national rules on misleading advertising concerning foodstuffs as well as national landmark cases regarding misleading advertising are described. In this regard, it can be noted that in the different national jurisdictions the laws implementing EU laws and/or national legislations mainly belong to both law sectors, civil and administrative law. Cases on food advertising matters, that are decided by national courts or other bodies, tackle problems related to the advertising regarding the composition, packaging, name and alleged function

4 Regulation (EU) No. 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No. 1924/2006 and (EC) No. 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No. 608/2004 Text with EEA relevance, in OJ L 304, 22 November 2011, pp. 18–63. Article 7 "Fair information practices": "1. Food information shall not be misleading, particularly: (a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production; (b) by attributing to the food effects or properties which it does not possess; (c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasizing the presence or absence of certain ingredients and/or nutrients; (d) by suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while in reality a component naturally present or an ingredient normally used in

that food has been substituted with a different component or a different ingredient. 2. Food information shall be accurate, clear and easy to understand for the consumer. 3. Subject to derogations provided for by Union law applicable to natural mineral waters and foods for particular nutritional uses, food information shall not attribute to any food the property of preventing, treating or curing a human disease, nor refer to such properties. 4. Paragraphs 1, 2 and 3 shall also apply to: (a) advertising; (b) the presentation of foods, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are displayed."

5 Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, in OJ L 404, 30 December 2006, pp. 9–25.

6 Regulation (EU) No. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, in OJ L 343, 14 December 2012, pp. 1–29.

7 Directive 2006/114/EC OF the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, in OJ L 376, 27.12.2006, p. 21.

of the products, geographic origin, characteristics, and qualities of foodstuffs that may mislead consumers and create unfair competition.

Section III of each national chapter examines the relevant national legislation on mandatory labelling by assessing whether there are any national legal definitions of a certain category/type of foodstuff that make reference to national peculiarities and that could hamper the marketing of a foodstuff coming from another country. From this analysis one may gather that many national laws still exist, which are not harmonised at the EU level, regarding the name of the food. As a consequence, the consumer of the country of marketing, used to a particular product name, may be misled regarding the true nature of the same foodstuff when differently named. As a general rule at the EU level, the use of the name under which a foodstuff is legally manufactured and marketed in the Member State of production should be accepted also in other Member States. However, in some cases national mandatory legal definitions exist that fix the conditions under which the product may be marketed under a particular sales name. At the national level there are also certain specifications that, for instance, introduce additional categories and definitions of food products in order to ensure the correct information for consumers. In this regard, from the analysis made in Section III of each national chapter, we may gather that much national legislation provides legal definitions or mere specification for particular categories of foodstuff such as cheese, yogurt, energy and sport drinks.

Section IV of each national chapter is dedicated to voluntary labelling and, in particular, to “clean labels” (such as “natural”, “pure”, “home-made”, “additive-free”, etc.) and to nutrition and health claims. The use of “clean labels” is only partially harmonised at the EU level, where requirements are fixed, for example, for the use of the terms “natural flavouring”, “mountain products”, and “traditional specialities guaranteed”. The volume gives an overview how the use of such “clean labels” is regulated in the different States, where in some countries regulatory provisions fix particular conditions for the use of terms such as “natural” or “pure” while in other countries the question of whether a certain “clean labeling” is considered as being misleading or not is decided by national case law, including self-regulatory decisions. As far as the use of nutrition and health claims is concerned, at the EU level, following the Regulation (EC) No.

1924/2006, a list of permitted health claims made on foods other than those referring to the reduction of disease risk and to children’s development and health has been adopted with Regulation (EU) No. 432/2012⁸. However, the volume shows how difficulties in marketing and advertising may arise due to the fact that the decision regarding the classification of a certain product containing “healthy” compounds, as foodstuffs or medicinal product, is still made by national administrative bodies and judges. In addition, only in some Member States national laws exist that allow the possibility to make reference to recommendations or endorsements by national associations, medical nutrition or dietetic professionals and health-related charities, including rules to be followed when making such reference. Furthermore, the use of nutrition or health claims on non-prepackaged food that benefit from certain exceptions with respect to the obligations laid down in Regulation (EC) No. 1924/2006 is ruled, in some States, through national provisions. Finally, in some countries a notification procedure is required prior to the marketing of foodstuffs (including food supplements) bearing nutritional or health claims in order to facilitate efficient monitoring by the use of these claims. Concerning the non-EU countries whose legislation is examined in the volume (Norway and Switzerland), lacking a common list of permitted health claims made on food, the legal framework applicable to the use of nutrition and health claims made on food is described more in detail in the relevant national chapters.

The last part of each national chapter (Section V) explains the main rules regarding the enforcement of food law that is only regulated at the Member State (Third State) level. In this sector the differences are highlighted due to the fact that in case of non-compliance with the labelling or advertising requirements, actions may be taken, depending on the national enforcement system, by competent public authorities and agencies and/or competitors and/or consumers associations while in some States self-regulating bodies, with respect to advertising of foodstuffs, also play an important role in enforcement.

8 Commission Regulation (EU) No. 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children’s development and health Text with EEA relevance, in OJ L 136, 25 May 2012, pp. 1–40.

The comparative law analysis provided in the volume also shows that the measures in non-compliance cases taken by the national enforcement bodies may be very different. They may consist, for instance, in the withdrawal of the product from the markets or in the imposition of a fine and/or legal proceedings before civil, administrative or criminal law bodies. The volume also reveals that in some States the information provided for foodstuffs is considered so relevant for consumers that a sort of moral enforcement of food law has been established, which foresees the publication of cases of food law infringements in the local media or in grocery retail stores.

To conclude, the volume "Advertising Food in Europe - A Comparative Law Analysis" is an important tool to better understand the existing food advertising legislation at the EU and national levels. In addition, this volume gives "food for thought" regarding the necessity and possibility of further harmonization of the legislation on food advertising at the EU level, with the purpose of ensuring, without disregarding national specificities and different consumer understanding due to cultural and linguistic factors, an equal protection of consumers' interests throughout the EU, a fully fair competition among traders within the EU and, overall speaking, in order to facilitate the free circulation of goods in the EU.

EU Food Law Handbook, by Bernd v.d. Meulen (ed.)

Wageningen: Wageningen Academic Publishers, 2014
692 pp., €75.00, hardback

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The "EU Food Law Handbook" is not only a well structured but also a very comprehensive book. It is divided into several different parts: the "Prerequisites", which covers some very interesting subjects, such as international food law, the foundations of the European Union and the embedding of food law into substantive EU law; the "Systematic analysis of food law", which looks at studies of the general provisions of food law, authorisation requirements and contaminants and restricted substances; and "Select-

ed topics," - special foods, Importing food into the EU, Food contact materials, Nutrition policy in the European Union, Intellectual property rights in the agro-food chain and even EU Feed Law and the so-called Private food law.

The purpose of the authors of this excellent *Handbook* is to analyse and explain the different institutional, substantive and procedural elements of EU food law. Focussing on the General Food Law, they discuss principles as well as specific rules addressing food as a product, the processes related to food, and communication about food to consumers through labelling. These rules define requirements on subjects like market authorisation for food additives, novel foods and genetically modified foods, food hygiene, tracking & tracing, withdrawal & recall. The powers of public authorities to enforce food law and to deal with incidents are outlined. Attention is also given to the international context (WTO, *Codex Alimentarius*).

In addition to that systematic analysis, the *Handbook* includes selected topics such as nutrition and health policy, special foods, food import requirements, food contact materials, intellectual property and animal feed.

It ends with the editor's own conclusion that «food law cannot be understood in isolation from the general aspects of EU law». Therefore, scholars and practitioners in food law may well want to keep their eyes wide open...

A set of useful annexes are also provided:

- Appendix A. Finding sources of EU law: legislation and case law;
- Data bases;
- Appendix B. Attribution of powers for the General Food Law;
- Regulation 178/2002

It is difficult for a specialist in Food Law to say which chapters are more interesting than the others are. It is worth highlighting the methodological rigour in listing and formulating different concepts and defining the procedures used to enforce food law.

"The Eu Food Law Handbook", produced in co-operation with the European Institute for Food Law, is relevant for practitioners and academics both with and without a background in law. It is ideal for educational purposes, just as its authors intended.

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