

## COMMISSION STAFF WORKING DOCUMENT

### on food intended for sportspeople

**[Supporting document for the meeting of the Working Group of the Advisory Group on the Food Chain and Animal and Plant Health on Article 13 of Regulation (EU) No 609/2013 on 21 December 2015]**

#### Introduction

Article 13 of Regulation (EU) No 609/2013 (hereinafter 'FSG Regulation') on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control<sup>1</sup> requires the Commission to present a report to the European Parliament and to the Council, after consulting the European Food Safety Authority (EFSA), on the necessity, if any, of provisions for food intended for sportspeople (hereinafter 'sports food').

The reason for requiring this report from the Commission is that the FSG Regulation repeals Directive 2009/39/EC, including the specific Directives adopted under this framework and replaces it with a new framework of the FSG Regulation covering only foods for certain vulnerable groups of consumers, for which specific composition and information rules are justified. After the entry into application of the FSG Regulation on 20 July 2016, foods classified currently as foodstuffs intended for the particular nutritional uses in accordance with Directive 2009/39/EC and not included in the scope of the new framework adopted by the European Parliament and the Council will have to comply with other relevant horizontal rules of the European food law. Sports food is not covered by the scope of the FSG Regulation but may be currently classified either (1) as 'foodstuff intended for the particular nutritional use' under Directive 2009/39/EC<sup>2</sup> or (2) as food for normal consumption governed by relevant horizontal rules of food law. Consequently, sport food products placed on the market under Directive 2009/39/EC will be affected by the repeal of this legislation.

In preparation of the drafting of the report required by Article 13 of Regulation (EU) No 609/2013, and in order to collect useful data and information of the market of sports food the Commission services commissioned an external contractor to carry out a relevant market study, including case studies. This market study was carried out by the Food Chain Evolution Consortium (FCEC Study) between January 2015 and July 2015. In the context of this study the external contractor carried out a consumer survey in order to gather information regarding consumer behaviour, understanding and consumption habits. Further to this survey an extensive survey was carried out amongst the national competent authorities of the Member States, as well. Relevant stakeholders were also consulted for the purpose of the study by the external contractor.

The European Commission also consulted the European Food Safety Authority (EFSA) which provided a scientific and technical assistance regarding sports food. In accordance with the request of the Commission EFSA compiled existing scientific advice in the area of nutrition and health claims and Dietary References values for adults that are relevant to sportspeople<sup>3</sup>. EFSA informed the Commission that the recommendations of the report of the Scientific

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<sup>1</sup> OJ L 181, 29.6.2013, p. 35

<sup>2</sup> OJ L 124, 20.5.2009, p. 21

<sup>3</sup> EFSA Scientific and technical assistance on food intended for sportspeople, 29.09.2015,

<http://www.efsa.europa.eu/en/supporting/pub/871e>

Committee on Food (SCF) adopted in 2001 on composition and specification of food intended to meet the expenditure of intense muscular effort, especially for sportsmen,<sup>4</sup> and the subsequent scientific advices of EFSA are still fully valid.

This Working Document is prepared with a view to presenting in the meeting of the Working Group of the Advisory Group on the Food Chain and Animal and Plant Health of 21 December 2015 the findings of the study and the aspects that the future report of the Commission aims at addressing.

Information included in this Working Document is only for the purpose of discussion and exchange of views and is without prejudice to the Commission's final report required by Article 13 of Regulation (EU) No 609/2013 on food intended for sportspeople.

## 1. Summary of the market of sports food

Sports food is not defined in EU legislation. However, in order to be able to carry out market analyses it was necessary to define the products which will be assessed for the purpose of the future report. For this reason this Working Document considers sports foods as products which target sportspeople, irrespective under which European legislation they are placed on the market.

In addition two categories of consumers of sports food were identified: (1) sportspeople: who practise sport once a week or more and, (2) lifestyle users: people who practise sport less than once a week or not at all.

### **Products present on the market, value of the market and its structure**

The following categories of sports food products were identified in the context of the market study:

Category	Key function
Sport drinks	Hydration; generally used during/after exercise
(Protein based) muscle strengthening, building and post exercise recovery products	Build/rebuild muscles, gain weight, recovery. Generally to be taken after exercise
Energy and performance boosting products, and products for on-going supplementation of sportspeople	Improve performance; generally to be taken either (1) pre-exercise (2) during exercise or (3) as ongoing supplement. Minority of these products may be taken after exercise.

The EU wide market for sports nutrition and drinks was worth €3.07 billion (retail value) in 2014.

Approximately 30 000 sports food products were identified in the market which number has been calculated on the basis of the innovation rate.

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<sup>4</sup> Report of the Scientific Committee on Food on composition and specification of food intended to meet the expenditure of intense muscular effort, especially for sportsmen, 28.02.2001

The highest number of sport food products can be found in the category of protein based sports food but, from the market value point of view, sports drinks can be considered as the most important category, followed by (protein based) muscle strengthening, building and post exercise recovery products.

The most expensive category is the (protein-based) muscle strengthening, building and post exercise recovery products, followed by performance boosting products, and products for on-going supplementation of sportspeople. The less expensive category of sports foods is the category of sports drinks.

The market of sports drinks is dominated by large multinational companies while in the sports nutrition sector SME<sup>5</sup> participation is characteristic mainly for companies entirely or mainly focusing on sports nutrition.

### **Distribution channels**

Lifestyle users and sportspeople considered as the most important distribution channel for sports food supermarkets/generalists shops, followed by sports supermarkets. The importance of online channels and internet is still not significant when purchasing sports food but have for lifestyle users more importance as for sportspeople. Additional distribution channels for sports food are the following: specialised shops, pharmacies and parapharmacies, fitness centres and clubs.

### **Marketing techniques, consumer understanding and consumption habits**

With respect to the marketing techniques, information on the label was identified by operators<sup>6</sup> as one of the most significant marketing techniques. Information on the label can relate to the (1) sale denomination: clear description of the function of the products (e.g. energy bars); (2) brand and packaging (e.g. the use of photos of sportspeople); (3) clear instructions for use (e.g. during or after physical activity); (4) composition and ingredients; (5) use of information such as "high energy", "source of glucose" used as mandatory indication required by Directive 2009/39/EC on foodstuffs intended for particular nutritional uses; (6) use of health claims authorised under Regulation (EC) No 1924/2006 on nutrition and health claims made on food<sup>7</sup>.

Sportspeople and lifestyle users identified the following elements of importance for the label: the list of ingredients, followed by the expected results/effects and consumption instructions, side effects, warnings on potential overdoses and use of natural ingredients/procedures in the preparation. However, the two groups of consumers have slightly different interests when ranking the importance of the mentioned information. Receiving information on the expected results or effects of the product is more relevant for sportspeople, while lifestyle users are more interested in side effects or the use of natural ingredients.

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<sup>5</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36)

<sup>6</sup> Other marketing techniques used in relation to sports food are: sponsoring of sports events, endorsement by famous sportspeople, specialised press advertising, mainstream media, word-of-mouth advertising, web marketing and internet communication

<sup>7</sup> OJ L 404, 30.12.2006, p.9

Information on the particular nutritional characteristics of sports food and its beneficial health effect for sportspeople can be provided either under Article 9 of Directive 2009/39/EC as mandatory requirement if sports food is classified as food intended for particular nutritional use or as authorised claim under Regulation (EC) No 1924/2006<sup>8</sup> if sports food is classified as food for normal consumption and governed by horizontal rules of food law. Hence, it is difficult for consumers to identify under which legislation are such information provided. Consumers in general have also little means to identify whether a claim has been authorised according to the procedure laid down in Regulation (EC) No 1924/2006 or not. Findings of the consumer survey show the trust of the consumers in non-authorised claims is not lower than the trust in authorised claims. On the basis of the consumer survey it cannot be concluded that consumers are influenced very much by the presence of a claim when purchasing sports food.

Sportspeople consume more sports food in relation to sport than to other activities and they are willing to spend more on such products than lifestyle users. The trend is reversed for consumption not related to sport or physical activities. Less sportspeople than lifestyle users consume sports food in relation to physical effort other than sport. Energy increase, recovery and endurance increase are the main reasons declared by both groups of consumers for the consumption of sports food. Still the reasons for consumption are not necessarily reflected in the intended use of the sports food which is particularly valid for lifestyle users.

## **2. Legislative framework of sports food until 20 July 2016 in the EU**

As already mentioned above, sports food may currently be classified either (1) as 'foodstuff intended for the particular nutritional use' under Directive 2009/39/EC or (2) as food for normal consumption governed by relevant horizontal rules of food law. Some Member States require notification of sports food classified as food intended for the particular nutritional use in accordance with Directive 2009/39/EC and have laid down other specific rules (e.g. definition, composition, labelling). For sports food not classified as food intended for particular nutritional use and governed by horizontal rules Member States might require notification introduced at national level for fortified foods and food supplements.

## **3. Aspects to be considered in the context of sports food after 20 July 2016**

After 20 July 2016 when Directive 2009/39/EC will be repealed, in the absence of specific legislation sports food classified currently as food intended for particular nutritional use would need to comply according to the case with the requirements of some of the following horizontal food law legislation: (1) Regulation (EC) No 178/2002<sup>9</sup> (so called 'General Food Law'); (2) Regulation (EC) No 1924/2006 on nutrition and health claims made on foods; (3) Regulation (EC) No 1925/2006 on the addition of vitamins and minerals and of certain other substances to foods (so called 'fortified food'); (4) Regulation (EU) No 1169/2011 on the

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<sup>8</sup> 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 (OJ L 404, 30.12.2006, p.9)

<sup>9</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principle and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p.1)

provision of food information to consumers; (5) Directive 2002/46/EC on food supplements<sup>10</sup>; and (6) Regulation (EC) No 258/97 on novel foods and novel food ingredients<sup>11</sup>.

In this context it should be considered how food safety, consumer information and legal clarity relevant for sports food currently classified as food intended for particular nutritional use are affected under the above mentioned legislations.

### **Consumer information**

In the absence of specific provisions after 20 July 2016 consumer information on sports food would need to be provided in accordance with Regulation (EU) No 1169/2011. Furthermore, information falling under the definition of nutrition and health claims provided for sports food on voluntary basis will have to comply with Regulation (EC) No 1924/2006. Consequently, only nutrition and health claims authorised pursuant to that Regulation will be allowed for use on sports food.

Currently there are already seven authorised health claims targeting sportspeople and some additional which may be considered relevant for them<sup>12</sup>. There are substances for which claims were not authorised, sometimes despite a positive assessment of EFSA<sup>13</sup> regarding the beneficial effect for sportspeople of the product concerned, because the claim was considered as non-beneficial for the general population from the health policy point of view (e.g. 'high in sodium').

Directive 2009/39/EC requires, in addition to the indication of the particular nutritional characteristics, that foods covered by the scope are intended for the particular nutritional uses and are clearly distinguishable from foodstuffs for normal consumption. In the absence of specific provision after 20 July 2016, when Directive 2009/39/EC will be repealed denomination and instructions for use on sports food will be governed by Regulation (EU) No 1169/2011. Article 17 of that Regulation lays down provisions on the name of the food and Article 9(1)(j) on the instructions of use, which shall be indicated in such a way as to enable appropriate use to be made of the food.

### **Composition**

In the absence of specific provisions after 20 July 2016 sports food would most probably be considered, as the case may be, either as food supplements in accordance with Directive 2002/46/EC or as fortified foods in accordance with the provisions of Regulation (EC) No 1925/2006. Consequently, they would need to comply with the relevant compositional requirements set out in those legislations.

In this context consideration should be given to Article 6(6) of Regulation (EC) No 1925/2006 which requires that vitamins and minerals added to the food should be present at least in a significant amount as defined in Regulation (EU) No 1169/2011. In sport food vitamins and minerals are sometimes added at lower level than that significant amount, to

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<sup>10</sup> Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51)

<sup>11</sup> Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ L 43, 14.2.1997, p. 1)

<sup>12</sup> FCEC Study, Section 3.3.4.1

<sup>13</sup> EFSA Scientific and technical assistance on food intended for sportspeople, 29.09.2015, <http://www.efsa.europa.eu/en/supporting/pub/871e>

ensure that the composition of the product best addresses the requirements of the body when carrying out sports activity. Nevertheless, it should be pointed out that, although it has never been used up to now, Regulation (EC) No 1925/2006 provides the possibility of granting derogation to the requirement of the 'significant amount' in justified cases for certain categories of food.

With respect to the addition of substances other than vitamins and minerals, no harmonisation took place up to now for fortified foods under Regulation (EC) No 1925/2006 and for food supplements under Directive 2002/46/EC. Hence Member States have the possibility to introduce national rules in this respect. The situation is similar regarding maximum level of vitamins and minerals where harmonisation has not taken place either. In the absence of specific rules for sports food after 20 July 2016 such national provisions would apply to this kind of products in compliance with Articles 34 to 36 of the Treaty on the functioning of the European Union, as to any other food products today classified as food supplements or fortified foods.

#### **Notification**

Member States may require notification of food supplements and fortified food for the purpose of monitoring. In the absence of specific provisions after 20 July 2016, sports food would be covered by that requirement.

#### **4. Views of the Member States and interested parties**

While the majority of Member States believe that the existing horizontal rules are either quite suitable or very suitable for regulating sports food, few Member States have recognised the need for specific rules for sports food.

Operators are clearly divided on the question whether specific legislation is necessary for sports food or whether sports food should be governed by horizontal rules of food law.

An industry group, in favour of specific legislation, believes that under horizontal rules of food law the quality of the product and the communication on sports food cannot be guaranteed, in particular as far as Regulation (EC) No 1924/2006 on nutrition and health claims is concerned.

Another industry group considers that the applicable horizontal rules are sufficient to govern the different aspects (e.g. food safety, composition, and information) related to food intended for sportspeople. However, this group of industry acknowledges that some specific aspects, in particular regarding nutrition and health claims, are not adequately addressed under the horizontal rules of food law.