



Department
for Environment
Food & Rural Affairs

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Consultation on proposed enforcement arrangements for updated EU marketing standards on Olive Oil

October 2013



Llywodraeth Cymru
Welsh Government



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Rural Development

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www.defra.uk/defra

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1. Purpose

1.1 The purpose of this consultation is to seek your views on the enforcement arrangements we propose to put in place to implement recently updated EU marketing standards on olive oil.

1.2 The EU marketing standards on olive oil detail the different categories of oil; specify the methods of analysis to be used to confirm the category of oil; specify member State control requirements; and outline labelling requirements.

1.3 The marketing standards are outlined in EU regulations that are directly applicable and afford very little flexibility. However, there are three areas on which we are seeking your views:

- Sampling regime;
- The specific details relating to the requirement for an entry and withdrawal register; and
- Maximum size of containers intended for the service industry.

2. Who is affected by the Regulations?

2.1 The Regulations will impact on:

- Operators involved in the bottling, buying and selling of olive oils (including bottlers and retailers).
- Third country operators who export to the European Union (EU) will also be affected as their products will have to be marketed in the EU according to these rules.
- Consumers who purchase olive oil products.

3. Impact Assessment

3.1 An Impact Assessment is required to assess the costs of the proposed changes. A draft has been published alongside this document for comments. This is based on the current EU legislation and will be updated based on comments received and legislative changes.

4. Duration of the consultation

4.1 25 October 2013 to 22 November 2013.

5. Enquiries

5.1 Contact for enquiries: Defra, Area 1E, Nobel House, 17 Smith Square, London, SW1P 3JR. E-mail: OliveOil.Consultation@defra.gsi.gov.uk
Telephone number 020 7238 1208.

6. How to respond

6.1 Responses can be posted to the above address or sent electronically to: OliveOil.Consultation@defra.gsi.gov.uk

7. Background

7.1 The sale of olive oil within the EU is governed by specific olive oil marketing standard regulations which seek to protect the consumer by ensuring that olive oil is marketed accurately and by providing a deterrent against fraud.

7.2 The EU marketing standards on olive oil are outlined in Council Regulation (EC) No 1234/2007¹ (“Regulation 1234/2007”), the basic EU Regulation which sets out all of the market management rules that make up the Common Agricultural Policy (CAP). The detailed rules for these standards are set out in two Commission Regulations:

- Commission Implementing Regulation (EU) No 29/2012 (“Regulation 29/2012”) covers the marketing standards for olive oil including the setting of labelling requirements.
- Commission Regulation (EEC) No 2568/91 (“Regulation 2568/91”) sets out in detail the characteristics of each category olive oil and establishes the relevant methods of analysis.

7.3 In summary the regulations:

- Detail the characteristics of the different categories of olive oil, enabling the consumer to distinguish between these categories, including the higher value extra virgin unrefined products and the lower value refined oils;
- Detail the methods of analysis to determine the characteristics of the oil; and
- Specify mandatory and optional labelling requirements. These include optional terms that may be used on the label to describe the taste and smell of extra virgin and virgin olive oil.

7.4 Specifically, Article 118(1) of Regulation 1234/2007 provides (as did its predecessor, Council Regulation (EC) No 865/2004) that the use of the descriptions and definitions of olive oils and olive-pomace oils set out in Annex XVI of Regulation 1234/2007 is compulsory for marketing those products in the European Union. Article 118(2) of Regulation 1234/2007 provides that only oils referred to in points 1(a) and (b), 3 and 6 of Annex XVI may be marketed at the retail stage. The oils permitted are:

¹ Regulation 1234/2007 is due to be repealed and replaced by a new regulation on 1 January 2014 as part of the CAP reform exercise. We do not expect the rules on olive oil to change.

- Extra virgin olive oil
- Virgin olive oil
- Olive oil – composed of refined olive oils and virgin olive oils
- Olive-pomace oil

7.5 These EU Regulations are directly applicable in each member State. However national legislation is required to give powers to enforce the provisions in the UK.

7.6 In late 2011 various media articles were published in the UK which questioned the authenticity of EU produced olive oil, suggesting widespread adulteration with cheaper oils.

7.7 In response to this bad publicity as well as to meet the challenge of competition from third country producers and to deal with structural problems within the sector, the European Commission met with Mediterranean olive oil producing member States and agreed an Action Plan to improve the reputation of EU produced olive oil.

7.8 The Action Plan made a number of recommendations including enhanced member State controls. The recommendations were discussed at the Olive Oil Management Committee and the enhanced controls were adopted in Commission Regulation (EU) No 299/2013 which amends Regulation 2568/91. The main changes are as follows:

- (i) Member State control obligations are clarified.
- (ii) A new minimum annual sampling requirement is introduced based on the amount of oil marketed in each member State. Results of the sampling carried out must be communicated to the European Commission by 31 May of the following year.
- (iii) A new provision is introduced which requires operators who hold olive oil up to the bottling stage to keep entry and withdrawal registers of each category of olive oil. Member States will be required to check that this obligation has been carried out.

7.9 These new rules will come into force on 1 January 2014 and will be enforced by national legislation, the Olive Oil (Marketing Standards) Regulations 2013, which will replace the Olive Oil (Marketing Standards) Regulations 2003 (as amended) and the Olive Oil (Marketing Standards) Regulations (Northern Ireland) 2008. It is proposed that the new Regulations will extend to the whole of the UK. **A copy of the draft version of the Olive Oil (Marketing Standards) Regulations 2014 is attached for information.**

7.10 Amendments to Regulation 29/2012 were also proposed by the European Commission. The proposal amended the labelling provisions; amended member State control requirements; and introduced a new provision to require the use of non re-useable containers in the catering sector. This proposal was withdrawn on 23 May 2013 because of the negative reaction to the requirement for a non re-useable container in the catering sector. We understand that a revised proposal, without the catering provision, is likely to be issued in the near future.

8. Enforcement

8.1 We have devised an annual sampling regime, consisting of:

(i) Annual inspections of olive oil bottling establishments to check a sample of paperwork, including compliance with the requirement to keep an entry and withdrawal register. The storage and the production facilities will also be checked. The selection of bottlers will be via a risk analysis produced annually.

(ii) Annual conformity checks which consist of a chemical and taste analysis of olive oil samples collected from operators bottling olive oil and from the retail sector. The labels of products collected for conformity checks will also be examined to ensure the labelling is compliant with EU rules.

8.2 The number of conformity checks is dependent on the amount of oil marketed in the member State. At least one conformity check must be made per thousand tonnes of olive oil marketed in the member State per year. Latest figures from the European Commission state that 59,000 tonnes was marketed in the UK. This equates to 59 conformity checks.

8.3 The sampling regime will be carried out by the Rural Payments Agency (RPA), an executive agency of Defra. They will be responsible for enforcing the legislation in the UK. The RPA will act in Wales; Scotland; and Northern Ireland under agency agreements with the Welsh Minister; Scottish Minister; and Northern Ireland Minister. Local authorities will have no duty to enforce but, at the request of the Trading Standards Institute, they will have the necessary powers to investigate, if they receive evidence of non compliance, which they wish to follow up.

Implementation approach

8.4 The exact details of the number of bottlers to be visited and the number of samples to be tested at each establishment will be determined by the risk assessment which is not part of this consultation exercise. However, we have

considered the general principles of the number of bottlers to be visited based on the dynamics of the industry.

8.5 Industry figures indicate that approximately 35,000 tonnes is marketed in the UK, of which about 15,000 tonnes is bottled abroad; and around 20,000 tonnes is imported in bulk and bottled in the UK. 24,000 tonnes is believed to be used as an input within processed products.

8.6 The bottling industry is made up of 40 operators. One company makes up 95% of the market by volume and the biggest four comprise over 99.5%.

8.7 Subject to the risk analysis, we will inspect the four largest bottlers representing 99.5% of the olive oil marketed by volume plus four others. Approximately 20 conformity checks will be undertaken from these eight bottlers. Approximately 15 establishments in the retail sector will be visited and 39 conformity checks undertaken. This gives a total of 59 conformity checks. The exact number of visits and the number of conformity checks at each establishment will be determined by the risk analysis.

8.8 Our aim would be to minimise inspections on micro businesses. This is justified from an enforcement point of view because a case of non-compliance from a micro business will have far less effect than from a larger operator. We asked the European Commission to provide an exemption for micro businesses in the revised EU regulations, but they declined to do this.

Question 1: Do you agree with the implementation approach? If not, why not, and what should the Government do instead?

9. Penalties

9.1 Member States are required to implement appropriate penalties at the national level, which must be effective, proportionate and dissuasive.

9.2 We have had discussions with the Ministry of Justice to design the enforcement regime so as to ensure that the sanctions are proportionate to the offence committed.

9.3 Following those discussions, it is proposed that a compliance notice may be issued in respect of breaches of the EU Regulations. Failure to comply with such a notice will be a criminal offence. Obstruction of inspectors e.g. failure to provide a register on request, will also be a criminal offence.

Question 2: Do you agree with the proposed approach to penalties? If not, why not, and what should the Government do instead?

10. Appeals

England and Wales

10.1 In England and Wales, an appeal against a compliance notice will be made to the General Regulatory Chamber of the First-tier Tribunal. The Tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure cases are dealt with in the interest of justice and minimising parties' costs. The composition of a tribunal is a matter for the Senior President of Tribunals to decide, and may include non-legal members with suitable expertise or experience in the issues in an appeal in addition to Tribunal Judiciary.

10.2 The General Regulatory Chamber operates under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which provide flexibility for dealing with individual cases. Rule 2 of the General Regulatory Chamber Rules states its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The Rules give the Tribunal judge wide case management powers in order to achieve these objectives. The General Regulatory Chamber rules can be found at:

<http://www.justice.gov.uk/downloads/tribunals/tribunals-rules-2009-at010411.pdf>

Scotland

10.3 In Scotland, it is proposed that an appeal against a compliance notice will be made to the sheriff.

Northern Ireland

10.4 In Northern Ireland, it is proposed that an appeal against a compliance notice will be made to the magistrate's court.

Question 3: Do you agree with the proposed approach to appeals? If not, why not, and what should the Government do instead?

11. Entry and withdrawal register

11.1 Article 7a of Regulation 2568/91 introduces a new requirement for persons holding olive oil or olive pomace-oil, from extraction at the mill up to the bottling stage (including bottling establishments), to keep entry and withdrawal registers for each category of oil they hold. It also requires member States to ensure that this obligation is complied with.

11.2 To ensure effective enforcement we propose that registers include the following information:

- Details of each delivery, despatch and disposal;
- Details of processing undertaken (including blending and bottling); and
- A calculation of stocks held at the end of each month and a record of actual physical stocks held at the end of the establishment's accounting period.

11.3 The registers will be checked by the RPA as part of the inspection regime check of paperwork during a compliance visit.

Question 4: Do you agree with our proposal for the information that is required to be included in the register? If not, why not?

12. Olive Oil Containers

12.1 Article 2 of Regulation 29/2012 sets out the rules governing the capacity of containers. No container that is intended for the final consumer is permitted to carry more than five litres of olive oil. However, a member State has the option to set a greater maximum capacity for containers of oil intended for use in service establishments such as restaurants and hospitals. Based on discussions with stakeholders, we consider that a maximum of five litres is consistent with the quality imperative, recognising that restaurants etc will use far more olive oil in a shorter period of time than households, but that only certain types of containers are suitable for the purpose.

Question 5: Do you agree with the proposed approach to containers? If not, why not?

13. Approval of packaging establishments

13.1 Article 9(2) of Regulation 29/2012 and its predecessor provides an option to member States to introduce arrangements to approve establishments which bottle olive oil. In Great Britain this provision was implemented through Regulation 10 of the Olive Oil (Marketing Standards) Regulations 2003. It enabled operators who bottled extra virgin or virgin olive oil to make an application for approval. Operators were required to sign a declaration that they possessed packaging facilities and were in compliance with the Regulations. They were given an alphanumeric bottling number to be used on extra virgin and virgin olive oil. In practice this requirement represents a burden on industry and has not proved effective in practice. **We have decided therefore, that such approvals will cease once the Olive Oil (Marketing Standards) Regulations 2014 come into force.**

14. Impact Assessment

14.1 A Consultation Impact Assessment is attached as part of this consultation exercise. The assessment presents and evaluates the available evidence on the cost and benefits of our approach. An Impact Assessment is required for any Government intervention affecting the private sector and civil society organisations. Their preparation and publication ensure that those with an interest understand and can challenge:

- why the Government is proposing to intervene;
- how and to what extent new policies may impact on them; and
- the estimated costs and benefits of the proposed and actual measures.

14.2 Consultation on the Impact Assessment (IA) also provides affected parties the opportunity to identify potential impacts that we have not considered.

14.3 Paragraph 5.15 of the IA looks at the costs to local authorities.

Question 6: Do you agree that there will be no additional costs to local authorities?

14.4 Tables 4 and 5 of the IA provide an estimate of the costs to industry to host inspection visits. This is based on the cost of staff time using Office of National Statistics' Annual Survey of hours and earnings (ASHE).

Question 7: Do you agree with the estimated cost to host inspection visits? If not, why not? Please give as much detail of alternative costs as you can.

14.5 Appendix A to this document replicates Annex 1a of Regulation 2568/91. This specifies the amount of oil to be collected for conformity checks for packaging up to 100 litres. Table 6 of the IA gives an estimate of the cost of the oil which must be taken to carry out all 59 conformity checks.

Question 8: Do you agree with the calculation to determine the cost of the oil used for conformity checks? If not, why not? Please give as much detail of alternative costs as you can.

14.6 Table 7 of the IA estimates the cost to industry to comply with the requirements to keep entry and withdrawal registers for each category of oil held.

Question 9: Do you agree with the estimated cost to keep entry and withdrawal registers? If not, why not? Please give as much detail of alternative costs as you can.

14.7 Table 8 of the IA estimates the cost to industry of the appeals process.

Question 10: Do you agree with the calculation of the cost to industry of appeals? If not, why not? Please give as much detail of alternative costs as you can.

15. Consultation Process

15.1 This consultation has been prepared in line with the Code of Practice on Consultations. This is available from the Department for Business Innovation and Skills, which can be viewed at:

<http://www.bis.gov.uk/files/file47158.pdf>

Appendix A

ANNEX Ia of Commission Regulation (EEC) No 2568/91

Sampling of olive oil or olive-pomace oil delivered in immediate packaging not exceeding 100 litres

This method of sampling applies to deliveries of olive oil or olive-pomace oil not exceeding 125 000 litres, put up in immediate packaging not exceeding 100 litres.

If the delivery exceeds 125 000 litres, it is to be subdivided into batches of 125 000 litres or under. If the delivery is less than 125 000 litres it shall constitute one batch. The method shall then be applied to each batch.

The minimum number of primary samples to be taken is determined by the size of the batch in accordance with the table set out in point 1.

The size of the primary sample is determined on the basis of the capacity of the immediate packaging, in accordance with the table set out in point 2.1.

Delivery, primary sample and laboratory sample shall mean the definitions given in standard EN ISO 5555.

'Batch' shall mean a set of sales units which are produced, manufactured and packed in circumstances such that the oil contained in each sales unit is considered to be homogenous in terms of all analytical characteristics.

1. Number of primary samples to be taken

The minimum number of primary samples to be taken will be determined by the size of the batch in accordance with the following table:

Size of batch (litres) less than	Minimum number of primary samples
7 500	2
25 000	3
75 000	4
125 000	5

The immediate packs selected to form a primary sample must be adjacent to each other in the batch.

In cases of doubt, Member States shall increase the number of primary samples to be taken.

2. Content of primary samples

2.1 Primary samples must comprise the following:

Where the immediate packaging has a capacity of:	The primary sample shall comprise the oil from:
(a) 5 litres or more	(a) 3 immediate
(b) 3 litres or more but less than 5 litres	(b) 3 immediate packs
(c) 2 litres or more but less than 3 litres	(c) 3 immediate packs
(d) 1 litre or more but less than 2 litres	(d) 6 immediate packs
(e) 0,75 litres or more but less than 1 litre	(e) 6 immediate packs
(f) less than 0,75 litres	(f) three times the oil from the minimum number of packs with a total capacity of more than 1,5 litres

2.2 The primary samples are to be kept in the immediate packaging up to the time of analysis. The oil in the primary samples shall then, as applicable, be subdivided into three laboratory samples in order to carry out:

- (a) the analyses referred to in Annexes II, III, IX and X,
- (b) the analysis referred to in Annex XII,
- (c) the other analyses.

2.3 The packs constituting a primary sample shall be subdivided in accordance with the control procedures provided for in national law.

3. ANALYSES AND RESULTS

(a) Each of the primary samples referred to in point 1 shall be subdivided into laboratory samples, in accordance with point 2.5 of standard EN ISO 5555, and analysed as follows:

- determination of free fatty acids, as referred to in the first indent of Article 2(1),
- determination of the peroxide value, as referred to in the second indent of Article 2(1),
- spectrophotometric analysis, as referred to in the eighth indent of Article 2(1),
- determination of the fatty acid composition, as referred to in the ninth indent of Article 2(1).

(b) Where one of the results of the analyses referred to in (a) for at least one of the primary samples taken from the same batch does not comply with the characteristics of the category of oil declared, the whole of the batch concerned is to be declared not to comply.

Where the results of the analyses referred to in (a) for each of the primary samples taken from the same batch are not all uniform, given the repeatability characteristics of the methods concerned, the entire batch is to be declared non-uniform and each primary sample is to be subject to the other analysis required. Otherwise, one primary sample from that batch is to be subject to the other analysis required.

(c) Where one of the results of the analyses referred to in the second paragraph of point (b) does not comply with the characteristics of the category of oil declared, the whole of the batch concerned is to be declared not to comply.

Where all the results of the analyses referred to in the second paragraph of point (b) comply with the characteristics of the category of oil declared, the whole batch is to be declared to comply.

Appendix B

Summary of questions

Question 1: Do you agree with the implementation approach? If not, why not, and what should the Government do instead?

Question 2: Do you agree with the proposed approach to penalties? If not, why not, and what should the Government do instead?

Question 3: Do you agree with the proposed approach to appeals? If not, why not, and what should the Government do instead?

Question 4: Do you agree with our proposal for the information that is required to be included in the register? If not, why not?

Question 5: Do you agree with the approached approach to containers? If not, why not, and what should the Government do instead?

Question 6: Do you agree that there will be no additional costs to local authorities?

Question 7: Do you agree with the estimated cost to host inspection visits? If not, why not? Please give as much detail of alternative costs as you can.

Question 8: Do you agree with the calculation to determine the cost of the oil used for conformity checks? If not, why not? Please give as much detail of alternative costs as you can.

Question 9: Do you agree with the estimated cost to keep entry and withdrawal registers? If not, why not? Please give as much detail of alternative costs as you can.

Question 10: Do you agree with the calculation of the cost to industry of appeals? If not, why not? Please give as much detail of alternative costs as you can.