Flavourings and food ingredients with flavouring properties for use in and on foods

2006/0147(COD) - 11/03/2008 - Commission communication on Council's position

The Commission supports the common position, which was adopted unanimously by the Council. The changes made by Council are in line with the objectives set out in the initial proposal as well as reflecting the core principles of several Parliamentary amendments tabled at first reading.

Amendments made by the Parliament accepted by the Commission and which are in line with the common position:

Criteria for authorising flavourings: taking account of Parliament's concerns, the common position clarifies what is meant by misleading the consumer in Recital 6.

Labelling natural flavourings: in line with Parliament's amendments, the common position modifies the initial proposal so that at least 95% of the flavouring component (and not 90% as originally proposed) must be obtained from the source referred to. This change corresponds better to consumer expectations and will have a limited impact on current practices.

Regulatory procedure with scrutiny: the European Parliament, the Council and the Commission agree that measures to amend non-essential elements of the Regulation by supplementing it will be subject to the regulatory procedure with scrutiny. However, both the Council and the Commission introduced the option for an urgency procedure.

Amendments made by Parliament accepted by the Commission but not incorporated in the common position:

Four Parliamentary amendments accepted by the Commission have not been incorporated into the Common position. They refer to the labelling of flavourings falling within the scope of Regulation (EC) No 1829/2003; and defining an "appropriate physical process" for the production of natural flavouring substances or flavouring preparations. In the amendment the Parliament sought to avoid traditional preparation processes being considered physical processes. The Commission accepted this amendment, given that it clarifies the situation and in case of doubt, a comitology decision can be adopted.

Commission's position on new provisions introduced by the Council:

Several new provisions have been introduced by the Council. Most of which seek to clarify the text or are in line with the objective's proposed in the initial proposal. In summary, they refer to:

- clarifying the meaning of "raw foods" and "non-compound food";
- justifying the risk based approach for the establishment of maximum levels for substances of toxicological concern, referred to in Article 5, that may be present in flavourings. It furthermore emphasizes the responsibilities of the producers in relation to those substances;
- clarifying the principle already included in the General Food Law (Regulation (EC) No 178/2002) that the rules on flavourings take into account, where appropriate, the protection of the environment. This change is consistent with the proposed Regulation on food additives and food enzymes and relevant EP amendments on the proposal on food additives;
- adding to the definition of natural flavouring substance that they correspond to substances that are naturally present and have been identified in nature. This is to void that some flavouring substances

that are not present in materials of vegetable r animal origin, but that are obtained by artificial enzymatic processes, would be considered as natural;

- adding to that the definition of source materials considered as food for the production of flavourings is valid for the purpose of this Regulation only;
- clarifying that flavourings and/or foodstuffs in which flavourings are used should not be placed on the market, if the flavouring or its use does not comply with the proposed Regulation;
- introducing the option for an urgency procedure into the regulatory procedure with scrutiny;
- clarifying labelling requirements and aligning them with the proposals on food additives and food enzymes;
- clarifying that the maximum of 5% of the flavouring component derived from other source materials shall not reproduce the flavour of the source material referred to;
- in Annex III Part A, aloin and coumarin remain included in the list of substances that shall not be added as such to food, as already established in the current legislation. Scientific consideration on potential carcinogenicity of aloin is still ongoing and there are concerns that the exposure to coumarin via the use of food ingredients with flavouring properties (cinnamon) could be already too high;
- clarifying that maximum levels will not apply to compound foods which are prepared and consumed on the same site (restaurants), that contain no added flavourings and contain only herbs and spices as food ingredients with flavouring properties;
- setting maximum levels for coumarin in certain food categories;
- increasing the maximum levels for teucrine A in alcoholic beverages from 2 to 5 mg/kg in bitter tasting spirit drinks and liqueurs with bitter taste. This change was introduced at the request of Italy which has concerns about some local traditional drinks in Italy that otherwise could no longer be maintained on the market. The Commission can accept this increase, as these spirit drinks will have a limited impact on the total exposure to teucrine A.

Major problems encountered in adoption of the Common Position:

New analytical data from Germany demonstrated that the actual levels in certain foodstuffs to which cinnamon is added, are much higher than the current maximum levels and that the Tolerable Daily Intake (TDI) was likely to be exceeded. Germany therefore requested to reintroduce maximum levels. The Member States agreed with this reintroduction. However there was major concern about traditional cinnamon containing products that could be affected by too strict levels. The Commission organised two technical meetings with Member State experts and stakeholders and, following these consultations, possible maximum levels were identified. The Commission, therefore, asked the EFSA to assess this information. The conclusions of EFSA's additional assessment are expected to be available in May 2008. The Council has in the mean time adopted maximum levels that will be reconsidered in the light of these conclusions and a joint statement of Council and Commission has therefore been prepared.

To conclude, the Commission supports the common position as adopted unanimously by the Council.