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

2006/0147(COD) - 10/03/2008 - Council position

The Council has introduced a number of modifications to the text of the initial proposal with many of these based on amendments proposed by the European Parliament. Some of the Parliamentary amendments were introduced by Council on its own initiative. Of the 43 amendments proposed by Parliament, the Council has decided to adopt either in principle or in full, 27 amendments.

In summary, the modifications made by Council are as follows:

A single legal base: accepting Parliamentary suggestions, the Council has decided to retain Article 96 of the TEU as the sole legal base for the proposal agreeing that agricultural aspects are merely incidental and not core to the proposed Regulation's objectives.

Misleading the consumer: the Council has decided to included, in accordance with Parliamentary amendments, references to "misleading the consumer" in recital 7.

Environmental protection: the Council has modified the proposal so that prior to an authorisation being granted, scientific evaluators should take any environmental impacts into consideration when authorising flavourings.. Environmental protection is also listed as one of the Regulation's objectives.

Scope: the Council clarifies that smoke flavourings are not completely excluded from the scope of the proposed Regulation. The common position, therefore, opts for the complementary application of two Regulations namely: the proposed Regulation, in the absence of more specific rules set out in Regulation (EC) No 2065/2003 on smoke flavourings.

The common position specifies that the proposed Regulation will not apply to mixtures of herbs and/or spices, mixtures of tea and mixtures for infusions, on condition that they are not used as food ingredients. This is in line with a Parliamentary amendment on the matter.

Definitions: the Council has given particular attention to the accuracy of definitions and their consistency with other Community legislation. Thus, the term "flavourings not elsewhere specified" has the same meaning as the formulation proposed by the Commission namely "flavourings" not defined elsewhere. The Council favours the latter interpretations given that it is more consistent with Article 3.

Regulatory procedure with scrutiny: the proposal has been modified in order to apply the regulatory procedure with scrutiny when adopting measures that supplement the Regulation. The Council has also introduced the urgency procedure to allow the Commission to restrict, on grounds of emergency, the use of flavourings and food ingredients with flavouring properties for which an approval is not required. The urgency procedure will also allow for amendments to Annexes II and V.

Interpretation decisions: all provisions relating to interpretations have been regrouped into a new single article. Given that they do not supplement the Regulation they have been made subject to the regulatory comitology procedure without scrutiny.

Prohibiting the use of non compliant flavourings or food containing such flavourings: for reasons of clarity, legal certainty and the correct functioning of the internal market, the Council has inserted an article that prohibits producers from placing non-compliant food enzymes on the market. This is consistent with the proposals concerning enzymes and food additives.

Use of the term "natural" flavouring: in order to safeguard consumer interests, the Council agrees with Parliamentary proposals that the term "natural" should only be sued in reference to a food, food category or a vegetable or animal flavouring source, on condition that at least 95% by w/w has been obtained from the source material (as opposed to 90% proposed in the Commission's initial proposal). Further, the common position adds that the remaining 5% flavouring component, derived from other sources materials, should not reproduce the flavour of the source material referred to.

Authorising flavourings that fall within the scope of Regulation (EC) 1829/2003 on genetically modified food and feed: the Council agrees that two authorisation procedures can be carried out simultaneously. Some drafting changes to the text have been made in order to make these provisions compatible with Regulation (EC) No 1829/2003.

Labelling: the common position streamlines labelling provisions in a bid to harmonise them with provisions already laid down by Directive 2000/13/EC. A distinction is drawn between "business to business" labelling and the labelling of products intended for the final consumer. Although, the structure of the Chapter on Labelling is different to that proposed by Parliament, the underlying principles, nevertheless, remain the same.

Transitional measures for products already on the market: The Council has allowed for a two year transition phase, from the entry into force of the Regulation. Thus, food lawfully placed on the market or labelled during this two-year period may be marketed until their date of minimum durability or use-by-date.

Amendments not incorporated in the common position include, *inter alia*:

Precautionary principle: given that this principle already applies to general food law, the Council has decided there is no specific need to refer to it in the proposed Regulation. Further, and taking account of the risk analysis framework, the precautionary principle can only be taken into account within the context of risk management, never in the risk assessment phase, as suggested by Parliament.

Defining "appropriate physical process": the Council does not wish to confuse the traditional food preparation processes listed in Annex II with the "appropriate physical process".

Defining "flavouring substance": the Council indicates, in recital 14, which flavouring substances can be considered products. Defining this term would restrict the methods that may be used.

Decisions submitted to the regulatory comitology procedure: decisions on whether or not a given substance should fall within the scope of the Regulation are of an interpretive nature and as a result do not fall under the regulatory comitology procedure with scrutiny – in this case i) rules on implementing Annex IIIB and the common methodology for monitoring the consumption and use of flavourings – are of an interpretive nature and therefore do not supplement the Regulation. As a result they do not fall within the scope of the regulatory comitology procedure with scrutiny.

Labelling of GMOs: food additives remain subject to the labelling provisions as defined in Directive 2000 /13/EC on the approximation of the laws relating to labelling, presentation and advertising foodstuffs, as

well as Regulation (EC) No 1829/2003 on genetically modified food and feed. Any amendments that could potentially interfere with the scope of the horizontal Regulations in force have not been accepted by Council.

Conditions for use: the Council has decided not to include a reference to "benefiting the consumer" and "the technological need as a general condition for the use of flavouring" as suggested by Parliament given that the implementation of these provisions would not be possible.

Labelling: although the Council has reorganised the Chapter on Labelling, the principles underlying the provisions remain fundamentally the same. However, the Council is unable to accept proposals to label GMOs. This is due to the fact that it would not be consistent with related EU legislation on both labelling and GMOs.

Entry into force: Parliament's proposals to change the dates for the entry into force of certain provisions have been rejected by Council on the grounds that they can only apply after the Community list of authorised flavourings and source materials has become applicable. Further the date of application of the Community list can only be determined after it has been adopted through the comitology procedure with scrutiny and pending the outcome of an EFSA evaluation.

Presence of toxic substances: The Council attaches great importance to using a risk-based approach to the setting of maximum limits in the proposed Regulation. As a result certain Parliamentary suggestions on the presence of toxic substances go against the need to provide a high level of protection to human health. Further, the Council is of the view that a general exclusion, as suggested by on amendment, regarding the application of Annex III B to compound food to which only herbs and spices have been added is too broad and would not provide sufficient protection to consumers. On the grounds of proportionality, the Council concludes that the exclusion from maximum levels set in Annex III B is justified for the use of herbs and spices on condition that they are used in compound foods which are prepared and consumed on the same site and thus will not affect cross-border trade.

To conclude, the Council believes that the common position offers a balanced approach as well as incorporating many of Parliamentary suggestions.