Food additives

2006/0145(COD) - 10/03/2008 - Council position

The Council has introduced a number of modification to the text of the initial proposal with many of these modification based on amendments proposed by the European Parliament. Some of the Parliamentary amendments were introduced by Council on its own initiative. Of the 59 amendments proposed by Parliament, the Council has decided to adopt either in principle or in full, 33 amendments.

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

Misleading the consumer: the Council has included references to “misleading the consumer” in both recital 7 and Article 6.

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. Environmental protection is also listed as one of the Regulation’s objectives.

Food intolerance or allergies: the Council recognises that the use and maximum levels of food additives should take account of exposure to special groups of consumers and those with allergies in particular.

Regulatory comitology procedure with scrutiny: the Regulation has been adapted so that in cases where measures are adopted that supplement the Regulation, the regulatory procedure with scrutiny will apply. In order to improve the efficiency of the Regulation’s provisions the Council decided to use the regulatory procedure with scrutiny with curtailed time limits when establishing the Community list of additives. This will also apply to transitional measures.

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.

Authorisation of additives falling within the scope of Regulation (EC) No 18 29/2003 on genetically modified food and feed: the Council agrees that two authorisation procedures can be carried out simultaneously, albeit that final authorisation will be subject to the food additives Regulation. Some drafting changes to the text have been made in order to make these provisions compatible with Regulation (EC) No 1829/2003.

Transitional measures for products already on the market: a one year transitional period, from the date of entry into force of the Regulation, has been made by the Council. Foods lawfully placed on the market or labelled during this year may be marketed until their date of minimum durability or use-by-date.

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.

Nanotechnology: in line with amendments proposed by Parliament, the Council agrees that, in cases where a food additive has been produced by methods significantly different from those included in previous risk assessments, then, a new evaluation will be necessary.

Parliamentary 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.

Food additives not to be used with other food additives: the Regulation already stipulates that the use of food additives has to be listed in the Community list, thus it is superfluous to repeat this.

Re-evaluation programme to review authorisations: the Council is of the view that strict review criteria already exist in the proposed Regulation. A system is already being proposed for the continuous observation and re-evaluation of food additives that take account of changing circumstances. An additional review would represent an unnecessary administrative burden for producers, users, the EFSA, the Commission and the Member States.

Review of existing authorisations: the Council is of the view that additives that have already been authorised can be transferred on the list of authorised additives once the safety review has take place. The Council does not believe that it is necessary for the EFSA to conduct a second review.

Scope: the common position does not extend the scope of the proposed Regulation to include "plant protection products used for post-harvest treatment" given that they are already subject to Directive 91/414 /EEC. On the other hand, the Council is of the view that "microbial cultures" should be included in the scope of the Regulation given that some cultures are added to foods toward the end of their manufacture for preservation purposes. Similarly, given that "blood proteins" are already listed as a food additive under existing Community law they too should be included in the scope of the proposed Regulation.

Decision 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.

Definitions: the Council decided not to include an "additional technological" effect in Article 3 on the grounds that it is too broad and may exclude substances used as food additives.

Food reduced in sugars: The Council decided that introducing the concept of "food reduced in sugars" could result in an increase of products in which sweeteners may be used, leading to a possible increase in the consumption of such additives.

Consumer benefits: an amendment proposing that one of the conditions for including a good additive on the Community list should refer to a "reasonable technological need" in terms of benefiting the consumer. However, the proposed Regulation already stipulates that an additive needs to have certain benefits and advantage for the consumer – repeating this requirement would, therefore, be superfluous.

Labelling 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.

To conclude, the Council is of the view that the common position is both balanced and objective as well as having taken account of Parliamentary suggestions.