Production and marketing of honey: pollen in honey; aligning the Directive with the TFEU (Commission delegated and implementing powers)

2012/0260(COD) - 21/09/2012 - Legislative proposal

PURPOSE: to align existing Commission implementing powers with the provisions laid down in the Treaty on the Functioning of the European Union (TFUE) and clarify explicitly the status of pollen as a constituent particular to honey rather than an ingredient of honey.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFUE) distinguish two different types of Commission acts:

- **Article 290 of the TFUE** allows the legislator to delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act (delegated acts);

- **Article 291 of the TFUE** allows Member States to adopt all measures of national law necessary to implement legally binding Union acts (implementing acts).

Following a reference for a preliminary ruling under Article 234 EC for the Bayerischer Verwaltungsgerichtshof *(case C-442/09)*, the **Court of Justice** issued a ruling, whereby it qualifies pollen in honey as an ingredient within the meaning of Article 6(4)(a) of Directive 2000/13/EC on the approximation of laws of the Member States relating to the labelling, presentation and advertising of foodstuffs.

In light of these considerations, a draft proposal amending Directive 2001/110/EC has been prepared.

IMPACT ASSESSMENT: no significant changes for interested parties are expected and for this reason, no impact assessment has been carried out.

LEGAL BASIS: Article 43 TFEU.

CONTENT : the proposal aims to:

- **identify the delegated and implementing powers** that should be conferred upon the Commission as regards Directive 2001/110/EC and establish the corresponding procedure for adoption of this act in the new legal context determined by the entry into force of Articles 290 and 291 TFUE;

- clarify, in view of the judgement of the Court of Justice in *Case C-442/09*, that **pollen in honey is not an ingredient in the sense of Article 6(4)(a) of Directive 2000/13/EC of the European Parliament and of the Council, but is a constituent of honey,** which is a natural substance that has no ingredients. This clarification will not prevent the applicability of Regulation (EC) No 1829 /2003 to honey containing GM pollen, and in particular will not affect the conclusion of the Court

of Justice that honey containing GM pollen can be placed on the market only if it is covered by an authorisation in accordance with that Regulation.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.