



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Brussels, 25 April 2014
(OR. en)

2012/0260 (COD)

PE-CONS 65/14

DENLEG 63
AGRI 190
SAN 126
ENV 251
CODEC 735

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL amending Council Directive 2001/110/EC relating to honey

DIRECTIVE 2014/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Council Directive 2001/110/EC relating to honey

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 11, 15.1.2013, p. 88.

² Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal)] and decision of the Council of ...

Whereas:

- (1) Council Directive 2001/110/EC¹ defines honey as the natural sweet substance produced by *Apis mellifera* bees ('bees'). Honey consists essentially of different sugars, predominantly fructose and glucose, as well as other substances such as organic acids, enzymes and solid particles derived from honey collection. Directive 2001/110/EC limits human intervention that could alter the composition of honey and thereby allows for the preservation of the natural character of honey. In particular, Directive 2001/110/EC prohibits the addition of any food ingredient to honey, including food additives, and any other addition other than honey. Similarly, that Directive prohibits the removal of any constituent particular to honey, including pollen, unless such removal is unavoidable in the removal of foreign matter. Those requirements are in line with the Codex Alimentarius standard for honey (Codex Stan 12-1981).

- (2) Pollen is part of the composition criteria for honey set out in Directive 2001/110/EC. Available evidence, including empiric and scientific data, confirms that bees are the origin of the presence of pollen in honey. Pollen grains fall into nectar which is collected by bees. In the hive, collected nectar containing pollen grains is transformed into honey by bees. According to the available data, additional pollen in honey can come from pollen on bees' hair, from pollen in the air inside the hive and from pollen that was packed in cells by bees and released as a result of the accidental opening of those cells during the extraction of honey by food business operators. Pollen can therefore be said to enter the hive as a result of the activity of bees and is naturally present in honey regardless of whether or not food business operators extract that honey. Furthermore, the deliberate addition of pollen to honey by food business operators is prohibited under Directive 2001/110/EC.

¹ Council Directive 2001/110/EC of 20 December 2001 relating to honey (OJ L 10, 12.1.2002, p. 47).

- (3) Regulation (EU) No 1169/2011 of the European Parliament and of the Council¹, defines 'ingredient' as any substance used in the manufacture or preparation of a foodstuff and still present in the finished product, even in altered form. That definition implies a deliberate use of a substance in the manufacture or preparation of food. Taking into account the natural character of honey, and in particular the natural origin of the presence of constituents particular to honey, pollen, being a natural constituent particular to honey, should not be considered to be an 'ingredient' of honey within the meaning of Regulation (EU) No 1169/2011.

¹ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

- (4) This Directive is without prejudice to the application of Regulation (EC) No 1829/2003 of the European Parliament and of the Council¹ to honey containing genetically modified pollen, since such honey constitutes food produced from genetically modified organisms within the meaning of that Regulation. In Case C-442/09², Karl Heinz Bablok and Others v Freistaat Bayern, the Court of Justice of the European Union ruled that the determining criterion for the application of Regulation (EC) No 1829/2003, as set out in recital 16 of that Regulation, is whether material derived from the genetically modified source material is present in food. Honey containing genetically modified pollen should therefore be regarded as being "food (partially) produced from a GMO" within the meaning of point (c) of Article 3(1) of Regulation (EC) No 1829/2003. Laying down a provision to the effect that pollen is not an ingredient of honey does not therefore affect the Court's conclusion in Case C-442/09 that honey containing genetically modified pollen is subject to Regulation (EC) No 1829/2003, in particular to the requirements thereof concerning authorisation prior to placing on the market, supervision and, where applicable, labelling.
- (5) Under the labelling requirements of Regulation (EC) No 1829/2003, there is no obligation to indicate the presence of genetically modified pollen in honey on labels for honey if the following conditions are met: such pollen does not exceed 0,9 % of the honey, and its presence in the honey is adventitious or technically unavoidable. It should be recalled that Directive 2001/18/EC of the European Parliament and of the Council³ provides that Member States may take appropriate measures to avoid the unintended presence of genetically modified organisms in honey.

¹ Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ L 268, 18.10.2003, p. 1).

² 2011 ECR I-07419.

³ Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ L 106, 17.4.2001, p. 1).

- (6) Under Directive 2001/110/EC, if honey originates in more than one Member State or third country, the mandatory indication of the countries of origin may be replaced by one of the following, as appropriate: 'blend of EC honeys', 'blend of non-EC honeys', 'blend of EC and non-EC honeys'. Following the entry into force of the Treaty of Lisbon, the European Union replaced and succeeded the European Community. It is therefore appropriate to clarify the relevant labelling requirements by replacing the reference to "EC" by a reference to "EU".
- (7) Directive 2001/110/EC confers power on the Commission to implement some of its provisions, in particular power to adopt measures necessary for implementation of provisions relating to adaptation to technical progress and for bringing that Directive into line with general Union legislation on foodstuffs. Furthermore, Directive 2001/110/EC confers power on the Commission to adopt methods to permit the verification of the compliance of honey with the Directive. It is necessary to review the scope of that power.
- (8) In order to ensure fair commercial practices, to protect consumer interests and to enable the setting out of relevant methods of analysis, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to define quantitative parameters for the criterion of "mainly" as regards the floral or vegetable origin of honey and the minimal content of pollen in filtered honey following removal of foreign inorganic or organic matter. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (9) Following the adoption of Regulation (EC) No 178/2002 of the European Parliament and of the Council¹, which applies to all stages of production, processing and distribution of food and feed at Union and national level, general Union provisions on foodstuffs apply directly to the products covered by Directive 2001/110/EC. It is therefore no longer necessary for the Commission to have power to align the provisions of that Directive to the general Union legislation on foodstuffs. The provisions conferring such power should therefore be deleted.
- (10) Following the adoption of Regulation (EU) No 182/2011 of the European Parliament and of the Council², it is appropriate to adapt the relevant provisions of Directive 2001/110/EC to that Regulation.
- (11) In order to allow Member States to adopt the national laws, regulations and administrative provisions necessary to comply with Directive 2001/110/EC, as amended by this Directive, a transposition period of twelve months should be established. During that period, the requirements of Directive 2001/110/EC, without the amendments introduced by this Directive, remain applicable.

¹ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (12) In order to take into account the interests of food business operators who place on the market or label their products in accordance with the requirements applicable before the application of the national provisions transposing Directive 2001/110/EC, as amended by this Directive, it is necessary to establish appropriate transitional measures. Therefore, it should be possible for products placed on the market or labelled before the application of those provisions to continue to be marketed until the exhaustion of stocks.
- (13) Directive 2001/110/EC should therefore be amended accordingly.
- (14) Since the amendments relating to conferral of power on the Commission concern only the Commission power, they do not need to be transposed by the Member States.
- (15) Since the objectives of this Directive, namely to provide that pollen being a natural constituent particular to honey should not be considered an ingredient of honey, to clarify the labelling requirements for the cases where the honey originates in more than one Member State or third country, and to review the scope of the existent power conferred on the Commission, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments

Directive 2001/110/EC is amended as follows:

(1) In Article 2(4), point (a) is replaced by the following:

"(a) the country or countries of origin where the honey has been harvested shall be indicated on the label.

Notwithstanding the first subparagraph, if the honey originates in more than one Member State or third country, the indication of the countries of origin may be replaced with one of the following, as appropriate:

- 'blend of EU honeys',
- 'blend of non-EU honeys',
- 'blend of EU and non-EU honeys'."

(2) In Article 2, the following point is added:

"5. Pollen, being a natural constituent particular to honey, shall not be considered to be an ingredient, within the meaning of point (f) of Article 2(2) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council*, of the products defined in Annex I to this Directive.

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- * Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18)."

(3) Article 4 is replaced by the following:

"Article 4

1. For the purposes of the second paragraph of Article 9 of this Directive, the Commission may, taking into account international standards and technical progress, by means of implementing acts that are in accordance with Regulation (EC) No 882/2004 of the European Parliament and of the Council*, set out methods of analysis to verify whether honey is compliant with the provisions of this Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 7(2) of this Directive. Until the adoption of such methods, Member States shall, whenever possible, use internationally recognised validated methods of analysis such as those approved by Codex Alimentarius to verify compliance with the provisions of this Directive.

2. For the purpose of ensuring fair commercial practices and protecting consumer interests and enabling the setting out of relevant methods of analysis, the Commission shall be empowered to adopt delegated acts in accordance with Article 6 to supplement this Directive by laying down the quantitative parameters relating to the following:
- (a) the criterion of "mainly" as regards the floral or vegetable origin of honey as referred to in the first indent of Article 2(2)(b); and,
 - (b) the minimal content of pollen in filtered honey following removal of foreign inorganic or organic matter referred to in point 2(b)(viii) of Annex I.

The Commission shall provide, in those delegated acts, for appropriate transitional arrangements for products placed on the market before the date of application of those delegated acts.

* Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1)."

(4) Article 6 is replaced by the following:

"Article 6

1. The power to adopt the delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 4(2) shall be conferred on the Commission for a period of five years from ...⁺. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 4(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

⁺ OJ: Please insert the date: date of entry into force of this amending directive.

5. A delegated act adopted pursuant to Article 4(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."

(5) Article 7 is replaced by the following:

"Article 7

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health (the 'Committee') established by Article 58(1) of Regulation (EC) No 178/2002 of the European Parliament and of the Council*. The Committee is a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council**.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

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- * Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).
 - ** Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)."

(6) In Annex II, the third paragraph is replaced by the following:

"Without prejudice to point 2(b)(viii) of Annex I, neither pollen nor any other constituent particular to honey, may be removed except where this is unavoidable in the removal of foreign inorganic or organic matter."

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with points (1), (2) and (6) of Article 1 and Article 3. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

Member States shall determine how such reference is to be made.

2. Member States shall apply the measures referred to in paragraph 1 from ...⁺.

⁺ OJ: Please insert the date: 12 months after the entry into force of the Directive.

Article 3
Transitional measures

Products which are placed on the market or labelled before ... ⁺, in accordance with Directive 2001/110/EC, may continue to be marketed until the exhaustion of stocks.

Article 4
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5
Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

⁺ OJ: Please insert the date: 12 months after the entry into force of the Directive.