Novel foods

2008/0002(COD) - 24/03/2010 - Commission communication on Council's position

The position of the Council reflects the result of the examination of the Commission's proposal taking into account the amendments voted by the European Parliament. The Council has included in its position several amendments adopted at first reading by the European Parliament and also accepted by the Commission.

The Commission has accepted all the changes introduced by the Council to its proposal except the inclusion of the offspring (first generation) of cloned animals in the scope of the proposal and the proposed adaptations of several comitology related provisions to the Lisbon Treaty. Therefore the Commission can not support the position of the Council.

Animal cloning: the Commission does not support the inclusion of food from clones' offspring within the scope and therefore can not agree with the Council?s position. The Commission position is to maintain the legal status quo for the food produced with new breeding techniques such as cloning and to prepare the foreseen report by the end of the year.

The Commission considers that there is no justification to include in the scope food from clones' offspring as they are obtained through conventional breeding techniques and that the submission of food from clones' offspring to a pre-market authorisation regime would therefore be disproportionate to the objectives of the regulation, in particular food safety, and not in line with the Treaty on the Functioning of the European Union. In addition, such provision would be at variance with EU international commitments.

Adaptation to the Lisbon Treaty: following the entry into force of the Lisbon Treaty, the position of the Council was adapted to take into account Articles 290 and 291 of Treaty

on the Functioning of the European Union.

The adoption of further criteria to clarify the definitions laid down in Article 3 2) points a) (i) to (iv) related to sub-categories of novel foods, in point c) on the definition of "engineered nanomaterials" and point d) and e) related to traditional foods from third countries would be ensured through implementing acts. The Commission considers that the determination of these criteria is a measure aimed to supplement non essential elements of the Regulation which should be adopted through delegated acts.

As regards the adaptation of the definition of "engineered nanomaterials" to scientific and technical progress and to definitions agreed at international level, the Commission considers that the absence of a provision in the position of the Council in first reading allowing the revision of the definition to reflect the technical evolution implies the introduction of the ordinary legislative procedure for its revision. This would prevent this definition to reflect the best state of science and would have negative consequences for the innovation in the food

industry. Such adaptation is designed to amend non essential elements of this regulation and should be adopted through delegated acts.

The Commission cannot accept recital 36 as it stands concerning the consultation of experts in the preparation of delegated acts. Lastly, on the duration of the period to raise objections for delegated acts, the Commission considers that the Council did not provide enough reasons to opt for a three-month period. The Commission insists on the two-month period (which may be extended by one additional month) and cannot support this amendment of the Council.

The Commission can nevertheless support the adaptation of the following measures through implementing acts:

- the procedure for determination of the novel food status;
- the decisions whether a type of foods fall within the scope;
- the update of the list of traditional foods from third countries;
- the adoption of detailed rules for implementation of the procedure for traditional foods from third countries;
- the update of the Union list in case of data protection before the expiry of the 5 year- period of data protection;
- the adoption of implementing measures to ensure public information;
- the adoption of transitional measures for pending requests;
- the update of the Union list of authorised novel foods.