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From:	General Secretariat of the Council
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directives 2001/110/EC relating to honey, 2001/112/EC relating to fruit juices and certain similar products intended for human consumption, 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption, and 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption - Comments from the Polish delegation

Delegations will find attached the Polish delegation's comments and replies in response to the request from the Presidency sent on 20 December 2023, and that can be found in document 16745/23.

ANNEX

Poland's answers in response to the Belgian Presidency document no. 16745/23

Poland thanks the Belgian Presidency, for the document 16745/23. Please find below Poland's responses to the questions submitted therein.

1. HONEY

1.1 *What is the opinion of the Member States on the introduction of a traceability system that requires Member States to trace back the entire supply chain of a given honey to beekeepers or harvesting operators in the case of imported honey (AM 21, 56)?*

PL response: AM 21 refers not only to imported honey, but to all honey placed on the market under a different name than the beekeeper's name. Therefore, in Poland's opinion the proposed identification of honey is too far-reaching proposal and imposes additional duties on the sector. In many cases identification will not refer to the origin of the honey. Migratory apiaries collect honey inside and outside the country. If a traceability system for honey is introduced, the information will concern the location of the beekeeper's headquarter, not the region honey comes from.

1.2 *What is the opinion of the Member States on the proposed change of the definition of honey, in particular to exclude ultrafiltration, artificial evaporation and vacuum evaporation as allowed techniques and to introduce a new type of honey, namely 'unheated honey' (AM 19, 20, 26, 27, 29, 30, 31, 32, 67)?*

PL response: The temperature inside the hive is approximately 34-35°C. Heating the slices to such temperature is a typical beekeeping practice and should not be restricted. Therefore the introduction of a new type of honey "unheated honey" is inappropriate.

In beekeeping practice, external factors often prevent bees from evaporating water inside the hive (in the case of autumn harvest of honeydew or goldenrod,) when the temperature drops and the humidity increases. Therefore, in Poland's opinion, it should be possible for beekeepers to evaporate excess water in honey in order to avoid the fermentation process of honey.

Directive 2014/63/EU of the European Parliament and of the Council of 15 May 2014 amending Council Directive 2001/110/EC relating to honey prohibits the removal of any constituent particular to honey, including pollen, unless such removal is unavoidable in the removal of foreign matter. This provision refers to ultrafiltration of pollen and its modification is not necessary.

2. FRUIT JUICE

2.1 *What is the opinion of the Member States on the proposal to introduce origin labelling for fruit in fruit juices (main AM 33)?*

PL response: AM 33 - the rationale and impact assessment of which are unknown, requires broader analysis and discussion, so Poland cannot accept it.

The EC document has not include a proposal to introduce fruit origin labelling in fruit juices. This issue was not identified and examined in the impact analysis of the EC proposal as requiring clarification in the "juice directive," so it is difficult to predict its consequences.

Additionally AM 33 does not have the important issue of linking quality to origin or fraud, as is demonstrated in the case of honey.

Therefore, the introduction of mandatory labelling of the origin of fruit in fruit juices in the provisions of the "Juice Directive" raises serious doubts of Poland. Mandatory labelling measure shouldn't be introduced without a proper detailed EC report assessing its feasibility and potential social, economic and sustainability impacts, in accordance with better regulation procedures.

Existing EU horizontal legislation (including Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers) provides the possibility and clarifies the rules for food origin labelling.

2.2 What is the opinion of Member States on the proposal to restrict claims for reduced-sugar fruit juices and to prohibit any comparative claims for those products in comparison with the fruits they originate from or 'normal' fruit juices (AM 36)?

PL response:

In the opinion of national experts, from a legal point of view, this EP's amendment seems to be inappropriately worded, which is why Poland does not support it.

This is indicated by analyses carried out in Poland regarding the content of this amendment and Regulation (EU) No. 1924/2006 - we will send their description in written comments after the meeting.

In its current form, the EP's amendment prohibits, among others: claims that are not allowed anyway (comparing juices to fruit).

It is not clear whether the authors of the amendment intend to prohibit to use on labels of juices with reduced sugar content authorized nutrition and health claims or other information used on a voluntary basis pursuant to Art. 36 of the regulation No. 1169/2011? In the second case, please remember that such information based on art. 36 of Regulation No. 1169/2011 also cannot mislead the consumer.

A scientific institution should comment the issue of prohibiting the use of authorized health and nutrition claims on juices with reduced sugar content e.g. EFSA, as it is a question relating to nutrition.

Without the EP's amendment, juices with reduced sugar content could have on a label on a voluntary basis, authorized nutrition and health claims, in accordance with Regulation 1924/2006. According to the national analysis, none of authorised claims allows comparison between juices and fruit, which appears to have been the subject of the Council's mandate and agreement.

Additional information:

Comparative claims compare the composition of a given food with a range of products in the same category. In the case of juices with reduced sugar content, the reference product to which such new juice should be compared will be juices produced in a standard way. Thus, it cannot be fruit, as the EP suggests in its amendment, because it is not the same food category.

The draft directive amending the Directive 2011/112/EC provides a new category of food, i.e. fruit juice with reduced sugar content and fruit juice from concentrated juice with reduced sugar content, which products name will have the term - accordingly: "reduced - sugar fruit juice", " reduce -sugar fruit juice from concentrate".

Moreover, it was indicated that these fruit juices must have at least 30% less sugar than traditional juices in order to comply with the provisions of Regulation 1924/2006 (recital 9 of the draft).

Above mentioned names of these new juices are similar to the authorized nutrition claim "reduced [name of nutrient]", but the principles and the conditions for the use of comparative statements are specified in Art. 9 of the regulation No. 1924/2006, which states:

1. Without prejudice to Directive 84/450/EEC, a comparison may only be made between foods of the same category, taking into consideration a range of foods of that category. The difference in the quantity of a nutrient and/or the energy value shall be stated and the comparison shall relate to the same quantity of food.

2. Comparative nutrition claims shall compare the composition of the food in question with a range of foods of the same category, which do not have a composition which allows them to bear a claim, including foods of other brands.

Moreover, recital 21 of the preamble of regulation no/ 1924/2006 states that in the case of comparative claims it is necessary that the product being compared be clearly identified to the final consumer.

Comparative claims compare the composition of a given food with a range of products in the same category. In the case of juices with reduced sugar content, the reference product to which such new juice should be compared will be juices produced in a standard way. However, it cannot be fruit, as the EP suggests in its amendment, because it is not the same food category.

Pursuant to the annex to Regulation No. 1924/2006, the list of comparative nutritional claims is currently a closed catalogue and consists of four claims:

• increased [name of the nutrient]

• reduced [name of the nutrient]

• light

• energy - reduced.

In the case of a nutrition claim *reduced in [name of the nutrient],* the conditions of use are as follows:

"A claim stating that the content in one or more nutrients has been reduced, and any claim likely to have the same meaning for the consumer, may only be made where the reduction in content is at least 30 % compared to a similar product, except for micronutrients, where a 10 % difference in the reference values as set in Directive 90/496/EEC shall be acceptable, and for sodium, or the equivalent value for salt, where a 25 % difference shall be acceptable".

The condition of reducing sugars by 30% was used in the discussed draft directive amending Directive 2011/112/EC in the context of the use of the term "reduced - sugar fruit juice".

It should be added that Regulation No. 1047/2012[1] clarified the conditions for using the claim *reduced content of [name of the nutrient]* in relation to its application to the sugar content, i.e.:

"The claim "reduced sugars", and any claim likely to have the same meaning for the consumer, may only be made if the amount of energy of the product bearing the claim is equal to or less than the amount of energy in a similar product.".

However, in the discussed draft directive amending Directive 2011/112/EC does not mention the **second condition - that the energy value of the product bearing the information *"reduced sugar content"* must be equal to or less than the amount of energy in a similar product**.

If a ban on the use of sweeteners and sugar in this type of juices is introduced, this condition will most likely be met for juices with reduced sugar content. Poland would like to ask the Belgian Presidency as follows:

- for consistency with the provisions of Regulation 1924/2006 and clarity in the interpretation of the provisions, should this condition be added?

There is an information in recital 9 of the draft directive amending the directive 2011/112/EC –

" In order to ensure consistency with Regulation (EC) No 1924/2006 the reduction of sugar content should be at least 30 %compared to fruit juice and fruit juice from concentrate."

Meanwhile, in order to be compliant with Regulation 1924/2006, the juices with reduced sugar would also have to be met the second condition concerning the energy value.

2.3 *What is the opinion, in principle, of the Member States on the proposal to subordinate the creation of the new categories of reduced-sugar fruit juices to the adoption of criteria better defining the essential physical, chemical, organoleptic and nutritional characteristics of an average type of juice (AM 37, 38)?*

PL response:

PE AM 37 and 38 are in line with the position already presented by Poland, so Poland support them.

[1] COMMISSION REGULATION (EU) No 1047/2012 of 8 November 2012 amending Regulation (EC) No 1924/2006 with regard to the list of nutrition claims

According to PL, it is a very good solution to create a delegated act and include in it the possibility to also use enzymatic methods to reduce the sugar content of fruit juices, and to include the following enzymes to be used to reduce the sugar content: oxidoreductases, hydrolases, transferases and isomerases (to reduce the sugar content by enzymatic methods).

The full wording of the amended provision would then be as follows:

- *Enzyme preparations: pectinases (degrading pectin), proteinases (degrading proteins), amylases (degrading starch), cellulases (limited use to facilitate the disruption of cell walls), oxidoreductases, hydrolases, transferases and isomerases (to reduce the sugar content by enzymatic methods) meeting the requirements of Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes).*

Poland fully supports the possibility of including new powers for the Commission to establish regulations with regard to the clarification of their quality including the clarification of new technologies that could be used to reduce the sugar content of fruit juices.

Poland supports the possibility of giving new powers to the Commission to establish methods of analysis, taking into account international standards and technical progress, to verify that the products covered by the Juice Directive (i.e. those listed in Annex I, Part I, points 1(a), 1(b), 2, 6(a), 6(b) and 7) comply with the provisions of this Directive. In addition, until such methods are adopted, Member States shall, as far as possible, use internationally recognized validated methods of analysis such as those approved by the Codex Alimentarius to verify compliance with the provisions of Directive 2001/112/EC.

3. JAM

3.1 *What is the opinion of the Member States on the proposal to introduce origin labelling for fruits and sugar in jams (AM 39)?*

PL response:

AM 39 - the rationale and impact assessment of which are not known, requires a broader analysis and discussion, hence Poland cannot accept it.

Poland's opinion on the proposal to introduce fruit and sugar origin labelling in jams (AM 39) is similar to that presented to the EP AM 33 on the introduction of mandatory fruit origin labelling for fruit juices in sector regulations. This seems to be an excessive measure, very burdensome for the industry, and the existing horizontal regulations do not prohibit the labelling of jams with the origin of fruit or sugar on a voluntary basis, if the manufacturer so decides. The issue of fruit and sugar origin labelling for jams and jellies was also not included in the EC Proposal. The main concerns relate to practical feasibility, the impact on operational and administrative costs of production and the environment due to the need to produce multiple packaging variants with different countries of origin of raw materials, and the associated potential risk of increased food waste.

4. OTHER

4.1 *Are there any other issues Member States wish to express concerning the content of the mandate of the European Parliament?*

PL's opinion on EP amendment 11

AM 11, which is supplement to the preamble text proposed by the European Commission proposal, is in Polish opinion redundant provision that PL does not support. The provision depreciates juice products relative to other beverages and foods. So we propose not to accept following wording added by EP:

„Consuming too many free sugars or non-sugar sweeteners is linked to adverse health effects. Products such as processed juices or nectars that promote reduced sugar levels are often not a healthier option than products with natural or no added sugar and are not suitable as a substitute for fresh fruits or vegetables. To provide clarity for consumers and health practitioners, misleading labelling that encourages substitution of fruits or other nutritious food with processed juices or nectars should not be allowed. Member States and the Commission should respect the results of the EFSA study on Tolerable upper intake level for dietary sugars, especially the recommendation that free and added sugars need to be classed together in terms of the health outcomes for citizens. By 31 December 2024, the Commission should submit a proposal to revise Regulation (EU) No 1169/2011 of the European Parliament and of the Council to better inform consumers about the presence and amount of free and added sugars in a product."*

The principles and criteria for the use of nutrition and health claims are regulated in detail in the Regulation of the European Parliament and of the Council No. 1924/2006. Additionally, work is also underway to amend the Regulation of the European Parliament and of the Council No. 1169/2011. The regulations 1924/2006 regulates nutrition and health claims in a horizontal and equivalent manner in relation to all product categories. There is no justification for including additional nutrition and health claims in the preamble of this directive under consideration, or even a commitment by the European Commission to revise Regulation 1169/2011, which in PL's opinion is a horizontal act and is under procedure. Taking the above into account, we are against the acceptance of the AM 11.

PL's position on EP amendment 40

The issue of labelling of sulphur dioxide residues (as an allergenic ingredient) is regulated by horizontal legislation (Regulation No. 1169/2011). AM 40 seems to be inconsistent with these regulations, therefore Poland does not support this amendment.

PL's position on the EP amendments No. 41, 42, 43

Poland does not support the proposed AM 41, 42, 43 to shorten by 6 months the deadlines indicated in Articles 5 (Transposition) and 6 (Transitional measures) in EC Proposal. The deadlines indicated in the EC proposal were supported by the Council.