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NOTE

From:	General Secretariat of the Council
To:	Delegations
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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 - Preparation of the trilogue

Delegations will find in the Annex an updated Presidency note with a view to inviting the SCA to exchange views, to agree to modify the negotiating mandate, and to prepare the trilogue on the Directive amending the Breakfast Directives, to be held on 30 January 2024.

Changes in comparison with 5760/24 are highlighted in yellow.

Modifications compared to document 5760/24 are highlighted in yellow.

Articles/rows/issues where a tentative agreement has been reached with the European Parliament, including explanations where necessary:

Amendments to Directive 2001/110/EC, ‘Honey Directive’

Concerning the Honey Directive, the Presidency tentatively agreed on the amendments suggested by the Parliament related to filtered honey. This means that “filtered honey” is deleted in article 2, article 3 and Annex I, point 2 of the Honey Directive (row 41b, 41d, 44e). Instead, the definition of filtered honey as outlined in Annex I, point 2, will be incorporated into the definition of baker’s honey in Annex I, point 3.

Amendments to Directive 2001/112/EC, ‘Fruit Juice Directive’

Concerning the Fruit Juice Directive, the Parliament tentatively agreed on the amendments suggested by the Council for:

- Article 3, point 1, subpoint (b) concerning the languages that can be used for particular designations (row 53);
- Annex I concerning the reference to Directive (EU) 2020/2184 which sets out criteria for potable water (row 117a, 117b, 117c, 117d);
- Annex I concerning the addition of a new category ‘Concentrated reduced-sugar fruit juice’ (row 125a, 125b, 129, 134), however, an agreement on the wording for the definition of the new category itself has not yet been reached;
- Addition of ‘concentrate from reduced-sugar fruit juice’ (row 58)
- Annex IV concerning ‘Quinces’ (row 62a).

The Presidency tentatively agreed on the amendments suggested by the Parliament for:

- Article 3, point 6 where the new categories of reduced-sugar juices are added, relating to the labelling of ‘(partially) from concentrates’ (row 58);
- Annex I concerning the allowed processes to reduce sugar where a rewording was proposed by the Parliament (row 141).
- Possible way to prohibit sweeteners in fruit juices (concerning row 121a, 124a)

Amendments to Directive 2001/113/EC, ‘Jam Directive’

Concerning the Jam Directive, the Parliament tentatively agreed on the following amendments suggested by the Council:

- Annex II, second to fifth indents, concerning the addition of ‘concentrated juice’ (row 85 till 86c);
- Annex III concerning the particular designations (row 152, 152b, 155).

Furthermore, the Presidency and the Parliament have tentatively agreed to increase the fruit content in jams and extra jams, while ensuring a significant distinction between “jam” and extra jam”:

- 400g as a general rule for jam instead of 450g in the Commission Proposal (row 167);
- 500g as a general rule for extra jam instead 550g in the Commission Proposal (row 176);
- 180g for ginger jam instead of 250g in the Commission Proposal (row 169);
- 280g for extra ginger jam instead of 350g in the Commission Proposal (row 178).

Amendments to Directive 2001/114/EC

Concerning Directive 2001/114/EC on preserved milk, the Parliament tentatively agreed to the amendments proposed in the Councils’ mandate.

Articles/issues where a tentative agreement has not yet been reached with the European Parliament and for which the Presidency would like to invite delegations to exchange views on possible compromise suggestions:

1. EMPOWERMENTS FOR THE COMMISSION CONCERNING HONEY

a) Composition characteristics of honey

The European Parliament suggests different changes to the Honey Directive in order to prevent honey from being overheated (row 44i), explicitly referring to an 'Invertase Index' (row 44p). Besides, the European Parliament suggests to prevent the removal of pollen when foreign organic or inorganic matter is removed (row 44m). While the Council shares the interest of the Parliament, the amendments proposed by the Parliament concern specific technical matters that should be broadly discussed with experts.

b) Adulteration of honey

The Parliament proposed the empowerment for the Commission to adopt delegated acts to establish harmonized methodology to detect adulteration of honey (row 44g). The Council also suggests an empowerment for the Commission for the methods to detect adulterated honey, but through an implementing act (row 44r).

c) Traceability of honey

The Parliament advocates for a mandatory traceability system. According to this system, each honey marketed with a different identification than that of the beekeeper shall have an identifier code linked to a traceability system. This system should enable Member States to trace back the entire supply chain (row 41f). Furthermore, the Parliament suggests empowering the European Commission via a delegated act, to establish a harmonized methodology to determine the origin of the honey (row 44g).

Introducing such a mandatory traceability system raises concerns about the proportionality of such a system, given the absence of an impact assessment. The Presidency considers the legal framework provided by the General Food Law Regulation (Regulation 178/2002) and the Officials Controls Regulation (Regulation 2017/625), together with intensified official controls following the EU coordinated action 'From the hive', to be sufficient to guarantee proper traceability of honey

Possible compromise:

With a view to reach an agreement with the Parliament, the Presidency proposes to empower the Commission to adopt, through delegated or implementing acts:

- 1) methods of analysis to verify the compliance of honey with the Directive*
- 2) methods of analysis to detect adulterated honey.*
- 3) the criterion 'mainly as regards the floral or vegetable origin of honey';*
- 4) the composition criteria to ensure that the honey is not heated or treated in such a way that natural enzymes are destroyed, taking into account the invertase index (except for baker's honey);*
- 5) the criteria to ensure that pollen is not removed and pollen density and spectrum are not modified, taking into account content of pollen, minimal size of pollen and mesh size of filters (except for baker's honey);*
- 6) the minimal content of pollen in baker's honey*
- 7) criteria to determine the place of honey harvesting, considering the possibility of a Union-wide traceability system with the possibility of using a unique identifier code.*

The Presidency also considers it important that the Commission conducts a feasibility analysis to adopt said acts on the points 3 to 7.

2. EUROPEAN REFERENCE LABORATORY (ROW 44c)

The European Parliament proposes the establishment of a European reference laboratory with the aim of enhancing controls and detecting honey adulteration (row 44c). The Council mandate does not foresee a European reference laboratory. Controls have already been scaled up by Member States following the findings of the EU coordinated action “From the hives”, as provided in the Official Controls Regulation. Furthermore, the Official Controls Regulation already includes provisions for reference laboratories and reference centers. The tasks entrusted to such laboratories are based on a network of national reference laboratories and mainly involve the developments of harmonized practices (not to perform actual tests).

Possible compromise:

With a view to reaching an agreement with the Parliament, the Presidency suggests to ask the Commission to establish an expert group, composed of representatives of Member States, stakeholders, academics etc. to advise the Commission on the methods and criteria regarding Annex II of the Honey Directive and to advise on the establishment of an EU reference laboratory.

The detailed description of the tasks of the expert group is still being discussed, and will be shared with delegations when available.

3. LABELLING OF HONEY

The Council mandate establishes the obligation for the countries of origin to be indicated on the label in descending order based on their share in weight, along with the corresponding percentage (row 43). Hereby a 5% tolerance for each individual share will be allowed. Additionally the Council foresees a derogation for Member States stipulating that only the four largest shares must be indicated with percentages, while remaining countries can be listed without percentages (row 43a).

The Parliament presented two alternatives. In both options, the Parliament aims to establish uniform rules without allowing derogations for Member States. The first option requires the labeling of countries of origin in descending order, along with exact percentages, allowing a 5% tolerance in total (row 43). The second option involves indicating percentage shares using specified ranges (row 43c). The purpose of option 2 is to prevent frequent label changes for food business operators.

Both the Council's mandate (row 43b) and the Parliament's mandate (row 43d) include a derogation for small packages allowing the ISO 3166-1 two letter code. Therefore the Council and Parliament already tentatively agreed on this derogation.

Possible compromise(s):

The aim of the Presidency is to reach a compromise with the European Parliament, taking into account both the need to informing the consumer about the origin of honey and considering the production processes of the packagers.

Question from the Presidency:

Would Member States consider it acceptable to explore the option of the usage of ranges instead of exact percentages, as foreseen in the Parliament's mandate (row 43c)?

4. **STATEMENT CONCERNING SUGARS IN FRUIT JUICE (row 55)**

The European Parliament wants to introduce the voluntary statement 'contains only naturally occurring sugars' instead of the statement 'no fruit juices contain added sugars' as proposed by the Commission. The Council mandate foresees a combination whereby the statement 'fruit juices do not contain added sugars' has to be accompanied by the statement 'fruit juices contain sugars that occur naturally in the fruit'.

Possible compromise:

A possible approach could be to agree on a voluntary statement that fruit juices contain only naturally occurring sugars. Keeping in mind that it is a voluntary statement, the following provision is suggested in order to reach compromise:

Article 2, new point 4:

*Without prejudice to Regulation (EC) No 1924/2006 of the European Parliament and of the Council, The statement '~~no fruit juices contain added sugars~~ **only naturally occurring sugars**' may appear on the label in the same field of vision as the name of the products referred to in Part I, point 1 of Annex I to this Directive.*

5. EMPOWERMENTS FOR FRUIT JUICES

The Council considers that the definition of the reduced-sugar fruit juices leaves room for interpretation. Therefore, the Council suggests to further detail the requirements for these new products by empowering the Commission to adopt implementing acts to lay down uniform rules regarding the use of the authorized treatments and the resulting characteristics of the reduced-sugar fruit juices (row 61d).

The European Parliament also considers that there is a need to define the essential characteristics of an average type of juice but suggests that this has to be done based on a Commission proposal by 31 December 2024 (row 68b). Moreover, the Parliament suggests that the reduced-sugar juices cannot be placed in the market until 12 months after the adoption of the definition for the essential characteristics of an average type of juice (row 61r). The Parliament also had concerns regarding the wording from the Council mandate in rows 121 and 124 ('with the exception of changes in those characteristics directly resulting from reducing sugar'), which could leave the possibility for producers to change the characteristics of the product and justify them as a so-called result of reducing the sugar.

Possible compromise:

The Presidency therefore proposes to empower the Commission to lay down rules on the characteristics of the products listed in Annex 1, Part I [point 6, 6a and 7], and rules regarding the use of authorised technologies to reduce sugar via delegated acts. Additionally, the Presidency proposes to empower the Commission to lay down the methods of analysis to verify if the products listed in Annex I, Part I [1(b), 2, 6(a) and 7] are compliant with the Directive via an implementing act. These delegations of power have to respect the interinstitutional agreement on Non-Binding Criteria for the application of Articles 290 and 291 of the Treaty on the Functioning of the European Union. It could be considered as a compromise that the addition of the reduced-sugar juices, listed in Annex I, Part I (6, 6a, 7) will only be applicable when the delegated acts enter into force.

With a view to reach an agreement with the Parliament, the Presidency also proposes to delete the wording 'with the exception of changes in those characteristics directly resulting from the reduced sugar content' (row 121) and 'with the exception of changes in those characteristics directly resulting from the decreased sugar content' (row 124).

Lastly, the Presidency suggests changing the wording ‘other characteristics typical for the original product’ back to ‘essential characteristics’ (rows 121, 124 and 141), with a view of reaching an agreement.

6. COMPARISON OF REDUCED-SUGAR FRUIT JUICE TO FRUIT JUICES

The European Parliament wants to explicitly prohibit claims regarding positive properties, such as health benefits, ingredients or nutritional value of reduced-sugar juices in comparison with the fruits from which they originate or the regular fruit juices (row 58c). The Council’s mandate did not foresee such a prohibition. Comparison with fruits is not allowed according to the Claims Regulation since fruits and juices are different categories. However, at present, it is not forbidden to compare reduced-sugar fruit juices with regular fruit juices, as long as it complies with Regulation 1924/2006 and Regulation 1169/2011.

Possible compromise:

The Presidency proposes to not allow for the new categories of reduced-sugar fruit juice, reduced-sugar fruit juice from concentrate or concentrate from reduced-sugar fruit juice to make any nutrition or health claims in comparison to fruit juice or the products listed in Annex I, point 1 to 4.

7. ORIGIN LABELLING OF FRUITS AND SUGAR

The European Parliament wants to introduce origin labelling for fruits used in fruit juices, and for fruits and sugars in jams and jellies. According to this amendment, the countries of origin of the mentioned fruits must be indicated on the label in descending order based on their proportions in the fruit juice (row 53b). The Parliament introduced a similar provision for fruits and sugar used in jams (row 76b), where the fruits used in jams would also be displayed in descending order based on their proportion through the use of ranges. These amendments raise concerns about the feasibility of these label requirements and the potential administrative burden for producers. Additionally, introducing such a label requirement without impact assessment – analyzing the need, added value, costs and impact– also raises questions regarding the proportionality of such a label requirement.

In the pursuit of an agreement with the Parliament, the Presidency aims to find solutions that are acceptable to the EP without introducing rules not being in line with the Better Regulation procedures (impact assessment, etc.). The Presidency therefore suggests exploring the potential of implementing such a label requirement in the future, provided it aligns with Better Regulation procedures. This entails the Commission conducting a proper impact assessment for origin labelling of fruits in fruit juices.

Possible compromise:

The Presidency suggests to introduce a new provision that instructs the Commission to produce a report to evaluate the impact of such an initiative in the future. A specific timeframe for this report could be set within a reasonable period, allowing the Commission to thoroughly analyze the potential costs and benefits of such origin labelling, as well as its impact on the internal market and international trade.

This new provision would be accompanied by a recital, affirming the need to explore the possibility to extend mandatory origin labelling for fruits used to produce juices and jams.

Recital:

Moreover, following the Farm to Fork Strategy's objective of strengthening consumers in making informed choices, including on the origin of the food, it appears necessary to explore the possibility to extend mandatory origin labelling for fruit used to produce juices and jams. It is therefore appropriate to request the Commission to prepare a report covering this topic.