



Council of the
European Union

Brussels, 7 June 2023
(OR. en)

**Interinstitutional File:
2023/0105(COD)**

9697/23
ADD 11 REV 1

LIMITE

AGRI 271
AGRIORG 62
AGRILEG 86
FOOD 43
CODEC 939
IA 119

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	8624/23 + ADD 1- ADD 4
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 Belgian delegation

Delegations will find in the Annex the comments from the Belgian delegation on the above-mentioned proposal.

Breakfast directives - Belgian comments and answers
26th May 2023 - Working Party

Avertissement

We consider that the time given to respond is too short and does not allow for the development of a concerted position between the different authorities concerned, which was also pointed out on the previous occasion. Nonetheless, we wish to already provide the following provisory comments.

Table des matières

1	Honey 2001/110/EC	1
2	Milk 2001/114/EC.....	2
2.1	Note of 11 th May.....	2
2.1.1	Original text	2
2.1.2	English version, courtesy translation.....	3
3	Fruit juices 2001/112/EC.....	4
3.1	Answers to questions	4
3.2	Note of 11 th May.....	Error! Bookmark not defined.
3.2.1	Original text	Error! Bookmark not defined.
3.2.2	English version, courtesy translation.....	Error! Bookmark not defined.
4	Jam 2001/113/EC	5

1 Honey 2001/110/EC

Concerning honey: the time given to understand the proposal and to ask the different services was really insufficient in order to find a position. We therefore propose a study reservation (which may apply to the entire proposal).

In order to clarify some points BE raises the following questions:

- How will consumers be properly informed of the differences in quality between honey of different Member States?
- Will the Commission for example provide on a regular basis a ranked listing or a clarification of the different levels of quality between the Member States?
- Will the Commission provide the necessary information to consumers on market surveillance results in honey per Member State? Because if not, how will the consumer be able to make an objectively informed purchase? Will the consumer not be left with an uninformed subjective perception, which could lead to gastro-chauvinisme, and negatively affect the principle of the Common Market?

4. Can the Commission provide further clarification of how the quality in honey currently differs between the EU Member States? Because right now the proposal simply states that there is difference in quality, yet fails to provide a justification for that statement.
5. Given that all honey within the EU needs to meet the same standard, that honey production standards could vary in Third Countries, is it not better to provide the consumer with the specific origin of non-EU honeys, while keeping “EU honey” as a general indicator for EU produced honey, while allowing producers to provide the Member State origin on a voluntary basis?
6. Can the Commission please clarify how the proposal can coincide with the long established ECJ principal that “An area of origin which is defined on the basis either of the extent of national territory or a linguistic criterion cannot constitute a geographical area within the meaning referred to above [as in indicator of different quality], capable of justifying an indication of origin, ...” (*Case 12/74 Commission v Germany* [1975] ECR 181.)? See also *Case 249/81 Commission v Ireland*

2 Milk 2001/114/EC

We repeat our position and questions as in our previous document of 11th May.

Geen opmerkingen bij de ontwerpen voor gedehydrateerde melk. De gedane voorstellen kunnen aanvaard worden en worden ook gedragen door de betreffende sectoren.

No comments on the drafts for dehydrated milk. The proposals made can be accepted and are also supported by the sectors concerned.

2.1 Note of 11th May

2.1.1 Original text

BE n’a aucune réserve à propos de de l’autorisation d’un traitement pour produire du lait déshydraté sans lactose. We steunen het voorstel tot wijziging van Richtlijn 2001/114/EC inzake bepaalde voor menselijke voeding bestemde, geheel of gedeeltelijk gedehydrateerde verduurzaamde melk. Nous attirons cependant votre attention sur le fait qu’il n’y a toujours pas de seuil réglementaire harmonisé pour la mention ‘sans lactose’.

Concernant la disposition elle-même, la traduction de ‘following’ par ‘postérieure’ est-elle bien correcte ?

<p>(2) in Annex I, point 3, the following point is added:</p> <p>‘(d) Reduction of the lactose content by conversion to glucose and galactose. Modifications in the composition of milk following this treatment shall be allowed only if they are indelibly indicated on the packing of the product so that it can be easily seen and read. However, such indication shall not remove the obligation as regards nutrition labelling laid down by Regulation (EU) No 1169/2011. Member States may limit or prohibit modifications to the composition of milk referred to in this point (d).’;</p>	<p>(2) À l’annexe I, point 3), le point suivant est ajouté:</p> <p>«d) La réduction de la teneur du lait en lactose par sa conversion en glucose et galactose. Les modifications de la composition du lait postérieures à ce traitement ne sont admises que si elles sont indiquées sur l’emballage du produit de façon clairement visible et lisible et de manière indélébile. Toutefois, cette indication ne dispense pas de l’obligation d’un étiquetage nutritionnel visé par le règlement (UE) n° 1169/2011. Les États membres peuvent limiter ou interdire les</p>
---	--

	modifications de la composition du lait visées au présent point d).».
--	---

Nous supposons que l'on parle des modifications par le traitement lui-même, et pas par d'autres traitements postérieurs. Nous proposons plutôt quelque chose comme 'Les modifications de la composition du lait **suite** à ce traitement...'. Le mot 'modification' ne devrait pas être au singulier ?

La formulation de la disposition est un peu particulière, la COM a repris une formulation similaire à celle pour le lait dans le Règlement (UE) No 1308/2013. Pourquoi ne pas être plus prescriptif ?

Est-il possible d'obtenir une autorisation similaire pour la production de yaourt sans lactose ?

2.1.2 English version, courtesy translation

BE has no reservations about allowing a treatment to produce lactose-free dehydrated milk. We would like to draw your attention to the fact that there is still no threshold for the use of dehydrated milk for human consumption. However, we would like to draw your attention to the fact that there is still no harmonised regulatory threshold for the term 'lactose-free'.

With regard to the provision itself, is the translation of 'following' as 'posterior' correct?

(2) in Annex I, point 3, the following point is added: '(d) Reduction of the lactose content by conversion to glucose and galactose. Modifications in the composition of milk following this treatment shall be allowed only if they are indelibly indicated on the packing of the product so that it can be easily seen and read. However, such indication shall not remove the obligation as regards nutrition labelling laid down by Regulation (EU) No 1169/2011. Member States may limit or prohibit modifications to the composition of milk referred to in this point (d).';	(2) À l'annexe I, point 3), le point suivant est ajouté: «d) La réduction de la teneur du lait en lactose par sa conversion en glucose et galactose. Les modifications de la composition du lait postérieures à ce traitement ne sont admises que si elles sont indiquées sur l'emballage du produit de façon clairement visible et lisible et de manière indélébile. Toutefois, cette indication ne dispense pas de l'obligation d'un étiquetage nutritionnel visé par le règlement (UE) n° 1169/2011. Les États membres peuvent limiter ou interdire les modifications de la composition du lait visées au présent point d).».
---	--

We assume that we are talking about changes by the treatment itself, and not by other subsequent treatments. Instead, we propose something like 'The changes in the composition of the milk as a result of this treatment...'. Shouldn't the word 'modification' be in the singular?

The wording of the provision is a bit peculiar, COM has taken a similar wording to that for milk in Regulation (EU) No 1308/2013. Why not be more prescriptive?

Is it possible to obtain a similar authorisation for the production of lactose-free yoghurt?

3 Fruit juices 2001/112/EC

Geen opmerkingen bij de ontwerpen voor vruchtensappen. De gedane voorstellen kunnen aanvaard worden en worden ook gedragen door de betreffende sectoren.

No comments on the drafts for fruit juices. The proposals made can be accepted and are also supported by the sectors concerned.

3.1 Answers to questions and BE position

Questions on fruit juices for the 26th

- a) Do you agree to the inclusion of a category of fruit juice with reduced sugar?***
- b) Do you agree that membrane filtration and yeast fermentation are to be authorised processes? (Is it sufficient to meet technical innovation)***
- c) Will the requirement "all the other essential characteristics should remain unchanged" be an obstacle to placing these products on the market?***

At this stage, Belgium cannot support the addition of 'yeast fermentation' as authorized treatment. In general, the characteristics of fermented products are significantly different than the non-fermented product, for example yoghurt compared with milk. The ferment changes the characteristics of the product in a significant way and it might in the case of fruit juice not be limited to the sugar content.

Furthermore, the reference to 'yeast fermentation' is very general and raises several questions:

- Does 'yeast' only refer to the common Baker's yeast or to any yeast (in compliance to the relevant legislation, such as the novel food legislation)?
- Into what the sugars are converted during this fermentation process?
- Do the produced substances (might be alcohol) and the yeast have to be removed from the juices?
- How can it be prevented that this yeast fermentation results in increased levels of substances with a functional effect comparable to food additives functions?

Regarding membrane filtration, Belgium is not sure about all possible impacts, and how such a treatment would not affect all the other essential characteristics.

Furthermore, the use of sweeteners is regulated by Regulation 1333/2008. Nothing explicitly forbids the use of sweeteners in Directive 2001/112/EC. Although sweeteners are not authorized in fruit juices so far, how can be ensured that the reduction of the sugar content – and as a consequence the

sweetness level – of fruit juices will not be compensated by the addition of sweeteners in the future, if applications for authorization are submitted under Regulation 1333/2008?

3.2 Proposed amendments on specific provisions:

ANNEX I

Annexes I and III to Directive 2001/112/EC are amended as follows:

(1) Annex I is amended as follows:

(...)

(b) Part II is amended as follows:

(i) point 2 is amended as follows:

(...)

- the fifth indent is replaced by the following:

‘- For fruit nectars: restored flavour, pulp and cells; sugars and/or honey up to 20 % of the total weight of the finished products referred to in Part I of Annex IV, 15 % of the total weight of the finished products referred to in Part II of Annex IV and 10 % of the total weight of the finished products referred to in Part III of Annex IV; and/or sweeteners;

*A claim stating that sugars have not been added to fruit nectar, and any claim likely to have the same meaning for the consumer, may only be made where the product does not contain any added mono- or disaccharides or any other food used for its sweetening properties, including sweeteners as defined in Regulation (EC) No 1333/2008. If sugars are naturally present in fruit nectar, the following indication **should shall** also appear on the label: ‘contains naturally occurring sugars’;’;*

Rationale: Although the term ‘should’ originates from the Annex of Regulation 1924/2006, it should be replaced by ‘shall’ for the legal clarity. We consider the use of the ‘should’ was not intentional in the Annex of Regulation 1924/2006 and it has led to implementation problems.

4 Jam 2001/113/EC

4.1 BE Position

In general, Belgium supports the increase of fruit and as a consequence the decrease of sugar content in jams and marmalades.

Belgium supports the increase of the minimum level of fruit content for “jam” from 350gr to 450gr. We do fear that some producers will stop using “jams” in their products (example in filled cakes), and revert to lesser quality “fruit preparations”. Has the impact assessment taken into account the follow-up consequences of the proposal?

Increasing the minimum level of fruit content for “extra jam” to 550gr has negative effects that could outweigh the benefit of increased fruit intake: the production process requires substantially more energy, which will increase the environmental impact and drive up the cost. A higher cost could push the consumer to consider other high sugar spread.

We would therefore propose to adjust the minimum level for “extra jam” to 500gr, instead of the proposed 550gr

We would like also to draw the attention to the potential unexpected consequences on the use of additives.

The authorization of food additives to jam and extra jam is regulated by Regulation 1333/2008 which refers to the food categories defined in directive 2001/113/EC.

Less additives are authorised in extra jam in comparison with jam: colours and gums other than pectins are not authorised in extra jam,

Therefore, if producers decide not to increase the content of fruit, products which are considered extra jams now might not be 'extra jam' according the new criteria of the proposal (2023/0105 COD), but simply 'jams'. This will result in increased authorisation for the use of food additives in these products. Hence, instead of obtaining extra jams with more fruits, the consumer might get products with more colours and other food additives, depending on the choices of the food producers. At least as long as the authorisations of the food additives in the categories 'jam' and 'extra jam' are not revised accordingly.

Belgium has concerns with the change of the term "marmalade", specifically the change to "citrus marmalade". The current "orange marmelade" will then have to be labelled "Citrus marmalade of oranges". This lengthy description poses problems for producers in Member States with multi-language labelling requirements.

Belgium wishes to extend the transition period to 4 years instead of the proposed 2, in order for industry to adjust their recipes and packaging.

4.2 Proposed amendments on specific provisions:

Article 3

Amendments to Directive 2001/113/EC

Directive 2001/113/EC is amended as follows:

(1) Article 2 is amended as follows:

(...)

c) paragraph 6 is ~~deleted~~ replaced by the following:

~~'6. Where the residual content of sulphur dioxide is more than 10 mg/kg, its presence shall be indicated on the list of ingredients by way of derogation from Article 20 of Regulation (EU) No 1169/2011.'~~

Rationale:

BE is of the opinion that only the general rules on allergen declaration of Regulation (EU) No 1169/2011 should apply, and that sulphur dioxide above 10 mg/kg has always to be declared, since Article 20 applies without prejudice to Article 21 on allergens. Therefore, there is no need to have a specific provision on sulphites in this directive.

Article 3

Amendments to Directive 2001/113/EC

Directive 2001/113/EC is amended as follows:

(1) Article 2 is amended as follows:

(...)

(5) in Annex III, Part B, point 1, the fourth indent is ~~deleted~~ replaced by the following:

~~'with the exception of the raw materials used in the manufacture of 'extra' products; the use of sulphur dioxide (E 220) or its salts (E 221, E 222, E 223, E 224, E 226 and E 227) as an aid to manufacture provided that the maximum sulphur dioxide content laid down in Regulation (EC) No 1333/2008 is not exceeded in the products defined in part I of Annex I.'~~

Rationale:

The use of additives is regulated by Regulation (EC) No 1333/2008. It contains specific provisions regarding the use of sulphur dioxide and sulphites in jam and extra jam.

BE is of the opinion that the use of additives should only be regulated by this Regulation.
It may otherwise lead to contradictions, if the Directive authorizes more additives than allowed by Regulation (EC) No 1333/2008, or the opposite.
Furthermore, the term '*an aid to manufacture*' is not in line with the provisions of Regulation (EC) No 1333/2008.

1 Milk

1.1 Original text

Deux remarques importantes qui doivent être répondues afin d'avoir un texte final conforme :

Le point 3 de l'annexe mentionne simplement « 3. Treatments ». Il ne semble dit nulle part que ce sont les seuls traitements autorisés (contrairement par exemple à la même disposition dans 1308/2013, qui stipule : « **only** the following modifications shall be allowed: ... »). Par conséquent, est-ce que la réduction du lactose était vraiment interdite précédemment ? Et est-il donc réellement nécessaire de l'ajouter dans l'annexe pour que cela soit permis ?

Au contraire, le point 4 est lui clair: "Authorized additions and raw materials". On peut donc conclure que tout autre ajout est interdit. Pourtant, le règlement 1333/2008 sur les additifs prévoit une catégorie "01.5 Dehydrated milk as defined by Directive 2001/114/EC" pour laquelle de nombreux additifs sont autorisés. Ne faudrait-il pas ajouter dans la directive sous le point 4 de l'annexe un nouveau point c) : « c) Authorized food additives and food enzymes in compliance with Regulation (EC) No 1333/2008 and Regulation (EC) No 1332/2008 » ?

1.2 English version, courtesy translation

There are two important points that need to be addressed in order to ensure that the final text is compliant:

Point 3 of the Annex simply states "3. Treatments". Nowhere does it seem to say that these are the only treatments permitted (unlike, for example, the same provision in 1308/2013, which states: "only the following modifications shall be allowed: ..."). So, was lactose reduction really prohibited previously? And is it really necessary to add it to the annex for it to be permitted?

On the contrary, point 4 is clear: "Authorized additions and raw materials". We can therefore conclude that any other addition is prohibited. However, Regulation 1333/2008 on additives provides for a category "01.5 Dehydrated milk as defined by Directive 2001/114/EC" for which many additives are authorised. Shouldn't a new point c) be added to the directive under point 4 of the annex: " c) Authorized food additives and food enzymes in compliance with Regulation (EC) No 1333/2008 and Regulation (EC) No 1332/2008"?

2 Honey

2.1 Original text

La Belgique choisit l'option B du flash de la présidence de la réunion du 1 juin, elle souhaite que soit faite la mention du pays d'origine dans l'ordre décroissant d'importance.

La Belgique insiste sur le fait cet étiquetage ne règle d'aucune manière le problème de la fraude qui doit être traité dans une autre législation. Il ne faut pas que les questions relatives au miel s'arrêtent à la présente directive.

2.2 English version, courtesy translation

Belgium opted for option B of the Chair's Flash for the 1 June meeting, BE would like the country of origin to be listed in descending order of importance.

Belgium insists that this labelling in no way solves the problem of fraud, which must be dealt with in other legislation. Issues relating to honey should not stop at this directive.

3 Jams

These are two points that should not give rise to discussion. The proposals below are intended simply to apply the principle that allergens and additives should be governed by the general rules, and that there should be no specific provisions in the directives that might be contradictory.

Article 3

Amendments to Directive 2001/113/EC

Directive 2001/113/EC is amended as follows:

(1) Article 2 is amended as follows:

(...)

c) paragraph 6 is ~~deleted~~ replaced by the following:

~~*‘6. Where the residual content of sulphur dioxide is more than 10 mg/kg, its presence shall be indicated on the list of ingredients by way of derogation from Article 20 of Regulation (EU) No 1169/2011.’;*~~

Rationale:

BE is of the opinion that only the general rules on allergen declaration of Regulation (EU) No 1169/2011 should apply, and that sulphur dioxide above 10 mg/kg has always to be declared, since Article 20 applies without prejudice to Article 21 on allergens. Therefore, there is no need to have a specific provision on sulphites in this directive.

Article 3

Amendments to Directive 2001/113/EC

Directive 2001/113/EC is amended as follows:

(1) Article 2 is amended as follows:

(...)

(5) in Annex III, Part B, point 1, the fourth indent is ~~deleted~~ replaced by the following:

~~*‘with the exception of the raw materials used in the manufacture of ‘extra’ products: the use of sulphur dioxide (E 220) or its salts (E 221, E 222, E 223, E 224, E 226 and E 227) as an aid to manufacture provided that the maximum sulphur dioxide content laid down in Regulation (EC) No 1333/2008 is not exceeded in the products defined in part I of Annex I.’;*~~

Rationale:

The use of additives is regulated by Regulation (EC) No 1333/2008. It contains specific provisions regarding the use of sulphur dioxide and sulphites in jam and extra jam.

BE is of the opinion that the use of additives should only be regulated by this Regulation.

It may otherwise lead to contradictions, if the Directive authorizes more additives than allowed by Regulation (EC) No 1333/2008, or the opposite.

Furthermore, the term ‘an aid to manufacture’ is not in line with the provisions of Regulation (EC) No 1333/2008.

4 Fruit juices

Our questions about treatments to reduce sugar in fruit juices also apply:

Questions on fruit juices for the 26th

a) Do you agree to the inclusion of a category of fruit juice with reduced sugar?

b) Do you agree that membrane filtration and yeast fermentation are to be authorised processes? (Is it sufficient to meet technical innovation)

c) Will the requirement “all the other essential characteristics should remain unchanged” be an obstacle to placing these products on the market?

At this stage, Belgium cannot support the addition of ‘yeast fermentation’ as authorized treatment.

In general, the characteristics of fermented products are significantly different than the non-fermented product, for example yoghurt compared with milk. The ferment changes the characteristics of the product in a significant way and it might in the case of fruit juice not be limited to the sugar content.

Furthermore, the reference to ‘yeast fermentation’ is very general and raises several questions:

- Does ‘yeast’ only refer to the common Baker’s yeast or to any yeast (in compliance to the relevant legislation, such as the novel food legislation)?
- Into what the sugars are converted during this fermentation process?
- Do the produced substances (might be alcohol) and the yeast have to be removed from the juices?
- How can it be prevented that this yeast fermentation results in increased levels of substances with a functional effect comparable to food additives functions?

Regarding membrane filtration, Belgium is not sure about all possible impacts, and how such a treatment would not affect all the other essential characteristics.

Furthermore, the use of sweeteners is regulated by Regulation 1333/2008. Nothing explicitly forbids the use of sweeteners in Directive 2001/112/EC. Although sweeteners are not authorized in fruit juices so far, how can be ensured that the reduction of the sugar content – and as a consequence the sweetness level – of fruit juices will not be compensated by the addition of sweeteners in the future, if applications for authorization are submitted under Regulation 1333/2008?