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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**on the implementation of the measures introduced by Directive 2002/2/EC amending
Directive 79/373/EEC on the circulation of compound feedingstuffs**

European Commission

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Additional information on feed law is available at:

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1. EXECUTIVE SUMMARY

Article 15a of Directive 79/373/EEC¹ states that, on the basis of information received from the Member States, the Commission shall submit a report to the European Parliament and the Council on the implementation of the measures introduced by Directive 2002/2/EC², which amended Directive 79/373/EEC, accompanied by any proposals designed to improve these measures.

Twenty four Member States have responded to the Commission Services' request for information. The present report deals with the implementation of the measures introduced by Directive 2002/2/EC:

Firstly, indication of the batch reference number on the label had been made mandatory. The Member States implemented this measure without any major problems. It is considered to improve significantly traceability. Secondly, the Directive allows exceptions from the provision that labelling particulars are to be included in the space reserved for them. Certain mandatory labelling particulars may be marked outside this space. Member States implemented this measure without any major problems observed. The Commission has no detailed information about the extent to which producers of compound feed took advantage of this flexibility. There have been no problems raised by the control authorities or customers.

The mandatory indication of quantities of feed materials, including the permitted tolerance, produced the most diverging picture: the application of the percentage declaration was suspended by national court decision in several Member States, further to requests by manufacturers of compound feed and pending the preliminary ruling to be given by the European Court of Justice. In one Member State, the suspension only covered companies that initiated court cases. Another group of Member States had decided to be flexible when carrying out official checks and even not to impose penalties on operators in cases of infringement of the quantitative labelling obligations. The majority of these Member States has transposed the open declaration as a consequence of the Court ruling of 6 December 2005. There is thus one group of Member States that have transposed and enforced the provisions of the "open declaration" directly; they foresee fines if non-compliance is detected. These Member States report positive developments in terms of compliance and have received no complaints from compound feedingstuffs producers.

¹ OJ L 86, 6.4.1979. p. 30-37. Directive as last amended by Council Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36-62).

² OJ L 63, 6.3.2002, p. 23-25.

Finally, the Directive stipulates that feed producers have to cooperate with the control authorities. The Member States implemented this measure in the frame of Directive 2002/2/EC or they had already included it into national law before. This core principle is now an integral part of the General Food Law.

Proposals to improve the above-mentioned measures will not be presented here. The respective options are part of an impact assessment addressing the whole area of feed labelling currently underway by the Commission Services. On completion of this work, the resulting legislative proposal is scheduled to be presented in the second half of 2007.

2. INTRODUCTION

Why this report?

Article 15a of Directive 79/373/EEC provides that

“At the latest on 6 November 2006, the Commission shall submit a report to the European Parliament and the Council, on the basis of the information received from Member States, on the implementation of the measures introduced by Article 5(1)(j) and (l), and (5)(d) and Article 5c and the second subparagraph of Article 12, particularly as regards the indication of quantities, in the form of percentage by weight, of feed materials on the labelling of compound feedingstuffs, including the permitted tolerance, accompanied by any proposals designed to improve these measures.”

The Commission asked the Member States to provide this information and received a response from twenty four of them.

Background

A series of crises concerning human food and animal feed (BSE, dioxin, etc.) in the late 1990s exposed weaknesses in the design and application of food legislation within the EU. This led the Commission to include the promotion of a high level of food safety among its policy priorities (European Council in Helsinki 1999). In response, the “White Paper on Food Safety” of 12.01.2000 (COM (1999) 719 final) made proposals to transform EU food policy into a proactive, dynamic, coherent and comprehensive instrument, with 84 separate measures being outlined.

The new strategy had to take into account the fact that the agro-food sector is of major importance for the European economy as a whole. Furthermore, the food production chain is becoming increasingly complex, while the enlargement of the Union has created additional challenges for the Internal Market in terms of safe and high-quality products coming from all the Member States.

As a core element of the new legislative framework, the “farm to table” approach covers all steps in the food chain. Feed business operators, farmers and food business operators have the primary responsibility for food safety. Traceability of feed and food and their ingredients is another key element of feed and food safety. Transparency in respect of feed labelling is also an important principle of the new feed and food law designed to increase consumer confidence in feed and food.

Directive 79/373/EEC, before being amended by Directive 2002/2/EC, provided for a flexible declaration confined to indication of the feed materials, without stating their quantity, in feedingstuffs for production animals, while retaining the possibility of declaring categories of feed materials instead of the feed materials themselves.

Bearing in mind that the safety of food of animal origin begins with safe animal feed, the White Paper on Food Safety identified the amendment of the Directive on compound feedingstuffs as a priority (action No 24). The relevant Commission proposal resulted in the adoption of Directive 2002/2/EC, designed to ensure that stock farmers are informed as accurately as possible about the composition and use of feedingstuffs. In order to improve transparency and traceability, Directive 2002/2/EC imposes the so-called “open declaration”:

- listing all feed materials used in the compound feedingstuffs by their specific names, with an indication, in descending order, of the percentages by weight present, with a tolerance of +/- 15 % of the declared value;
- providing the exact percentages by weight at the customer’s request.

The Member States had to transpose these measures before 6 March 2003 and to apply them at the latest from 6 November 2003.

Issues

The introduction of the “open declaration” was very controversial because producers of compound feedingstuffs were opposed to disclosure of the composition of their products.

On the initiative of the feed industry, several national courts brought references for a preliminary ruling to the European Court of Justice³, which centred essentially on the validity of Directive 2002/2/EC.

³ Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04.

On 6 December 2005⁴ the Court rejected the arguments put forward to contest the validity of the Directive and thus supported the position defended by the institutions. In particular, the legal basis of the Directive (Article 152(4)(b) of the EC Treaty: measures aiming directly at the protection of public health) was considered as valid by the Court. Accordingly the Court confirmed the validity of the percentage declaration with +/- 15% tolerance. However, the specific requirement to inform customers, at their request, of the exact percentage by weight of each feed material used in the compound feed was declared invalid by the Court because it was found to be contrary to the principle of proportionality.

According to Article 10 of the EC Treaty, Member States must take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. Furthermore, the Commission adopted, on 27 June 2006, a proposal for a decision of the European Parliament and of the Council correcting Directive 2002/2/EC to delete the provision declared invalid by the Court, in order to bring legislation into line with the Court ruling. The proposal is currently at the first reading stage in Parliament.

As a consequence, the provision whereby the exact percentages by weight should be made known at the customer's request (Article 5(1)(l)) is not covered by this report.

3. IMPLEMENTATION OF THE MEASURES BY MEMBER STATES

3.1. Indication of the batch reference number (Art. 5(1)(j)):

Twenty two Member States reported to have implemented this measure without any major problems observed. They consider this provision very important with regard to the traceability of compound feedingstuffs. Meantime, traceability is a requirement laid down in Article 18 of the General Food Law⁵, Annex II to the Feed Hygiene Regulation⁶ and Articles 4 to 8 of the Regulation on the traceability and labelling of genetically modified organisms⁷. The ability to trace compound feedingstuffs one step on and one step back in the distribution chain proved crucial in many cases. The experiences with this requirement are unequivocally positive.

⁴ OJ C 36, 11.2.2006, p. 5.

⁵ 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.

⁶ Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 laying down requirements for feed hygiene.

⁷ Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC.

3.2. Marking certain particulars outside the space reserved for labelling particulars:

Art. 5(5)(d): *“The minimum storage life, the net quantity, the batch reference number and the approval or registration number may be marked outside the space reserved for the labelling particulars referred to in paragraph 1; in this case, these details shall be accompanied by an indication of where the information appears.”*

The provision gives the producer of compound feed the possibility of indicating the minimum storage life, the net quantity, the batch reference number and the approval or registration number at positions on the packaging where it is appropriate to provide such information. This depends on both the design of the packaging and on the type of packaging equipment used. In practice, the minimum storage life and/or the batch reference number may for example be stamped on the bottom or on the edge of a bag during the process of packaging.

Twenty two Member States reported to have implemented this measure without any major problems observed.

The Commission has no detailed information about the extent to which producers of compound feed took advantage of this possibility, but the flexibility is highly appreciated by the industry. On the other hand there are no complaints about this provision, in terms of clarity and transparency, either from control authorities or from livestock producers.

3.3. Percentage declaration of feed materials with a tolerance of +/- 15 %:

Art. 5c: *“1. All feed materials used in the compound feedingstuff shall be listed by their specific names.*

2. The listing of feed materials for feedingstuffs shall be subject to the following rules:

(a) compound feedingstuffs intended for animals other than pets:

(i) listing of feed materials for feedingstuffs with an indication, in descending order, of the percentages by weight present in the compound feedingstuff;

(ii) as regards the above percentages, a tolerance of ± 15 % of the declared value shall be permitted;

(b) compound feedingstuffs intended for pets: listing of feed materials for feedingstuffs either indicating the amount contained or naming them in descending order by weight.” (Art. 5c(3) and (4) contain special provisions for pet food and are not covered by this report)

In the course of the transposition of Directive 2002/2/EC into national law, six national courts of Member States suspended the application of the open declaration in response to requests by manufacturers of compound feed and pending the preliminary ruling to be given by the European Court of Justice; in one Member State the suspension was only granted for specific companies. As a consequence of the ECJ ruling on 6 December 2005, some of these Member States have implemented the percentage declaration or are at an advanced stage of implementation. In other Member States implementation is still pending. Accordingly, neither group of Member States had any practical experience of the percentage declaration, but problems were encountered in trying to implement it.

The Member States which directly transposed the open declaration by the stipulated deadline (6 March 2003), or before the date of EU accession in the case of the ten new Member States, can also be divided into two groups:

Taking into account the suspension of the provision in important neighbour Member States with trade flows of compound feed to their territory, four Member States had formally decided to be flexible on the occasion of official controls and even not to impose penalties to operators in case of infringement to the quantitative labelling obligations. Three Member States did not formally suspend controls on the compliance but reported either that following the risk based approach there were at the most limited controls as they considered the risk to be subordinate or they reported problems in the implementation in practice.

The second part of the Member States (10) who implemented the open declaration directly gave either no information about experiences on the implementation of the open declaration or they undertook repressive controls (5 thereof). In this group of Member States the controls unveiled either no significant problems with the provision or at least declining rates of non compliance. In fact there is as well support from the users of feedingstuffs and most of the feedingstuffs industry for the open declaration reported in the last group. Additionally, this group provided a positive example of quick detection of the source of an aflatoxin contamination thanks to the open declaration.

To resume on this, several Member States report problems with this provision suggesting to reflect on amending the requirement, some Member States are neutral and a third group supports the open declaration.

3.4. Requirement for feed producers to cooperate with the control authorities:

Art 12 (2): *“They (the Member States) shall stipulate that the manufacturers of compound feedingstuffs are obliged to make available to the authorities responsible for carrying out official inspections, on request, any document concerning the composition of feedingstuffs intended to be put into circulation which enables the accuracy of the information given by the labelling to be verified.”*

Twenty two Member States who responded implemented this measure, and some of them had even incorporated this provision into their national legislation before the adoption of Directive 2002/2/EC. Meanwhile the duty for cooperation between feed business operators and the control authorities is as well laid down in the General Food Law.

Member States stressed the importance of being provided with the information required to monitor compliance with the labelling provisions and of the obligation placed on the compound feed producer to offer any necessary assistance during the conduct of checks. This provision is particularly important for food and feed safety, as disclosure of the exact percentage of compounds at the request of the customer has been declared invalid by the Court.

4. PROPOSALS DESIGNED TO IMPROVE THE MEASURES

The revised Lisbon Strategy identified simplification as one priority action for the EU. It aims at achieving growth and jobs in Europe and therefore focuses on those elements of the *acquis* that concern the competitiveness of enterprises in the EU. Its overall objective is to contribute to a European regulatory framework that fulfils the highest standards of lawmaking, respecting the principles of subsidiarity and proportionality. In this respect simplification is intended to make legislation at both Community and national level less burdensome and easier to apply, thereby achieving the desired goals more effectively.

The modernisation of feed legislation and in particular the labelling of feed form part of the current Simplification Rolling Programme attached to the Communication from the Commission of 25 October 2005. The Programme provides specifically for the modernisation and replacement of four feed-related Directives (and around 30 amending Directives) by a Regulation. Modification of the existing feed labelling requirements is a particular area of interest.

On the basis of a study which identified different issues and policy options, the Commission completed in the first half of 2006 an internet consultation with stakeholders, including competent national authorities. The results are now being used for an integrated impact assessment scrutinising in particular the social, economic and environmental impact of the policy options envisaged. The Commission intends to present the legislative proposal to Parliament and the Council in autumn 2007.

This report is therefore not accompanied by proposals to improve the measures introduced by Directive 2002/2/EC.

5. CONCLUSION

To sum up, there is largely positive feedback concerning

- indication of the batch reference number,
- marking certain particulars outside the space reserved for labelling particulars and
- the requirement for feed producers to cooperate with the control authorities.

As regards the percentage declaration of feed materials with a tolerance of +/- 15 %, the situation is varied:

- Several Member States report positive feedback not only from the control authorities but also from businesses (compound feed producers and livestock producers).
- On the other hand, an important number of Member States argue that provisions concerning declaration of compounds should be improved.

The Commission confirms its intention to modernise the legislation on labelling and circulation of feed and to present a legislative proposal in autumn 2007.