

Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council correcting Directive 2002/2/EC amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs

COM(2006) 340 final — 2006/0117 (COD)

(2006/C 324/15)

On 10 July 2006 the Council decided to consult the European Economic and Social Committee, under Article 152 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 September 2006. The rapporteur was Mr Nielsen.

Due to the renewal of the Committee's term of office, the Plenary Assembly decided to vote on this opinion at its October plenary session and appointed Mr Nielsen as rapporteur-general under Rule 20 of the Rules of Procedure.

At its 430th plenary session, held on 26 October 2006, the European Economic and Social Committee adopted the following opinion by 85 votes in favour with one abstention.

1. Background

1.1 The 1979 rules on the production and circulation of compound feedingstuffs for livestock have been subject to a number of amendments relating, among other things, to labelling and composition information ⁽¹⁾. As a result, the balance between confidentiality (as advocated by the feedingstuffs industry) and full disclosure of content and composition (as advocated by the farming sector) has also shifted a number of times.

1.2 The labelling rules were harmonised in 1990 and stipulated that the relevant feed materials should be listed out in descending order by weight, without any obligation to declare the actual quantities involved. Following the BSE (bovine spongiform encephalopathy) and dioxin crises, it was decided in 2002 to introduce so-called 'open labelling' to provide both quantitative and qualitative content information. Under these arrangements, it became mandatory to declare the percentages of materials used in descending order by weight, with a tolerance of 15 % of the declared value. Provision was also made to communicate the exact percentages by weight of feed materials used in the compound feedingstuffs, at the customer's request ⁽²⁾.

1.3 This requirement was referred to the Court of Justice for a preliminary ruling in the context of the examination of a number of requests by the feedingstuffs industry for the annulment or suspension of the relevant national rules. In its judgment handed down on 6 December 2005 ⁽³⁾ the Court of Justice largely supported the position of the EU institutions, not least as regards the validity of the directive. However, under the

principle of proportionality, the Court did declare invalid the obligation to inform customers, on request, of the exact percentages by weight of feed materials used in the compound feedingstuffs. Among other things, the Court found that the obligation could not be justified by the objective of protecting public health and went beyond what is necessary to attain that objective.

1.4 Against that backdrop, the Commission is therefore proposing a 'correcting Decision' taking account of the principle that amending acts should not be amended themselves but that they may, however, be corrected. According to the Commission, this 'will guarantee transparency and clarity of Community law while at the same time not imposing a direct obligation on the Member States to change their national legislation, as they are in any case obliged to take all appropriate measures under their national legal systems to ensure fulfilment of the Court's judgment'.

2. The EESC's comments

2.1 The EU feedingstuffs industry is well aware of the Court of Justice ruling and, from the comment cited above, the Commission recognises that the correction has no practical implications. However, the EESC feels that the rules must reflect the current legal position and thus supports the Commission's proposed correction.

2.2 The EESC also supports the principle of 'open compounds' which facilitates user choice and is also conducive to competition in this area. It is important for agricultural producers to know as accurately as possible what is contained in the compounds, not only in terms of the actual feed composition alone, but also so as to be able to compare prices and quality. The arguments advanced by the feedingstuffs industry — including the demand for confidentiality in the interests of market competition and possible patenting — appear to carry less weight in the light of the experience gained to date in the compound feedingstuffs market.

⁽¹⁾ Council Directive 79/373/EEC on the circulation of compound feedingstuffs and subsequent amendments.

⁽²⁾ Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002, which entered into force in the Member States from November 2003.

⁽³⁾ Joined cases C-453/03, C-11/04, C-12/04 and C-194/04.

2.3 That said, the EESC does recognise that special arrangements apply in individual cases and to quite specific compound feedingstuffs used, for instance, in fish farming ⁽⁴⁾. The EESC would therefore ask the Commission, in interests of confidentiality vis-à-vis ongoing technological developments, to consider exempting a small number of special compounds from the requirement to declare the percentages of materials used in descending order by weight. However, any such provision must be applicable in exceptional cases only and only where absolutely necessary.

2.4 In practical terms, the provision to declare the percentages of materials used by weight, with a tolerance of 15 % of the declared value, is by and large warranted. Where it is, in practice, impossible to check lower quantities (e.g. 10 %) with this kind of accuracy, the national inspection authorities must be able to carry out checks using company documentation.

2.5 It is sometimes claimed that it is, in practice, impossible to analyse the content of a compound. This is not true — allowing for the exception mentioned above — since laboratories are in place in all the Member States that are perfectly able to perform this task quite satisfactorily.

2.6 Last but not least, the EESC feels that, in the interests of intra-Community trade and compliance with EU rules in this field, it is vital that Member State authorities monitor the relevant provisions and observe them fully — something that has not always been the case in the past. The Commission should, with the help of the Food and Veterinary Office (FVO), show more commitment to meeting its obligations in this regard than it has done so far.

Brussels, 26 October 2006.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽⁴⁾ In fish farming, for instance, the different fish species have specific needs. There are also considerable differences in the composition of the by-products from the fisheries sector and the fish industry used as raw materials in the compounds.