COMMISSION RECOMMENDATION

of 21 April 1998

on the ways in which the Member States and the signatory States to the Agreement on the European Economic Area should protect intellectual property in connection with the development and manufacture of flavouring substances referred to in Regulation (EC) No 2232/96 of the European Parliament and of the Council

(Text with EEA relevance)

(98/282/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the second indent of Article 155 thereof,

Whereas pursuant to Article 3(1) of Regulation (EC) No 2232/96 of the European Parliament and of the Council of 28 October 1996 laying down a Community procedure for flavouring substances used or intended for use in or on foodstuffs [1], the Member States [2] must notify the Commission of the list of flavouring substances which may be used in or on foodstuffs marketed on their territory; whereas these flavouring substances and the technical data relating to them are initially communicated to the competent authorities of the Member States by their manufacturer; whereas under the first subparagraph of Article 3(2) and Article 4(1) of Regulation (EC) No 2232/96 this information may be entered in a register and in an evaluation programme made public; whereas, moreover, a number of persons should have access to this information throughout the Community procedure set up by the Regulation;

Whereas, however, the circulation of some of this information should be restricted; whereas the development of certain new flavouring substances and the manufacture of certain existing flavouring substances calls for heavy investment by manufacturers in research and production; whereas flavouring substances which are not inventions cannot be patented; whereas the development and manufacture of such flavouring substances nonetheless amount to trade secrets which have to be protected against acts of counterfeiting and unfair competition;

Whereas the Community legislature has taken account of this fact by requiring in the second subparagraph of Article 3(2) of Regulation (EC) No 2232/96 that these flavouring substances be 'designated in such a way as to protect the intellectual property rights of their manufacturer'; whereas this need to protect intellectual property is also referred to in recital 14 of the preamble to that Regulation; whereas this requirement applies not only to flavouring substances notified pursuant to Article 3(1) of the Regulation but also in the future to new flavouring substances as referred to in Article 5(2) thereof; whereas this requirement applies at all stages of the Community procedure set up by the Regulation;

Whereas intellectual property can be protected through the confidentiality of the technical data concerning the flavouring substances in question; whereas it is necessary to define the ways in which such confidential data should be protected by the Member States; whereas these ways can be defined by way of a Commission recommendation addressed to the Member States; whereas the ways in which confidential data is to be protected by the Commission are described in the communication of 21 April 1998 [3];

Whereas the bodies representing the manufacturers of flavouring substances consider it sufficient to protect confidential data for a period of five years;

Whereas the Member States have been consulted on this recommendation within the framework of the Standing Committee on Foodstuffs,

HEREBY FORMULATES THIS RECOMMENDATION:

1. Protection of the confidential data concerning a flavouring substance should be provided at the express request of the manufacturer of the flavouring substance in question, or his representative, made to the competent authorities of the Member State on whose territory the flavouring substance may be used. The Member State should examine each case to see whether or not such protection should be provided.

2. This confidential information may cover:

   — the nature of the flavouring substances, their origin and the manufacturing process involved,

   — the conditions as to the use of the flavouring substances, including the names of the foodstuffs in or on which they may be used,

[1] OJ L 299, 23. 11. 1996, p. 1.

[2] In this recommendation, reference to the Member States also covers the signatories to the EEA Agreement.

[3] OJ C 131, 29. 4. 1998, p. 3.

— all the information which is not generally known to persons belonging to the circles normally dealing with the type of information in question or which is not easily accessible to them and has a commercial value.

3. Where the Member State notifies to the Commission a list of flavouring substances which may be used on its territory, is should clearly indicate which substances on that list and/or which data have to be protected.

4. The need to protect confidential data extends to all stages of the procedure set up by Regulation (EC) No 2232/96, and particularly in the following three areas: the possession of information, its dissemination and its processing. It is for the administrations concerned to provide such protection at their own level in each of these areas by the appropriate means (security of the premises where such data is held, security of document transmission, identification of copies made by whatever means and of the persons for whom those copies are intended, confidentiality of translations, etc.).

5. At all stages of the procedure, the confidential data should be accessible only to those persons in charge or directly involved in the administrative, technical or scientific processing of the dossier, namely the officials, other employees and experts of the competent authorities of each Member State required to have a knowledge of dossiers from that Member State and possibly of dossiers from other Member States through meetings or exchanges of information. Such persons are bound by the obligation of professional secrecy under their national law or Article 214 of the EC Treaty. The confidential data should also be accessible to officials and other employees of the Member States responsible for the official control of foodstuffs and bound by the obligation of professional secrecy under their national law or Article 12 of Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs ([1]). Any other person having access to the confidential data but not bound by the obligation of professional secrecy under national or Community law should be required to sign a declaration of confidentiality.

6. Confidential data relating to flavouring substances should be protected for a period of five years from the date of receipt by the Commission of the list notified by the Member State and containing the flavouring substance in question or of any dossier concerning a new flavouring substance.

Done at Brussels, 21 April 1998.

For the Commission

Martin BANGEMANN

Member of the Commission

([1]) OJ L 186, 30. 6. 1989, p. 23.