COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.6.2006
COM(2006) 340 final

2006/0117 (COD)

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Directive 2002/2/EC

Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002[1] amended Council Directive 79/373/EEC on the circulation of compound feedingstuffs[2], as regards labelling provisions.

In particular, Article 1(4) of Directive 2002/2/EC, which replaces Article 5c of Directive 79/373/EEC, provides for the compulsory declaration of the percentages of feed materials present in compound feedingstuffs other than pet food in descending order by weight, with a tolerance of +/- 15 % of the declared value.

In addition, Article 1(1)(b) of Directive 2002/2/EC, which adds a point (l) to Article 5(1) of Directive 79/373/EEC, requires the communication of the exact percentages by weight of feed materials used in the compound feedingstuffs, at the customer's request.

2. Judgment of the Court of Justice of 6 December 2005

References for preliminary rulings under Article 234 of the EC Treaty were brought to the Court of Justice by courts of United Kingdom, Italy and the Netherlands, which centred essentially on the validity of Directive 2002/2/EC, in particular Article 1(1) (b) and 1(4) thereof.

Those references have been made in the context of the examination of requests by manufacturers of compound feedingstuffs or representatives of that industry for the annulment or suspension of the rules adopted for the purpose of transposing in national law the contested provisions of Directive 2002/2/EC.

In its judgment adopted on 6 December 2005[3], the Court of Justice rejected the arguments put forward to contest the validity of the legal basis (Article 152(4)(b) of the EC Treaty) used for the adoption of Directive 2002/2/EC and supported the position defended by the institutions.

Also, the Court turned down the arguments submitted to contest the validity of the Directive in the light of the principle of equal treatment and non-discrimination.

Examination by the Court of the arguments concerning the respect of the principle of proportionality has not revealed any factor affecting the validity of Article 1(4) of Directive 2002/2/EC. However, the Court ruled that in the light of that principle, Article 1(1)(b) of the Directive was invalid.

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1 OJ L 63, 6.3.2002, p. 23.

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

3 Joined Cases C-453/03, C-11/04, C-12/04 and C-194-04 *ABNA and Others*, not yet published in the Reports of Cases before the Court of Justice and the Court of First Instance.

The Court considered indeed that the obligation to inform customers, on request, of the exact quantitative composition of compound feedingstuffs could not be justified by the objective of protecting public health which was being pursued and manifestly went beyond what is necessary to attain that objective[4].

3. Proposal

In accordance with Article 233 of the EC Treaty, laying down that institutions whose act has been declared void are required to take the necessary measures to comply with the judgment of the Court of Justice, it is proposed to correct Directive 2002/2/EC through a Decision deleting the invalid provision, i.e. Article 1(1)(b) of the Directive.

For the sake of consistency, any reference made to the deleted provision should also be removed. Therefore, any reference to Article 5(1)(l) of Directive 79/373/EEC, which was added by Article 1(1)(b) of Directive 2002/2/EC, should be deleted. This is the case in Article 1(6) of Directive 2002/2/EC, inserting an Article 15a to Directive 79/373/EEC. The text of this provision should therefore be adapted accordingly.

The form of the draft proposal is a correcting Decision, taking account of the principle that amending acts should not be amended themselves but that they may however be corrected. It is proposed to correct the Directive through a Decision, which 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, in accordance with Article 10 of the EC Treaty.

[4] Cfr. in particular points 79 to 85 of the judgment.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152(4)(b) thereof,

Having regard to the proposal from the Commission[5],

Having regard to the opinion of the European Economic and Social Committee[6],

Having regard to the opinion of the Committee of the Regions[7],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[8],

Whereas:

(1) The Court of Justice of the European Communities, in its judgment handed down on 6 December 2005 in Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04[9], declared invalid Article 1(1)(b) of Directive 2002/2/EC of the European Parliament and of the Council[10], which amended Council Directive 79/373/EEC[11], in the light of the principle of proportionality. That provision added a point (l) in Article 5(1) of Directive 79/373/EEC requiring manufacturers of compound animal feedingstuffs to indicate, at the customer's request, the exact composition of a feedingstuff.

(2) Article 233 of the Treaty requires the institutions whose act has been declared void to take the necessary measures to comply with the judgment of the Court of Justice.

(3) Directive 2002/2/EC should therefore be corrected,

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5 OJ C , , p. .
6 OJ C , , p. .
7 OJ C , , p. .
8 OJ C , , p. .
9 *ABNA and Others*, not yet published in the Reports of Cases before the Court of Justice and the Court of First Instance.
10 OJ L 63, 6.3.2002, p. 23.
11 OJ L 86, 6.4.1979, p. 30. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

HAVE ADOPTED THIS DECISION:

Article 1

Directive 2002/2/EC is corrected as follows:

(1) Article 1(1)(b) is deleted.

(2) In Article 1(6), in the text of Article 15a of Directive 79/373/EEC, the words “Article 5(1)(j) and (l)” are replaced by the words “Article 5(1)(j)”.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*