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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on the **provision of food information to consumers**
– Statement of the Council's reasons

I. INTRODUCTION

1. On 1 February 2008, on the basis of Article 95 of the Treaty establishing the European Community (Article 114 of the Treaty on the Functioning of the European Union – the Treaty), the European Commission submitted a proposal for a Regulation of the European Parliament and of the Council on the **provision of food information to consumers** [1]. The ordinary legislative procedure is applicable.

2. Acting in accordance with Article 294(3) of the Treaty, the European Parliament adopted its position at first reading [2] on 16 June 2010, approving **247** amendments to the original Commission proposal.

   In accordance with Article 114(1) of the Treaty, the Economic and Social Committee delivered its opinion on 18 September 2008[3].

3. In accordance with Article 294(5) of the Treaty, the Council adopted its position at first reading by qualified majority on 14 February 2011.

II. OBJECTIVE

1. The main objective of the draft Regulation on the provision of food information to consumers is to update and rationalise European Union legislative provisions applicable to food labelling and, in particular, to nutrition labelling. The draft Regulation merges into a single Regulation different pieces of legislation, such as Directives 2000/13/EC[4] and 90/496/EEC[5] while introducing a major innovation: the nutrition declaration should become mandatory.

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1 6172/08.
2 10972/10 [P7_TA(2010)0222].
3 OJ C 77, 31.3.2009, p. 81.
4 Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L 109, 6.5.2000, p. 29).
5 Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs (OJ L 276, 6.10.1990, p. 40).

2. The aim of the draft Regulation is to pursue a high level of **protection of consumers'** health and interests by providing the means for final consumers to make informed choices and safe use of food, taking into account the differences in the perception of consumers and their information needs.

3. The draft Regulation further aims at ensuring the smooth functioning of the internal market, achieving the free movement within the Union of food legally produced and marketed, taking into account, where appropriate, the need to protect the **legitimate interests of producers** and to promote the **production of quality products**.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A) The Commission's proposal

In its first reading position, the Council introduced a number of changes to the Commission proposal, in particular regarding:

a) **the scope of the draft Regulation** (Article 1(3)): the Council specified explicitly that the draft Regulation applies to the activities of the food business operators. This covers amendments **6, 39 (5th part) and 305 (in part)**;

b) **imitation food** (Article 7(1)(d) and Annex VI): the Council introduced provisions aimed at preventing that food information would mislead the consumer by suggesting the presence of a particular food or of an ingredient although in reality the food is a food in which a component naturally present or an ingredient normally used has been substituted with a different component or a different ingredient. Furthermore, the Council requires the labelling of the component or ingredient used for the substitution. This covers the spirit of amendments **77, 78 and 230,** with one exception: the Council considers that the clear indication of the component or ingredient used for the substitution in addition to the name of the food gives to the consumers the relevant information;

c) **the name on the label** (Article 9(1)(h)): the Council clarified that it is mandatory to mention on the labelling the name and address of the food business operator responsible for the food information; additional names and addresses might be included on a voluntary basis in order to identify other food business operators involved in the food production process.

d) **distance selling** (Article 14): it is required that for prepacked food, all the mandatory food information, except the date of minimum durability or "use by date", must be provided before the conclusion of the purchase; anyway, all mandatory particulars must be provided at the moment of delivery; amendments **20, 118 and 119** are therefore covered.

e) **alcoholic beverages** (Article 16(4)): the Council set out in further detail the objectives of the report on the exemption of the alcoholic beverages that shall be submitted by the Commission within five years of the entry into force of the draft Regulation.

f) **country of origin or place of provenance** (Article 25): labelling of the country of origin or place of provenance is mandatory:

   a) where the absence of any indication might mislead the consumer;
   b) for swine, sheep, goat and poultry meat, in addition to products for which it is already compulsory by virtue of vertical legislation, subject to a report to be submitted by the Commission within 5 years from the date of application of the mandatory labelling.

   For other products (other types of meat, milk, milk used as an ingredient in dairy products; meat used as an ingredient; unprocessed foods; ingredients that represent more than 50% of a food), the Commission is required to submit a report within three years of the entry into force of the Regulation to evaluate the feasibility, cost-benefit analysis including the legal aspects regarding the internal market and the consequences for international trade of the indication of the country of origin or place of provenance for these products. The Council further requires an indication of the origin of the primary ingredient if it is not the same as the origin of the food product (or at least an indication that the origins are not the same).

g) **nutrition declaration** (Articles 29, 33): the elements of the mandatory nutrition declaration are energy, fat, saturates, carbohydrates, sugars, protein and salt; they may be voluntarily supplemented by the element defined in Article 29(2); all these elements should be presented in the same field of vision (front of pack or elsewhere). Furthermore, part of the information may be repeated in any field of vision (front of pack or elsewhere). This is in line with amendment **298**.

h) **expression "per 100g or per 100ml"** (Articles 31, 32): in the Council's position, the expression per 100g or per 100ml, which allows comparison between similar products, is obligatory in all cases. The expression "per portion" is permitted in addition to the expression above. This covers amendment **32 (1st part)**.

i) **non-prepacked foods** (Article 42): as a principle, for non-prepacked foods, only the information on allergens is mandatory. However, Member States may, at national level, establish that other particulars listed in Article 9 or Annex III are mandatory. They also can determine the means and forms under which the information is to be made available. This is in line with amendments **7, 34, 37, 39 (4th part), 93, 127, 136, 184 (1st part), 185, 220**.

j) **additional forms of expression or presentation** (Article 34): in line with the amendments of the European Parliament, the Council also deleted the Chapter of the Commission proposal on "national schemes". However, the intention of the Council was to allow the use by food business operators of additional forms of expression or presentation, subject to the respect of legal requirements. The Council settled a minimum frame at European Union level for additional forms of expression or presentation. This is in line with amendments **59, 155, 156, 170 (3rd part) and 301**.

k) **alignment with the Treaty**: the legal basis has been aligned with the Treaty; moreover, the terminology has been adapted and new rules concerning the powers given to the Commission to implement the Regulation have been inserted in the text. This is in line with the European Parliament's amendments **82, 105, 138, 188, 329**, **330**, **331, 333, 336, 337, 340 (in part), 346, 347, 348, 349**.

l) **transitional measures for implementing measures or delegated acts** (Article 45)**:** the draft Regulation establishes that measures adopted by the Commission shall include transitional period to allow for the exhaustion of stocks of the labelled food; this covers, in principle, amendment **69**;

m**) the application of the draft Regulation** (Article 55): the draft Regulation shall apply three years after its entry into force except in what concerns Articles 29 to 34, which shall apply 5 years after the entry into force; however, the application of the rules concerning the nutrition declaration may be anticipated: on a voluntary basis, food business operator may apply Articles 29 to 34 three years after the entry into force of the Regulation (Article 54(3)).

B) The European Parliament's amendments

a) The amendments incorporated:

The Council incorporated **75** of the European Parliament's amendments in its Position.

The Council adopted the following amendments in **full**:
59, 301 (deletion of the chapter on national schemes)**, 57, 58** (simplification of the definition of "primary ingredient")**, 76** (material degree)**, 82** (alignment with the Lisbon Treaty)**, 83** (misleading practices)**, 103** (competence to change the list of particulars), **149** (simplification)**, 184, (1st part), 185** (non-prepacked foods)**, 217** (foods exempted from the nutrition declaration), **243** (list of vitamins)**, 105, 138, 188, 329**, **330, 331, 333, 336, 337, 346, 347, 348, 349** (implementing powers and delegated acts).

The following amendments were **partially** accepted:
17, **332, 340** (implementing powers and delegated acts) **88, 89** (responsibility)**, 118, 119** (distance selling)**, 155** (forms of expression or presentation), **300** (national schemes)**, 322** (Annex I).

The following amendments were accepted in **principle**:
6, 305 (in part) (scope of the Regulation)**,** 7, **34, 37, 39 (4th and 5th parts), 93, 127, 136, 285** (non-prepacked food), **14, 84, 86, 326** (responsibility), **20, 118, 119** (distance selling)**, 31** (same field of vision), **32 (1st part)** (expression of quantities)**, 40** (foods from third countries)**, 69** (transitional measures)**, 77**, **78**, **230** (imitation food)**, 130** ('nanos')**, 134** (enzymes), **156, 160, 165** (forms of expression or presentation), **170 (1st part)** (voluntary information), **170 (3rd part) (**additional forms of expression or presentation)**, 178** (free movement of goods), **194** (entry into force of Articles 29 to 34), **202**, **203, 204, 245, 255** (Annexes), **298** (repetition of the nutrition declaration).

b) Amendments already covered by the Commission's Proposal

There is a number of amendments that the Council did not expressly integrate in its text for considering that they were already covered by the Commission proposal in parts not changed by the Council. However, the Council agrees with the principles behind amendments **71, 72, 142 (in part).** (categories of information), **98, 99** (storage conditions), **114, 122** (language requirements), **115**, **265**, **276, 293** (misleading the consumer), **116, 224 (in part)** (legibility), **209** (fruits and vegetables), **211** (mineral waters)**, 215, 216** (additives).

In the total, **92** amendments of the European Parliament are in accordance at least with the spirit of the Position of the Council.

c) Amendments not accepted

The Council did **not** accept the following amendments:

1) Objective of the draft Regulation:

The essential objectives of the draft Regulation are set out in recitals 1, 2 and 3 of the Council's position. The additions to recital 2 in amendment **1** were considered unnecessary.

Article 1(1) of the Commission proposal defines the objective of the Regulation; it would be inadequate to delete it. Amendment **38** was therefore rejected.

The Council considered the objective of the draft Regulation to be correctly expressed in Article 3(1) of the Council's position. No need was seen for a wording change, thus amendment **66** was not accepted**.**

The draft Regulation aims essentially to protect consumers, but there is no consumer protection without food production; it is therefore in the interest of consumers that the producer's interests as well as the quality of the products should also be taken into consideration. Amendment **68** was therefore rejected.

2) Education and information campaigns

Amendments **4 and 5** introduce references in the recitals of this European Union draft Regulation to education and information campaigns, which however are national level instruments; furthermore, there is nothing corresponding to these recitals in the provisions of the legal text. These amendments were rejected.

3) Misleading the consumer

The prohibition of the attribution of medicinal properties to foods in recital 20 of the Council's position was more important to the Council than the content of the European Parliament's version. Amendment **12** therefore was rejected.

Special dietary requirements: the prohibition provided for by the European Parliament in its amendment **81** is already covered by Directive 2009/39/EC on foodstuffs intended for particular nutritional uses [6].

[6] Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses (OJ L 124, 20.5.2009, p. 21).

4) Nutrition or health claims

Nutrition and health claims are regulated by Regulation (EC) No 1924/2006 on nutrition and health claims made for foods[7]. Any overlapping between the present draft Regulation and the nutrition and health claims Regulation should be avoided. Thus, the reference introduced in the recital by amendment **13** was considered to be inappropriate.

Emphasis on the absence or reduced quantity of a nutrient might be in a grey zone of frontier between an information and a claim; any overlapping between the present draft Regulation and the Regulation (EC) No 1924/2006 should be avoided. Amendments **79, 80** were rejected**.**

5) New technologies

Amendment **16** introduces a new recital describing alternative ways for consumers to obtain information from sources other than food labels such as internet. The recital is purely descriptive and there is no corresponding reference in the body of the text.

6) Allergens

Concerning substances causing allergies, amendment **18** introduces in a recital a requirement (to indicate the traces of the substance) for which there is no corresponding reference in the body of the text.

According to amendment **135,** the potential for allergy or intolerance should be immediately recognisable from references to allergens in the list of ingredients. The Council considers that an indication of the name of the product that might cause allergy or intolerance is sufficiently clear information for the consumer.

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[7] Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ L 404, 30.12.2006, p. 9).

7) Public health policy

A recital in a European Union Regulation does not seem an appropriate context in which to indicate to Member States how to conduct their public health policy, which is a national competence; amendment **26** was therefore rejected.

8) National legislation

Article 37 of the Council position stipulates that national measures may not give rise to obstacles to free movement of goods. Amendment **35** is thus superfluous.

9) Definitions

– The Council considers that the definition of food information law is essential in the context of the draft Regulation and should not be deleted; amendment **44** was rejected.

– The definition of mandatory food information clarifies the meaning of the legal text and should not be deleted; amendment **45** was rejected.

– The definition of prepacked food proposed by the Commission, referring to the packaging and specifying that the food is put into the packaging before being offered for sale, is more complete and precise than the version proposed by amendment **47**; this amendment was rejected**.**

– The definition of "non-prepacked food" is superfluous and would be counterproductive as "non-prepacked food" is all the food that is not prepacked and there is a definition of prepacked food; moreover providing a definition of non-prepacked food would open up the possibility of there being a food that was neither packed nor non-packed and this would inevitably lead to legal uncertainty; amendment **48** was therefore rejected.

– The concept of handcrafted food product is not used in the Council's position; the definition is therefore superfluous; amendment **292** was rejected.

– In the definition of "ingredient", the sentence "residues shall not be considered as ingredients" adds clarity and certainty; it should not be deleted; amendment **49** was rejected.

– The definition of "field of vision" in the Commission's proposal was considered more precise; amendment **52** was rejected.

– For reasons of legal clarity and certainty, the Council preferred to maintain the Commission's proposal for a definition of "legal name" in the legal text and therefore rejected amendments **54** and **129**.

– The Council simplified the definition of "primary ingredient", deleting the definitions of significant and characterising ingredients, but maintained the definition of primary ingredient in the legal text as is it used in one of the provisions; amendment **56** was rejected**.**

– The Council considers the concept of "single-ingredient product" clear enough with no need for a definition; amendment **350** was not accepted.

– The Council opted not to include in the text a definition of "imitation food", in order to avoid the risk of excluding from a definition cases that could be seen as "food imitation" and should be covered by the same regime; amendment **63** was not accepted.

10) Non-prepacked foods

The Council maintained non-prepacked foods within the scope of the draft Regulation, covered by Article 41. As a consequence, amendments **39 (2nd and 3rd parts), 109** were rejected.

By principle, no information is required to non-prepacked foods except for allergens. Non-prepacked foods usually do not cross borders. It is therefore logical to give to Member States the competence to require, at national level, the provision of further information in accordance to their national dietary considerations and public health priorities. Therefore amendments **6**, **184 (2nd part)** were rejected.

11) Date of manufacture

The Council discussed "date of manufacture" in general. This would be supplementary information to be provided by the food business operator, representing an extra burden on business operators. Therefore, before requiring it, its need and utility have to be considered carefully. For that reason, amendments **62, 97, 140** were rejected.

12) Origin of the food

To avoid misleading the consumer is one of the principles underlying the rules on origin in the Council's position. The provision deleted by amendment **172** of the European Parliament aims to avoid misleading consumer. Consequently amendments **172** and also **173** were rejected.

The European Parliament proposed amendments requiring immediate declaration of origin for foods such as meat, dairy products, fresh fruits and vegetables, other single-ingredient products and meat and fish when used as ingredients in processed foods. In the Council's position, indication of the country of origin or place of provenance is also required for swine, sheep, goat and poultry meat. However, for other products (other types of meat, milk, milk used as an ingredient in dairy products; meat used as an ingredient; unprocessed foods; ingredients that represent more than 50% of a food), the Council provided for a prior Commission report to attest the feasibility of the indication of origin. For that reason, the Council could not accept amendments **101, 309, 328**.

Amendment **24** was rejected as the European Union as a reference for the provenance of the food did not seem to be a question to be deal with at the Regulation level. It rather would be one of the elements to be evaluated by the Commission's reports and, if necessary, subsequently be established by implementing measures.

Concerning amendment **50**, the Council preferred to keep the broader scope of the definition of "place of provenance" provided for in the Commission's proposal. This amendment was rejected.

Regarding amendment **177**, the Council had no intention of restricting the concept of "provenance".

The Council maintained the possibility for Member States to adopt national measures concerning the mandatory indication of the country of origin or place of provenance of foods where there is a proven link between certain qualities of the food and its origin or provenance, to protect the quality of the local food. Amendment **179** had to be rejected.

13) Alcoholic beverages

The Council exempted specifically defined alcoholic beverages from bearing both the list of ingredients and the nutrition declaration in their entirety. However, pending a Commission report within 5 years to review the situation, information can be provided voluntarily, and in particular concerning the nutrition declaration, energy values might be given alone for these exempted beverages. However, energy is not compulsorily required in the Council's position. Amendment **28** was thus rejected.

The Council intentionally did not exempt beverages where alcohol is mixed with soft drinks (commonly called "alcopops"), mainly consumed by young people in large quantities. By consequence, the Council could not accept amendments **145, 294, 339**. The European Parliament exempted alcopops, but on the other hand called in a recital for stricter labelling requirements for them. The Council considers that the application of the common requirements provides enough information on these beverages. Amendment **21** was rejected.

As a rule, alcoholic beverages are exempted from bearing the list of ingredients. However, if different provisions were applicable at national level there is no reason not to maintain them. The Council could not accept amendment **181**.

14) Legibility

For the Council, one of the essential elements of legibility is the mandatory font size, completed with contrast and additional criteria to be defined by the Commission through delegated acts. Therefore the Council established the size of letters at 1.2mm (x-height) for a text to be considered legible while the European Parliament refers to a subjective criterion (optical aids). In amendments **19, 113** and **334**, the European Parliament did not explicitly consider any measurable criterion for determining legibility, which was not acceptable to the Council.

The European Parliament establishes a closed list of additional criteria while the Council left the list open for consideration by the Commission. The Council cannot accept amendment **53**.

Amendment **67** introduces a generic provision with vague concepts the compliance of which would be impossible to verify.

Given the general requirement on font size in the Council's position, amendment **111** requiring a font size for specific foods becomes pointless.

The Council considered it necessary to give powers to the Commission to adopt detailed rules on contrast between the print and the background given the very technical nature of this provision. The Council could not therefore accept amendment **112**.

Concerning amendment **117**, if the burden on the environment would be a criterion for the legislator to bear in mind in order to limit the mandatory information required, it should not be directly applicable to food business operators. The latter, shall provide mandatory information, legibly and not taking into consideration the increase in the size of the packing material or the increase of the burden on the environment. Amendment **10** was also rejected, as it suggests in a recital that the burden on the environment would be a criterion for establishing new mandatory information, but this does not correspond to the provision in the body of the text.

15) Categories of information

The Council considered important to inform consumers by means of labelling of the risks to health resulting from eating or drinking in excess, after the use by date, etc.; amendment **73**, which deletes that possibility, was rejected.

16) Mandatory particulars:

Criteria to establish mandatory information: in line with the Commission proposal, the Council considers that the need of consumers for information is the determinant criterion to make information mandatory. Amendment **75** was rejected.

– Ingredients: the reference to the Annex introduced by amendment **94** is not necessary and might cause problems if this Regulation is modified or if relevant provisions are adopted by a different item of legislation.

– Quantity: it is clear that "net quantity" means the quantity of the food when it is placed into the package; there is no need for further explanation; amendment **95** was rejected**.**

– Quantity of liquids: amendment **139** introduces a reference to a legal act that did not seem essential to the clarity of the text.

– Weights and measures (Article 11): in amendment **106,** the European Parliament introduces the reference to one specific piece of legislation that must be complied with; this single reference might give the impression that all other legislation falls outside the scope of Article 11, which would be an incorrect message.

– Placement: the European Parliament eliminated the option of putting the information on a label attached to the package; the Council was in favour of flexibility and retained that option; amendment **107** was rejected.

17) List of ingredients – nutrition declaration

Exemptions from the nutrition declaration: with amendment **30,** the European Parliament introduced in a recital a further example of circumstances in which a food is exempted from the nutrition declaration. The Council did not feel the need to repeat in the recital the cases of exemption mentioned in Annex V.

For the Council, the mandatory elements of the mandatory nutrition declaration should be energy, fat, saturates, carbohydrates, sugars, protein and salt. The Council therefore could not accept amendments **144, 152, 319**.

Nor can the Council agree with amendment **146 (1st part)**; the Council considers the information on cholesterol useless and misleading to the consumer because the cholesterol consumed has no direct relationship to the levels of cholesterol in the human body.

The Council considers that if the list of vitamins is incomplete, it is Annex XIII that must be completed. Amendment **146 (2nd part)** was not acceptable.

The Council requires that the content of the mandatory nutrition declaration should appear in the **same** field of vision of the package – front or other view. This will ensure that the consumer has immediate access to complete information, not merely to the negative or positive qualities of the food. Furthermore, the Council would permit specific parts of the information to be repeated anywhere on the package voluntarily. The Council therefore could not accept amendments **161, 313**.

Presentation of the energy content: in the Council's view, the consumer should as far as possible receive maximum information concerning the food at first glance. The consumer should not receive partial and distorted information on the food. The Council therefore did not subscribe to the idea of highlighting information on one element to the detriment of others and rejected amendments **158**, **159, 162**.

The additional wording required by amendment **151** is not rigorous and anyway requires an educational campaign to be put into context. On the other hand, if the educational campaign is correctly implemented there will be no need for such lengthy wording on every label.

Information provided on a voluntary basis: the Council considers that even where provided on a voluntary basis, the information should respect the legal requirements of Sections 2 and 3 of Chapter IV of the Regulation. The Council could not therefore accept the deletion of Article 35(1) and rejected amendment **169**. Amendment **170 (2nd part),** is difficult to implement and had to be rejected by the Council: who would be responsible for making the information available to the public?

Indelibly marked glass bottles intended for reuse: the Council considered that the nutrition requirements are essential. Amendments **124 and 223** were rejected.

Concerning the definition of small packages in relation to the mandatory particulars required, the Council did not accept amendment **125** and stayed in line with the Commission: the Council defines a small package as a package the largest surface of which has an area of less than 10 cm^2 and requires less information than the European Parliament.

Concerning the definition of small packages exempted from the requirement of the mandatory nutrition declaration, the Council kept to the Commission proposal: a small package is a package the largest surface of which has an area of less than 25 cm^2 and not even energy values are required for these packages. Amendment **219** was rejected.

Calculation of energy and nutrient values: according to amendment **340 (1st part),** the declared values should be determined at the end of the minimum durability period. The Council did not see any reason to specify such a period of time.

18) Labelling requirements in specific legislation

The European Parliament introduced amendments requiring the Commission to publish a list with the labelling requirements provided for in specific European Union legislation applicable to particular foods. Taking into account the fact that there are databases available to the public (e.g. on the internet) giving the legislation in force, the Council considers that to draw up such a list, which would need to be constantly updated to be useful, would be an unnecessary additional burden. The Council could not accept amendments **15, 41.**

In amendment **42**, the European Parliament asked the Commission to confirm that the specific requirements comply with this draft Regulation. The Council can recognise the value of such a confirmation, but since a budgetary commitment is not provided for in this draft Regulation with this aim, this piece of legislation is not the right place to impose an additional burden on the Commission. The Council could not accept amendment **42**.

19) The name on the label

For the Council, the person identified on the label should be the person responsible for the food information. The Council considered the question of space on the labels and therefore could not accept amendment **100** and its lists of persons to identify.

20) Expression "per portion"

The European Parliament **requires** the expression "per portion" of the nutrition declaration in addition to the expression per 100 g or per 100 ml (amendment **313**) and therefore deleted Article 32(1) of the Commission proposal where the expression per portion was admitted as a mere possibility (amendment **153)**. The Council **permits** the expression "per portion", to complement the expression per 100g or per 100 ml, the only form of expression that allows comparison between the products. Both amendments were rejected.

21) Additional forms of expression and presentation:

The Council authorises the use by food business operators of additional forms of expression or presentation and considers amendments **11, 102** too restrictive.

The Council could not accept the deletion of paragraphs (1) to (3) of Article 34 of the Commission proposal on the forms of presentation and thus rejected amendment **316**.

22) Derogations for micro-companies

The majority of the food business operators placing their products on the European market are small and medium enterprises. If micro-companies are exempted from the obligations provided for in the draft Regulation, it would mean that a significant proportion of the products on the EU market will be exempted from providing essential information. The Council could not accept amendments **104** and **221**.

23) Implementing powers and delegated acts

The European Parliament and the Council have divergent opinions on the delegation of the legislative powers to the Commission in particular concerning Article 13(3) (amendment **108);** Articles 26(2) and 30(4) (amendments **338 and 341 (2nd part));** Article 29(4) (amendment **146, (3rd part));** Article 35(6) (amendment **174)**.

24) Vegetarianism

Regarding amendment **175**, it seemed premature to insert in a legal text two concepts that are not defined at EU or international level and in relation to which there is too much uncertainty. The Council rejected this amendment.

25) Date of minimum durability and use-by date

The European Parliament proposed a definition of “use-by" date (Article 2). Instead of introducing a definition, the Council preferred to retain the explanation in Article 24(1). Amendment **61** was rejected**.**

In the list of mandatory particulars (Article 9), the explanation introduced in amendment **96** concerning the “use-by" date is sufficiently covered by Article 25. The amendment was rejected.

The European Parliament opted to transfer, with minor changes, the text of the content of Annex IX to the body of the draft Regulation. The Council did not see any advantage in terms of clarity of the text in following that line. Amendments **141, 241** were considered superfluous and therefore not accepted.

26) Stakeholders consulted in the context of the national measures notification procedure

The European Parliament provided for a formal notification procedure for all stakeholders in accordance with Directive 98/34/EC. The Council, in line with the Commission proposal, considers that any decision on the need to consult the stakeholders should be taken on a case-by-case basis and in an informal way. Amendments **186** and **187** were rejected.

27) Annexes

– **Isomaltulose and D-tagatose:** the European Food Safety Authority has not yet delivered its opinion on these two products; it seemed to the Council premature to anticipate the scientific results by already including the products in the text – amendment **197** was rejected;

– **Milk protein:** the formula provided for in the Commission proposal gives an average value of the protein content for all products; if a different formula is provided for each specific case the calculation would become too complex and difficult. The Council kept to the Commission proposal and rejected amendment **198**.

– **Culinary gold leaf**: definition unnecessary as the concept is not used in the Council's position. Amendment **199** was not accepted.

– **Front of the package**: definition unnecessary as the concept is not used in the Council's position. Amendment **200** was not accepted.

– **Meat products from special slaughter:** the Council did not intend to adopt a specific labelling for this meat. Amendment **205** was not accepted.

– **Sweeteners:** the Council did not require that the name of the food appears in the principal field of vision; furthermore, the Council did not consider it essential to label sweeteners in the principal field of vision. Amendment **317** was rejected.

– **Phenylalanine** is the scientifically correct term for the substance that can cause adverse health problems in people. The Council did not see any reason to replace the term used and set out in Regulation (EC) No. 1333/2008. Amendment **206** was rejected.

– **Labelling of additives:** additives are already included in the list of ingredients; the requirement in amendment **275** would result in double labelling.

– **Beef and pork proteins used in the production of chicken products:** although the information might be of high importance, especially for people with a diet determined by religious considerations, the Council considered that as beef and pork should be identified in the list of ingredients, there is no need for a double labelling; amendment **207** was rejected.

– **Seasonings:** the concept of seasonings is so broad and so vague that it could for instance include sauces for salads, which the Council does not wish to exempt from bearing the mandatory nutrition declaration; amendment **212** was rejected.

– **Sugars, novel sugars and varieties of flour:** the Council considered that these products should provide the relevant food information; amendments **213** and **214** were rejected.

– **Gift packaging, mixed multi-packs, assortments** would most probably contain food with the usual nutrients in relation to which the consumer must be informed; **confectionery and sugar and chocolate figurines** should not be exempted for the same reason that sugar and chocolate are not exempted; amendment **218** was rejected.

– **Food of less than 5 g/ml:** according to the Council's position, for prepacked food, it is generally covered by indent 18; for non-prepacked food, it should be regulated by the Member States; amendment **222** was rejected.

– **Re-frozen, defrosted:** the two terms are added to what is merely a list of examples; they do not need to be stated to be considered included in the list; the addition is irrelevant; amendment **225** was not accepted.

– **Different animal origin or water indicated with the name of the food:** the indication of such ingredients in the list of ingredients is mandatory; to further indicate them with the name of the food would result in double labelling which would not simplify or clarify the readability of the labels and would be an extra burden for food business operators with no relevant advantage for the consumer; amendments **226, 227, 228** were rejected.

– **Sausage casings:** artificial casings must be labelled in accordance to Article 9(1)(j) of the Council's position; natural casings are typically the field of voluntary information: both casings are safe and it would be unfair to penalise one form of casing over another as collagen casings are also from natural sources; producers who want to promote the casings from intestinal tract or even toed ungulates can do so voluntarily; amendment **229** was rejected.

– **Preparations of spices and herbs**: if this concept is a synonym of mixtures, it is superfluous; if it means a preparation of spices and herbs with the addition of other ingredients, it its place is not in this row of this table. Amendment **231** was rejected.

– **Oil/fat origin**: the Council had noted that more detailed information than the animal/vegetal origin of the oil/fat would represent further costs for food business operators and would not be justified considering the strengthening of the nutritional information. Amendment **263, 279** were rejected.

– **Hydrogenated**: if the information already exists through other sources, there is no need to repeat it. The Council maintained the Commission version and rejected amendment **232**.

– **Starches**: all types of starches are covered by the Council's position; the Council did not see any advantage in further specifying the sub-types of starches; this amendment is pointless **234** and was rejected.

– **Food colouring**: this is a general category that might include different types of ingredients; it is preferable to specify the ingredients and not include them in a global category which would reduce the information to consumers; amendment **235** was rejected.

– **Mechanically separated meat**: the Council retained a concept that encompasses both processes of mechanical separation of meat taking into account that once the processes have been carried out it is impossible to distinguish between them. When the Council took its decision, the *Communication from the Commission to the European Parliament and the Council on the future necessity and use of mechanically separated meat in the European Union, including the information policy towards consumers*[8] was not yet available. The Council did not accept amendment **236**.

– **Enzymes and cellulose extract:** are both not functional categories that have not their place in the list of Annex V of the Council's Position; the labelling of enzymes is regulated by Regulation (EC) No 1332/2008[9]; cellulose extract when used in food as an additive, regulated by Regulation (EC) No 1333/2008[10]; therefore amendments **237** and **307** are rejected.

– **Sold by number or weighed**: normally food sold in the presence of the purchaser would be non-prepacked food, but not necessarily; there is no advantage in a possible restriction of the scope of this provision; amendment **238** was rejected.

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8 17547/10.

9 Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes.

10 Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives.

– **Other exemptions**: the provision is superfluous; amendment **239** was rejected.

– **Reference intakes:** it is clear from the context that the values of the reference intakes are "per day"; the amendment is unnecessary. Amendment **242** was rejected**.**

– **Information in kJ**: the legal units of measurement which must be used for expressing quantities of energy are established by Directive 80/181/EEC; Point 1.2.3 of the Annex establishes that the quantity of energy should be expressed in Joules; therefore, the expression of the energy in kJ in food labelling is a legal obligation; amendments **246, 248** were rejected.

A number of amendments are not reflected in the Council's position because they are deemed unnecessary and/or in conflict with it. In particular:

Amendments **2, 3, 8, 9, 27, 29, 43, 46, 55, 60, 70, 92, 123, 126, 132, 133, 137, 143, 168, 201, 208, 299** were rejected due to their essentially linguistic nature or to the absence of any substantial change in the meaning of the text.

IV. CONCLUSION

The Council believes that its position at first reading represents a fair balance between the achievement of a high level of protection of consumers' health and interests and the need to protect the legitimate interests of producers, to promote the production of quality products, while guarantying the free movement of goods.

The Council looks forward to constructive discussions with the European Parliament at second reading with a view to early adoption of the Regulation.