

ROADMAP	
TITLE OF THE INITIATIVE	Proposal for a Directive of the EP and of the Council amending Council Directive 2001/110/EC relating to honey
TYPE OF INITIATIVE	• CWP      X Non-CWP      • Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	SANCO E1
EXPECTED DATE OF ADOPTION	September 2012
VERSION OF ROADMAP	No: 1      Last modification:      Month/Year:

This indicative roadmap is provided for information purposes only and is subject to change. It does not preclude the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

A. Context, problem definition
<p>(i) What is the political context of the initiative?  (ii) How does it relate to past and possible future initiatives, and to other EU policies?  (iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?</p>
<p><b><u>(i) POLITICAL CONTEXT</u></b></p> <p>This proposal is to be placed in the context of the exercise of alignment of EU legislation to the new rules set in the Treaty on the Functioning of the European Union (TFUE) on the delegation of powers from the legislators to the Commission.</p> <p>This proposal it is also made in response to the situation created by a ruling of the European Court of Justice (case C-442/09) related to the application of the GMO legislation (Regulation (EC) No 1829/2003 on genetically food and feed) to honey.</p> <ul style="list-style-type: none"> <li>• Before the ruling, there was a general understanding that 1/honey being an animal product, was not covered by the scope of the GMO legislation, and 2/ honey being a natural substance produced by bees, could not be considered as having ingredients within the meaning of Directive 2000/13/EC on the labelling of foodstuffs.</li> <li>• The Court indicated that 1/ the previous understanding of the scope of the GMO legislation was wrong (this legislation was fully applicable to honey) and 2/ that pollen in honey was to be considered as an ingredient.</li> </ul> <p>It is important to clarify that this proposal has not as objective to change the conclusion of the ECJ that the GMO legislation applies to honey (point 1 of second bullet point above). It aims at clarifying that pollen in honey is not an ingredient but a constituent (point 2 of second bullet point above). This clarification is technically justified in light of the method of production of honey by bees. Legally it will only affect the application of the labelling rules applicable to honey.</p>
<p><b><u>(ii) LINK WITH OTHER INITIATIVE /OTHER EU POLICY</u></b></p> <p>The proposal aims at amending Directive 2001/110/EC on Honey to clarify that pollen in honey is not an ingredient. This is an amendment of a technical nature limited to honey which should have no impact on other EU policies.</p> <p>It is also to be placed in the context of the general exercise of alignment of existing Commission implementing powers in Directive 2001/110/EC to the differentiation between delegated and implementing powers introduced by Articles 290 and 291 TFEU.</p>
<p><b><u>(iii) EX- POST ANALYSIS OF EXISTING LEGISLATION AND RELEVANT RESULTS</u></b></p> <p>Directive 2001/110/EC does not state whether pollen is or is not an "ingredient" in the sense of Directive 2000/13/EC. In the absence of precision in the Directive, the ECJ, based on the facts which were brought to its attention, considered that it should be regarded as an ingredient. Following the judgement, it appeared that the facts on which the Court based its ruling did not reflect appropriately the origin of the presence of pollen in honey.</p> <p>The ruling is based on the understanding that the presence of pollen in honey is "mainly due to the centrifugation</p>

carried out by the beekeepers" to collect honey. The Court considered this element as decisive, since Directive 2000/13/EC defines ingredient as "any substance, including additives and enzymes, used in the manufacture or preparation of a foodstuff and still present in the finished product, even if in altered form". However pollen only enters into the hive as a result of the activity of the bees. Based on this information, it is appropriate to amend existing legislation in order to reflect clearly, in light of the origin of the presence in pollen in honey, that pollen in honey shall not be regarded as an ingredient but as a constituent.

What are the main problems which this initiative will address?

This initiative will clarify that pollen is not an ingredient of honey. The consequence of this change will be that the labelling rules applicable to ingredients in Directive 2000/13/EC, (the compulsory requirement to mention the list of ingredients on the product), will not apply to honey. Before the ruling nobody was claiming that pollen could be an ingredient of honey and therefore the rules on labelling of ingredients were not deemed to be applicable at all to honey (product mono-ingredient). However the consequence of the Court ruling is that these rules are now to be considered as fully applicable to honey. Therefore, from a legal point of views it is clear that every pot of honey placed on the market should bear a list of ingredients where pollen appears as one of the ingredients. The problem is that nobody knows which could be the other ingredients apart from pollen, given that honey is produced by bees with different nectars and constituents which do not meet the definition of "ingredients" (which implies that something is voluntarily added to a product)! Therefore nobody complies with this labelling obligation which is in fact an unexpected collateral effect of the ruling (to which the judges did not think at all because they concentrated on the GMOs aspects). As regards the application of Directive 2000/13/EC, this change will thus have the effect to restore the status quo that was prevailing before the judgement as regards the application of the labelling rules. Prior authorisation of the GMO and labelling rules applicable to GMOs set in the GMO legislation will remain fully applicable to honey.

This initiative also align the Honey Directive to the rules introduced by the Lisbon treaty on the delegation of power conferred on the Commission.

Who will be affected by it?

Honey producers and stakeholders involved in honey production and using honey as an ingredient in foodstuffs have been affected by the interpretation of EU legislation in the above mentioned Court case in so far as they are currently obliged to affix a list of ingredient on honey among which pollen has to appear (where this was not required before the ruling). This proposal should therefore have a positive impact on these stakeholders who will in particular not have to affix a list of ingredients on their product label and bear the costs of such a labelling. By clarifying that honey is a natural substance composed of various constituents with no ingredient added, the amendment should also have a positive impact on the image of the product.

- (i) Is EU action justified on grounds of subsidiarity?
- (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test)
- (iii) Can the EU achieve the objectives better? (Test of EU Value Added)

#### **(i) SUBSIDIARITY**

In light of the technical nature of the changes proposed, the proposal does not modify the division of responsibilities between the Member States and the Commission as set out by the amended legislation. It is thus in line with the principle of subsidiarity.

#### **(ii) NECESSITY TEST**

The amendments put forward in the proposal cannot be achieved by Member States given that they have as objectives:

- (a) to align the Directive on Articles 290 and 291 TFEU of the implementing powers conferred to the Commission by the legislators.
- (b) to clarify the legal status of pollen in honey in relation to the definition of "ingredients" in Article 6 of Directive 200/13/EC.

#### **(iii) TEST of VALUE ADDED**

For the reasons above mentioned, these objectives cannot be achieved at Member State level but only by amending the Honey Directive.

## B. Objectives of the initiative

What are the main policy objectives?
The Objectives of the proposal are: 1) to align the existing Commission implementing powers with the provisions laid down in the TFEU and to confer additional delegated powers to the Commission. 2) to explicitly state in the Directive that pollen is a natural constituent of honey and not an ingredient
Do the objectives imply developing EU policy in new areas?
No. This is a targeted amendment of a technical nature limited to Directive 2001/110/EC.

C. Options
(i) What are the policy options being considered? (ii) What legislative or 'soft law' instruments could be considered? (iii) How do the options respect the proportionality principle?
<b><u>(i) POLICY OPTIONS CONSIDERED</u></b> Following the ECJ ruling, there have been different options considered: <b>Option 1:</b> stay with the interpretation of the ECJ that pollen in honey is an ingredient; <b>Option 2:</b> clarify in the EU legislation that pollen in honey is not an ingredient. To achieve the expected result two alternatives have been considered:  (a) to amend Regulation (EC) No 1169/2011 on the provisions of food information to consumers - which replaces Directive 2000/13 (but is not applicable yet) - to indicate in the definition of "ingredient" that pollen is not an ingredient in honey  (b) to amend Directive 2001/110/EC on honey to introduce a specific mention in the Directive clarifying that pollen is not an ingredient, but a natural constituent.
<b><u>(ii) TYPE OF INSTRUMENT TO BE CONSIDERED</u></b> As the ruling of the ECJ provides interpretation of existing legislation, an amendment of EU legislation is necessary to introduce the clarification as regards the status of pollen in honey.
<b><u>(iii) PROPORTIONALITY PRINCIPLE</u></b> The proposal is in line with the proportionality principle. It is a limited amendment of a technical nature which will make it possible to achieve the expected objective which is to reflect in the legislation (by saying that pollen is not an ingredient in honey but a constituent) the origin of the presence of pollen in honey, which is a natural substance produced by bees. No alternatives other than amending EU legislation are possible to attain this objective, in light of the existence of a Court ruling which provides interpretation of existing legislation.

D. Initial assessment of impacts
What are the benefits and costs of each of the policy options?
<b>Option 1:</b> current EU legislation, as interpreted by the ECJ, has an impact on various stakeholders from the beekeepers to the different operators in the supply chain. It entails the application of some specific labelling rules (such as a list of ingredient) which were not considered applicable to honey before the ruling. The implementation of these labelling rules entails additional costs for the affected stakeholders in the EU and in third countries which are not deemed legitimate in light of the origin of the presence of pollen in honey (presence of honey in the hive is due to the bees' activity and not to the beekeeper). In addition the fact that pollen is to be labelled as an ingredient of honey may have an impact on the image of the product which is of a high quality, natural and made by bees (and only harvested by the beekeeper). Therefore the option of <u>not</u> changing existing EU legislation, as interpreted by the ECJ, would have a negative impact on these stakeholders. Moreover, it would not benefit the consumer because technically pollen is a normal constituent of honey and not an ingredient added by the beekeepers. If pollen in honey should continue to be labelled as an ingredient, it would only confuse the consumer as to the way honey is produced and raise doubts on whether honey is a natural substance.  <b>Option 2 (a):</b> an amendment of Regulation (EC) No 1169/2011 will allow to reach the same objectives as a modification of the Honey Directive. However this Regulation has been adopted very recently after a long discussion and it is not yet entered into force. It does thus not appear appropriate to re-open this newly adopted act if other alternatives exist. In addition the Honey Directive is the <i>lex specialis</i> for any amendment linked to the status of honey and of its various constituents.  <b>Option 2(b):</b> for the reasons exposed above, it was decided 1/ that an amendment of EU legislation to clarify the

status of pollen in honey was needed; 2/the amendment of the Honey Directive was deemed to be the most appropriate tool to introduce such a change.
Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?
<b><u>(i) IMPACT ON SIMPLIFICATION</u></b> Given the limited nature of the changes proposed, the proposal should have no effect on simplification.
<b><u>(ii) IMPACT ON ADMINISTRATIVE BURDEN</u></b> By not imposing unnecessary labelling rules to honey and honey products, this proposal will reduce administrative burdens to concerned stakeholders.
<b><u>(iii) IMPACT ON RELATIONS WITH OTHER COUNTRIES</u></b> Immediately after the ruling many third countries (Argentina, Brazil, Mexico, USA, Canada, Paraguay and others) complained about the impact on the ruling on trade. The Commission has received many letters of third countries on this subject and in many meetings with the Commission's services these countries have expressed their worries. The issue has also been regularly raised in the case of SPS and TBT meetings in Geneva. Third countries believe that the interpretation of the ECJ that pollen is an ingredient in Honey is in contradiction with the Codex Standard for Honey which states that honey is a natural substance produced by honey bees to which no food ingredient can be added.
<b><u>(iv) POSSIBLE DIFFICULTIES OF TRANSPOSITION</u></b> No particular difficulty of transposition by any Member State is to be expected.
(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?
<ul style="list-style-type: none"> <li>• With regard to the alignment of Commission implementing powers with the TFEU, there was no need for consultation of interested parties or for external expertise or an impact assessment since the proposal is an inter-institutional matter, inherent to the entry into force of the Lisbon Treaty.</li> <li>• As regards the nature of pollen in honey, the proposed amendment of the Honey Directive aims at clarifying that pollen is not an ingredient in honey and will therefore have the effect, in light of the application of the labelling rules set out in Directive 2000/13/EC, to return to the situation prevailing until the judgement. As a result, it is expected that the amendments will have no significant effect on interested parties and for this reason, no impact assessment has been carried out.</li> </ul>
(i) Is any of options likely to have impacts on the EU budget above €5m?
(ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.
This proposal will not affect the EU budget

## E. Evidence base, planning of further work and consultation

(i) What information and data are already available? Will existing impact assessment and evaluation work be used?
(ii) What further information needs to be gathered, how will this be done ( <i>e.g. internally or by an external contractor</i> ), and by when?
(iii) What is the timing for the procurement process & the contract for any external contracts that you are planning ( <i>e.g. for analytical studies, information gathering, etc.</i> )?
(iv) Is any particular communication or information activity foreseen? If so, what, and by when?
The proposal is a technical amendment whose objective is to adjust the legislation as regards the status of pollen in honey to reflect appropriately the way in which pollen is present in honey. The origin of the presence of pollen in the hive is common knowledge.
Which stakeholders & experts have been or will be consulted, how, and at what stage?
The Commission has carried out a series of consultations with Member States, in particular in the context of the Standing Committee on the Food Chain and Animal Health (SCFCAH), with stakeholders (including beekeepers associations or NGOs) in particular in the context of the Advisory Group on the Food Chain Animal Health and Plant Health, the Advisory Group for Apiculture, and with third countries in specific meetings that have been organised for this purpose after the ruling, and in the context of different forums of the World Trade Organisation (WTO).