



FEDERATION OF EUROPEAN FOOD ADDITIVES,  
FOOD ENZYMES AND FOOD CULTURES INDUSTRIES

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**Mr M. Coomans**  
**DG Enterprise**

**Mr M. Scannel, Ms J. Vergnettes, Mr J. Humières**  
**DG Sanco**

(By e-mail)

Brussels, 20 August 2008

Dear Madam, Sirs,

**RE: WG « FOOD LAW » - HLG COMPETITIVENESS OF AGRO-FOOD INDUSTRY**

I am writing to you on behalf of ELC, the Federation of European Food Additives, Food Enzymes and Food Cultures Industries. Its members are all trade associations representing about 250 companies, who develop and produce key and innovative ingredients for the food industry, thus contributing to the competitiveness of this EU leading economic sector.

First I would like to congratulate you to have organised this meeting, as it gave ELC and many other stakeholders the opportunity to highlight some views of food law aspects that potentially affect the competitiveness of the agro-food industry. I would like to develop further a few concrete examples of several points that were addressed at the meeting in order to better illustrate the specific concerns of the ingredient industry:

- **To meet the deadlines laid down in the legislation for authorisation of new additives and ingredients is a key criterion for innovation and competitiveness; not only the EFSA, but also the Commission, should be given the necessary human resources to allow them to meet these deadlines.**

Actually the competitiveness of the additive sector is endangered now, in the immediate future, and in the long term:

- *Now*, because authorization of new additives and extension of use of permitted additives, for which the EFSA opinions are available, is blocked since 2 years already, since the risk management resources are mobilised on the adoption of the Food Improvement Agents Package and the development of subsequent implementation measures.
- *In the immediate future*, because there is no guarantee that, during the transitional period of the new legislation applying to additives, the legal act that will permit new authorisations be a Regulation, and not a Directive, the implementation of which would mechanically lead to delay due to transposition in national laws. In that respect, I noted with great interest that Mr Scannel mentioned the Commission's preference for the use of Regulations over Directives in the future EU legislation: I would like to underline that application of this principle to the additive authorisations during the transitional period

would represent an “ideal case”, and it would make a significant difference for the competitiveness of the EU additive producers, who would be able to benefit from their R&D investments eventually.

- *In the long term*, because despite the expected significant progress brought by the replacement of the co-decision procedure with comitology with scrutiny for the authorisation of new additives/new conditions of use of permitted additives, the future legislation still foresees a period of 9 months for the EFSA to assess an application and a period of 9 months for the Commission to draft a subsequent legislation; moreover these deadlines may be extended by derogation in case additional information is requested from the applicants. Our industry is concerned that both the EFSA and the Commission might be tempted to use improperly the derogation system because they could not meet the long “normal” deadlines, e.g. due to lack of human resources.
- **Science-based policy should remain the pillar of risk management, otherwise it would lead to an insecure business environment whereby safe products could be removed any day from the market under consumers/political pressure, which would dramatically affect in an unpredictable way the EU producers.**

Our sector experienced quite recently the well-known case of colours pointed out in the Southampton study, where the risk manager accepted a warning labelling of foods containing these colours<sup>1</sup> despite the fact that the EFSA opinion concluded that the Southampton study suffered from several scientific shortcomings and cannot be used as a basis for altering the acceptable daily intake (ADI) for the examined food colours: it should be understood that in practice, this warning labelling signaled the end of sale of these colours in the EU.

Our industry is very worried that the case may happen again as regards the risk management option that would be taken by the Commission following the EFSA opinion on the safety of aluminium from dietary intake. Actually, the EFSA has identified various dietary sources of Aluminium, including food additives that contain aluminium, but does not provide any indication between the relative contribution of each of the identified sources to the dietary intake of aluminium. We strongly insist that, when establishing the measures to reduce exposure for those people who may be exceeding the tolerable weekly intake for aluminium, the European Commission should consider the conclusions of the EFSA in their entirety, bearing in mind that a detailed breakdown by exposure source is not available: failure to do so would likely end up in a non science-based change of the EU policy surrounding the aluminium containing additives, which would again affect the competitiveness of the EU food additive industry.

From a more general point of view, the competitiveness of the EU additive industry would certainly benefit from a frank and public support from the Commission for additives that are permitted substances, lawfully present on the market, re-assessed by the EFSA and key ingredients for food formulations. With no doubt, an active communication from the legislators that “E numbers mean safety” would greatly help our industry that is continuously facing distrust from consumers to an extent unequalled in third countries. Moreover, it would reinforce EFSA’s credibility towards consumers when the Authority delivers opinions on food additives that are typically drawing media attention.

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<sup>1</sup> « may have an adverse effect on activity and attention in children ».

- **“Alternative legislative instruments” should benefit from proper impact assessment**

As mentioned in the European Commission website<sup>2</sup>, *"to make sure that regulation is used only when necessary, allows for innovation and that the burdens they impose are proportionate to their objective, the Commission has a number of processes and tools in place. These include the use of impact assessment and stakeholder consultation in the development of new policy proposals. Moreover, alternative policy instruments to traditional “command and control” legislation are always being considered in parallel."* In our opinion, when the Standing Committee on the Food Chain and Animal Health is developing such "alternative policy instruments" (e.g. interpretation documents/criteria of current food legislation) that are expected to have a similar impact as new legislation, the adoption procedure should benefit from the same tools such as a proper impact assessment. If this approach is not feasible, then such "alternative policy instruments" should not be adopted in Standing Committee but a proposal for a new legislation should be made by the Commission for adoption under the co-decision procedure. Additionally, the Standing Committee should seek scientific advice when ever needed before the development of "alternative policy instruments" as any standards on food safety must be based on science (WTO Sanitary and Phytosanitary (SPS) Measures Agreement).

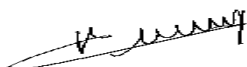
- **There is legislation that can be identified as unnecessary for ensuring food safety.**

The GMOs legislation (Regulations (EC) 1829/2003 and (EC) 1830/2003) is a good example, as it applies to foodstuffs that do not contain recombinant DNA anymore, e.g. food additives that occur multiple refining and purification steps. It creates administrative burden and distortion of competition with respect to imports from third countries, since by very nature it is not possible to control what is not present in foods.

In addition, I would like to draw your attention that **a better alignment of the EU legislation with international standards** would enhance the competitiveness of our industry, who dedicates part of its activities to export: for example, an alignment of the EU purity criteria for food additives (currently under revision) with the specifications set up by the JECFA<sup>3</sup> would be most welcome in this perspective.

I thank you very much for your attention to this letter and hope that our views will be taken into account in the wrap-up session in September. I remain at your disposal, should you wish to further discuss our concerns.

Yours sincerely,



Maryse Hervé  
Secretary General ELC

cc: Mr H. Vounakis, DG Enterprise

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<sup>2</sup> <http://ec.europa.eu/enterprise/food/legislation.htm>

<sup>3</sup> JECFA: Joint FAO/WHO Expert Committee on Food Additives.