

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 536 final - SYN 380

Brussels, 7 April 1992

Proposal for a

COUNCIL DIRECTIVE

amending Directive 79/112/EEC on the

approximation of the laws of the Member States relating to the labelling,
presentation and advertising of foodstuffs

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The aim of this proposal for a directive is three-fold:

- to fill a gap with regard to the labelling of foodstuffs consisting of a single ingredient;
- to reconsider the labelling of alcoholic beverages; and
- to make it compulsory to indicate the content of certain ingredients or constituents,
- to supplement the provisions concerning the name under which the product is sold.

With this in mind, it sets out the amendments which need to be made to Articles 3, 5, 6 and 7 of Council Directive 79/112/EEC¹ of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as last amended by Directive 91/72/EEC.²

These amendments were set out in the Commission communication of 1989 on the free movement of foodstuffs within the Community,³ paragraph 18 of which states that:

"The Commission is therefore shortly to put forward a proposal aimed at making it mandatory to indicate the quantity of ingredients that are essential to the characteristics of a foodstuff, specifying the cases in which foodstuffs composed of a single ingredient do not need to bear a list of ingredients and making it mandatory to indicate the ingredients in beverages with an alcoholic strength of more than 1.2% by volume, etc."

2. Name under which the product is sold

Article 5 of Directive 79/112/CEE now states that in the absence of Community or national regulations determining the name under which a product is sold, the manufacturer could use the name customary in the Member State where the product is sold to the ultimate consumer or to mass caterers.

This territorial limit to the concept of customary names does in practice create some obstacles to the free movement of goods.

In the framework of the completion of the Internal Market, it is appropriate to allow also the use of the name customary in the Member State where a product is manufactured in the case of products which will be sold in another Member State provided this does not have the effect of misleading the purchaser.

¹ OJ L 33, 8.2.1979.

² OJ L 42, 15.2.1991.

³ OJ C 271, 24.10.1989.

3. Foodstuffs consisting of a single ingredient

Article 6(2)(c) of Directive 79/112/EEC states that Ingredients need not be listed in the case of:

- "(c) products consisting of a single ingredient".

Since the Directive was introduced, practice has shown that this provision does not always make it possible to ensure that the consumer is provided with correct information as to the nature of the constituent ingredient. This is the case in particular with foodstuffs marketed under the generic name of "pasta", which is used to designate products obtained from both common wheat and durum wheat. These products were the subject of the judgment of 14 July 1988 in Case 90/86, and it should be stressed that in this Case the Court upheld the listing of Ingredients in accordance with the provisions of the Council Directive on the labelling and presentation of foodstuffs (ground 17).

It is therefore necessary to restrict the scope of the derogation provided for in Article 6(2)(c) exclusively to cases in which indicating the single ingredient would appear to be superfluous because the ingredient already appears in the name under which the product is sold or where this name enables the consumer to make his choice according to the nature of the ingredient.

4. Labelling of alcoholic beverages

The original version of Article 6(3) of Directive 79/112/EEC stated that:

"In the case of beverages containing more than 1.2% by volume of alcohol, the Council, acting on a proposal from the Commission, shall, before the expiry of a period of four years following notification of this Directive, determine the rules for labelling and, possibly, indicating the alcoholic strength."

In accordance with this provision, the Commission, in October 1982, proposed an amendment to this Directive to make it compulsory to state in the labelling of alcoholic beverages:

- the alcoholic strength
- the list of ingredients.

However, this proposal was only partly adopted in Directive 86/197/EEC on alcoholic strength.¹ As the second part on the compulsory listing of Ingredients is still before the Council, it should be reactivated and appropriate consequences drawn in the light of the judgment of 12 March 1987 (Beer Purity Law) in Case 178/84. If the listing of Ingredients were made compulsory, there would be no need to mention any particular ingredient alongside the name under which the product is sold which could discredit the product.

¹ OJ L 144, 29.5.1986.

5. Quantitative statement of ingredients or constituents

The purpose of stating the content of certain ingredients is to provide essential information with regard to the composition of foodstuffs. It enables the consumer to make a better choice from among the large number and variety of products on the market, in particular those which are similar in appearance but differ more or less substantially.

This additional information therefore helps to achieve the mutual recognition of national regulations and standards on the names and composition of foodstuffs and provides producers with extra protection against unfair competition.

The compulsory indication of the content of ingredients or constituents should therefore be introduced in Article 3 of the labelling Directive and Article 7 should be amended to specify the cases in which this indication is required and the procedures applicable.

The Commission takes the view that the measures proposed should be adopted as they derive from the principles evolved

- on the one hand, by the Court of Justice, which has had to state its opinion on this subject on several occasions. The judgments concerned in particular are those of 12 March 1987 (Purity requirements for beer) in Case 178/84 and 14 July 1988 (Pasta) in Case 90/86, in which it upheld that the "compulsory affixing of suitable labels giving the nature of the product sold" was the most suitable means of providing the consumer with information about the composition of the products as it appeared to constitute the least obstacle to the importation of products lawfully manufactured and marketed in other Member States.
- on the other hand, in the two Commission communications entitled "Completion of the internal market: Community legislation on foodstuffs"¹ and "Free movement of foodstuffs within the Community".²

1 COM(85)603 final.

2 OJ C 271, 24.10.1989.

Proposal for a Council directive amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs,¹ last amended by Directive 91/72/EEC² and in particular Article 6(2)(c) and (3) and Article 7.

Having regard to the proposal from the Commission,³

In cooperation with the European Parliament,⁴

Having regard to the opinion of the Economic and Social Committee,⁵

Whereas the measures aimed at the gradual establishment of the internal market must be adopted by 31 December 1992; whereas the internal market consists of an area without internal frontiers within which the free movement of goods, persons, services and capital is guaranteed;

Whereas, in the context of the single Market, the use of the name customary in the Member State in which the product is manufactured should also be allowed in the case of products which will be sold in another Member State;

Whereas with the two aims of providing the consumer with better information and ensuring fair trade the labelling rules as regards the exact nature and characteristics of products need to be further improved;

1 OJ L 33, 08.2.1979, p. 1.

2 OJ L 42, 15.2.1991.

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Whereas the Court of Justice has delivered several judgements in which it recommends detailed labelling, in particular the compulsory affixing of suitable labels giving the nature of the product sold;⁴ whereas this course of action enables the consumer to make his choice in full knowledge of the facts and is the most appropriate since it creates the least obstacles to free trade;

Whereas it is for the Community legislator to adopt measures deriving from this case-law;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 79/112/EEC shall be amended as follows:

1. The following shall be added to Article 3(1):

"2a. the quantity of certain ingredients or categories of ingredients;"

2. Article 5(1) shall be replaced by the following:

1. The name under which a product is sold is

(a) the name provided for in the laws, regulations or administrative provisions applicable to it;

(b) failing that, one and/or another of the following names:

- the name customary in the Member State where the product is either manufactured or sold to the final consumer or mass caterers.

4 Judgement of 9 December 1981 in Case 193/80 [1981] 3019
 Judgement of 12 March 1987 in Case 178/84 [1987] 1262
 Judgement of 14 July 1988 in Case 90/86 [1988]

- a description of the foodstuff and, if necessary, of its use which is clear enough to let the purchaser know its exact nature and to distinguish it from other products with which it could be confused.

The name chosen in accordance with this point must not mislead the purchaser.

3. Article 6 2c) shall be replaced by the following:

"(c) products consisting of a single ingredient

- where the name under which the product is sold and the ingredient are the same or
- where the name under which the product is sold enables the nature of the ingredient to be clearly identified."

4. Article 6(3) shall be replaced by the following:

"3. The rules for labelling the ingredients of drinks containing more than 1.2% alcohol by volume shall be determined

(a) in the case of:

- wines⁵ including sparkling wines,⁶ liqueur wines and semi-sparkling wines offered for sale to the consumer;
- partially fermented grape must;⁶
- spirituous beverages;⁷
- aromatized wines⁸

by the specific Community provisions applicable to them."

5 Council Regulation No 2392/89, OJ L 149, 14.6.91, p. 1.

6 Council Regulation No 3309/85, OJ L 320, 29.11.85, p. 9.

7 Council Regulation No 1576/89, OJ L 160, 12.6.89, p. 1.

8 Council Regulation No 1601/91, OJ L 149, 14.6.91, p. 1.

- (b) In the case of other products, in accordance with the procedure provided for in Article 17.

For all these products, the list of ingredients shall be preceded by the following: "prepared with".

5. Article 7 shall be replaced by the following:

"Article 7

1. The quantity of an ingredient or category of ingredients used in the manufacture or preparation of a foodstuff shall be stated in accordance with this Article.
2. This indication shall be compulsory where the ingredient or category of ingredients concerned:
 - (a) appears in the name under which the foodstuff is sold or is derived implicitly therefrom;
 - (b) is emphasized on the labelling;
 - (c) is essential to characterize a foodstuff and to distinguish it from products with which it might be confused.
3. Points (a) and (b) of paragraph 2 shall not apply
 - (a) to an ingredient:
 - which itself alone constitutes a foodstuff and is sold as such;
 - the drained net weight of which is indicated in accordance with Article 8(4);
 - which is used in small quantities only as a flavouring.
 - (b) in the cases referred to in the fourth and fifth indents of Article 6(5)(a);
 - (c) in all other cases determined in accordance with the procedure laid down in Article 17.

4. The rules governing the application of point 2(c) shall be adopted in accordance with the procedure laid down in Article 17.
5. The quantity indicated is that used in the manufacture of the product expressed as a percentage of a given quantity of the finished product in the units of measurement laid down in the first paragraph of Article 8(1).
6. In accordance with the procedure laid down in Article 17, it may be decided, for certain foodstuffs, to make it compulsory to indicate the quantities of certain constituents contained therein.
7. Community provisions or, where there are none, national provisions may stipulate for certain foodstuffs that quantities of certain ingredients must be indicated in absolute terms or as percentages and that, where appropriate, mention should be made of any alteration in the quantities of these ingredients.

The procedure laid down in Article 16 shall apply to any such national provisions.

The Community provisions referred to in this paragraph shall be adopted in accordance with the procedure laid down in Article 17.

8. This Article shall apply without prejudice to Community rules on nutrition labelling for foodstuffs."

Article 2

1. The Member States shall, where appropriate, amend their laws, regulations and administrative provisions in order to:
 - allow trade in products conforming to this Directive no later than 30 June 1993;

- prohibit trade in products not conforming to this Directive no later than 30 June 1994. However, trade in products not conforming to this Directive and labelled before that date is permitted until stocks are fully depleted.

They shall forthwith inform the Commission thereof.

When the Member States adopt these provisions, the latter shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

Impact statement

Impact of the proposal on businesses and on small and medium-sized enterprises in particular

Title of the proposal:

Draft proposal for a Council directive amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs

Reference of document:

III/9081 Rev. 3

The proposal:

1. Bearing in mind the principle of subsidiarity, why is Community legislation in this field necessary, and what are its main aims?

The labelling of foodstuffs is already the subject of Community harmonization (Directive 79/112/EEC). The draft proposal is designed to further improve consumer information and promote the free movement of goods. This is to be achieved mainly by introducing the principle of indicating the quantities of certain ingredients. In addition, the proposal aims to make it mandatory to give a list of ingredients of alcoholic beverages and to specify the cases in which products composed of a single ingredient do not need to display a list of ingredients.

Impact on businesses:

2. Who will be affected by the proposal?

- which sectors of business?
- what size of businesses (proportion of SMEs)?
- are these businesses located in specific areas of the Community?

The rules governing the labelling of foodstuffs apply to all agri-foodstuffs businesses, whether multinationals or SMEs. The businesses are spread throughout the Community. However, one part of the draft concerns producers of alcoholic beverages more particularly.

3. What measures will businesses have to take to comply with the proposal?

Businesses will have to modify the labelling of their products to include the additional information required by the new directive.

4. What are the likely economic effects of the proposal:

- on employment?
- on investment and the creation of new businesses?
- on the competitiveness of businesses?

One of the principles underlying the adoption of Community legislation on labelling is that of fair trading. The adoption of these new rules should further boost trade within the Community, which is likely to have a favourable impact on the competitiveness of businesses.

5. Does the proposal include measures to take account of the specific situation of small and medium-sized enterprises (less stringent or different requirements, etc.)?

No, since accurate consumer information is necessary for products manufactured by both large businesses and SMEs.

Consultation

6. List of organisations which have been consulted on the proposal and have broadly defined their position

The Advisory Committee on Foodstuffs, which includes representatives from trade, industry, agriculture, consumers' organizations and trade unions, was consulted on the draft. Its position was favourable by and large, although representatives of the wine industry and agriculture expressed reservations concerning the inclusion of a list of ingredients for wine and other alcoholic beverages.

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DOCUMENTS

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