

**DECISION No 292/97/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 19 December 1996****on the maintenance of national laws prohibiting the use of certain additives in the production of certain specific foodstuffs**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption <sup>(1)</sup>, and in particular Article 3a thereof,

Having regard to the proposal from the Commission <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 189b of the Treaty <sup>(4)</sup>,

Whereas the rules on additives harmonization should not affect the application of provisions in force in the Member States on 1 January 1992 which prohibit the use of certain additives in certain specific foodstuffs considered as traditional and produced on their territory;

Whereas the list of foodstuffs considered as traditional must be drawn up on the basis of notifications sent by the Member States to the Commission before 1 July 1994; whereas, however, notifications sent by the new Member States after that date must be considered;

Whereas, however, the general purpose of this Decision is not to define the traditional character of foodstuffs; whereas, in particular, traditional character is not determined simply by a prohibition on the use of additives in such products;

Whereas, nevertheless, account must be taken of how significant the national legal prohibition in force on 1 January 1992 on the use of certain categories of additives is in foodstuff production practices as a whole; whereas

the particular features of certain production methods should be retained; whereas account should be taken of fair practice in commercial transactions involving these products and of consumers' interests before authorization can be given to maintain the prohibition on the use of certain categories of additives;

Whereas designation of a product as a traditional product for which a Member State might maintain its national legislation must be without prejudice to the provisions of Regulations (EEC) No 2081/92 <sup>(5)</sup> and (EEC) No 2082/92 <sup>(6)</sup> on designation of origin and certificates of specific character respectively;

Whereas Directive 89/107/EEC and the specific directives authorize only additives which do not harm human health; whereas protection of public health cannot therefore be a criterion warranting prohibition of the use of certain additives in certain specific foodstuffs considered as traditional;

Whereas, in principle, prohibition of the use of certain additives must not lead to discrimination with regard to other additives belonging to the same category as referred to in Annex I to Directive 89/107/EEC and so must not affect Community harmonization;

Whereas, in the interests of transparency, bans on the use of certain categories of additive in certain categories of foodstuff which Member States may maintain in derogation from the provisions of Directive 89/107/EEC and the specific Directives 94/35/EC <sup>(7)</sup>, 94/36/EC <sup>(8)</sup> and 95/2/EC <sup>(9)</sup> should be identified;

Whereas freedom of establishment and the free movement of goods must not be jeopardized either by the authorization to maintain national laws or by any regulations on labelling to distinguish these products from similar foodstuffs; whereas the free movement, placing on the market manufacture in all Member States of similar foodstuffs considered as traditional or non-traditional must therefore be maintained, in accordance with the provisions of the Treaty,

<sup>(1)</sup> OJ No L 40, 11. 2. 1989, p. 27. Directive as amended by Directive 94/34/EC (OJ No L 237, 10. 9. 1994, p. 1).

<sup>(2)</sup> OJ No C 134, 1. 6. 1995, p. 20 and OJ No C 186, 26. 6. 1996, p. 7.

<sup>(3)</sup> OJ No C 301, 13. 11. 1995, p. 43.

<sup>(4)</sup> Opinion of the European Parliament of 16 January 1996 (OJ No C 32, 5. 2. 1996, p. 21.) common position of the Council of 18 June 1996 (OJ No C 315, 24. 10. 1996, p. 4) and Decision of the European Parliament of 23 October 1996 (OJ No C 347, 18. 11. 1996). Council Decision of 9 December 1996.

<sup>(5)</sup> OJ No L 208, 24. 7. 1992, p. 1. Regulation as amended by the 1994 Act of Accession.

<sup>(6)</sup> OJ No L 208, 24. 7. 1992, p. 9. Regulation as amended by the 1994 Act of Accession.

<sup>(7)</sup> OJ No L 237, 10. 9. 1994, p. 3.

<sup>(8)</sup> OJ No L 237, 10. 9. 1994, p. 13.

<sup>(9)</sup> OJ No L 61, 18. 3. 1995, p. 1.

HAVE ADOPTED THIS DECISION:

*Article 2*

*Article 1*

Pursuant to Article 3a of Directive 89/107/EEC and in accordance with the conditions specified therein, the Member States listed in the Annex are hereby authorized to maintain in their legislation the prohibition on the use of certain categories of additives in the production of the foodstuffs listed in that Annex.

This Decision shall be applied without prejudice to Regulations (EEC) No 2081/92 and (EEC) No 2082/92.

This Decision is addressed to the Member States.

Done at Brussels, 19 December 1996.

*For the European Parliament*

*The President*

K. HÄNSCH

*For the Council*

*The President*

S. BARRETT

## ANNEX

**PRODUCTS FOR WHICH THE MEMBER STATES CONCERNED MAY MAINTAIN THE  
PROHIBITION OF CERTAIN CATEGORIES OF ADDITIVES**

Member State	Foodstuffs	Categories of additives which may continue to be banned
Germany	Traditional German beer ('Bier nach deutschem Reinheitsgebot gebraut')	All except propellant gases
Greece	'Feta'	All
France	Traditional French bread	All
France	Traditional French preserved truffles	All
France	Traditional French preserved snails	All
France	Traditional French goose and duck preserves ('confit')	All
Austria	Traditional Austrian 'Bergkäse'	All except preservatives
Finland	Traditional Finnish 'Mämmi'	All except preservatives
Sweden Finland	Traditional Swedish and Finnish fruit syrups	Colours
Denmark	Traditional Danish 'Kødboller'	Preservatives and colours
Denmark	Traditional Danish 'Leverpostej'	Preservatives (other than sorbic acid) and colours
Spain	Traditional Spanish 'Lomo embuchado'	All except preservatives and antioxidants
Italy	Traditional Italian 'Salame cacciatore'	All except preservatives, antioxidants, flavour enhancers and packaging gas
Italy	Traditional Italian 'Mortadella'	All except preservatives, antioxidants, pH-adjusting agents, flavour enhancers, stabilizers and packaging gas
Italy	Traditional Italian 'Cotechino e zampone'	All except preservatives, antioxidants, pH-adjusting agents, flavour enhancers, stabilizers and packaging gas