REGULATION (EC) No 258/97 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 27 January 1997

concerning novel foods and novel food ingredients


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REGULATION (EC) No 258/97 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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concerning novel foods and novel food ingredients

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 the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3) in the light of the joint text approved by the Conciliation Committee on 9 December 1996,

(1) Whereas differences between national laws relating to novel foods or food ingredients may hinder the free movement of foodstuffs; whereas they may create conditions of unfair competition, thereby directly affecting the functioning of the internal market;

(2) Whereas, in order to protect public health, it is necessary to ensure that novel foods and novel food ingredients are subject to a single safety assessment through a Community procedure before they are placed on the market within the Community; whereas in the case of novel foods and novel food ingredients which are substantially equivalent to existing foods or food ingredients a simplified procedure should be provided for;

(3) Whereas food additives, flavourings for use in foodstuffs and extraction solvents are covered by other Community legislation and should therefore be excluded from the scope of this Regulation;


(5) Whereas risks to the environment may be associated with novel foods or novel food ingredients which contain or consist of genetically modified organisms; whereas Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the

environment of genetically modified organisms (1) stipulates that, for such products, an environmental risk assessment must always be undertaken to ensure environmental safety; whereas, in order to establish a unified Community system for assessment of such products, provision must be made under this Regulation for a specific environmental risk assessment, which in accordance with the procedure provided for in Article 10 of Directive 90/220/EEC must be similar to that laid down in that Directive, but must also include the assessment of the suitability of the product to be used as a food or food ingredient;

(6) Whereas the Scientific Committee for Food set up by Decision 74/234/EEC (2) should be consulted on any question relating to this Regulation which may have an effect on public health;


(8) Whereas, without prejudice to the other requirements in Community legislation relating to the labelling of foodstuffs, additional specific requirements on labelling should be laid down; whereas these requirements must be subject to precise provisions in order to ensure that the necessary information is available to the consumer; whereas defined population groups associated with well established practices regarding food should be informed when the presence in a novel food of material which is not present in the existing equivalent foodstuff gives rise to ethical concerns as regards those groups; whereas foods and food ingredients which contain genetically modified organisms and which are placed on the market must be safe for human health; whereas this assurance is provided for through compliance with the authorization procedure contained in Directive 90/220/EEC and/or by the single assessment procedure laid down in this Regulation; whereas insofar as an organism is defined by Community law, with respect to labelling, information to the consumer on the presence of an organism which has been genetically modified constitutes an additional requirement applicable to the foods and food ingredients referred to in this Regulation;

(9) Whereas, in respect of foods and food ingredients which are intended to be placed on the market to be supplied to the final consumer, and which may contain both genetically modified and conventional produce, and without prejudice to the other labelling requirements of this Regulation, information for the consumer on the possibility that genetically modified organisms may be present in the foods and food ingredients concerned is deemed — by way of exception, in particular as regards bulk consignments — to fulfil the requirements of Article 8;

(10) Whereas nothing shall prevent a supplier from informing the consumer on the labelling of a food or food ingredient that the product in question is not a novel food within the meaning of this Regulation or that the techniques used to obtain novel foods indicated in Article 1 (2) were not used in the production of that food or food ingredient;

(11) Whereas, under this Regulation, provision should be made for a procedure instituting close cooperation between Member States

and the Commission within the Standing Committee on Foodstuffs set up by Decision 69/414/EEC (1);

(12) Whereas a modus vivendi between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty was concluded on 20 December 1994 (2),

HAVE ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns the placing on the market within the Community of novel foods or novel food ingredients.

2. This Regulation shall apply to the placing on the market within the Community of foods and food ingredients which have not hitherto been used for human consumption to a significant degree within the Community and which fall under the following categories:

- (c) foods and food ingredients with a new or intentionally modified primary molecular structure;
- (d) foods and food ingredients consisting of or isolated from microorganisms, fungi or algae;
- (e) foods and food ingredients consisting of or isolated from plants and food ingredients isolated from animals, except for foods and food ingredients obtained by traditional propagating or breeding practices and having a history of safe food use;
- (f) foods and food ingredients to which has been applied a production process not currently used, where that process gives rise to significant changes in the composition or structure of the foods or food ingredients which affect their nutritional value, metabolism or level of undesirable substances.

3. Where necessary, it may be determined in accordance with the procedure laid down in Article 13(2) whether a type of food or food ingredient falls within the scope of paragraph 2 of this Article.

Article 2

1. This Regulation shall not apply to:


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(c) extraction solvents used in the production of foodstuffs, falling within the scope of Council Directive 88/344/EEC of 13 June 1988 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (1);


2. The exclusions from the scope of this Regulation referred to in paragraph 1, indents (a) to (c) shall only apply for so long as the safety levels laid down in Directives 89/107/EEC, 88/388/EEC and 88/344/EEC correspond to the safety level of this Regulation.

3. With due regard for Article 11 the Commission shall ensure that the safety levels laid down in the above Directives, as well as in the implementing measures for these Directives and this Regulation, correspond to the safety level of this Regulation.

Article 3

1. Foods and food ingredients falling within the scope of this Regulation must not:
   — present a danger for the consumer,
   — mislead the consumer,
   — differ from foods or food ingredients which they are intended to replace to such an extent that their normal consumption would be nutritionally disadvantageous for the consumer.

2. For the purpose of placing the foods and food ingredients falling within the scope of this Regulation on the market within the Community, the procedures laid down in Articles 4, 6, 7 and 8 shall apply on the basis of the criteria defined in paragraph 1 of this Article and the other relevant factors referred to in those Articles.

4. By way of derogation from paragraph 2, the procedure referred to in Article 5 shall apply to foods or food ingredients referred to in Article 1(2)(d) and (e) which, on the basis of the scientific evidence available and generally recognised or on the basis of an opinion delivered by one of the competent bodies referred to in Article 4(3), are substantially equivalent to existing foods or food ingredients as regards their composition, nutritional value, metabolism, intended use and the level of undesirable substances contained therein.

Where necessary, it may be determined in accordance with the procedure laid down in Article 13(2) whether a type of food or food ingredient falls under this paragraph.

Article 4

1. The person responsible for placing on the Community market (hereinafter ‘the applicant’) shall submit a request to the Member State in which the product is to be placed on the market for the first

time. At the same time, he shall forward a copy of the request to the Commission.

2. An initial assessment as provided for in Article 6 shall be carried out.

Following the procedure referred to in Article 6 (4), the Member State referred to in paragraph 1 shall inform the applicant without delay:

— that he may place the food or food ingredient on the market, where the additional assessment referred to in Article 6 (3) is not required, and that no reasoned objection has been presented in accordance with Article 6 (4), or

— that, in accordance with Article 7, an authorization decision is required.

3. Each Member State shall notify to the Commission the name and address of the food assessment bodies responsible in its territory for preparing the initial assessment reports referred to in Article 6 (2).

4. Before the date of entry into force of this Regulation, the Commission shall publish recommendations concerning the scientific aspects of:

— the information necessary to support an application and the presentation of such information,

— the preparation of the initial assessment reports provided for in Article 6.

5. Any detailed rules for implementing this Article shall be adopted in accordance with the procedure laid down in Article 13(2).

Article 5

In the case of the foods or food ingredients referred to in Article 3 (4), the applicant shall notify the Commission of the placing on the market when he does so. Such notification shall be accompanied by the relevant details provided for in Article 3 (4). The Commission shall forward to Member States a copy of that notification within 60 days and, at the request of a Member State, a copy of the said relevant details. The Commission shall publish each year a summary of those notifications in the ‘C’ series of the Official Journal of the European Communities.

With respect to labelling, the provisions of Article 8 shall apply.

Article 6

1. The request referred to in Article 4 (1) shall contain the necessary information, including a copy of the studies which have been carried out and any other material which is available to demonstrate that the food or food ingredient complies with the criteria laid down in Article 3 (1), as well as an appropriate proposal for the presentation and labelling, in accordance with the requirements of Article 8, of the food or food ingredient. In addition, the request shall be accompanied by a summary of the dossier.

2. Upon receipt of the request, the Member State referred to in Article 4 (1) shall ensure that an initial assessment is carried out. To that end, it shall notify the Commission of the name of the competent food assessment body responsible for preparing the initial assessment report, or ask the Commission to arrange with another Member State for one of the competent food assessment bodies referred to in Article 4 (3) to prepare such a report.

The Commission shall forward to the Member States without delay a copy of the summary provided by the applicant and the name of the competent body responsible for carrying out the initial assessment.
3. The initial assessment report shall be drawn up within a period of three months from receipt of a request meeting the conditions laid down in paragraph 1, in accordance with the recommendations referred to in Article 4 (4), and shall decide whether or not the food or food ingredient requires additional assessment in accordance with Article 7.

4. The Member State concerned shall without delay forward the report of the competent food assessment body to the Commission, which shall forward it to the other Member States. Within a period of 60 days from the date of circulation of the report by the Commission, a Member State or the Commission may make comments or present a reasoned objection to the marketing of the food or food ingredient concerned. The comments or objections may also concern the presentation or labelling of the food or food ingredient.

Comments or objections shall be forwarded to the Commission, which shall circulate them to Member States within the period of 60 days referred to in the first subparagraph.

The applicant shall, where a Member State so requests, provide a copy of any pertinent information appearing in the request.

Article 7

1. Where an additional assessment is required in accordance with Article 6 (3) or an objection is raised in accordance with Article 6 (4), an authorization decision shall be taken in accordance with the procedure laid down in Article 13(2).

2. The decision shall define the scope of the authorization and shall establish, where appropriate:
   — the conditions of use of the food or food ingredient,
   — the designation of the food or food ingredient, and its specification,
   — specific labelling requirements as referred to in Article 8.

3. The Commission shall without delay inform the applicant of the decision taken. Decisions shall be published in the Official Journal of the European Communities.

Article 8

1. Without prejudice to the other requirements of Community law concerning the labelling of foodstuffs, the following additional specific labelling requirements shall apply to foodstuffs in order to ensure that the final consumer is informed of:

   (a) any characteristic or food property such as:
   — composition,
   — nutritional value or nutritional effects,
   — intended use of the food,

   which renders a novel food or food ingredient no longer equivalent to an existing food or food ingredient.

   A novel food or food ingredient shall be deemed to be no longer equivalent for the purpose of this Article if scientific assessment, based upon an appropriate analysis of existing data, can demonstrate that the characteristics assessed are different in comparison with a conventional food or food ingredient, having regard to the accepted limits of natural variations for such characteristics.

   In this case, the labelling must indicate the characteristics or properties modified, together with the method by which that characteristic or property was obtained;
(b) the presence in the novel food or food ingredient of material which
is not present in an existing equivalent foodstuff and which may
have implications for the health of certain sections of the popu-
lation;

(c) the presence in the novel food or food ingredient of material which
is not present in an existing equivalent foodstuff and which gives
rise to ethical concerns.

2. In the absence of an existing equivalent food or food ingredient,
appropriate provisions shall be adopted where necessary in order to
ensure that consumers are adequately informed of the nature of the
food or food ingredient.

3. Any detailed rules for implementing this Article shall be adopted
in accordance with the procedure laid down in Article 13(2).

Article 10

Detailed rules for the protection of the information provided by the
applicant shall be adopted by the Commission. Those measures,
designed to amend non-essential elements of this Regulation by supple-
menting it, shall be adopted in accordance with the regulatory procedure
with scrutiny referred to in Article 13(3).

Article 11

The Scientific Committee for Food shall be consulted on any matter
falling within the scope of this Regulation likely to have an effect on
public health.

Article 12

1. Where a Member State, as a result of new information or a reas-
essment of existing information, has detailed grounds for considering
that the use of a food or a food ingredient complying with this Regu-
lation endangers human health or the environment, that Member State
may either temporarily restrict or suspend the trade in and use of the
food or food ingredient in question in its territory. It shall immediately
inform the other Member States and the Commission thereof, giving the
grounds for its decision.

2. The Commission shall examine the grounds referred to in
paragraph 1 as soon as possible within the Standing Committee for
Foodstuffs. It shall take the appropriate measures aimed at confirming,
amending or repealing the national measure in accordance with the
regulatory procedure laid down in Article 13(2). The Member State
which took the decision referred to in paragraph 1 may maintain it
until the measures have entered into force.
Article 13

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health, set up by Article 58 of Regulation (EC) No 178/2002 (1), hereinafter referred to as ‘the Committee’.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC (2) shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 14

1. No later than five years from the date of entry into force of this Regulation and in the light of experience gained, the Commission shall forward to the European Parliament and to the Council a report on the implementation of this Regulation accompanied, where appropriate, by any suitable proposal.

2. Notwithstanding the review provided for in paragraph 1, the Commission shall monitor the application of this Regulation and its impact on health, consumer protection, consumer information and the functioning of the internal market and, if necessary, will bring forward proposals at the earliest possible date.

Article 15

This Regulation shall enter into force 90 days following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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