

Council Directive 89/395/EEC of 14 June 1989 amending Directive 79/112/EEC
on the approximation of the laws of the Member States relating to labelling,
presentation and advertising of foodstuffs for sale to the ultimate consumer
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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 the proposal from the Commission (1) ,

In cooperation with the European Parliament (2) ,

Having regard to the opinion of the Economic and Social Committee (3) ,

Whereas Council Directive 79/112/EEC (4) , as last amended by Directive 86/197/EEC (5) , makes provision for national derogations in a number of cases;

Whereas, with the dual aim of completing the internal market and providing improved information for all consumers in the Community, those derogations should be eliminated;

Whereas, in particular, experience acquired since the adoption of Directive 79/112/EEC enables it to be made applicable to restaurants, hospitals, canteens and other similar mass caterers throughout the Community;

Whereas the date of minimum durability has proved its worth; whereas, however, in the interests of a better protection of public health a stricter system of dating should be used in preference thereto in the case of foodstuffs which, from the microbiological point of view, are highly perishable and whereas in doubtful cases a Community procedure should be laid down;

Whereas this Directive is concerned only with labelling, presentation and advertising and not with the question of allowing or banning irradiation of foodstuffs or ingredients thereof;

Whereas, however, without prejudice to a decision on substance at Community level, the consumer's right to be informed of any irradiation treatment undergone by a

foodstuff, where such treatment is allowed, must already be acknowledged; whereas to that end it should be specified that any foodstuff which has undergone such treatment must bear a corresponding indication; whereas, however, specific provisions concerning compound foodstuffs containing an ingredient previously treated with ionizing radiation will not be adopted until rules are adopted on irradiation treatment itself;

Whereas with a view to facilitating trade between Member States, it may be provided that, at stages prior to sale to the ultimate consumer, only information on the essential elements should appear on the outer packaging and whereas certain mandatory particulars that must appear on a prepackaged foodstuff need appear only on commercial documents referring thereto;

Whereas in all cases where the Council empowers the Commission to implement rules relating to foodstuffs intended for human consumption, provision should be made for a procedure establishing close cooperation between the Member States and the Commission within the Standing Committee for Foodstuffs, set up by Decision 69/414/EEC (6) ,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 79/112/EEC is hereby amended as follows:

1. The title of the Directive shall be replaced by the following:

' Council Directive of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs' .

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

' 2. This Directive shall apply also to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers (hereinafter referred to as " mass caterers") .'

3. In Article 1 (3) (b) , ' to the ultimate consumer' shall be replaced by ' to the ultimate consumer and to mass caterers' .

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

(b) subject to Community provisions applicable to natural mineral waters and foodstuffs for particular nutritional uses, attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties' .

5. Article 3 (1) (4) shall be replaced by the following:

' 4. The date of minimum durability or, in the case of foodstuffs which, from the microbiological point of view, are highly perishable, the " use by" date.'

6. The following paragraph shall be added to Article 4:

' 3. The Community provisions referred to in paragraphs 1 and 2 shall be adopted in accordance with the procedure laid down in Article 17.'

7. In Article 5 (1) , ' to the ultimate consumer' shall be replaced by ' to the ultimate consumer and to mass caterers' .

8. In Article 5 (3) the following text shall be added:

' Any foodstuff which has been treated with ionizing radiation must bear one of the following indications:

- in Spanish

" irradiado" or " tratado con radiación ionizante"

- in Danish:

" bestraalet/ . . ." or " straalekonserveret" or " behandlet med ioniserende straaaling" or " konserveret met ioniserende straaaling"

- in German:

" bestrahlt" or " mit ionisierenden Strahlen behandelt"

- in Greek:

" epexergasmeno me ionizoysa aktinovia" or " aktinovolimeno"

- in English:

" irradiated" or " treated with ionizing radiation"

- in French:

" traite par rayonnements ionisants" or " traite par ionisation"

- in Italian:

" irradiato" or " trattato con radiazioni ionizzanti"

- in Dutch:

" doorstraald" or " door bestraling behandeld" or " met ioniserende stralen behandeld"

- in Portuguese:

" irradiado" or " tratado por irradiação" or " tratado por radiação ionizante" '

9. The first indent of Article 6 (5) (b) shall be replaced by the following:

' - ingredients which belong to one of the categories listed in Annex I and are constituents of another foodstuff may be designated by the name of that category only. Alterations to the list of categories in Annex I may be effected in accordance with the procedure laid down in Article 17,'

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10. The following shall be added to the third indent of Article 6 (5) (b) :

' These provisions shall be adopted in accordance with the procedure laid down in Article 17,' .

11. The fourth indent of Article 6 (5) (b) shall be replaced by the following:

' - the specific community provisions governing the indication of treatment of an ingredient with ionizing radiation shall be adopted subsequently in accordance with Article 100a of the Treaty.'

12. The following subparagraph shall be added to Article 6 (6) :

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

13. The following subparagraph shall be added to Article 7 (3) :

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

14. Article 8 (4) shall be replaced by the following:

' 4. Where a solid foodstuff is presented in a liquid medium, the drained net weight of the foodstuff shall also be indicated on the labelling.

For the purposes of this paragraph, " liquid medium" shall mean the following products, possibly in mixtures and also where frozen or quick-frozen, provided that the liquid is merely an adjunct to the essential elements of that preparation and is thus not a decisive factor for the purchase: water, aqueous solutions of salts, brine; aqueous solutions of food acids, vinegar; aqueous solutions of sugars, aqueous solutions of other sweetening substances; fruit or vegetable juices in the case of fruit or vegetables.

This list may be supplemented in accordance with the procedure laid down in Article 17.

Methods of checking the drained net weight shall be determined in accordance with the procedure laid down in Article 17.'

15. The following paragraph shall be added to Article 8:

' 7. The community provisions referred to in paragraphs 1, 2 (b) and (d) and 5 shall be adopted in accordance with the procedure laid down in Article 17.'

16. The second and third subparagraphs of Article 9 (2) shall be deleted.

17. Article 9 (5) shall be replaced by the following:

' 5. In their own territories the Member States may, until 31 December 1992, permit the minimum durability period to be expressed otherwise than in terms of the date of minimum durability. Without prejudice to the notification provided for in Article 22, Member States shall notify the commission and the other Member States of any measure taken under this paragraph.'

18. Article 9 (6) shall be replaced by the following:

' 6. Subject to community provisions imposing other types of date indication, an indication of the durability date shall not be required for:

- fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated. This derogation shall not apply to sprouting seeds and similar products such as legume sprouts,
- wines, liqueur wines, sparkling wines, aromatized wines and similar products obtained from fruits other than grapes, and beverages falling within cN codes 2206 00 91, 2206 00 93 and 2206 00 99 and manufactured from grapes or grape musts,
- beverages containing 10 % or more by volume of alcohol,
- soft drinks, fruit juices, fruit nectars and alcoholic beverages in individual containers of more than five litres, intended for supply to mass caterers,
- bakers' or pastry cooks' wares which, given the nature of their content, are normally consumed within 24 hours of their manufacture,
- vinegar,
- cooking salt,
- solid sugar,
- confectionery products consisting almost solely of flavoured and/or coloured sugars,
- chewing gums and similar chewing products.
- individual portions of ice-cream.'

19. The following Article shall be added:

' Article 9a

1. In the case of foodstuffs which, from the microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability shall be replaced by the " use by" date.

2. The date shall be preceded by the words:

- in Spanish: " fecha de caducidad" ,
- in Danish: " sidste anvendelsesdato" ,

- in German: " verbrauchen bis" ,
- in Greek: " analosi mechri" ,
- in English: " use by" ,
- in French: " à consommer jusqu' au" ,
- in Italian: " da consumare entro" ,
- in Dutch: " te gebruiken tot" ,
- in Portuguese: " a consumir até" .

These words shall be accompanied by:

- either the date itself, or
- a reference to where the date is given on the labelling.

These particulars shall be followed by a description of the storage conditions which must be observed.

3. The date shall consist of the day, the month and, possibly, the year, in that order and in uncoded form.

4. In some cases it may be decided by the procedure laid down in Article 17 whether the conditions laid down in paragraph 1 are fulfilled.'

20. The following subparagraph shall be added to Article 10 (2) :

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

21. Article 11 shall be replaced by the following:

' Article 11

1. (a) When the foodstuffs are prepackaged, the particulars provided for in Articles 3 and 4 (2) shall appear on the prepackaging or on a label attached thereto.

(b) Notwithstanding point (a) and without prejudice to Community provisions on nominal quantities, where prepackaged foodstuffs are:

- intended for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage,
 - intended for supply to mass caterers for preparation, processing, splitting or retail sale,
- the particulars required under Articles 3 and

4 (2) need appear only on the commercial documents referring to the foodstuffs where it can be guaranteed that such documents, containing all the labelling information, either accompany the foodstuffs to which they refer or were sent before or at the same time as delivery.

(c) In the cases referred to in (b) , the particulars referred to in Article 3 (1) (1) , (4) and (6) and, where appropriate, that referred to in Article

9a, shall also appear on the external packaging in which the foodstuffs are presented for marketing.

2. These particulars shall be easy to understand and marked in a conspicuous place in such a way as to be easily visible, clearly legible and indelible.

They shall not in any way be hidden, obscured or interrupted by other written or pictorial matter.

3. (a) The particulars listed in Article 3 (1) , points 1, 3, 4 and 9 shall appear in the same field of vision.

This requirement may be extended to the particulars provided for in Article 4 (2) .

(b) However, for glass bottles intended for re-use, upon which one of the particulars listed in point (a) is indelibly marked, this requirement shall not apply for a period of 10 years following notification of this Directive.

4. In the case of the glass bottles intended for re-use which are indelibly marked and which therefore bear no label, ring or collar and packaging or containers the largest surface of which has an area of less than 10 cm² only the particulars listed in Article 3 (1) (1) , (3) and (4) need be given.

In this case, paragraph 3 (a) shall not apply.

5. Member States may, until 31 December 1996, refrain from requiring the minimum durability

date or the " use by" date to be mentioned in respect of bottles referred to in paragraph 4.

6. Ireland, the Netherlands and the United Kingdom may derogate from Article 3 (1) and paragraph 3 (a) of this Article in the case of milk and milk products put up in glass bottles intended for re-use.

7. The Member States shall inform the Commission of any measure taken pursuant to paragraphs 5 or 6.'

22. In the first paragraph of Article 12, ' to the ultimate consumer' shall be replaced by ' to the ultimate consumer or to mass caterers' .

23. In the second paragraph of Article 12, ' consumer' shall be replaced by ' purchaser' .

24. Article 17 shall be replaced by the following:

' Article 17

Where the procedure laid down in this Article is to be followed, the matter shall be referred to the Standing Committee on Foodstuffs (hereinafter called " the Committee") by its chairman, either on his own initiative or at the request of a representative of a Member State.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of Decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.'

25. Article 18 shall be deleted.

26. Article 23 shall be deleted.

Article 2

Member States shall, where necessary, amend their laws, regulations and administrative provisions in such a way as to:

- permit trade in products complying with this Directive by not later than 20 December 1990,
- prohibit trade in products not complying with this Directive with effect from 20 June 1992.

They shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1989.

For the Council

The President

P. SOLBES