



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.07.1997
COM(97) 133 final

97/0114 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

laying down additional general rules on the common organization of the market in
milk and milk products for drinking milk

(presented by the Commission)

EXPLANATORY MEMORANDUM

Introduction

1. Regulation (EEC) No 1411/71 lays down additional general rules on the common market organization in milk and milk products for drinking milk. Since its entry into force, it has been amended on numerous occasions and other Regulations and Directives touching on its field of application have been adopted.

The validity of the provisions in force should therefore be verified and the Regulation consolidated. That is the first aim of this proposal.

2. Furthermore, under the Act of Accession, Finland and Sweden may derogate, until 31 December 1997, from the requirements on the minimum fat content laid down in Article 3(1)(b) of Regulation (EEC) No 1411/71. Under the terms of the Act of Accession, "during the said period the classification of milk for human consumption laid down in the Regulation shall be reviewed".

This document also aims to fulfil that requirement.

The importance of drinking milk for the milk market

3. According to latest estimates, total production of drinking milk in the fifteen countries of the European Union in 1995 was almost 30 million tonnes. This means that around 26% of milk delivered to processing establishments is processed into drinking milk. There can therefore be no doubt about the importance of drinking milk in maintaining balance on the milk market and its influence on the income of producers. Consequently, steps must be taken to ensure the stable development of production of this key product.
4. Over recent years, total production of drinking milk has increased fairly steadily at between 0.5% and 1.0% per year. There has been a more noticeable change in consumer preferences among the range of products on offer, based on their fat content, heat treatment and packaging.

Table 1 shows that the market share of semi-skimmed milk is rapidly approaching that of whole milk.

	1986	1995
Whole milk	65.4	47.8
Semi-skimmed milk	28.6	44.3
Skimmed milk	6.0	7.9

As regards thermal treatment, there has been a large increase in the share of UHT milk at the expense of pasteurized and sterilized milk. This is shown in Table 2. Finally, consumers are moving towards tetrapacks and recyclable plastic bottles and away from glass bottles.

	1986	1995
Pasteurized milk	56	52
Sterilized milk	11	6
UHT milk	33	43

The special situation in Finland and Sweden

5. The market for drinking milk in these two countries differs from that in the other Member States in that the range of products on offer is greater and consumers prefer products with a lower fat content.

In Finland, whole milk accounts for only 18% of sales, while semi-skimmed and skimmed milk take 62% and 20% respectively of the market. Among semi-skimmed milk products, a drinking milk with a 1% fat content has a market share of around 8%.

In Sweden, semi-skimmed and skimmed milk account for 37% and 24% respectively of the market. Whole milk represents 39% of sales of drinking milk, but this is made up almost exclusively of a milk with a fat content of only 3%.

6. The Act of Accession of 1994 lays down that products not meeting the fat-content requirements set out in Article 3(1)(b) of Regulation (EEC) No 1411/71 may be marketed in the country of production, i.e. in Finland and Sweden. That derogation expires on 31 December 1997.

In accordance with the Act of Accession, the Commission has examined the classification laid down in the abovementioned Regulation and considered whether it should be amended to take account of the special situation in Finland and Sweden. Either the classification can be amended to include the milk consumed in those countries or those two Member States can be obliged to comply with the classification in force in the rest of the Community.

The first option has the advantage of respecting consumption patterns in those countries and avoiding the risk of milk consumption being seriously affected by the disappearance of products which are well-known and enjoyed by consumers.

However, this would mean that the same range of drinking milks would be available throughout the Community, with the risk of confusion for both industry and consumers, who are used to their existing ranges and have shown no desire to change them.

The Commission therefore considers that the derogation provided for in the Act of Accession could be extended temporarily so as to maintain the existing situation throughout the Community. The Commission therefore proposes that the derogation be extended until 31 December 1999.

The protein content of drinking milk

7. Regulation (EEC) No 1411/71 prohibits any modification of the protein content of drinking milk. There have recently been discussions within the sector, which are still continuing, about this provision and the Commission has received a request that the standardization of protein content be allowed. After examining the question, the Commission takes the view that the situation should remain as it stands.

Standardization of protein content involves numerous risks and could distort the market. For example, if it were decided to move towards a single figure for the whole Community, too low a figure would lead to additional surpluses of milk proteins which would have to be disposed of on a market on which there is already a large surplus.

On the other hand, given the principle of a single market, it would be difficult to justify fixing a minimum figure for each Member State and this would risk distorting competition.

Furthermore, it cannot be denied that consumers are becoming more and more aware of the nutritional value of milk protein and it is therefore important that they be guaranteed drinking milk with a protein content which fulfils their expectations. In addition, steps should be taken to facilitate the sale of milk with a protein content higher than the natural content. To that end, the Commission proposes that the possibility of protein enrichment of drinking milk, already provided for by Regulation (EEC) No 1411/71, be maintained.

8. Experience has shown that special provisions need to be adopted to improve the monitoring of compliance with the prohibition on the standardization of protein content. This can be achieved, and excessively onerous checking procedures avoided, by basing checks on a comparison of the protein contents of drinking milk and raw milk.

As regards checks on compliance with marketing rules in general, the Commission takes the view that the Member States should lay down appropriate rules and penalties in the event of infringements.

Drinking milk and health standards

9. There are several references in Regulation (EEC) No 1411/71 to milk quality and public health standards. In particular, Articles 4 and 5 provide for the adoption by the Council of rules of application on these questions. Since 1 January 1994, the health and quality aspects of drinking milk have been covered by Directive 92/46/EEC, which is directly based on Article 43 of the Treaty since it concerns all milk products. The abovementioned Articles 4 and 5 should therefore be examined and amended to prevent any overlap with the Directive.

Moreover, the Directive lays down a number of provisions on drinking milk which concern product composition rather than health. These include rules on the freezing point and minimum protein and fat-free dried ingredient contents. It is therefore proposed to insert these provisions in the marketing standards Regulation in accordance with what the Council itself requested when adopting Directive 92/46/EEC. On the basis of experience, it is proposed to amend the provision concerning the freezing point and to provide for the possibility of laying down additional rules on heat treatment to prevent, in particular, a deterioration in milk quality.

Proposal for
COUNCIL REGULATION (EC) No
of

laying down additional general rules on the common organization of the market in
milk and milk products for drinking milk

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas the aim of Council Regulation (EEC) No 1411/71 of 29 June 1971 laying down additional rules on the common market organization in milk and milk products for drinking milk⁴, as last amended by Regulation (EEC) No 2138/92⁵, is to increase the market for products falling within CN code 0401 as much as possible by providing a guarantee of quality and products which fulfil consumers' needs and wishes; whereas the establishment of marketing standards for the milk products concerned helps stabilize the market and therefore ensures a fair standard of living for farmers; whereas it is consequently in the interests of both milk producers and consumers to maintain such rules;

Whereas, in order to profit from experience and to simplify and clarify the rules so as better to guarantee the legal security of those concerned, a number of amendments should be made to the said Regulation and its provisions brought together in a new Regulation;

Whereas, in order to meet the wishes of consumers, who attach increasing importance to the nutritional value of milk proteins, rules should be laid down to ensure that milk products contain at least the natural protein content of milk and to permit the enrichment of drinking milk with fat-free dried milk ingredients;

¹ OJ No C

² OJ No C

³ OJ No C

⁴ OJ No L 148, 3.7.1971, p. 4.

⁵ OJ No L 214, 30.7.1992, p. 6.

Whereas; with regard to the fat content of milk, account should be taken of the special situation in Finland and Sweden which, under the Act of Accession, have a derogation which expires on 31 December 1997; whereas that derogation should be extended temporarily to permit the two Member States concerned to adjust to the arrangements in force in the rest of the Community;

Whereas Article 5(9) of Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products⁶, as last amended by Directive 96/23/EC⁷, lays down certain requirements concerning the composition of drinking milk; whereas, in the interests of consistency, those provisions should be included in the Regulation on marketing standards and at the same time amended to take account of experience;

Whereas Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs⁸, as last amended by Directive 97/4/EC⁹, and Directive 90/496/EEC on nutrition labelling for foodstuffs¹⁰ apply;

Whereas, in order to ensure consistency, products imported from third countries should be subject to the same rules;

Whereas it should be laid down that the Member States must determine the checks and penalties to be applied in the event of infringement of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down standards for products falling with CN code 0401 intended for human consumption within the Community.
2. For the purposes of this Regulation:
 - (a) "milk" shall mean the produce of the milking of one or more cows,
 - (b) "drinking milk" shall mean the products referred to in Article 3 intended for delivery unprocessed to the consumer,
 - (c) "fat content" shall mean the ratio by weight of parts of milk fat per hundred parts of milk in the milk concerned.

⁶ OJ No L 268, 14.9.1992, p. 1.

⁷ OJ No L 125, 23.5.1996, p. 10.

⁸ OJ No L 33, 8.2.1979, p. 1.

⁹ OJ No L 43, 14.2.1997, p. 21.

¹⁰ OJ No L 276, 6.10.1990, p. 40.

Article 2

1. Only milk complying with the requirements laid down for drinking milk may be delivered or sold without processing to the final consumer, either directly or through the intermediary of restaurants, hospitals, canteens or other similar establishments.
2. The sales descriptions to be used for those products shall be those given in Article 3. Those descriptions shall only be used for the products referred to in that Article, without prejudice to their use in composite descriptions.
3. Member States shall adopt measures to inform consumers of the nature and composition of the products concerned where the absence of such information is likely to cause confusion.

Article 3

1. The following products shall be considered as drinking milk:
 - (a) raw milk: milk which has not been heated above 40°C or subjected to treatment having the same effect;
 - (b) whole milk: heat-treated milk which, with respect to fat content, meets one of the following requirements:
 - standardized whole milk : milk with a fat content of at least 3.50%. However, Member States may provide for an additional category of whole milk with a fat content of 4.00% or above,
 - non-standardized whole milk : milk with a fat content that has not been altered since the milking stage either by the addition or removal of milk fats or by mixture with milk the natural fat content of which has been altered. However, the fat content may not be less than 3.50 %;
 - (c) semi-skimmed milk: heat-treated milk whose fat content has been brought to at least 1.50 % and at most 1.80 %;
 - (d) skimmed milk: heat-treated milk whose fat content has been brought to not more than 0,30 %.
2. Notwithstanding paragraph 1, the requirements on fat content shall not apply to milk intended for human consumption produced in Finland and Sweden for a period of two years from the entry into force of this Regulation. Drinking milk produced in those two Member States to which this derogation applies may only be marketed in the country of production or exported to third countries.

3. Without prejudice to the second indent of paragraph 1(b), only the following modifications shall be allowed:

- (a) in order to meet the minimum fat content for drinking milk, modification of the natural fat content by the removal of cream or the addition of whole milk, semi-skimmed milk or skimmed milk,
- (b) the addition of proteins derived from milk, mineral salts and vitamins, provided this is indelibly indicated at an obvious place on the packing of the product so that it can be easily seen and read. However, such indication shall not remove the obligation as regards nutrition labelling laid down by Directive 90/496/EEC. Where proteins are added, the protein content of the enriched milk must be 4.00% or more.

Article 4

Without prejudice to Directive 92/46/EEC, drinking milk must:

- (a) have a freezing point close to the average freezing point for raw milk recorded in the region of production of the drinking milk,
- (b) have a weight of not less than 1 028 grams per litre for whole milk at 20°C or the equivalent weight per litre for totally defatted milk at 20°C,
- (c) contain a minimum of 28 grams of protein per litre, obtained by multiplying the total nitrogen content of the milk expressed as a percentage by 6.38,
- (d) have a fat-free dried ingredient content of 8.50% or more,
- (e) for heat-treated milk, have been subjected to a heat treatment which permits compliance with quality requirements to be determined.

Article 5

Products imported into the Community for sale as drinking milk must comply with this Regulation.

Article 6

Directive 79/112/EEC shall apply, in particular as regards national provisions on the labelling of drinking milk.

Article 7

1. Member States shall adopt all appropriate measures to monitor the application of this Regulation, penalize infringements and prevent and repress fraud.

Such measures and any amendments shall be notified to the Commission during the month following their adoption.

2. The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

Article 8

Regulation (EEC) No 1411/71 is hereby repealed.

References to Regulation (EEC) No 1411/71 shall be understood to apply to this Regulation.

Article 9

This Regulation shall enter into force on 1 January 1998.

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

Done at ...

For the Council

FINANCIAL STATEMENT

DATE: |

1. BUDGET HEADING: Chapter B1-20 APPROPRIATIONS: ECU 3 632m

2. TITLE:
Proposal for a Council Regulation laying down additional general rules on the common market organization in milk and milk products for drinking milk

3. LEGAL BASIS: Articles 42 and 43 of the Treaty

4. AIMS OF PROJECT:
To consolidate Regulation (EEC) No 1411/71 and to extend the exemption from the requirements respecting the minimum fat content granted to Finland and Sweden in the Act of Accession.

5. FINANCIAL IMPLICATIONS	PERIOD OF 12 MONTHS ECUm	CURRENT FINANCIAL YEAR (97) ECUm	FOLLOWING FINANCIAL YEAR (98) ECUm	
5.0. EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTION) - NATIONAL ADMINISTRATION - OTHER	p.m.	p.m.	p.m.	
5.1. REVENUE - OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES) - NATIONAL	p.m.	p.m.	p.m.	
	1999 ECUm	2000 ECUm	2001 ECUm	2002 ECUm
5.0.1. ESTIMATED EXPENDITURE	p.m.	p.m.	p.m.	p.m.
5.1.1. ESTIMATED REVENUE				

5.2. METHOD OF CALCULATION:

6.0. CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET? YES/NO

6.1. CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET? YES/NO

6.2. IS A SUPPLEMENTARY BUDGET NECESSARY? YES/NO

6.3. WILL FUTURE BUDGET APPROPRIATIONS BE NECESSARY? YES/NO

OBSERVATIONS: The consolidation of Regulation (EEC) No 1411/71 has no financial implications. It is hard to put a figure on the financial impact of extending the exemption from the requirements in respect of minimum fat content.

ISSN 0254-1475

COM(97) 133 final

DOCUMENTS

EN

03 02 01 10

Catalogue number : CB-CO-97-126-EN-C

ISBN 92-78-17582-X

Office for Official Publications of the European Communities

L-2985 Luxembourg