

COMMISSION OF THE EUROPEAN COMMUNITIES

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Interpretative Commission communication
concerning the use of languages in
the marketing of foodstuffs
in the light of the judgment
in the Peeters case



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A. Introduction

1. This communication follows on from the communication on the free movement of foodstuffs within the Community.¹
2. Given the extent of the problem of language in the marketing of foodstuffs, the Commission feels it is worth recalling the relevant principles deriving from Articles 30 et seq. of the EEC Treaty enshrining the principle of the free movement of goods, as interpreted by the Court of Justice, and from Article 14 of 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 for sale to the ultimate consumer.²
3. For the purposes of this communication the Commission takes labelling to mean "any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff" (Article 1(3)(a) of Directive 79/112/EEC).
4. In the wine sector, Article 3(5) of Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts³ lays down specific conditions for the use of languages in the labelling of those products.

1 OJ C 271, 24.10.1989, p. 3.

2 This communication does not deal with information for workers to ensure satisfactory conditions of hygiene and safety at work, since this is covered in a specific Community act.

3 OJ L 232, 9.8.1989, p. 13.

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B. General problems and principles: assessment with regard to Community law

5. A great many national regulations require that certain particulars appearing on a foodstuff be drafted in, or at least translated into, the official language(s) of the country of marketing.
6. Requirements of this nature, even when applied indiscriminately to domestic and imported products alike, are liable to create barriers to intra-Community trade since producers established in other Member States will be forced to affix "ad hoc" labelling for the country of marketing or to have the documents accompanying the product translated.
7. This obligation, which is liable to generate additional costs for operators, is nonetheless justified where intended to protect the ultimate consumer by informing him of the nature, composition, conditions of use and guarantees of the product.
8. A distinction should be drawn here between products which are intended for sale to the consumer unaltered and those which are not. For the first category, national rules must be looked at in the light of Article 14 of Directive 79/112/EEC and Article 30 of the Treaty. For the second category, only Article 30 is applicable.
9. Food products are not intended to be delivered in the unaltered state (a) if they still have to be processed, e.g. intermediate products to be used by the food industry, and (b) if they still need or are due to be adapted by the economic operator who receives them and will sell them. This is the case, for instance, when a product's packaging will be altered or is inappropriate for sale to the ultimate consumer (e.g. products delivered loose prior to sale to the ultimate consumer). The same applies where an economic operator wishes or is legally or contractually bound to alter, supplement or correct a product's labelling. These situations can arise when an economic operator markets food products from another Member State which are largely or completely unknown to consumers in the country of importation and wishes to promote them through specific labelling better suited to the social and cultural peculiarities of the market concerned.
10. These two scenarios are examined individually: foodstuffs which may not be sold unaltered to the ultimate consumer and to which Article 30 of the EEC Treaty applies are dealt with under C; products intended for sale unaltered to the ultimate consumer and which are covered by Article 14 of Directive 79/112/EEC, as interpreted in the light of Article 30 of the Treaty, are looked at in section D.

C. Article 30 of the EEC Treaty

11. Concerning the first scenario, that is to say transactions between producers, importers, wholesalers and retailers who carry out a final adaptation of the product or its packaging, including labelling, the following considerations must be taken into account.
12. In the normal course of trade the abovementioned operators have few problems with language: either they speak the language of their economic partners or they can ask their suppliers, within the framework of their contractual relations, to supply all the information they need to carry out their business properly and to use and process the product correctly. In this case it would be excessive, and hence run counter to Article 30 of the Treaty, to impose the use of a particular language.
13. The situation changes at the stage of sale to the ultimate consumer since foodstuffs are then marketed in their final state and Article 14 of Directive 79/112/EEC, as interpreted in the light of Article 30 of the Treaty, is applicable. This difference in approach is understandable, given that consumers cannot be assumed to know the languages of the other Member States, unlike operators for whom such knowledge goes with their business or who are in a position to obtain the information they need. Consumers' health must therefore be protected and consumers must be given information enabling them to make informed choices.
14. Articles 30 to 36 must also be applied in accordance with the principle of proportionality. With regard to this, the Court indicated in its judgment of 16 December 1992 (Case C-169/91 "Stoke & Norwich") that "appraising the proportionality of national rules which pursue a legitimate aim under Community law involves weighing the national interest in attaining that aim against the Community interest in ensuring the free movement of goods" (paragraph 15 of the legal grounds of the judgment).
15. It follows, as the Court found in its judgment of 18 June 1991 (Case C-369/89 "Peeters"), that "the obligation exclusively to use the language of the linguistic region [of marketing] constitutes a measure having equivalent effect to a quantitative restriction on imports, prohibited by Article 30 of the Treaty."
16. However, the principle of proportionality is applied without prejudice to the right of administrations to request, at a stage prior to the retail stage, a translation of the labelling where this is necessary for the proper accomplishment of their official tasks (e.g. inspection at the wholesale stage).

17. Nonetheless, a Member State would be overstepping the mark if it requested an authenticated translation or one legalized by a consular or administrative authority (see the Court's judgment of 17 June 1987 in Case 154/87 Commission v. Italy). Similarly, it would be disproportionate to impose an excessively short deadline for such a translation except in special circumstances (e.g. rapidly perishable products).
18. It is clear that, with regard to particulars which are not compulsory under the rules in force and in respect of which a Member State imposes the use of a specific language, the principle of proportionality deriving from Article 30 likewise applies.

D. Article 14 of Directive 79/112/EEC

19. In adopting Article 14 of Directive 79/112/EEC, the Community legislature has not departed from the principles deriving from Article 30 of the Treaty on the free movement of goods: the second paragraph of that Article lays down that the particulars which must appear on the label must be given in a language easily understood by purchasers, unless other measures have been taken to ensure that the purchaser is informed. The Article also stipulates that such particulars may be indicated in various languages.
20. This provision is addressed to the Member States and allows them considerable scope for interpreting the concept of language easily understood by the consumer with regard to the abovementioned compulsory information. This scope is nonetheless bound by the limits set by the Court of Justice in its interpretation of Articles 30 et seq. of the EEC Treaty (see C above). Even if Directive 79/112/EEC was adopted with a view to eliminating barriers to the free movement of foodstuffs resulting from divergence between national laws on the labelling of such products (see the first recital of the Directive), it can only contribute towards the implementation of Article 30 of the Treaty.
21. We therefore need to specify the conditions in which, by virtue of Community law, a Member State is entitled to impose the use of its official national language(s) and is bound to accept the use of other languages as substitutes, in the light, inter alia, of the problems highlighted by the transposition of Article 14 of Directive 79/112/EEC.

22. Article 1(1) of the Directive indicates the scope of Article 14: the labelling in question applies to all stages of marketing provided that the foodstuff is to be delivered unaltered to the ultimate consumer, including mass caterers, i.e. it is not to undergo any further processing or preparation. The scope of this rule has been discussed at B above.

The language(s) which may be used in the labelling of foodstuffs

23. In accordance with Article 14 of Directive 79/112/EEC and in order to inform and protect the consumer, labelling information must be given in an easily understood language, which generally means the official language(s) of the country of marketing.
24. The principle of proportionality, which underlies Article 14 of the Directive, involves weighing the benefits of achieving the goal of national regulations, in this instance consumer information, against the benefits of the free movement of goods.
25. The purpose of the second paragraph of Article 14 is therefore to ban products whose labelling cannot be understood by the purchaser rather than to impose the use of a particular language.
26. This means that a Member State which imposed the exclusive use of its official language(s) would be infringing both Article 14 of Directive 79/112/EEC, which expressly prohibits such restrictions, and Article 30 of the Treaty, for the reasons given at C.
27. As indicated above, the Court of Justice confirmed this interpretation in its judgment in the Peeters case when it said that a national rule imposing the exclusive use of a specific language would constitute a measure of equivalent effect and would therefore infringe Article 30 of the Treaty.
28. In the operative part of the same judgment the Court ruled that Article 30 of the EEC Treaty and Article 14 of Directive 79/112/EEC preclude a national law from requiring the exclusive use of a specific language for the labelling of foodstuffs without allowing for the possibility of using another language easily understood by purchasers or of ensuring that the purchaser is informed by other measures.
29. It should be pointed out with regard to the purpose of Article 14 that what matters is not so much the language itself as the content of the particulars given on the label. The fact that a language is used for a particular does not mean that the use of that language is justified for all the other particulars.

1. The concept of the easily understood language

30. The concept of "a language easily understood by purchasers" must obviously be left to the discretion of Member States. Similarly, an official language of the Member State of marketing will in principle be a language allowing consumers a good understanding of the labelling.
31. Moreover, a distinction can be drawn between a language which is easily understood and terms and expressions which are easily understood. Article 11(2) of Directive 79/112/EEC requires that labelling particulars be easy to understand. It cannot be ruled out that such terms and expressions, although expressed in a foreign language, might be easily understood.

2. Obligatory use of the official language: conditions and limitations

32. The purpose of Article 14 of Directive 79/112/EEC is to ensure that the particulars which have to appear on the labelling in accordance with Articles 3, 4 and 16 of the Directive are comprehensible. The provision places no obligation on the person responsible for labelling to translate foreign terms and expressions which are easily understood. Such terms and expressions must be understandable, however; there can be no question of operators shirking their responsibilities in respect of consumer information.
33. On the other hand, it may be unnecessary to require importers automatically to translate every labelling particular in order to ensure comprehensibility, in which case such a requirement would run counter to Article 30 of the Treaty and Article 14 of Directive 79/112/EEC. Thus Member States can, in application of Article 14 of Directive 79/112/EEC, require that their official language(s) be used for the particulars which must appear on the labelling of foodstuffs intended for sale to the ultimate consumer in the unaltered state on condition that this requirement does not exclude the use of other languages or recourse to other measures to inform the purchaser.

3. Criteria for the use of easily understood terms and expressions not belonging to the official language(s) of the Member State of sale to the ultimate consumer

34. Member States are responsible for ensuring compliance with the principles set out in Article 30 of the EEC Treaty and Article 14 of Directive 79/112/EEC and must accordingly permit the use in labelling of foreign terms and expressions, on condition that this does not impair the consumer's understanding.

35. The grounds of consumer protection which may justify the imposition of the official language(s) of a Member State no longer apply when foreign terms and expressions appearing on product labelling are easily understood and therefore fulfil their informative function.

36. The various exceptions to the use of the official language(s) of the Member State of marketing are as follows:

(a) Use of terms and expressions generally known to the consumer

37. A number of terms and expressions expressed in a language foreign to the ultimate consumer will be familiar in the Member States (e.g. "made in ...").

(b) Use of terms which are untranslatable or have no equivalent in the official language(s) of the Member State of sale

38. Where a foreign term has no equivalent in the official language(s) of the Member State of sale the importer has no choice but to use that term. A necessarily approximative translation of the term would be liable to mislead the consumer. There could be no question of opposing the importation of the product concerned solely because a term did not exist in the official language(s) concerned.

39. Moreover, a Member State's laws must not "crystallize given consumer habits" by preventing the marketing of a new product in its territory (Judgments of 27 February 1980, Case 170/78 "tax arrangements applying to wine", and 12 March 1987, Case 178/84 "beer purity law" paragraph 32 of the legal grounds of the judgment).

(c) Use of terms and expressions easily understood thanks to similarity of spelling

40. These are terms and expressions which differ from the same words in the official language(s) of the Member State of marketing only in their spelling.

41. In these cases the original label of the imported product can provide information on the nature of the product and may be as comprehensible to consumers in the importing Member State as the term in the official language.

42. Original particulars concerning a characteristic of the product and which are close to the terms in the official language must be precise enough to indicate the true nature of the product to the purchaser and enable him to distinguish it from products with which it might be confused. Examples include coffee, lychees, mangos, puree and soya.

43. With regard to the particular problem of sales names and the indication they give of the composition of a product the Commission would point out that the relevant principles were set out in points 14 et seq. of its communication of 24 October 1989 on the free movement of foodstuffs within the Community (OJ C 271, 24 October 1989).

E. Final remarks

44. The Commission believes that in the labelling of foodstuffs sold to the ultimate consumer in the unaltered state the use of terms belonging to a language other than the official language(s) should, in practice, remain the exception.
45. In any event, the Commission will continue to check and monitor the application of Article 30 of the Treaty and Article 14 of Directive 79/112/EEC, ensuring that the consumer is properly informed and that terms belonging to non-official languages may be used in the cases referred to in this communication.

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