

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 107 final

Brussels, 29 March 1976

Proposal for a

COUNCIL DIRECTIVE

on the approximation of the laws of Member States
relating to the labelling, presentation and
advertising of foodstuffs for sale to the
ultimate consumer

(submitted to the Council by the Commission)

COM(76) 107 final

EXPLANATORY MEMORANDUM

1. General

The elaboration of Directive on the approximation of the legislation of the Member States relating to labelling and the presentation of foodstuffs destined for final consumption and their publicity has led to a double preoccupation. Firstly to assure that by horizontal approach all the food products intended for the final consumer are treated in the same way as far as their labelling is concerned, and at the same time that technical obstacles in trade can be avoided. Secondly, by making clearly indications legible, information to the consumer can be realised on the nature and the characteristics of the product to be consumed (art. 10 and 11).

2. Scope of the Directive

The scope of this Directive has been limited, purposely, to those foodstuffs intended for final consumption, excluding consequently all products which before this stage are intended to be submitted to transformation or treatment. It is clear that the information needed by industry, workers and stockists is not generally the same as that necessary for the final consumer. The requirements of technology, of storage and packaging of foodstuffs influence the labelling. For this reason, the Commission intends to elaborate in a second stage a proposal for directive on products not directly intended for the final consumer.

The present proposal for Directive does not include any indication which would permit the lot identification of any particular foodstuff. The details necessary to put into practice a community system on the subject have not yet been received. The Commission proposes to study this question later in order to establish Community legislation.

The scope includes both prepackaged and non-prepackaged foods as the needs for information as to the nature of both are generally the same, and do not require separate legislation.

3. General principles and remarks on the provisions of the Directive

The general principles in this Directive are justified by the recognition of the existence of consumers active as economic partners and by the necessity to take into consideration their requirements for protection, and information on the foodstuffs they consume. These general principles can be listed as

- 1) the general prohibition of fraud and fraudulent claims to ensure the protection of consumers (art. 2),
- 2) the application of a certain number of obligations to allow the needs for information of the consumers to be satisfied (article 3),
- 3) the maintenance of flexibility in the application of the Directive by means of provisions permitting more precise indications or derogations (article 4).

Article 2 deals with deception of the consumer using a broad formulation. The article also raises the question of fraudulent claims on the subject of which the Commission tried to base itself on the work of the Codex Alimentarius which is in progress at the present time.

Article 3 mentions that the labelling of a foodstuff must generally include : the designation of sale, the list of ingredients, the net quantity for pre-packed foods, the date of minimum durability, the conditions of preservation and use, the name registered office and address of the manufacturer of the packer or of the seller established in the Community, the origin and the method of use. Certain of these indications enlighten the consumer on the identity of the product that he buys. The other indications should permit him to be completely informed on the best way of using the food.

It should be noted that in order to have the most complete understanding of the provisions of this Directive it seems necessary to define a certain number of terms, such as the idea of pre-packed food, designation of sale, ingredient, net-quantity and date of minimum durability. On the subject of the latter it is important to underline that in comparison with other expressions of the same type such as sell-by-date, date of final consumption the date of

minimum durability is the only one which really informs the consumer at the moment the food is bought, of the minimum period during which this food is fully consumable. The indication of a sell-by-date seems to be information more specially directed to the seller, permitting him to arrange his stock rotation, the date of final consumption, pre-supposes an exact knowledge of the date from which a food becomes improper for consumption, this being in practice very difficult to determine.

Article 4 introduces flexibility in the provisions of the Directive permitting for certain foods the adaptation of the requirements for labelling because of the special nature of these foods and consequently the special information needed by the consumer.

With this in mind, in the case of Community provisions or in the absence of these, of national provisions, relating to specific foodstuffs other indications than those mentioned in article 3 can be required or on the contrary their can be derogations from the obligation to provide for certain indications.

It should also be mentioned that this Directive the subject of which is labelling also concerns the presentation of foods and makes reference to the publicity to effectively avoid deception of the consumer. These three notions are closely linked and the provisions concerning each of them respectively are all intended for the protection of the consumer. Therefore, to be logical and coherent all these complementary notions have been included in the Directive.

4. Preparation of the document

The Member States have been consulted on several occasions in a Working Group and a Drafting Committee. The economic and social sectors have given their advice within the Standing Committee for Foodstuffs.

5. Consultation of the European Parliament and of the Economic and Social Committee

The consultation of the European Parliament and of the Economic and Social Committee is required by the provisions of article 100, second paragraph of the Treaty because the adoption of the Directive implies for the Member States a modification of their legal provisions.

Proposal for a Council Directive on the approximation of the laws
of Member States relating to the labelling, presentation and
advertising of foodstuffs for sale to the ultimate consumer.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas differences which exist at present between the laws, regulations and
administrative provisions of Member States on the labelling of foodstuffs
impede the free circulation of these products and can lead to unequal conditions
of competition;

Whereas, therefore, approximation of these laws would contribute to the smooth
functioning of the common market;

Whereas the purpose of this Directive should be to enact Community rules of
a general nature and applicable horizontally to all foodstuffs put on the
market;

Whereas rules of a specific nature which apply vertically only to particular
foodstuffs should be laid down in provisions dealing with those products;

Whereas, moreover, the field of application of this Directive should be limited
to foodstuffs intended for sale to the ultimate consumer, and the rules
governing the labelling of products intended for subsequent processing or
preparation should be fixed at a later stage;

Whereas the prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer;

Whereas, therefore, a list should be drawn up of all information which should in principle be included in the labelling of all foodstuffs; whereas, however, provision should be made for the possibility of derogations from certain requirements in exceptional cases;

Whereas, moreover, the rules on labelling should prohibit the use of information that would mislead the purchaser or attribute medicinal properties to foodstuffs; whereas, to be effective, this prohibition should also apply to the presentation and advertising of foodstuffs;

Whereas Member States should retain the right, depending on local conditions and circumstances, to lay down rules in respect of the labelling of foodstuffs sold in bulk; whereas, in such cases, information should nevertheless be provided for the consumer;

Whereas the means by which the drained net weight is measured involves a detailed implementing rule of a technical nature, which should be adopted by the Commission with a view to simplifying and speeding up the procedure;

Whereas in all cases where the Council makes the Commission responsible for implementing rules laid down in respect of foodstuffs, 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 the Council Decision of 13 November 1969 (1);

Whereas it is advisable to make no change for the time being in the Community provisions already adopted in the field covered by this Directive and to decide later on any adjustments that may be required,

HAS ADOPTED THIS DIRECTIVE:

(1) OJ No L 291, 29.11.1969, p. 9

Article 1

1. This Directive concerns the labelling of foodstuffs to be delivered as such to the ultimate consumer and certain aspects relating to the presentation and advertising thereof.
2. For the purpose of this Directive:
 - a) "labelling" shall include any words, particulars, trade mark, brand name, pictorial matter or symbol relating to a foodstuff and placed on any document, notice, label, ring or collar accompanying such foodstuff;
 - b) "pre-packaged foodstuff" shall mean any single item for presentation as such to the ultimate consumer consisting of a foodstuff together with the packaging into which it was put before being offered for sale, whether such packaging encloses the foodstuff completely or only partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging.

Article 2

1. The labelling and methods used must not:
 - a) be such as could mislead the purchaser
 - i) as to the characteristics of the foodstuff and in particular as to its nature, identity, properties, composition, quantity, origin or provenance, method of manufacture or production;
 - ii) as to the effects and properties attributed to the foodstuff where the truth thereof has not been established;
 - iii) into supposing that the foodstuff possesses special properties when in fact all similar foodstuffs possess such properties;
 - b) subject to the provisions applicable to certain dietetic and dietary foods and to spa waters, imply that the foodstuff has properties which enable it to prevent or cure a human disease or to alleviate the effects thereof.

2. The Council, in accordance with the procedure laid down in Article 100 of the Treaty, shall draw up a list of the terms which constitute such claims the use of which should be prohibited or restricted.
3. The prohibitions referred to in paragraphs 1 and 2 shall also apply to :
 - a) the presentation of foodstuffs, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are displayed ;
 - b) all forms of advertising.

Article 3

In accordance with Articles 4 to 13 and subject to the exceptions contained therein, the following particulars shall appear on the labelling of foodstuffs :

1. the name under which the product is sold,
2. the list of ingredients,
3. in the case of pre-packaged foodstuffs, the net quantity,
4. the date of minimum durability,
5. any special storage conditions or conditions of use,
6. the name or business name and address of the manufacturer or packer, or of a seller established within the Community,
7. particulars as to the place of origin or provenance in the exceptional cases where failure to give such particulars might give rise to confusion as to the true nature of the foodstuff,
8. instructions for use where the purchaser would be unable to make appropriate use of the foodstuff in the absence of such instructions.

Article 4

1. Community provisions applicable to specified foodstuffs and not to foodstuffs in general may provide for exceptional derogations from the requirements laid down in Article 3 (2) and (4), providing this does not prejudice the information of the purchaser.

When in the absence of Community provisions a Member State is of the opinion that such a derogation is necessary for a specified foodstuff it shall inform the Commission thereof. The rule applicable in the Community will be established in accordance with the procedure laid down in Article 15.

2. Community provisions applicable to specified foodstuffs and not to foodstuffs in general may provide that other particulars in addition to those listed in Article 3 must appear on the labelling. In their absence, Member States may maintain provisions of their legislation which provide for such particulars. They shall inform the Commission within the period fixed in Article 18 paragraph 1.

Article 5

1. The name under which a foodstuff is sold shall be the name laid down by whatever laws, regulations or administrative provisions apply to the foodstuff in question or, in the absence of any such name, the name customary in the Member State where the product is sold to the final consumer, or a description of the foodstuff or its use that is sufficiently precise to inform the purchaser of its true nature and thus enable it to be distinguished from similar products with which it could be confused.
2. No substitution of the trade mark, brand name or fancy name for the name under which the product is sold shall be permitted.
3. The name under which the product is sold shall also include particulars as to the physical condition of the foodstuff or the specific treatment which it has undergone (e.g. powdered, freeze-dried, deep-frozen, concentrated, smoked) in all cases where omission of such information could lead to confusion in the mind of the consumer.

Article 6

1. The ingredients shall be listed in accordance with the provisions of this article and the Annex hereto.

2. a) "Ingredient" means any substance, including edible additives, used in the manufacture or preparation of a foodstuff and still present, even if in altered form ;
- b) Where an ingredient of the foodstuff is itself the product of several constituents, the latter shall be regarded as ingredients of the foodstuff in question ;
- c) The following, however, shall not be considered as ingredients :
- pesticide residues,
 - additives whose presence in the foodstuff is due solely to the fact that they were present in one or more of the ingredients of the foodstuff, provided they no longer perform any function.
3. a) All ingredients in the foodstuff shall be listed, in descending order of weight, as recorded at the time of their use in the manufacture of the foodstuff ; however,
- water and volatile products shall be listed in order of weight as in the finished product ;
 - ingredients used in concentrated or dehydrated form may be listed in order of weight as recorded before their concentration or dehydration.
- b) The ingredients shall be designated by their specific name, where applicable, in accordance with the rules laid down in Article 5. However,
- ingredients belonging to one of the categories listed in Annex I need only be designated by the name of that category,
 - ingredients belonging to one of the categories listed in Annex II must be designated by the name of that category, followed by their specific name or EEC number.

The provisions applicable to certain specific foodstuffs may also provide for other categories.

4. In the case referred to in paragraph 2 (b), a compound ingredient may be included in the list of ingredients in a position corresponding to its overall weight, provided it is immediately followed by a list of its constituents.

Such a list, however, shall not be compulsory if the compound ingredient :

- constitutes less than 30 % of the finished product, or
- is a foodstuff for which a list of ingredients is not required.

5. By way of derogation from paragraph 3 (a), the water content need not be specified :
 - a) where the use of water is required solely for the reconstitution of an ingredient that is present in concentrated or dehydrated form ;
 - b) in the case of :
 - bread and other bakery products,
 - pastry, biscuits, cakes and other confectionary,
 - sugar confectionery,
 - pasta products,
 - fermented drinks and spirits.

Article 7

1. Where the labelling or presentation of a foodstuff places emphasis on one or more ingredients which are essential to the specific properties of the foodstuff, the minimum percentage used in the manufacture thereof shall be stated.
2. Paragraph 1 shall not apply in the case of :
 - a) reserved designations
 - b) aromatizing ingredients such as flavourings, spices and spirits.

1. Notwithstanding the application of different provisions for certain specific foodstuffs, the net quantity of pre-packaged foodstuffs shall be expressed at the time of market preparation :
 - in the case of liquids, in units of volume,
 - in the case of other products, in units of mass,using, where appropriate, either the litre, centilitre, millilitre, kilogramme or gramme.
2. (a) The net quantity shall be the nominal quantity where the latter is to be indicated.
(b) Where the quantity has to be indicated by a category consisting of a maximum and minimum this category shall be considered as the net quantity.
3. In the case of foodstuffs normally sold singly, Member States may not make the declaration of the net quantity compulsory, provided that the contents are clearly visible from the outside or, if not, the number of items contained in the pre-packaging is indicated on the labelling.
4. Where a solid foodstuff is presented in a liquid medium, the drained net weight of the foodstuff shall also be indicated.
Methods of measuring the drained net weight shall be determined in accordance with the procedure laid down in Article 15.
5. Notwithstanding the application of different provisions for certain specific foodstuffs, it is not compulsory to state the net quantity in the case of foodstuffs sold in quantities of less than 5 grammes or 5 millilitres.
6. Until the expiry of the transitional period during which the use of imperial units of measurement appearing in Annex II to Directive 71/354/EEC (1) as last amended by the Act of Accession (2), is authorized in the Community, Ireland and the United Kingdom may stipulate that the quantity should also be expressed in units of measurement of the imperial system calculated on the basis of the following conversion factors :
 - 1 millilitre = 0.0352 fluid ounces
 - 1 litre = 1.760 pints or 0.220 gallons
 - 1 gramme = 0.0353 ounces (avoirdupois)
 - 1 kilogramme = 2.205 pounds.

(1) O.J. N° L 243, 29/10/1971, p. 29

(2) O.J. N° L 73, 27/3/1972, p. 14

Article 9

1. The date of minimum durability of a foodstuff shall be the date until which the foodstuff remains entirely edible and retains its specific properties.
2. The date shall be preceded by the words "will keep until", followed by :
 - either the date itself, or
 - a reference to where the date is given on the labelling.
3. The date shall comprise the day, the month and the year. Codes may not be used. In the case of foodstuffs with a durability of more than 12 months, it shall be sufficient to indicate the month and the year.

Article 10

1. Where the foodstuffs are pre-packaged, the particulars provided for in Article 3 and Article 4 paragraph 2 shall appear on the pre-packaging or on a label attached thereto.
2. The particulars shall be printed in clearly legible and indelible characters and in such a way to be easily readable under normal sales conditions. Furthermore, they shall be separate from any advertising materials.
3. The particulars specified in Article 3 (1) and (3)
 - a) shall appear in all cases on that part of the pre-packaging which normally faces the purchaser at the time of sale ;
 - b) shall be printed in characters at least 1.5 millimetres high, subject to the application of Community provisions relating to pre-packaging ; this limit shall not apply to pre-packaging of which the largest surface is less than 20 square centimetres.
4. The detailed rules laid down in paragraph 3 may be extended to the particulars provided for in Article 4 (2).

Article 11

Where foodstuffs are offered for sale to the ultimate consumer without pre-packaging, Member States shall adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4 (2) are to be shown.

They may make the provision of certain particulars compulsory only, provided that the consumer receives sufficient information.

Article 12

This Directive shall not affect the provisions of national laws which, in the absence of Community provisions, impose less stringent requirements for the labelling of foodstuffs presented in fancy packaging such as figurines or souvenirs.

Article 13

Member States shall refrain from laying down requirements more detailed than those already contained in Articles 3 to 10 concerning the manner in which the particulars provided for in Article 3 and Article 4 (2) are to be shown.

The Member States shall, however, ensure that the sale of foodstuffs within their territory is prohibited if the particulars provided in Article 3 and Article 4 (2) do not appear in a language easily understood by purchasers, although the present provision shall not prevent such particulars from being indicated in various languages.

Article 14

Member States may not forbid the trade in foodstuffs which comply with the rules laid down in this Directive by the application of non-harmonized national provisions governing the labelling and presentation of certain foodstuffs or of foodstuffs in general.

Article 15

1. Where the procedure laid down in this Article is to be followed, the matter shall be referred to the Standing Committee on Foodstuffs, set up by the Council Decision of 13 November 1969, hereinafter called the "Committee", by its Chairman, either on his own initiative or at the request of a representative of a Member State.
2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall give its Opinion on that draft within a time limit set by the Chairman having regard to the urgency of the matter. Opinions shall be delivered by a majority of 41 votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty. The Chairman shall not vote.
3. a) Where the measures envisaged are in accordance with the Opinion of the Committee, the Commission shall adopt them.
b) Where 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 on the measures to be taken. The Council shall act by qualified majority.
c) If within three months of the proposal being submitted to it, the Council has not acted, the proposed measure shall be adopted by the Commission.

Article 16

This Directive shall not affect Community provisions relating to the presentation and labelling of certain foodstuffs already adopted at the time of its notification.

The Council, in accordance with the procedure applicable to each of the provisions in question, shall adopt the amendments necessary to bring such provisions into line with the rules laid down in this Directive.

Article 17

This Directive shall not apply to products which are shown to be intended for export from the Community.

1. Member States shall, within one year of notification of this Directive, make such amendments to their laws as may be necessary to comply with the provisions of this Directive and shall forthwith inform the Commission thereof.

The laws thus amended shall be applied in such a way as to

- permit trade in those products which comply with the provisions of this Directive two years after notification;
- prohibit trade in those products which do not comply with the provisions of this Directive three years after notification.

2. Member States shall also ensure that the Commission receives the text of any essential provision of national law which they adopt in the field governed by this Directive.

Article 19

This Directive is addressed to the Member States.

Ingredients which may be designated by the name of the category rather than the specific name

| <u>Definition</u> | <u>Designation</u> |
|--|--|
| - refined oils and fats and their mixtures | "oil" or "fat", perhaps with an indication of their animal or vegetable origin |
| - starches, and starches modified by physical means | starch |
| - starches modified by chemical means | modified starch |
| - all species of fish where the fish constitutes an ingredient of another foodstuff and provided that the name of such foodstuff does not refer to a specific species of fish | fish |
| - all types of cheese where the cheese or mixture of cheeses constitutes an ingredient of another foodstuff and provided that the name of such foodstuff does not refer to a specific type of cheese | Cheese |
| - all spices not exceeding 1 % by weight of the foodstuff | spices or mixed spices |
| - all aromatic plants not exceeding 1 % by weight of the foodstuff | aromatics |
| - all types of gum used in the manufacture of chewing gum | basic gum |
| - all types of crumbs | crumbs |
| - semi white, white and refined sugar | sugar |
| - anhydrous dextrose and dextrose monohydrate | dextrose |
| - press, expeller and refined cocoa butter | cocoa butter |

ANNEX IIIngredients which must be designated by the name of the category
to which they belong

- colouring
- preservative
- antioxidant
- emulsifier
- thickener
- gelling agent
- stabiliser
- flavour enhancer
- food acid
- anticaking agent
- flavouring
- artificial sweetener
- baking powder
- foaming agent
- antifoaming agent