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**COUNCIL DIRECTIVE**

**of 21 December 1988**

**on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption**

(89/108/EEC)

(OJ L 40, 11.2.1989, p. 34)

Amended by:

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| ► <b><u>A1</u></b> Act of Accession of Austria, Sweden and Finland | C 241            | 21   | 29.8.1994 |
| (adapted by Council Decision 95/1/EC, Euratom, ECSC)               | L 1              | 1    | 1.1.1995  |

**COUNCIL DIRECTIVE****of 21 December 1988****on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption**

(89/108/EEC)

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,

In cooperation with the European Parliament <sup>(1)</sup>,Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Whereas the manufacture of and trade in quick-frozen foodstuffs intended for human consumption (hereinafter referred to as 'quick-frozen foodstuffs') are assuming increasing importance in the Community;

Whereas the differences between national laws relating to quick-frozen foodstuffs hamper the free movement thereof; whereas they may create unequal conditions of competition and therefore have a direct effect on the establishment and functioning of the common market;

Whereas it is therefore necessary to approximate these laws;

Whereas to that end the Community rules must be given the widest possible scope, extending to all quick-frozen foodstuffs intended for human consumption and including not only products intended for supply without further processing to the ultimate consumer and to restaurants, hospitals, canteens and to other similar mass caterers, but also products having to be further processed or prepared;

Whereas, however, these rules need not apply to products not offered for sale as quick-frozen foodstuffs;

Whereas it is in any case appropriate to lay down the general principles which any quick-frozen foodstuffs must satisfy;

Whereas at a later stage special provisions over and above the general principles may, where necessary, be adopted for certain categories of quick-frozen foodstuffs, in accordance with the procedure applicable to each of these categories;

Whereas the purpose of quick-freezing is to preserve the intrinsic characteristics of foodstuffs by a process of rapid freezing; whereas it is necessary to attain a temperature of  $-18^{\circ}\text{C}$  or lower at all points in the product;Whereas at  $-18^{\circ}\text{C}$  all microbiological activity likely to impair the quality of a foodstuff is suspended; whereas it is therefore necessary to maintain at least that temperature, subject to a certain technically inevitable tolerance, during the storage and distribution of quick-frozen foodstuffs before their sale to the ultimate consumer;

Whereas for technical reasons certain temperature increases are inevitable and may therefore be tolerated provided they do not harm the quality of the products, which may be ensured by complying with good storage and distribution practice, taking account in particular of the proper level of stock rotation;

Whereas the performance of certain technical equipment at present in use for the local distribution of quick-frozen foodstuffs is not capable of ensuring in every case full compliance with the temperature limits imposed in this Directive, and it is therefore necessary to provide for a

<sup>(1)</sup> OJ No C 175, 15. 7. 1985, p. 296 and OJ No C 12, 16. 1. 1989.

<sup>(2)</sup> OJ No C 104, 25. 4. 1985, p. 17.

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transitional system allowing for existing material to be used for its normal lifetime;

Whereas this Directive need merely state the objectives to be attained as regards both the equipment used for the quick-freezing process and the temperatures to be observed in the storage, handling, transport and distribution installations and equipment;

Whereas it is incumbent upon Member States to ensure by means of official checks that the equipment used is capable of meeting these objectives;

Whereas such checks render superfluous any system of official certification for trade purposes;

Whereas it is desirable to provide for the possibility of using cryogenic fluids in direct contact with quick-frozen foodstuffs; whereas therefore these fluids must be sufficiently inert not to impart to the foodstuffs any constituents in quantities liable to constitute a hazard to human health, or to give rise to an unacceptable change in the composition of foodstuffs, or to impair their organoleptic characteristics;

Whereas in order to attain this objective it is necessary to adopt a list of these substances and to lay down criteria for their purity and conditions for their use;

Whereas quick-frozen foodstuffs intended for the ultimate consumer and for restaurants, hospitals, canteens and other similar mass caterers are subject, as far as their labelling is concerned, to the rules laid down by 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 <sup>(1)</sup>, as last amended by Directive 86/197/EEC <sup>(2)</sup>; whereas the present Directive need therefore merely lay down the particulars which are specific to quick-frozen foodstuffs;

Whereas, to facilitate trade, rules should also be adopted for the labelling of quick-frozen foodstuffs not intended for supply in the frozen state to the ultimate consumer or to restaurants, hospitals, canteens and other similar mass caterers;

Whereas, in order to simplify and speed up the procedure, the Commission should be assigned the task of adopting implementing measures of a technical nature;

Whereas, in all cases in which the Council empowers the Commission to implement the rules laid down for foodstuffs, a procedure establishing close cooperation between the Member States and the Commission within the Standing Committee on Foodstuffs set up by Council Decision 69/414/EEC <sup>(3)</sup> should be laid down,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. This Directive shall apply to quick-frozen foods intended for human consumption, hereinafter referred to as 'quick-frozen foodstuffs'.

2. For the purposes of this Directive 'quick-frozen foodstuffs' means foodstuffs

— which have undergone a suitable freezing process known as 'quick-freezing' whereby the zone of maximum crystallization is crossed as rapidly as possible, depending on the type of product, and the resulting temperature of the product (after thermal stabilization) is continuously maintained at a level of  $-18^{\circ}\text{C}$  or lower at all points, and

<sup>(1)</sup> OJ No L 33, 8. 2. 1979, p. 1.

<sup>(2)</sup> OJ No L 144, 29. 5. 1986, p. 38.

<sup>(3)</sup> OJ No L 291, 19. 11. 1969, p. 9.

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— which are marketed in such a way as to indicate that they possess this characteristic.

For the purposes of this Directive, ice-cream and other edible ices shall not be regarded as quick-frozen foodstuffs.

3. This Directive shall apply without prejudice to Community provisions relating to:

- (a) the common organization of markets in the agricultural and fisheries sectors;
- (b) veterinary hygiene.

*Article 2*

Only the products defined in Article 1 (2) may bear the names provided for in Articles 8 and 9.

*Article 3*

1. Raw materials used in the manufacture of quick-frozen foodstuffs must be of sound, genuine and merchantable quality and be of the required degree of freshness

2. Preparation and quick-freezing of products must be carried out promptly, using appropriate technical equipment, in order to limit chemical, biochemical and microbiological changes to a minimum.

*Article 4*

The cryogenic media authorized, to the exclusion of all others, for use in direct contact with quick-frozen foodstuffs shall be the following:

- air,
- nitrogen,
- carbon dioxide.

By way of derogation from the first paragraph, Member States may retain until 31 December 1992 national laws authorizing the use of dichlorodifluoromethane (R 12) as a cryogenic medium.

The purity criteria to be satisfied by these cryogenic media shall be determined, as far as necessary, in accordance with the procedure laid down in Article 12.

*Article 5*

1. The temperature of quick-frozen foodstuffs must be stable and maintained, at all points in the product, at  $-18^{\circ}\text{C}$  or lower, with possibly brief upward fluctuations of no more than  $3^{\circ}\text{C}$  during transport.

2. However, tolerances in the temperature of the product in accordance with good storage and distribution practice shall be permitted during local distribution and in retail display cabinets subject to the following conditions:

- (a) these tolerances shall not exceed  $3^{\circ}\text{C}$ ;
- (b) they may, however reach  $6^{\circ}\text{C}$  in retail display cabinets, if and to the extent that the Member States so decide. In that case, the Member States shall select the temperature in the light of stock or product rotation in the retail trade. They shall inform the Commission of the measures taken and of the grounds for those measures.

The Commission shall review the tolerance provided for in the previous subparagraph in the light of technical developments and shall make proposals to the Council if appropriate before 1 January 1993.

3. For a period of eight years from the notification of this Directive, the Member States may, for local distribution, authorize tolerances of up to  $6^{\circ}\text{C}$ .

**▼B***Article 6*

1. The Member States shall:
  - (a) ensure that the equipment used for quick-freezing, storage, transport, local distribution and retail display cabinets is such that compliance with the requirements of this Directive can be guaranteed;
  - (b) conduct random official checks on the temperature of quick-frozen foodstuffs.
2. Member States shall not require that, as a preliminary to or during the marketing of quick-frozen foodstuffs, compliance with the provisions of paragraph 1 be attested by means of an official certificate.

*Article 7*

Quick-frozen foodstuffs intended for supply to the ultimate consumer must be packed by the manufacturer or packer in suitable pre-packaging which protects them from microbial or other forms of external contamination and against drying.

*Article 8*

1. Directive 79/112/EEC shall apply to products covered by this Directive and intended for supply without further processing to the ultimate consumer and to restaurants, hospitals, canteens and other similar mass caterers on the following conditions:

(a) one or more of the following shall be added to the sales name:

in Danish: 'dybfrossen',

in German: 'tiefgefroren' or 'Tiefkühlkost' or 'tiefgekühlt' or 'gefroret',

in Spanish: 'ultracongelado' or 'congelado rápidamente',

in Greek: 'βαθείας κατάψυξης' or 'ταχείας κατάψυξης' or 'υπερκατεψυγμένα',

in English: 'quick-frozen',

in French: 'surgelé',

in Italian: 'surgelato',

in Dutch: 'diepvries',

in Portuguese: 'ultracongelado',

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in Finnish: 'pakastettu',

in Swedish: 'djupfrost';

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- (b) in addition to the date of minimum durability, the period during which quick-frozen products may be stored by the purchaser and the storage temperature and/or type of storage equipment required must be indicated;
- (c) the labelling of any quick-frozen foodstuff must include a reference from which the batch may be identified;
- (d) the label of any quick-frozen foodstuff must bear a clear message of the type 'do not refreeze after defrosting'.

*Article 9*

1. The labelling of the products defined in Article 1 (2) which are not intended for sale to the ultimate consumer or to restaurants, hospitals, canteens and other similar mass caterers shall contain only the following mandatory particulars:

- (a) the sales name supplemented in accordance with Article 8 (1) (a) of this Directive;

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- (b) the net quantity expressed in units of mass;
  - (c) a reference enabling the batch to be identified;
  - (d) the name or business name and address of the manufacturer or packer, or of a seller established within the Community.
2. The particulars provided for in paragraph 1 shall appear on the packaging, container or wrapping, or on a label attached thereto.
  3. This Article shall not affect any Community metrological provisions which are more detailed or more comprehensive.

*Article 10*

Member States may not, for reasons related to their manufacturing specifications, presentation or labelling, prohibit or restrict the marketing of any of the products defined in Article 1 (2) which comply with this Directive and, with measures taken for its application.

*Article 11*

The sampling procedures for quick-frozen foodstuffs, the procedures for monitoring their temperature and for monitoring temperatures in the means of transport and warehousing and storage shall be determined in accordance with the procedure laid down in Article 12, before the end of a 24-month period following notification of this Directive.

*Article 12*

1. Where the procedure provided for in this Article is invoked, the matter shall be referred to the Standing Committee on Foodstuffs, hereinafter referred to as the Committee, by its chairman, acting either on his own initiative or at the request of the representative of a Member State.
2. The Commission representative shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its opinion on the draft within a period to be determined by the chairman having regard to the urgency of the matter. It shall decide by a qualified majority, as laid down in Article 148 (2) of the Treaty. The chairman shall not vote.
3. (a) The Commission shall adopt the measures proposed where these are in conformity with the opinion of the Committee;
  - (b) Where the measures proposed are not in conformity with the opinion of the committee or where no opinion is delivered, the Commission shall forthwith submit to the Council a proposal concerning the measures to be taken. The Council shall act by a qualified majority;
  - (c) If, upon the expiry of a period of three months from the date on which the matter is brought before the Council, the latter has failed to take any measures, the Commission shall adopt the proposed measures.

*Article 13*

1. The Member States shall take the measures necessary to comply with this Directive. They shall forthwith inform the Commission thereof. The measures taken shall:
  - permit no later than 18 months after notification <sup>(1)</sup> of the Directive, trade in products which comply with this Directive,
  - prohibit no later than 24 months after notification of the Directive, trade in products which do not comply with this Directive.

<sup>(1)</sup> This Directive was notified to the Member States on 10 January 1989.

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2. As regards retail display cabinets, for a period of eight years following notification of this Directive, Member States may retain the laws applying on the date when this Directive enters into force.

In this case, the Member States shall inform the Commission, stating the reasons for their decision.

*Article 14*

This Directive is addressed to the Member States.