

**DIRECTIVE 97/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of 27 January 1997

**amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to 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<sup>(1)</sup>, and in particular Article 6 (2) (c) and (3) and Article 7,

Having regard to the proposal from the Commission<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 189b of the Treaty<sup>(4)</sup> in the light of the joint text approved on 16 October 1996 by the Conciliation Committee,

Whereas, in the context of achieving the objectives of the internal market, the use of the name customary in the Member State in which a product is manufactured should also be allowed in the case of products to be sold in another Member State;

Whereas, with the twofold aim of providing the consumer with better information and ensuring fair trade, the labelling rules as regards the exact nature and characteristics of products need to be further improved;

Whereas, in accordance with the rules of the Treaty, the provisions applicable to sales names remain subject to the general rules on labelling in Article 2 and more particu-

larly the principle that they must not be such as to mislead the consumer about the characteristics of the foodstuff;

Whereas the Court of Justice of the European Communities has delivered several judgments in which it recommends detailed labelling, in particular the compulsory affixing of suitable labels giving the nature of the product sold; whereas this course of action, which enables the consumer to make his choice in full knowledge of the facts, is the most appropriate since it creates fewest obstacles to free trade;

Whereas it is for the Community legislature to adopt measures deriving from that case law,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

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

1. the following recital shall be inserted after the sixth recital:

‘Whereas that need means that Member States may, in compliance with the rules of the Treaty, impose language requirements;’

2. the following shall be added to Article 3 (1):

‘2a. the quantity of certain ingredients or categories of ingredients as provided for in Article 7;’

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

‘1. The name under which a foodstuff is sold shall be the name provided for in the European Community provisions applicable to it.

- (a) In the absence of European Community provisions, the name under which a product is sold shall be the name provided for in the laws, regulations and administrative provisions applicable in the Member State in which the product is sold to the final consumer or to mass caterers.

Failing this, the name under which a product is sold shall be the name customary in the Member State in which it is sold to the final consumer or to

<sup>(1)</sup> OJ No L 33, 8. 2. 1979, p. 1. Directive as last amended by Commission Directive 93/102/EC (OJ No L 291, 25. 11. 1993, p. 14).

<sup>(2)</sup> OJ No C 122, 14. 5. 1992, p. 12, and OJ No C 118, 29. 4. 1994, p. 6.

<sup>(3)</sup> OJ No C 332, 16. 12. 1992, p. 3.

<sup>(4)</sup> Opinion of the European Parliament of 27 October 1993 (OJ No C 315, 22. 11. 1993, p. 102), Council Common Position of 15 June 1995 (OJ No C 182, 15. 7. 1995, p. 1) and Decision of the European Parliament of 25 October 1995 (OJ No C 308, 20. 11. 1995, p. 30). Decision of the European Parliament of 10 December 1996 and Decision of the Council of 10 January 1997.

mass caterers, or a description of the foodstuff, and if necessary of its use, which is clear enough to let the purchaser know its true nature and distinguish it from other products with which it might be confused.

- (b) The use in the Member State of marketing of the sales name under which the product is legally manufactured and marketed in the Member State of production shall also be allowed.

However, where the application of the other provisions of this Directive, in particular those set out in Article 3, would not enable consumers in the Member State of marketing to know the true nature of the foodstuff and to distinguish it from foodstuffs with which they could confuse it, the sales name shall be accompanied by other descriptive information which shall appear in proximity to the sales name.

- (c) In exceptional cases, the sales name of the Member State of production shall not be used in the Member State of marketing when the foodstuff which it designates is so different, as regards its composition or manufacture, from the foodstuff known under that name that the provisions of point (b) are not sufficient to ensure, in the Member State of marketing, correct information for consumers.;

4. Article 6 (2) (c) shall be replaced by the following:

'(c) products comprising a single ingredient, where:

- the trade name is identical with the ingredient name, or
- the trade name enables the nature of the ingredient to be clearly identified.;

5. the first indent of Article 6 (5) (b) (Directive 79/112/EEC) shall be replaced by the following:

'— ingredients which belong to one of the categories listed in Annex I and are constituents of another foodstuff need only be designated by the name of that category.

Alterations to the list of categories in Annex I may be effected in accordance with the procedure laid down in Article 17.

However, the designation "starch" listed in Annex I must always be complemented by the indication of its specific vegetable origin, when that ingredient may contain gluten.;

6. the second indent of Article 6 (5) (b) (Directive 79/112/EEC) shall be replaced by the following:

'— 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; if an ingredient belongs to more

than one of the categories, the category appropriate to the principal function in the case of the foodstuff in question shall be indicated.

Amendments to this Annex based on advances in scientific and technical knowledge shall be adopted in accordance with the procedure laid down in Article 17.

However, the designation "modified starch" listed in Annex II must always be complemented by the indication of its specific vegetable origin, when that ingredient may contain gluten.;

7. Article 7 shall be replaced by the following:

*Article 7*

1. The quantity of an ingredient or category of ingredients used in the manufacture or preparation of a foodstuff shall be stated in accordance with this Article.

2. The indication referred to in paragraph 1 shall be compulsory:

(a) where the ingredient or category of ingredients concerned appears in the name under which the foodstuff is sold or is usually associated with that name by the consumer; or

(b) where the ingredient or category of ingredients concerned is emphasized on the labelling in words, pictures or graphics; or

(c) where the ingredient or category of ingredients concerned is essential to characterize a foodstuff and to distinguish it from products with which it might be confused because of its name or appearance; or

(d) in the cases determined in accordance with the procedure laid down in Article 17.

3. Paragraph 2 shall not apply:

(a) to an ingredient or category of ingredients:

— the drained net weight of which is indicated in accordance with Article 8 (4), or

— the quantities of which are already required to be given on the labelling under Community provisions,

— which is used in small quantities for the purposes of flavouring,

— which, while appearing in the name under which the food is sold, is not such as to govern the choice of the consumer in the country of marketing because the variation in quantity is not essential to characterize the foodstuff or does not distinguish it from similar foods. In cases of doubt it shall be decided by the procedure laid down in Article 17 whether the conditions laid down in this indent are fulfilled.

(b) where specific Community provisions stipulate precisely the quantity of an ingredient or of a category of ingredients without providing for the indication thereof on the labelling;

(c) in the cases referred to in the fourth and fifth indents of Article 6 (5) (a);

(d) in the cases determined in accordance with the procedure laid down in Article 17.

4. The quantity indicated, expressed as a percentage, shall correspond to the quantity of the ingredient or ingredients at the time of its/their use. However, Community provisions may allow for derogations from this principle for certain foodstuffs. Such provisions shall be adopted in accordance with the procedure laid down in Article 17.

5. The indication referred to in paragraph 1 shall appear either in or immediately next to the name under which the foodstuff is sold or in the list of ingredients in connection with the ingredient or category of ingredients in question.

6. This Article shall apply without prejudice to Community rules on nutrition labelling for foodstuffs;

8. The following Article shall be inserted:

*Article 13a*

1. Member States shall ensure that the sale is prohibited within their own territories of foodstuffs for which the particulars provided for in Article 3 and Article 4 (2) do not appear in a language easily understood by the consumer, unless the consumer is in fact informed by means of other measures determined in accordance with the procedure laid down in Article 17 as regards one or more labelling particulars.

2. Within its own territory, the Member State in which the product is marketed may, in accordance with the rules of the Treaty, stipulate that those labelling particulars shall be given in one or more languages which it shall determine from among the official languages of the Community.

3. Paragraphs 1 and 2 shall not preclude the labelling particulars from being indicated in several languages;

9. in Article 14, the second paragraph shall be deleted.

*Article 2*

Member States shall, where appropriate, amend their laws, regulations and administrative provisions in order to:

— allow trade in products conforming to this Directive no later than 14 August 1998,

— prohibit trade in products not conforming to this Directive no later than 14 February 2000. However, trade in products not conforming to this Directive and labelled before that date shall be permitted until stocks are fully depleted.

The Member States shall forthwith inform the Commission of those provisions.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 3*

This Directive shall apply as from the date of its publication in the *Official Journal of the European Communities*.

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 27 January 1997.

*For the European Parliament*

*The President*

J. M. GIL-ROBLES

*For the Council*

*The President*

G. ZALM