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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1854/89

of 14 June 1989

on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt

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 ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the entry in the accounts of import duties or export duties is of decisive importance for the implementation of the majority of specific customs regulations; whereas the conditions under which such entry in the accounts must take place are currently defined only in Council Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties ⁽⁴⁾; whereas, in other cases, the conditions under which the amounts of import duties or export duties are entered in the accounts are determined by the Member States; whereas the best possible arrangements must accordingly be made for their uniform application throughout the Community; whereas to that end the present provisions of Directive 78/453/EEC should be replaced by a Regulation incorporating all necessary clarifications and adjustments;

Whereas the rules on entry in the accounts and terms of payment of customs debt are of particular importance for the smooth functioning of the customs union and for ensuring the optimum degree of equal treatment of traders in the collection of import and export duties;

Whereas it can be left to the Member States to determine the practical procedures for the entry in the accounts of amounts

of import duties or export duties; whereas the main requirement is to fix the periods within which such entry in the accounts must take place;

Whereas it is advisable to fix also the periods within which the amounts of import duties or export duties entered in the accounts must be paid; whereas the payment facilities which are granted in the Member States, other than deferment of payment, ought to be maintained in a harmonized form; whereas, in the interests of clarity, it is appropriate to give a new form to all the measures concerning the payment of import duties or export duties, including those relating to deferment of payment currently contained in Directive 78/453/EEC, by including them in a single text;

Whereas in the case of payment facilities other than deferment of payment, and of late payment and failure to pay by the time limit fixed, the present legal situation in which interest must be paid is maintained;

Whereas, having regard to the constant growth in commercial traffic and the need to release goods as quickly as possible, the methods of control used by the customs departments have been adjusted so that they only examine goods before release in a very small number of cases; whereas checks on compliance with import and export rules are thus deferred and consist mainly of bookkeeping checks, which may entail post-clearance recovery of an additional amount of duties; whereas such post-clearance checks may similarly give rise to repayment of an amount of duty paid in excess; whereas the amount of duty paid in excess will have been calculated on the basis of information declared for tax purposes by the person concerned himself and whereas the latter will have had access to the goods far more rapidly than if they had been examined before release was granted;

Whereas, in view of the current conditions under which credit policy is determined in the various Member States, it is not possible to fix a rate of credit interest and a rate of interest on arrears applicable throughout the Community; whereas it is essential, however, to avoid, within each Member State, excessive disparities of treatment between persons liable for

⁽¹⁾ OJ No C 41, 13. 2. 1985, p. 5.

⁽²⁾ OJ No C 229, 9. 9. 1985, p. 107, and OJ No C 96, 17. 4. 1989.

⁽³⁾ OJ No C 169, 8. 7. 1985, p. 6.

⁽⁴⁾ OJ No L 146, 2. 6. 1978, p. 19.

payment of credit interest pursuant to this Regulation and those who contract loans with credit institutions; whereas, to that end, the rate of interest due in the case of payment facilities other than deferred payment must be fixed by the Member States on the basis of the rate ruling on their money and financial markets; whereas, in view of its purpose, the rate of interest on arrears may be higher than the rate of credit interest;

Whereas, in the context of transit operations, security provided has the benefit of more generous facilities as regards time limits for payment of interest than those provided for in this Regulation; whereas those more favourable provisions appear in certain international conventions and cannot be affected by the introduction of Community rules on the subject; whereas the same must apply to the Community transit procedure in so far as that procedure is applicable, under the Convention concluded with the EFTA countries, to goods moving between the customs territory of the Community and those countries; whereas the same must also apply to the temporary importation of goods effected under the conditions provided for in the Convention concluded at Brussels on 6 December 1961 (ATA Convention);

Whereas Directive 78/453/EEC, the provisions of which are incorporated in this Regulation, should be repealed; whereas, to take account of the above cases in which it is provided that no interest has to be paid by the persons liable for payment or the customs authority, as the case may be, Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties ⁽¹⁾, as last amended by Regulation (EEC) No 3799/86 ⁽²⁾, should contain an additional provision to this effect and, on the other hand, the provisions concerning the charging of interest must be deleted from Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties ⁽³⁾, as last amended by Regulation (EEC) No 918/83 ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt.
2. For the purposes of this Regulation:
 - (a) '*customs debt*' means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply under the provisions in force to goods liable to such duties;
 - (b) '*person*' means:
 - a natural person, or
 - a legal person, or
 - when this possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the legal status of the legal person;
 - (c) '*entry in the accounts*' means the entry by the customs authority in the accounts books, or any other medium used in their stead, of the amount of import duties or export duties corresponding to a customs debt;
 - (d) '*import duties*' means customs duties and charges having equivalent effect, and agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;
 - (e) '*export duties*' means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;
 - (f) '*customs authority*' means any authority empowered to apply customs legislation, even if that authority does not form part of the customs administration.

TITLE I

ENTRY IN THE ACCOUNTS OF THE AMOUNTS OF IMPORT DUTIES OR EXPORT DUTIES

Article 2

1. Each amount of import duties or export duties resulting from a customs debt — hereinafter called 'amount of duty' — shall be calculated by the customs authority as soon as it has the necessary data, and entered in the accounts by that authority.

⁽¹⁾ OJ No L 175, 12. 7. 1979, p. 1.

⁽²⁾ OJ No L 352, 13. 12. 1986, p. 19.

⁽³⁾ OJ No L 197, 3. 8. 1979, p. 1.

⁽⁴⁾ OJ No L 105, 23. 4. 1983, p. 1.

The first subparagraph shall not apply in cases in which a provisional anti-dumping or countervailing duty has been imposed or in those in which Article 5 of Regulation (EEC) No 1697/79 may be applied.

2. The Member States shall determine the practical procedures for the entry in the accounts of the amounts of duty. These procedures may differ according to whether or not, in view of the circumstances in which the customs debt was incurred, the customs authority is satisfied that payment of the said amounts is assured.

The Commission shall be notified of the procedures by which the customs authority will enter amounts of duty in the accounts in the various possible situations.

Article 3

1. Without prejudice to paragraph 2, where a customs debt arises as a result of the acceptance of the declaration of goods for a customs procedure other than temporary importation with partial relief from import duties or from any other act having the same legal effect as such acceptance, the amount corresponding to such customs debt shall be entered in the accounts as soon as it has been calculated and within two days at the latest of the date on which the customs authority granted release or authorized export of the goods.

However, provided that its payment has been guaranteed, the total amount of duty relating to all the goods which have been released — or in respect of which export authorization has been granted — to one and the same person during the course of a period fixed by the customs authority, which may not exceed 31 days, may be covered by a single entry in the accounts at the end of the period. Such entry in the accounts shall take place within five days of the date on which the period in question expires.

2. Where it is provided that goods may be released subject to certain conditions laid down in Community law which govern either determination of the amount of the debt arising or its collection being met, the entry in the accounts must be made no later than two days after the day on which either the amount of the debt or the obligation to pay the duties resulting from that debt are definitively determined or fixed.

However, when the customs debt relates to a provisional anti-dumping or countervailing duty, the duty shall be entered in the accounts no more than two months after the publication in the *Official Journal of the European Communities* of the Council Regulation establishing a definitive anti-dumping or countervailing duty.

3. In the case of a customs debt which arises under conditions other than those referred to in paragraph 1, entry in the accounts of the corresponding amount of duty must occur within two days of the date on which the customs authority is in a position to:

- (a) calculate the amount of duty in question, and
- (b) determine the person liable for payment of that amount.

Article 4

1. The time limits for entry in the accounts referred to in Article 3 may be extended:

- (a) either for reasons to do with the administrative organization of the Member States, and in particular where the accounts are centralized;
- (b) or where special circumstances prevent the customs authority from observing the said time limits.

Time limits may not, after extension, exceed 14 days.

2. The limits laid down in paragraph 1 shall not apply in unforeseeable circumstances or cases of *force majeure*.

Article 5

Where the amount of duty resulting from a customs debt has not been entered in the accounts in accordance with Articles 3 and 4 or has been entered in the accounts at a level lower than the amount legally owed, the entry in the accounts of the amount of duty to be recovered or remaining to be recovered must take place within two days of the date on which the customs authority noticed the situation and is in a position to calculate the amount legally owing and to determine the person liable for payment of that amount. This time limit may be extended in accordance with Article 4.

Article 6

1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the person liable for its payment, in accordance with the appropriate procedures.

2. Where the amount of duty payable has been entered, for guidance, in the customs declaration, the customs authority may specify that it shall not be communicated in accordance with paragraph 1 unless the amount of duty stated does not correspond to the amount determined by the authority.

Without prejudice to application of the second subparagraph of Article 3 (1), where use is made of the possibility provided for in the preceding subparagraph, release of the goods — or their authorization for export — by the customs authority shall be equivalent to communication of the amount of duty entered in the accounts to the person liable for its payment.

Article 7

Where action to recover duty may no longer be taken pursuant to the second subparagraph of Article 2 (1) of Regulation (EEC) No 1697/79, the Member States need apply neither Article 2 nor Article 6 of this Regulation.

TITLE II

TIME LIMIT AND PROCEDURES FOR PAYMENT OF THE AMOUNTS OF IMPORT DUTIES OR EXPORT DUTIES

Chapter A

Principle

Article 8

Each and every amount of duty communicated in accordance with Article 6 shall be paid by the person liable for its payment within the following time limits:

- (a) if the person is not entitled to any of the payment facilities laid down in Chapter B, payment shall be made within the period prescribed.

Without prejudice to the provisions applicable as regards right of appeal, this period shall not exceed 10 days following communication to the person liable of the amount of duty owed and, in the case of aggregation of entries in the account under the conditions laid down in the second subparagraph of Article 3 (1), it must be so fixed as not to enable the person liable for payment to obtain a longer period for payment than if he had been granted deferred payment under the conditions laid down in Chapter B, Section 1.

An extension of the period allowed shall be granted automatically where it is established that the party concerned received the payment demand too late to settle it within the time allowed for making payment.

Extension of the period may also, at the request of the person liable for payment, be granted by the customs authority when the amount of duty to be paid results from action for post-clearance recovery. Without prejudice to the provisions of Article 15, any extension of the period granted must not exceed the time necessary for the person liable for payment to take appropriate steps to discharge his obligation.

- (b) if the person is entitled to any of the payment facilities laid down in Chapter B, payment shall be made before expiry of the time limit(s) set in connection with those facilities.

Article 9

Payment must be made in cash or by any other means with similar discharging effect in accordance with the provisions in force in the Member State concerned (cash payment). It may also be made by way of set-off when the provisions in force so allow.

Chapter B

Payment facilities

Section 1

Deferred payment

Article 10

In so far as the amount of duty payable by the person concerned relates to goods entered for a customs procedure which entails the obligation to pay such duty, the customs authority shall, at that person's request, grant deferment of payment of that amount under the conditions laid down in Articles 11 to 14.

Article 11

The granting of deferment of payment shall be made conditional on the provision of security by the applicant.

In addition, the granting of deferment of payment may give rise to the collection of ancillary costs for opening a file or for services rendered.

Article 12

1. The competent customs authority shall decide which of the following procedures must be used when granting deferment of payment:

- (a) either separately in respect of each amount of duty entered in the accounts under the conditions laid down in the first subparagraph of Article 3 (1);
- (b) or globally in respect of all the amounts of duty entered in the accounts under the conditions laid down in the first subparagraph of Article 3 (1) during a period not exceeding 31 days to be fixed by the customs authorities;
- (c) or globally in respect of all amounts of duty forming a single entry in the accounts pursuant to the second subparagraph of Article 3 (1).

2. Deferred payment shall also be granted, under the same conditions as those laid down in paragraph 1, for amounts of duty on goods which are the subject of a declaration under the customs arrangements for temporary importation with partial relief from import duties.

Article 13

1. The period for which payment is deferred shall be 30 days. It shall be calculated as follows:

- (a) where payment is deferred in accordance with Article 12 (a), the period shall be calculated from the day following the date on which the amount of duty is entered in the accounts by the customs authority.

Where Article 4 is applied, the period of 30 days calculated in accordance with the first subparagraph shall be reduced by the number of days corresponding to the period in excess of two days used to enter the amount in the accounts;

- (b) where payment is deferred in accordance with Article 12 (b), the period shall be calculated from the day following the date on which the period covered by the aggregation deferment expires. It shall be reduced by the number of days corresponding to half the number of days in the aggregation period;
- (c) where payment is deferred in accordance with Article 12 (c), the period shall be calculated from the day following the expiry date of the period during which the goods in question were released, or their export was authorized. It shall be reduced by the number of days corresponding to half the number of days in the period concerned.

2. Where the number of days in the periods referred to in paragraph 1 (b) and (c) is an odd number, the number of days to be deducted from the 30-day period pursuant to paragraph 1 (b) and (c) shall be equal to half the next lowest even number.

3. To simplify matters, where the periods referred to in paragraph 1 (b) and (c) are a calendar week or a calendar month, Member States may provide that the amount of duty in respect of which payment has been deferred shall be paid:

- (a) if the period is a calendar week, on the Friday of the fourth week following that calendar week;
- (b) if the period is a calendar month, by the 16th day of the month following that calendar month.

Article 14

1. Deferment of payment may not be granted in respect of amounts of duty which, although relating to goods entered for a customs procedure which entails the obligation to pay such duty, are entered in the accounts in accordance with the provisions in force concerning acceptance of incomplete declarations, because the declarant has not, by the time of expiry of the time limit set, provided the information necessary for the definitive valuation of the goods for customs purposes or has not supplied the particulars or the document missing when the incomplete declaration was accepted.

2. However, deferment of payment may be granted in the cases referred to in paragraph 1 where the amount of duty to be recovered is entered in the accounts before the expiry of a period of 30 days from the date on which the amount originally charged was entered in the accounts or, if it was not entered in the accounts, from the date on which the declaration relating to the goods in question was accepted. The duration of the deferment of payment granted in such

circumstances may not extend beyond the date of expiry of the period which, pursuant to Article 13, was granted in respect of the amount of duty originally fixed, or which would have been granted had the amount of duty legally due been entered in the accounts when the goods in question were declared.

Section 2

Other payment facilities

Article 15

Member States may make provision for the person liable for payment of an amount of duty to be granted payment facilities other than the deferred payment referred to in Section 1.

The granting of such payment facilities shall be made conditional on the provision of security. However, such security need not be required where to require it would, because of the situation of the person concerned, create serious economic or social difficulties.

Section 3

Payment before expiry of the time limits

Article 16

Whatever the payment facilities granted to the person liable for payment of an amount of duty, that person may in any case pay all or part of the amount without awaiting expiry of the period he has been granted for payment.

Section 4

Payment by a third party

Article 17

Any amount of duty may be paid by a third party instead of the person liable for payment.

Chapter C

Enforcement

Article 18

Where the person liable for payment of an amount of duty has not discharged his obligation within the period granted him, the customs authority shall avail itself of all options open to it under the prevailing legislation, including enforcement, to secure payment of the amount.

TITLE III

PAYMENT OF INTEREST

Article 19

Where a Member State grants payment facilities in accordance with Article 15, the expenses borne by the person liable for payment for the granting of these facilities, and in particular any interest, must be calculated in such a way that the amounts are equivalent to those which would be charged for this purpose on the money market or financial market in the State concerned.

In the event of late payment or failure to pay within the time limits fixed, the interest rate on arrears may be higher than that defined in the preceding subparagraph.

would be likely to create serious economic or social difficulties.

2. Member States may also waive collection of interest on arrears if the amount concerned is less than, or equal to, ECU 20 or if the duties are paid within five days of the deadline for their payment. This amount may be amended in accordance with the procedure laid down in Article 24 (2).

Article 20

1. Member States may waive application of Article 19 where, because of the situation of the person concerned, it

3. Member States may fix minimum periods for calculation of interest.

TITLE IV

FINAL PROVISIONS

Article 21

Without prejudice to any provisions connected with offences against customs rules which might be applied, no interest other than the interest provided for in Article 19 shall be charged on amounts of duty payable by a person liable for payment.

However, interest on arrears may be collected in respect of post-clearance recovery if national provisions so stipulate.

on the harmonization of procedures for the release of goods for free circulation ⁽¹⁾, as last amended by Directive 81/853/EEC ⁽²⁾, may examine any questions relating to the implementation of this Regulation which are referred to it by its chairman, either on his own initiative or at the request of a representative of a Member State.

2. The measures necessary for implementation of this Regulation shall be adopted in accordance with the procedure laid down in Article 26 (2) and (3) of Directive 79/695/EEC.

Article 22

This Regulation shall not preclude the application of provisions which lay down that customs authorities need not enter in the accounts amounts of duty of less than ECU 10.

Article 25

1. Directive 78/453/EEC is hereby repealed.

References to that Directive shall be construed as references to this Regulation.

2. Article 6 of Regulation (EEC) No 1697/79 is hereby repealed.

3. The following Article is hereby inserted in Regulation (EEC) No 1430/79:

Article 23

Application of this Regulation shall be without prejudice to the more favourable provisions laid down with regard to security under the transit procedure and under the Convention for the temporary admission of goods concluded at Brussels on 6 December 1961 (ATA Convention).

Article 17a

Repayment by the competent authorities, pursuant to this Regulation, of amounts of import duties or export duties

Article 24

1. The Committee on General Customs Rules set up by Article 24 of Council Directive 79/695/EEC of 24 July 1979

⁽¹⁾ OJ No L 205, 13. 8. 1979, p. 19.

⁽²⁾ OJ No L 314, 7. 11. 1981, p. 1.

or of credit interest or interest on arrears collected on payment of such duties shall not give rise to the payment of interest by those authorities. However, interest may be paid if national provisions so provide.'

4. Article 13 of Directive 81/177/EEC is hereby amended as follows:

'Article 13

Without prejudice to any prohibition or restriction measures that may apply to goods declared for export, the customs authorities shall only authorize export of the goods after they have satisfied themselves, if necessary, that the export duties relating to them have been paid or covered by security or have been the subject of deferred payment under the conditions laid down in Council

Regulation (EEC) No 1854 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt ⁽¹⁾.

⁽¹⁾ OJ No L 186, 30. 6. 1989, p. 1.'

Article 26

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 July 1990.

It shall apply to amounts of duty entered in the accounts on and after that date.

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

Done at Luxembourg, 14 June 1989.

For the Council

The President

P. SOLBES

COUNCIL REGULATION (EEC) No 1855/89

of 14 June 1989

on the temporary importation of means of transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas temporary importation allowing the use without payment of import duties of certain means of transport which do not satisfy the conditions of Article 9 (2) of the Treaty, where such means of transport are intended for re-export, is provided for in the law of the majority of the Member States; whereas such arrangements are also the subject of several multilateral international conventions to which some or all Member States are contracting parties; whereas the requirements of the customs union make it desirable for a uniform arrangement for the temporary importation of means of transport to be established;

Whereas Regulation (EEC) No 3599/82 ⁽⁴⁾, as amended by Regulation (EEC) No 1620/85 ⁽⁵⁾, established arrangements for temporary importation which did not include means of transport;

Whereas the means of transport which do not meet the conditions laid down by this Regulation may nevertheless be covered by the said arrangements;

Whereas it is necessary to ensure the uniform implementation of this Regulation and therefore make provision for a Community procedure for the adoption of implementing rules; whereas close and effective cooperation in this field between the Member States and the Commission should be organized through the Committee for Customs Procedures with Economic Impact established by Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing arrangements ⁽⁶⁾,

TITLE I

General provisions

Article 1

1. The arrangements for the temporary importation of means of transport shall permit the importation, in accordance with the procedures and conditions laid down in this Regulation and free of all import duties, of means of transport which it is intended will stay temporarily in the customs territory of the Community and then be re-exported.

2. For the purposes of this Regulation:

(a) 'person' shall mean:

- a natural person, or
- a legal person, or
- when the possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the status in law of a legal person;

(b) 'person established outside the customs territory of the Community'

shall mean a natural person having his normal residence outside the customs territory of the Community or a legal person having his registered place of business outside that territory;

(c) 'import duties' shall mean the duties defined in Article 1 (2) of Regulation (EEC) No 3599/82;

(d) 'business use' shall mean the use of a means of transport in direct exercise of an activity carried out for consideration or financial gain;

(e) 'private use' shall mean use for purposes other than business use as defined in (d);

(f) 'means of transport' shall mean any means used for the transport of persons or goods. 'Means of transport' shall cover spare parts and normal accessories and equipment, including the equipment used to stow, secure or protect goods, imported with the means of transport;

(g) 'customs authority' shall mean any authority competent to apply customs rules even if that authority is not part of the customs administration.

⁽¹⁾ OJ No C 4, 7. 1. 1984, p. 3.

⁽²⁾ OJ No C 104, 16. 4. 1984, p. 116.

⁽³⁾ OJ No C 248, 17. 9. 1984, p. 6.

⁽⁴⁾ OJ No L 376, 31. 12. 1982, p. 1.

⁽⁵⁾ OJ No L 155, 14. 6. 1985, p. 54.

⁽⁶⁾ OJ No L 188, 20. 7. 1985, p. 1.

Article 2

The temporary importation of means of transport shall be authorized without formalities as soon as they enter the customs territory of the Community, subject to the conditions laid down in this Regulation.

In exceptional cases, however, a customs authority may make the grant of temporary importation subject to the completion of special formalities.

Article 3

The placing of means of transport under temporary importation arrangements shall not be subject to the provision of a security in order to ensure payment of any customs debt which may be incurred.

In exceptional cases, however, a customs authority may make such placing subject to the provision of a security.

TITLE II

Means of road transport

Article 4

1. The temporary importation arrangements shall apply, in accordance with Articles 2 and 3, to road vehicles for business use.

2. For the purposes of this Article, 'vehicles' shall mean all road vehicles and all trailers which can be coupled to such vehicles.

3. Without prejudice to paragraph 4, admission under the temporary importation arrangements referred to in paragraph 1 shall be subject to the condition that the vehicles are:

- (a) imported by a person established outside the customs territory of the Community or on his behalf;
- (b) used for business purposes by such a person or on his behalf; and
- (c) registered outside the customs territory of the Community in the name of a person established outside that territory. However, if the vehicles are not registered, the above condition shall be deemed to be met where the vehicles in question belong to a person established outside the customs territory of the Community;
- (d) used exclusively for transport which begins or ends outside the customs territory of the Community, save for the cases to be determined in accordance with the procedure laid down in Article 21.

4. Where a trailer is coupled to a motor vehicle registered within the customs territory of the Community, it shall be

admitted under these arrangements even if the conditions set out in subparagraphs 3 (a) and (b) are not satisfied.

5. The vehicles referred to in paragraph 1 may remain in the customs territory of the Community subject to the conditions laid down in paragraph 3 during the time required for carrying out the operations for which temporary admission is being requested, e.g. dispatching, picking up and setting down of passengers, loading and unloading goods, transport and maintenance.

Article 5

1. The temporary importation arrangements shall apply, in accordance with Articles 2 and 3, to road vehicles for private use.

2. For the purposes of this Article, 'vehicles' shall mean all road vehicles, including caravans and trailers, which can be coupled to motor vehicles.

3. Admission under the temporary importation arrangements referred to in paragraph 1 shall be subject to the condition that the vehicles are:

- (a) imported by persons established outside the customs territory of the Community;
- (b) used for private purposes by the persons concerned; and
- (c) registered outside the customs territory of the Community in the name of a person established outside that territory. However, if the vehicles are not registered, the above condition shall be deemed to be met where the vehicles in question belong to a person established outside the customs territory of the Community.

4. Notwithstanding subparagraph 3, the arrangements shall also extend to vehicles not meeting the conditions laid down in Articles 9 and 10 of the Treaty which are registered in the customs territory of the Community under a temporary series with a view to re-exportation and carry a registration number plate issued to a person established outside that territory.

5. The temporary importation arrangements shall also apply in the following cases:

- (a) where a private vehicle registered in the country of normal residence of the user is used regularly for the journey from his residence to his place of work and vice versa in the customs territory of the Community. There shall be no other limitation on the period;
- (b) where a student uses a private vehicle registered in the country of his normal residence in the customs territory of the Community in which the student is residing for the sole purpose of pursuing his studies.

6. Without prejudice to paragraph 5 (a), the vehicles referred to in paragraph 1 may remain in the customs territory of the Community for:

- (a) a period of six months — whether continuous or not — in any 12 months;
- (b) the period the student stays in the customs territory of the Community in the cases referred to in paragraph 5 (b).

7. Paragraphs 5 (b) and 6 (b) shall apply *mutatis mutandis* to persons fulfilling assignments of a specified duration.

Article 6

1. Article 5 shall apply *mutatis mutandis* to saddle or draught animals and the vehicles drawn by them entering the customs territory of the Community.

2. The animals and the vehicles drawn by them referred to in paragraph 1 may remain in the customs territory of the Community for a period of three months.

TITLE III

Means of rail transport

Article 7

1. The temporary importation arrangements shall apply, in accordance with Articles 2 and 3, to means of rail transport.

2. For the purposes of this Article, 'means of rail transport' shall mean all prime movers, railcars and multiple sets, and rolling stock of any description used for the transport of persons and goods.

3. Admission under the temporary importation arrangements referred to in paragraph 1 shall be subject to the condition that the means of rail transport:

- (a) belong to a person established outside the customs territory of the Community;
- (b) are registered on a railway network outside the customs territory of the Community.

4. Means of rail transport may remain in the customs territory of the Community for 12 months.

TITLE IV

Means of air transport

Article 8

1. The temporary importation arrangements shall apply, in accordance with Articles 2 and 3, to means of air transport.

2. The means of transport referred to in paragraph 1 may remain in the customs territory of the Community for the time required for carrying out the operations for which temporary admission is being requested, e.g. dispatching, boarding and landing passengers, loading and unloading goods, transport and maintenance.

3. Where the means of transport referred to in paragraph 1 are used for private air transport, the conditions laid down in Article 5 (3) shall apply.

4. The means of transport referred to in paragraph 3 may remain in the customs territory of the Community for a period of six months, whether continuous or not, in any 12-month period.

TITLE V

Sea and inland waterway transport

Article 9

1. The temporary importation arrangements shall apply, in accordance with Articles 2 and 3, to means of sea and inland waterway transport.

2. The means of transport referred to in paragraph 1 may remain in the customs territory of the Community for the time required for carrying out the operations for which temporary admission is being requested, e.g. dispatching, boarding and landing passengers, loading and unloading goods, transport and maintenance.

3. Where the means of transport referred to in paragraph 1 are used for private sea or inland waterway transport, the conditions laid down in Article 5 (3) shall apply.

4. The means of transport referred to in paragraph 3 may remain in the customs territory of the Community for a period of six months, whether continuous or not, in any 12-month period.

TITLE VI

Pallets

Article 10

1. The temporary importation arrangements shall apply, in accordance with Articles 2 and 3, to pallets.

2. For the purposes of this Article, a 'pallet' shall mean a device on the deck of which a quantity of goods can be assembled to form a unit load for the purpose of transport or

of handling or stacking by means of mechanical appliances. The device consists either of two decks connected to each other by cross-braces, or of a deck supported by feet or of a special deck designed for air transport; its overall height is reduced to the minimum compatible with its handling by means of rollers, forklift trucks or pallet trucks; it may or may not have a superstructure.

TITLE VII

Other provisions

Article 11

Spare parts, accessories and normal equipment, including equipment which is used for the stowage, securing or protection of goods, imported separately from the means of transport for which they are intended, shall be admitted under the temporary importation arrangements.

Article 12

The means of transport referred to in Titles II, III, IV and V shall not be lent, hired, pledged, transferred or put at the disposal of any person having his normal residence in the customs territory of the Community.

Article 13

In accordance with the procedure laid down in Article 21, it may be permissible in special cases for a person to import and/or to use a means of transport in the customs territory of the Community without complying with this Regulation.

Article 14

Where the circumstances so justify, the customs authority may, at the request of the interested party, prolong the time limits provided for in this Regulation.

Article 15

Persons eligible for the temporary importation arrangements shall be obliged to submit to all surveillance and control measures specified by the customs authority.

Article 16

The customs authority may withdraw its authorization where it is established that the person concerned has not observed one of the conditions set for such arrangements to be granted.

Article 17

1. The arrangements for temporary importation shall terminate when the means of transport placed under these arrangements is re-exported out of the customs territory of the Community or placed, with a view to its subsequent re-exportation:

— in a free zone,

or made subject to arrangements pertaining to:

— customs warehouses,

— Community transit (external procedure) or one of the international transport procedures referred to in Article 7 (1) of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit ⁽¹⁾, as last amended by Regulation (EEC) No 1674/87 ⁽²⁾, provided that the use of such a procedure is permitted by Community legislation,

— inward processing,

or when the means is abandoned without charge to the profit of public funds with the approval of the customs authority.

However, as regards pallets or means of rail transport used jointly under an agreement, the arrangements shall also be considered terminated when pallets of equivalent value or means of rail transport of the same type as those which are eligible for the temporary importation arrangements are exported or placed in a free zone with a view to subsequent exportation or are placed under one of the arrangements set out under the first subparagraph.

2. The customs authority may, where circumstances so warrant, authorize the release for free circulation or the destruction under customs supervision of means of transport admitted under the temporary importation arrangements, either immediately or after it has been placed in a free zone or after it has been placed under one of the procedures referred to in the first subparagraph of paragraph 1.

3. Paragraphs 1 and 2 shall also apply, without prejudice to the provisions regarding infringement of customs legislation, in cases where the authorization has been withdrawn under Article 16.

4. Parts replaced as a result of repair or maintenance must be disposed of in accordance with one of the procedures specified in paragraphs 1 and 2.

5. Without prejudice to the provisions concerning the infringement of customs legislation and duty-free arrangements, in cases where the means of transport admitted under the temporary importation arrangements are released for free circulation or in other cases where a customs debt is incurred under Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt ⁽³⁾, import duties

⁽¹⁾ OJ No L 38, 9. 2. 1977, p. 1.

⁽²⁾ OJ No L 157, 17. 6. 198, p. 1.

⁽³⁾ OJ No L 201, 22. 7. 1987, p. 15.

shall be charged according to the taxation characteristics of the means of transport when it was temporarily imported whether the release for free circulation took place then or after the means of transport had been placed in a free zone or under one of the procedures specified in paragraph 1.

However, in the case of waste or debris resulting from the destruction of the parts referred to in paragraph 4, the point to be used for the calculation of the customs debt shall be that referred to in Article 3 (f) of Regulation (EEC) No 2144/87.

TITLE VIII

Final provisions

Article 18

1. This Regulation shall not affect the provisions in force with regard to transport, in particular the conditions governing access to the market and the execution of the said transport.

2. Without prejudice to paragraph 1, the means of transport covered by this Regulation shall be admitted under the temporary importation arrangements free of import prohibitions or restrictions, on condition that they are to be re-exported.

3. This Regulation shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.

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

Done at Luxembourg, 14 June 1989.

Article 19

Until such time as Community provisions are established in the field in question, this Regulation shall not prevent the Member States applying:

- (a) greater facilitation arrangements for which current agreements make provision;
- (b) special reliefs granted to armed forces stationed in the territory of a Member State in accordance with Article 136 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty ⁽¹⁾, as last amended by Regulation (EEC) No 4235/88 ⁽²⁾.

Article 20

The Committee for Customs Procedures with Economic Impact may examine any question concerning the application of this Regulation which is raised by its chairman either on his own initiative or at the request of the representative of a Member State.

Article 21

The provisions necessary for the implementation of this Regulation shall be adopted in accordance with the procedure provided for in Article 31 (1) and (2) of Regulation (EEC) No 1999/85.

Article 22

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall become applicable one year after entry into force of the implementing provisions adopted in accordance with the procedure laid down in Article 21.

For the Council

The President

P. SOLBES

⁽¹⁾ OJ No L 105, 23. 4. 1983, p. 1.

⁽²⁾ OJ No L 373, 31. 12. 1988, p. 1.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 14 June 1989

amending for the fifth time Directive 74/329/EEC on the approximation of the laws of the Member States relating to emulsifiers, stabilizers, thickeners and gelling agents for use in foodstuffs

(89/393/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 ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Directive 74/329/EEC ⁽⁴⁾, as last amended by Directive 86/102/EEC ⁽⁵⁾, lays down a list of emulsifiers, stabilizers, thickeners and gelling agents which may be authorized in foodstuffs by the Member States;

Whereas Annex II to Directive 74/329/EEC indicates the designations of substances which may be temporarily authorized by Member States for use in foodstuffs; whereas this derogation came to an end on 31 December 1988;

Whereas, on 21 December 1988, the Council adopted Directive 89/107/EEC ⁽⁶⁾ on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption;

Whereas, pursuant to Article 3 of the said Directive, the Council, acting in accordance with the procedure provided for by Article 100a of the Treaty, must adopt a comprehensive Directive including, if necessary, both the positive list of authorized substances and the conditions for their use;

Whereas, however, it is not immediately possible to adopt all the rules covering the substances in question; whereas the validity of Annex II to Directive 74/329/EEC should therefore be extended for the time being,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Article 3 (1) of Directive 74/329/EEC, the first subparagraph is hereby replaced by the following:

'1. By way of derogation from Article 2 (1), Member States may authorize, until 31 December 1991, the use in foodstuffs of the substances listed in Annex II.'

Article 2

Article 1 shall take effect as from 1 January 1989.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1989.

For the Council
The President
P. SOLBES

⁽¹⁾ OJ No C 214, 16. 8. 1988, p. 14.

⁽²⁾ OJ No C 47, 20. 2. 1989, p. 80, and OJ No C 158, 26. 6. 1989.

⁽³⁾ OJ No C 337, 31. 12. 1988, p. 5.

⁽⁴⁾ OJ No L 189, 12. 7. 1974, p. 1.

⁽⁵⁾ OJ No L 88, 3. 4. 1986, p. 40.

⁽⁶⁾ OJ No L 40, 11. 2. 1989, p. 27.

COUNCIL DIRECTIVE

of 14 June 1989

amending for the third time Directive 75/726/EEC on the approximation of the laws of the Member States concerning fruit juices and certain similar products

(89/394/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Directive 75/726/EEC ⁽⁴⁾, as last amended by the Act of Accession of Spain and Portugal, makes no provision for the possibility of producing fruit nectars without the addition of sugar; whereas in view of changes in eating habits the existence of such products should be envisaged;

Whereas it is not possible to extract the juice of certain tropical fruits without the pulp; whereas it therefore appears necessary to provide for the possible use of fruit purée in the manufacture of certain fruit juices;

Whereas the option of replacing all sugars by honey within the limits laid down should be extended to all fruit nectars, and the option of using sugars and honey together in certain nectars should be removed;

Whereas the sweetening of certain concentrated fruit juices should be authorized only if they are intended for direct sale to the consumer, since the sweetening may not exceed the permitted limits at the final stage;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 75/726/EEC is hereby amended as follows:

1. Article 1 (7) shall be replaced by the following:

‘7. Fruit nectar:

- (a) The unfermented but fermentable product obtained by the addition of water and sugars to

fruit juice, concentrated fruit juice, fruit purée, concentrated fruit purée or to a mixture of these products which also conforms with the Annex.

- (b) However, it may be decided under the procedure in Article 14 that, in the case of certain fruits whose juice has a high natural sugar content, nectar may be produced from them without the addition of sugars.’

2. Article 4 (1) (a) shall be replaced by the following:

- ‘(a) the mixing of one or more kinds of fruit juices and/or fruit purées (as defined in Article 1 (2) and (5));’.

3. Article 7 (2) (c) and (d) shall be replaced by the following:

- ‘(c) the total replacement of sugars with honey, within the 20 % limit specified in (a);
- (d) in the case of the production of the fruit nectars referred to in Article 3 (2) (c) which are obtained from apples, pears or peaches or a mixture of these fruits, the addition of citric acid in a quantity not greater than five grams per litre of finished product; the citric acid may, however, be replaced totally or partially by an equivalent quantity of lemon juice.’

4. Article 7 (3) and (4) shall be deleted.

5. Article 8 (a) shall be replaced by the following:

- ‘(a) the treatments and processes listed in Article 4 with the exception of the provisions in paragraph 2 (a). However, the addition of sugars provided for in that point (a) shall be authorized only for prepackaged concentrated fruit juices intended for the ultimate consumer and provided that the sweetening is indicated in the description; in that case the total quantity of sugars added expressed in relation to the volume of the juice “obtained from concentrated . . .” may not exceed the limit authorized in Article 4 (2) (a) (i) and (ii).

⁽¹⁾ OJ No C 24, 31. 1. 1987, p. 12.

⁽²⁾ OJ No C 122, 9. 5. 1988, p. 78, and OJ No C 120, 16. 5. 1989.

⁽³⁾ OJ No C 150, 2. 6. 1987, p. 16.

⁽⁴⁾ OJ No L 311, 1. 12. 1975, p. 40.

For a period of 10 years from 14 June 1989, sugar may be added to concentrated orange juice not intended for the ultimate consumer up to a maximum quantity expressed as dry matter of 15 grams per litre for the purpose of correcting it.

In the case referred to in the second subparagraph the processor must be informed of the addition of sugar, in accordance with trade practices.

On expiry of the period referred to in the second subparagraph, the Council shall decide, acting on a proposal from the Commission, whether to continue the exception in the said subparagraph;'

6. The following Article shall be inserted:

'Article 11b

The amendments necessary to adapt Articles 4, 7, 8 and 9 and the Annex to technical progress shall be adopted in accordance with the procedure laid down in Article 14, with the exception of those concerning additives.'

7. Article 13 shall be replaced by the following:

'Article 13

The identity and purity criteria for the additives and treatment agents referred to in Articles 4 and 7 shall be determined where necessary in accordance with the procedure laid down in Article 14.'

8. Article 14 shall be replaced by the following:

'Article 14

1. Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Standing Committee for Foodstuffs, either on his own initiative or at the request of the 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 deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

- (b) If 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 relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.'

9. Article 15 shall be deleted.

10. Article 16 (1) (f) shall be deleted.

11. Article 16 (2) shall be replaced by the following:

'2. The derogations regarding additives provided for in paragraph 1 (c), (d), (e), (g) and (h) shall cease to apply once the relevant rules become applicable at Community level.'

12. The Annex shall be replaced by the Annex hereto.

Article 2

The Member States shall take the necessary measures to comply with this Directive. They shall forthwith inform the Commission thereof.

These measures shall be applied so as to:

- permit trade in products complying with this Directive not later than 14 June 1990,
- prohibit trade in products not complying with this Directive not later than 14 June 1991.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1989.

For the Council
The President
P. SOLBES

ANNEX

SPECIAL PROVISIONS RELATING TO FRUIT NECTARS

Fruit nectars made from	Minimum total acid content expressed as tartaric acid (g/l of finished product)	Minimum juice and/or purée content (% by weight of finished product)
I. Fruits with acid juice unpalatable in the natural state		
Passion fruit (<i>Passiflora edulis</i>)	8	25
Quito naranjillos (<i>Solanum quitoense</i>)	5	25
Blackcurrants	8	25
Whitecurrants	8	25
Redcurrants	8	25
Gooseberries	9	30
Sallow-thorn berries (<i>Hippophaë</i>)	9	25
Sloes	8	30
Plums	6	30
Quetsches	6	30
Rowanberries	8	30
Rose hips (fruits of <i>Rosa sp.</i>)	8	40
Sour cherries	8	35
Other cherries	6 ⁽¹⁾	40
Bilberries	4	40
Elderberries	7	50
Raspberries	7	40
Apricots	3 ⁽¹⁾	40
Strawberries	5 ⁽¹⁾	40
Mulberries/blackberries	6	40
Cranberries	9	30
Quinces	7	50
Lemons and limes	—	25
Other fruits belonging to this category	—	25
II. Low-acid, pulpy or highly flavoured fruits with juice unpalatable in the natural state		
Mangoes	—	35
Bananas	—	25
Guavas	—	25
Papayas	—	25
Lychees	—	25
Azeroles (Neapolitan medlars)	—	25
Soursop (<i>Annona muricata</i>)	—	25
Bullock's heart or custard apple (<i>Annona reticulata</i>)	—	25
Sugar apples	—	25
Pomegranates	—	25
Cashew fruits	—	25
Spanish plums (<i>Spondia purpurea</i>)	—	25
Umbu (<i>Spondias tuberosa aroda</i>)	—	30
Other fruits belonging to this category	—	25
III. Fruits with juice palatable in the natural state		
Apples	3 ⁽¹⁾	50
Pears	3 ⁽¹⁾	50
Peaches	3 ⁽¹⁾	45
Citrus fruits except lemons and limes	5	50
Pineapples	4	50
Other fruits belonging to this category	—	50

⁽¹⁾ Limit not applicable in the case of the product referred to in Article 3 (2) (c).

COUNCIL DIRECTIVE

of 14 June 1989

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

(89/395/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 ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Directive 79/112/EEC ⁽⁴⁾, as last amended by Directive 86/197/EEC ⁽⁵⁾, makes provision for national derogations in a number of cases;

Whereas, with the dual aim of completing the internal market and providing improved information for all consumers in the Community, those derogations should be eliminated;

Whereas, in particular, experience acquired since the adoption of Directive 79/112/EEC enables it to be made applicable to restaurants, hospitals, canteens and other similar mass caterers throughout the Community;

Whereas the date of minimum durability has proved its worth; whereas, however, in the interests of a better protection of public health a stricter system of dating should be used in preference thereto in the case of foodstuffs which, from the microbiological point of view, are highly perishable and whereas in doubtful cases a Community procedure should be laid down;

Whereas this Directive is concerned only with labelling, presentation and advertising and not with the question of allowing or banning irradiation of foodstuffs or ingredients thereof;

Whereas, however, without prejudice to a decision on substance at Community level, the consumer's right to be informed of any irradiation treatment undergone by a

foodstuff, where such treatment is allowed, must already be acknowledged; whereas to that end it should be specified that any foodstuff which has undergone such treatment must bear a corresponding indication; whereas, however, specific provisions concerning compound foodstuffs containing an ingredient previously treated with ionizing radiation will not be adopted until rules are adopted on irradiation treatment itself;

Whereas with a view to facilitating trade between Member States, it may be provided that, at stages prior to sale to the ultimate consumer, only information on the essential elements should appear on the outer packaging and whereas certain mandatory particulars that must appear on a prepackaged foodstuff need appear only on commercial documents referring thereto;

Whereas in all cases where the Council empowers the Commission to implement rules relating to foodstuffs intended for human consumption, provision should be made for a procedure establishing close cooperation between the Member States and the Commission within the Standing Committee for Foodstuffs, set up by Decision 69/414/EEC ⁽⁶⁾,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. The title of the Directive shall be replaced by the following:

'Council Directive of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs'.

2. Article 1 (2) shall be replaced by the following:

'2. This Directive shall apply also to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers (hereinafter referred to as "mass caterers").'

3. In Article 1 (3) (b), 'to the ultimate consumer' shall be replaced by 'to the ultimate consumer and to mass caterers'.

⁽¹⁾ OJ No C 124, 28. 5. 1986, p. 5, and OJ No C 154, 12. 6. 1987, p. 10.

⁽²⁾ OJ No C 99, 13. 4. 1987, p. 65, and OJ No C 120, 16. 5. 1989.

⁽³⁾ OJ No C 328, 22. 12. 1986, p. 27.

⁽⁴⁾ OJ No L 33, 8. 2. 1979, p. 1.

⁽⁵⁾ OJ No L 144, 29. 5. 1986, p. 38.

⁽⁶⁾ OJ No L 291, 19. 11. 1969, p. 9.

4. Article 2 (1) (b) shall be replaced by the following:
 - (b) subject to Community provisions applicable to natural mineral waters and foodstuffs for particular nutritional uses, attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties'.
5. Article 3 (1) (4) shall be replaced by the following:
 - '4. The date of minimum durability or, in the case of foodstuffs which, from the microbiological point of view, are highly perishable, the "use by" date.'
6. The following paragraph shall be added to Article 4:
 - '3. The Community provisions referred to in paragraphs 1 and 2 shall be adopted in accordance with the procedure laid down in Article 17.'
7. In Article 5 (1), 'to the ultimate consumer' shall be replaced by 'to the ultimate consumer and to mass caterers'.
8. In Article 5 (3) the following text shall be added:

'Any foodstuff which has been treated with ionizing radiation must bear one of the following indications:

 - in Spanish
"irradiado" or "tratado con radiación ionizante"
 - in Danish
"bestrålet/ ..." or "strålekonserveret" or "behandlet med ioniserende stråling" or "konservedet med ioniserende stråling"
 - in German:
"bestrahlt" or "mit ionisierenden Strahlen behandelt"
 - in Greek:
"επεξεργασμένο με ιονίζουσα ακτινοβολία" or "ακτινοβολημένο"
 - in English:
"irradiated" or "treated with ionizing radiation"
 - in French:
"traité par rayonnements ionisants" or "traité par ionisation"
 - in Italian:
"irradiato" or "trattato con radiazioni ionizzanti"
 - in Dutch:
"doorstraald" or "door bestraling behandeld" or "met ioniserende stralen behandeld"
 - in Portuguese:
"irradiado" or "tratado por irradiação" or "tratado por radiação ionizante"
9. The first indent of Article 6 (5) (b) shall be replaced by the following:
 - ingredients which belong to one of the categories listed in Annex I and are constituents of another foodstuff may be designated by the name of that category only. Alterations to the list of categories in Annex I may be effected in accordance with the procedure laid down in Article 17,'
10. The following shall be added to the third indent of Article 6 (5) (b):

'These provisions shall be adopted in accordance with the procedure laid down in Article 17,'
11. The fourth indent of Article 6 (5) (b) shall be replaced by the following:
 - the specific Community provisions governing the indication of treatment of an ingredient with ionizing radiation shall be adopted subsequently in accordance with Article 100a of the Treaty.'
12. The following subparagraph shall be added to Article 6 (6):

'The Community provisions referred to in this paragraph shall be adopted in accordance with the procedure laid down in Article 17.'
13. The following subparagraph shall be added to Article 7 (3):

'The Community provisions referred to in this paragraph shall be adopted in accordance with the procedure laid down in Article 17.'
14. Article 8 (4) shall be replaced by the following:

'4. Where a solid foodstuff is presented in a liquid medium, the drained net weight of the foodstuff shall also be indicated on the labelling.

For the purposes of this paragraph, "liquid medium" shall mean the following products, possibly in mixtures and also where frozen or quick-frozen, provided that the liquid is merely an adjunct to the essential elements of that preparation and is thus not a decisive factor for the purchase: water, aqueous solutions of salts, brine; aqueous solutions of food acids, vinegar; aqueous solutions of sugars, aqueous solutions of other sweetening substances; fruit or vegetable juices in the case of fruit or vegetables.

This list may be supplemented in accordance with the procedure laid down in Article 17.

Methods of checking the drained net weight shall be determined in accordance with the procedure laid down in Article 17.'
15. The following paragraph shall be added to Article 8:

'7. The Community provisions referred to in paragraphs 1, 2 (b) and (d) and 5 shall be adopted in accordance with the procedure laid down in Article 17.'

16. The second and third subparagraphs of Article 9 (2) shall be deleted.

17. Article 9 (5) shall be replaced by the following:

'5. In their own territories the Member States may, until 31 December 1992, permit the minimum durability period to be expressed otherwise than in terms of the date of minimum durability. Without prejudice to the notification provided for in Article 22, Member States shall notify the Commission and the other Member States of any measure taken under this paragraph.'

18. Article 9 (6) shall be replaced by the following:

'6. Subject to Community provisions imposing other types of date indication, an indication of the durability date shall not be required for:

- fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated. This derogation shall not apply to sprouting seeds and similar products such as legume sprouts,
- wines, liqueur wines, sparkling wines, aromatized wines and similar products obtained from fruits other than grapes, and beverages falling within CN codes 2206 00 91, 2206 00 93 and 2206 00 99 and manufactured from grapes or grape musts,
- beverages containing 10% or more by volume of alcohol,
- soft drinks, fruit juices, fruit nectars and alcoholic beverages in individual containers of more than five litres, intended for supply to mass caterers,
- bakers' or pastry cooks' wares which, given the nature of their content, are normally consumed within 24 hours of their manufacture,
- vinegar,
- cooking salt,
- solid sugar,
- confectionery products consisting almost solely of flavoured and/or coloured sugars,
- chewing gums and similar chewing products.
- individual portions of ice-cream.'

19. The following Article shall be added:

'Article 9a

1. In the case of foodstuffs which, from the microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability shall be replaced by the "use by" date.

2. The date shall be preceded by the words:

- in Spanish: "fecha de caducidad",
- in Danish: "sidste anvendelsesdato",

- in German: "verbrauchen bis",
- in Greek: "ανάλωση μέχρι",
- in English: "use by",
- in French: "à consommer jusqu'au",
- in Italian: "da consumare entro",
- in Dutch: "te gebruiken tot",
- in Portuguese: "a consumir até".

These words shall be accompanied by:

- either the date itself, or
- a reference to where the date is given on the labelling.

These particulars shall be followed by a description of the storage conditions which must be observed.

3. The date shall consist of the day, the month and, possibly, the year, in that order and in uncoded form.

4. In some cases it may be decided by the procedure laid down in Article 17 whether the conditions laid down in paragraph 1 are fulfilled.'

20. The following subparagraph shall be added to Article 10 (2):

'The Community provisions referred to in this paragraph shall be adopted in accordance with the procedure laid down in Article 17.'

21. Article 11 shall be replaced by the following:

'Article 11

1. (a) When the foodstuffs are prepackaged, the particulars provided for in Articles 3 and 4 (2) shall appear on the prepackaging or on a label attached thereto.
- (b) Notwithstanding point (a) and without prejudice to Community provisions on nominal quantities, where prepackaged foodstuffs are:
 - intended for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage,
 - intended for supply to mass caterers for preparation, processing, splitting or retail sale,

the particulars required under Articles 3 and 4 (2) need appear only on the commercial documents referring to the foodstuffs where it can be guaranteed that such documents, containing all the labelling information, either accompany the foodstuffs to which they refer or were sent before or at the same time as delivery.

- (c) In the cases referred to in (b), the particulars referred to in Article 3 (1) (1), (4) and (6) and, where appropriate, that referred to in Article

9a, shall also appear on the external packaging in which the foodstuffs are presented for marketing.

2. These particulars shall be easy to understand and marked in a conspicuous place in such a way as to be easily visible, clearly legible and indelible.

They shall not in any way be hidden, obscured or interrupted by other written or pictorial matter.

3. (a) The particulars listed in Article 3 (1), points 1, 3, 4 and 9 shall appear in the same field of vision.

This requirement may be extended to the particulars provided for in Article 4 (2).

- (b) However, for glass bottles intended for re-use, upon which one of the particulars listed in point (a) is indelibly marked, this requirement shall not apply for a period of 10 years following notification of this Directive.

4. In the case of the glass bottles intended for re-use which are indelibly marked and which therefore bear no label, ring or collar and packaging or containers the largest surface of which has an area of less than 10 cm² only the particulars listed in Article 3 (1) (1), (3) and (4) need be given.

In this case, paragraph 3 (a) shall not apply.

5. Member States may, until 31 December 1996, refrain from requiring the minimum durability date or the "use by" date to be mentioned in respect of bottles referred to in paragraph 4.

6. Ireland, the Netherlands and the United Kingdom may derogate from Article 3 (1) and paragraph 3 (a) of this Article in the case of milk and milk products put up in glass bottles intended for re-use.

7. The Member States shall inform the Commission of any measure taken pursuant to paragraphs 5 or 6.

22. In the first paragraph of Article 12, 'to the ultimate consumer' shall be replaced by 'to the ultimate consumer or to mass caterers'.

23. In the second paragraph of Article 12, 'consumer' shall be replaced by 'purchaser'.

24. Article 17 shall be replaced by the following:

'Article 17

Where the procedure laid down in this Article is to be followed, the matter shall be referred to the Standing

Committee on Foodstuffs (hereinafter called "the Committee") by its chairman, either on his own initiative or at the request of a representative of a Member State.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of Decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If 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 relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

25. Article 18 shall be deleted.

26. Article 23 shall be deleted.

Article 2

Member States shall, where necessary, amend their laws, regulations and administrative provisions in such a way as to:

- permit trade in products complying with this Directive by not later than 20 December 1990,
- prohibit trade in products not complying with this Directive with effect from 20 June 1992.

They shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1989.

For the Council
The President
P. SOLBES

COUNCIL DIRECTIVE

of 14 June 1989

on indications or marks identifying the lot to which a foodstuff belongs

(89/396/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 ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas it is necessary to adopt measures with the aim of progressively establishing the internal market over the period expiring on 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas trade in foodstuffs occupies a very important place in the internal market;

Whereas indication of the lot to which a foodstuff belongs meets the need for better information on the identity of products; whereas it is therefore a useful source of information when foodstuffs are the subject of dispute or constitute a health hazard for consumers;

Whereas 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 ⁽⁴⁾, as last amended by Directive 89/395/EEC ⁽⁵⁾, contains no provisions on indication of lot identification; whereas some Member States have meanwhile adopted national measures requiring such indication;

Whereas at international level there is now a general obligation to provide a reference to the manufacturing or packaging lot of prepackaged foodstuffs; whereas it is the Community's duty to contribute to the development of international trade;

Whereas it is therefore advisable to adopt rules of a general and horizontal nature in order to establish a common lot identification system;

Whereas the efficiency of this system depends on its application at the various marketing stages; whereas it is nevertheless desirable to exclude certain products and operations in particular those taking place at the start of the distribution network for agricultural products;

Whereas the concept of a lot implies that several sales units of a foodstuff have almost identical production, manufacture or packaging characteristics; whereas that concept therefore could not apply to bulk products or products which, owing to their individual specificity or heterogeneous nature, could not be considered as forming a homogeneous batch;

Whereas, in view of the variety of identification methods used, it is up to the trader to determine the lot and to affix the corresponding indication or mark;

Whereas, in order to satisfy the information requirements for which it is intended, this indication must be clearly distinguishable and recognizable as such;

Whereas the date of minimum durability or 'use by' date, may, in conformity with Directive 79/112/EEC, serve as the lot identification, provided it is indicated precisely,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive concerns the indication which allows identification of the lot to which a foodstuff belongs.
2. For the purposes of this Directive, 'lot' means a batch of sales units of a foodstuff produced, manufactured or packaged under practically the same conditions.

Article 2

1. A foodstuff may not be marketed unless it is accompanied by an indication as referred to in Article 1 (1).
2. However, paragraph 1 shall not apply:
 - (a) to agricultural products which, on leaving the holding are:

⁽¹⁾ OJ No C 310, 20. 11. 1987, p. 2.

⁽²⁾ OJ No C 167, 27. 6. 1988, p. 425, and OJ No C 120, 16. 5. 1989.

⁽³⁾ OJ No C 95, 11. 4. 1988, p. 1.

⁽⁴⁾ OJ No L 33, 8. 2. 1979, p. 1.

⁽⁵⁾ See page 17 of this Official Journal.

- sold or delivered to temporary storage, preparation or packaging stations,
 - transported to producers' organizations, or
 - collected for immediate integration into an operational preparation or processing system;
- (b) when, at the point of sale to the ultimate consumer, the foodstuffs are not prepackaged, are packaged at the request of the purchaser or are prepackaged for immediate sale;
- (c) to packagings or containers, the largest side of which has an area of less than 10 cm².
3. Member States may, until 31 December 1996, refrain from requiring the indication referred to in Article 1 (1) to be mentioned in the case of the glass bottles intended for re-use which are indelibly marked and which therefore bear no label, ring or collar.

Article 3

The lot shall be determined in each case by the producer, manufacturer or packager of the foodstuff in question, or the first seller established within the Community.

The indication referred to in Article 1 (1) shall be determined and affixed under the responsibility of one or other of those operators. It shall be preceded by the letter 'L' except in cases where it is clearly distinguishable from the other indications on the label.

Article 4

When the foodstuffs are prepackaged, the indication referred to in Article 1 (1) and, where appropriate, the letter 'L' shall appear on the prepackaging or on a label attached thereto.

When the foodstuffs are not prepackaged, the indication referred to in Article 1 (1) and, where appropriate, the letter 'L' shall appear on the packaging or on the container or, failing that, on the relevant commercial documents.

It shall in all cases appear in such a way as to be easily visible, clearly legible and indelible.

Article 5

When the date of minimum durability or 'use by' date appears on the label, the indication referred to in Article 1 (1) need not appear on the foodstuff, provided that the date consists at least of the uncoded indication of the day and the month in that order.

Article 6

This Directive shall apply without prejudice to the indications laid down by specific Community provisions.

The Commission shall publish and keep up to date a list of the provisions in question.

Article 7

Member States shall, where necessary, amend their laws, regulations or administrative provisions so as to:

- authorize trade in products complying with this Directive by not later than 20 June 1990,
- prohibit trade in products not complying with this Directive with effect from 20 June 1991, however, trade in products placed on the market or labelled before that date and not conforming with this Directive may continue until stocks run out.

They shall forthwith inform the Commission thereof.

Article 8

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1989.

For the Council
The President
P. SOLBES

COUNCIL DIRECTIVE
of 14 June 1989
on the official control of foodstuffs
(89/397/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 ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas trade in foodstuffs is one of the most important aspects of the common market; whereas all the Member States must endeavour to protect the health and economic interests of their citizens; whereas the protection of health must be given unconditional priority and whereas, therefore, official control of foodstuffs must be harmonized and made more effective;

Whereas, however, the differences between national legislations with respect to this type of control are such as to represent barriers to the free movement of goods;

Whereas it is therefore necessary to approximate these legislations;

Whereas, first of all, the general principles governing the carrying-out of such control must be harmonized;

Whereas specific provisions, in addition to the general principles, may, if necessary, be adopted subsequently;

Whereas the subject of this Directive is verification of the compliance of foodstuffs with legislation on foodstuffs; whereas such legislation contains provisions on health, rules on composition and rules on quality designed to protect consumers' economic interests as well as provisions on consumer information and fair commercial transactions;

Whereas, at the same time as foodstuffs, materials and articles intended to come into contact with such foodstuffs should be controlled;

Whereas for the purposes of the completion of the internal market, foodstuffs intended to cross intra-Community

frontiers must be inspected with the same care as those intended for marketing in the Member State of production;

Whereas inspection must therefore be based in principle on the provisions in force in the Member State of production; whereas, however, such a principle should not apply where it has been established to the satisfaction of the inspecting authority by appropriate means, including the submission of commercial documents, that the product in question is intended for consignment to another Member State and that it complies with the provisions in force in that Member State;

Whereas, to be effective, inspections must be carried out regularly; whereas they must not be limited as to the subject, stage or moment at which it is convenient to carry them out, and whereas they must take the most suitable forms to guarantee their effectiveness;

Whereas in order to ensure that inspection procedures are not evaded, it is necessary to provide that Member States shall not exclude a product from appropriate inspection on the grounds that it is intended for export outside the Community;

Whereas the inspectors must be granted adequate powers;

Whereas although, on the one hand, undertakings should not have the right to oppose the inspections, on the other hand their legitimate rights must be preserved, in particular the right to manufacturing secrecy and the right of appeal;

Whereas the authorities made responsible for the control of foodstuffs may differ from one Member State to another; whereas it is, therefore, desirable to publish a list of the competent authorities in the field in each Member State, with an indication of the territories for which they are competent, and approved laboratories for the analyses to be carried out in connection with such control;

Whereas official controls should contribute effectively to the prevention of food law infringements; whereas to that end programmes should be drawn up on the basis of appropriate criteria;

Whereas, although it is primarily for Member States to lay down their inspection programmes, it is necessary, with a view to the completion and operation of the internal market, to arrange also for coordinated programmes at Community level;

Whereas simultaneous implementation of national programmes and coordinated programmes will provide

⁽¹⁾ OJ No C 20, 27. 1. 1987, p. 6, OJ No C 88, 5. 4. 1987, p. 14, and OJ No C 131, 27. 5. 1989, p. 6.

⁽²⁾ OJ No C 345, 21. 12. 1987, p. 80, and OJ No C 120, 16. 5. 1989.

⁽³⁾ OJ No C 347, 22. 12. 1987, p. 1.

experience which is still widely lacking at present; whereas, in the light of that experience, it may prove necessary to revise this Directive to improve the arrangements which it introduces;

Whereas Member States should be allowed a certain degree of freedom as to the practical means of carrying out inspections so as not to interfere with systems of proven worth which are best suited to the particular situation in each Member State,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive lays down the general principles for the performance of official control of foodstuffs.

2. For the purposes of this Directive 'official control of foodstuffs' — hereinafter called 'control' — means an inspection by the competent authorities of the compliance:

- of foodstuffs,
- of food additives, vitamins, mineral salts, trace elements and other additives intended to be sold as such,
- of materials and articles intended to come into contact with foodstuffs,

with provisions aimed at preventing risks to public health, guaranteeing fair commercial transactions or protecting consumer interests, including provisions on consumer information.

3. This Directive shall apply without prejudice to the provisions adopted in the context of more specific Community rules.

4. This Directive shall not apply to metrological control.

Article 2

1. Member States shall take all necessary measures to ensure that control is carried out in accordance with this Directive.

2. Member States shall ensure that products intended for consignment to another Member State are inspected with the same care as those intended for marketing on their own territory.

Article 3

Member States shall not exclude a product from appropriate control on the grounds that it is intended for export outside the Community.

Article 4

1. Inspections shall be carried out:

- (a) regularly;
- (b) where non-compliance is suspected.

2. Inspections shall be carried out using means proportionate to the end to be observed.

3. Inspection shall cover all stages of production, manufacture, import into the Community, processing, storage, transport, distribution and trade.

4. As a general rule, inspections shall be carried out without prior warning.

5. As a general rule, inspections shall, in each case, select the stage or stages which it considers the most appropriate for its examination from those listed in paragraph 3.

Article 5

Control shall comprise one or more of the following operations in accordance with the conditions laid down in Articles 6 to 9 and in the light of the examination to be carried out:

- 1. inspection;
- 2. sampling and analysis;
- 3. inspection of staff hygiene;
- 4. examination of written and documentary material;
- 5. examination of any verification systems set up by the undertaking and of the results obtained.

Article 6

1. The following shall be subject to inspection:

- (a) the state and use which is made at the different stages enumerated in Article 4 (3) of the site, premises, offices, plant surroundings, means of transport, machinery and equipment;
- (b) raw materials, ingredients, technological aids and other products used for the preparation and production of foodstuffs;
- (c) semi-finished products;
- (d) finished products;
- (e) materials and articles intended to come into contact with foodstuffs;
- (f) cleaning and maintenance products and processes and pesticides;

- (g) processes used for the manufacture or processing of foodstuffs;
- (h) labelling and presentation of foodstuffs;
- (i) preserving methods.

2. The operations enumerated in paragraph 1 may, where necessary, be supplemented by:

- interviews with the head of the inspected undertaking and with persons working for that undertaking,
- the reading of values recorded by measuring instruments installed by the undertaking,
- inspections carried out by the competent authority, with its own instruments, of measurements taken with the instruments installed by the undertaking.

Article 7

1. Samples of the products enumerated in Article 6 (1) (b) to (f) may be taken for the purposes of analysis.

Member States shall take the necessary steps to ensure that those subject to inspection may apply for a second opinion.

2. The analyses shall be carried out by official laboratories.

Member States may also empower other laboratories to carry out these analyses.

Article 8

Persons who, in the exercise of their activity, come into contact, whether directly or indirectly, with the materials and products referred to in Article 6 (1) (b) to (f) shall be subject to the hygiene inspection referred to in Article 5 (3).

The purpose of this inspection shall be to check that the health standards concerning personal cleanliness and clothing are respected. It shall be carried out without prejudice to medical examinations.

Article 9

1. Inspectors may take note of written and documentary material held by the natural and legal persons at the various stages enumerated in Article 4 (3).

2. Inspectors may also make copies or take extracts of written and documentary material submitted to them for examination.

Article 10

Where inspectors discover or suspect an irregularity, they shall take the requisite measures.

Article 11

1. Member States shall ensure that inspectors have the right to carry out the operations provided for in Articles 6 to 10.

2. Member States shall prescribe that the natural and legal persons concerned shall be obliged to undergo any inspection carried out in accordance with this Directive and to assist inspectors in the accomplishment of their tasks.

Article 12

1. Member States shall take the measures necessary to ensure that natural and legal persons concerned by the inspection have a right of appeal against measures taken by the competent authority for the purpose of inspection.

2. They shall prescribe that inspectors shall be bound by professional secrecy.

Article 13

In order to ensure that the application of this Directive is uniform throughout the Member States, the Commission shall, within one year of its adoption, make a report to the European Parliament and to the Council on:

- (a) the current standard of training provision for food inspectors in the Member States;
- (b) the possibility of establishing Community provisions on what should constitute the basic and further training of inspectors;
- (c) the possibility of establishing Community quality standards for all laboratories involved in inspection and sampling under this Directive;
- (d) the possibility of establishing a Community inspection service, including opportunities for all institutions and persons involved in the inspections to exchange information.

Article 14

1. The competent authority or authorities of the Member States shall draw up forward programmes laying down the nature and frequency of the inspections to be carried out regularly in accordance with Article 4 (1) (a) over a specific period.

2. By 1 May of each year the Member States shall send to the Commission all the necessary information on implementation during the previous year of the programmes referred to in paragraph 1, specifying:

- the criteria applied in drawing up these programmes,
- the number and type of inspections carried out,
- the number and type of infringements established.

3. By 16 October of each year, and for the first time in 1991, the Commission shall transmit to the Member States, after having consulted them within the framework of the Standing Committee for Foodstuffs, a recommendation concerning a coordinated programme of inspections for the following year. This recommendation may be subsequently adjusted as required during implementation of the coordinated programme.

The coordinated programme shall set out in particular the priority criteria to be applied in its implementation.

The information provided for in paragraph 2 shall contain a special, separate section on implementation of the coordinated programme.

4. Five years after notification of this Directive the Commission shall transmit to the Council a report on the application of this Article, accompanied, if necessary, by any appropriate proposals.

Article 15

Each Member State shall communicate to the Commission the names of:

- the competent authority or authorities and the extent of their territorial responsibility and functions,
- the official laboratories or laboratories authorized by the competent authorities, which are responsible for carrying out analyses in connection with the control.

These lists shall be published in the 'C' series of the *Official Journal of the European Communities*.

Article 16

Member States shall adopt and publish, not later than 12 months after notification of this Directive, the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 months after its notification ⁽¹⁾. They shall forthwith inform the Commission thereof.

Article 17

This Directive is addressed to the Member States.

Done at Luxembourg, 4 June 1989.

For the Council
The President
P. SOLBES

⁽¹⁾ This Directive was notified to the Member States on 20 June 1989.

COUNCIL DIRECTIVE

of 3 May 1989

on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses

(89/398/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 ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Directive 77/94/EEC of 21 December 1976 on the approximation of the laws of the Member States relating to foodstuffs for particular nutritional uses ⁽⁴⁾, as last amended by Directive 85/7/EEC ⁽⁵⁾, has been amended on a number of occasions; whereas, on the occasion of new amendments, the said Directive should, for reasons of clarity, be redrafted;

Whereas the adoption of Directive 77/94/EEC was justified by the fact that the differences between national laws relating to foodstuffs for particular nutritional uses impeded their free movement, may have created unequal conditions of competition, and thus had a direct impact on the establishment and functioning of the common market;

Whereas the approximation of national laws presupposed, in an initial stage, the drawing-up of a common definition, the determination of measures enabling the consumer to be protected against fraud concerning the nature of these products and the adoption of rules to be complied with in labelling the products in question;

Whereas the products covered by this Directive are foodstuffs the composition and preparation of which must be specially designed to meet the particular nutritional requirements of the persons for whom they are mainly intended; whereas it may be necessary, therefore, to provide for derogations to the general or specific provisions applicable to foodstuffs in order to achieve the specific nutritional objective;

Whereas, although foodstuffs intended for particular nutritional uses which are the subject of specific provisions can be efficiently monitored on the basis of the general rules for monitoring all types of foodstuffs, this is not always the case for those foodstuffs in respect of which no such specific provisions exist;

Whereas for the latter the usual means available to the monitoring bodies might not in certain cases enable them to check whether a foodstuff actually has the particular nutritional properties attributed to it; whereas it is necessary therefore to provide that, where necessary, the person responsible for placing that foodstuff on the market should assist the monitoring body in carrying out its activities;

Whereas the current state of development of Community rules on additives means that it is not possible, in the framework of this Directive, to adopt provisions on the use of additives in foodstuffs intended for particular nutritional uses if they do not belong to one of the groups mentioned in Annex I; whereas this question should therefore be re-examined in due course;

Whereas the drawing-up of specific Directives implementing the basic principles of Community rules and amendments thereto are implementing measures of a technical nature; whereas their adoption should be entrusted to the Commission in order to simplify and expedite the procedure;

Whereas in all cases where the Council empowers the Commission to implement rules relating to foodstuffs intended for human consumption, provision should be made for a procedure establishing close cooperation between the Member States and the Commission within the Standing Committee for Foodstuffs, set up by Decision 69/414/EEC ⁽⁶⁾;

Whereas this Directive does not affect the time limits within which the Member States must comply with Directive 77/94/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive concerns foodstuffs for particular nutritional uses.

⁽¹⁾ OJ No C 124, 23. 5. 1986, p. 7, and OJ No C 161, 19. 6. 1987, p. 12.

⁽²⁾ OJ No C 99, 13. 4. 1987, p. 54, and OJ No C 120, 16. 5. 1989.

⁽³⁾ OJ No C 328, 22. 12. 1986, p. 9.

⁽⁴⁾ OJ No L 26, 31. 1. 1977, p. 55.

⁽⁵⁾ OJ No L 2, 3. 1. 1985, p. 22.

⁽⁶⁾ OJ No L 291, 19. 11. 1969, p. 9.

2. (a) Foodstuffs for particular nutritional uses are foodstuffs which, owing to their special composition or manufacturing process, are clearly distinguishable from foodstuffs for normal consumption, which are suitable for their claimed nutritional purposes and which are marketed in such a way as to indicate such suitability.
- (b) A particular nutritional use must fulfil the particular nutritional requirements:
- (i) of certain categories of persons whose digestive processes or metabolism are disturbed; or
 - (ii) of certain categories of persons who are in a special physiological condition and who are therefore able to obtain special benefit from controlled consumption of certain substances in foodstuffs; or
 - (iii) of infants or young children in good health.

Article 2

1. The products referred to in Article 1 (2) (b) (i) and (ii) may be characterized as 'dietetic' or 'dietary'.
2. In the labelling, presentation and advertising of foodstuffs for normal consumption the following shall be prohibited:
 - (a) the use of the adjectives 'dietetic' or 'dietary' either alone or in conjunction with other words, to designate these foodstuffs;
 - (b) all other markings or any presentation likely to give the impression that one of the products referred to in Article 1 is involved.
3. However, in accordance with provisions to be adopted according to the procedure provided for in Article 13, it shall be possible for foodstuffs for normal consumption which are suitable for a particular nutritional use to indicate such suitability.

The aforesaid provisions may lay down the arrangements for indicating this suitability.

Article 3

1. The nature or composition of the products referred to in Article 1 must be such that the products are appropriate for the particular nutritional use intended.
2. The products referred to in Article 1 must also comply with any mandatory provisions applicable to foodstuffs for

normal consumption, save as regards changes made to them to ensure their conformity with the definitions given in Article 1.

Article 4

1. The specific provisions applicable to the groups of foods for particular nutritional uses appearing in Annex I shall be laid down by means of specific Directives.

Such specific Directives may cover in particular:

- (a) essential requirements as to the nature or composition of the products;
- (b) provisions regarding the quality of raw materials;
- (c) hygiene requirements;
- (d) permitted changes within the meaning of Article 3 (2);
- (e) a list of additives;
- (f) provisions regarding labelling, presentation and advertising;
- (g) sampling procedures and methods of analysis necessary for checking compliance with the requirements of the specific Directives.

Such specific Directives shall be adopted:

- in the case of point (e), by the Council acting in accordance with the procedure laid down in Article 100a,
- in the case of the other points, in accordance with the procedure laid down in Article 13.

Provisions likely to have an effect on public health shall be adopted after consultation of the Scientific Committee for Food, set up by Decision 74/234/EEC ⁽¹⁾.

2. A list of substances with specific nutritional purposes such as vitamins, mineral salts, amino acids and other substances intended to be added to foodstuffs intended for particular nutritional uses, together with the purity criteria applicable to them, and, where appropriate, the conditions under which they should be used, shall be adopted in accordance with the procedure laid down in Article 13.

Article 5

Conditions under which reference may be made in labelling, presentation and advertising to a diet or to a category of persons for which a product referred to in Article 1 is intended may be adopted in accordance with the procedure laid down in Article 13.

⁽¹⁾ OJ No L 136, 20. 5. 1974, p. 1.

Article 6

1. The labelling and the labelling methods used, the presentation and the advertising of the products referred to in Article 1 must not attribute properties for the prevention, treatment or cure of human disease to such products or imply such properties.

Derogations from the first subparagraph may be provided for in accordance with the procedure laid down in Article 13 in exceptional and clearly defined cases. Derogations may be continued until that procedure has been completed.

2. Paragraph 1 shall not prevent the dissemination of any useful information or recommendations exclusively intended for persons having qualifications in medicine, nutrition or pharmacy.

Article 7

1. 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 ⁽¹⁾, as last amended by Directive 89/395/EEC ⁽²⁾, shall apply to the products referred to in Article 1, under the conditions set out below.

2. The designation under which a product is sold shall be accompanied by an indication of its particular nutritional characteristics; however, in the case of the products referred to in Article 1 (2) (b) (iii), this reference shall be replaced by a reference to the purpose for which they are intended.

3. The labelling of products for which no specific Directive has been adopted in accordance with Article 4 must also include:

- (a) the particular elements of the qualitative and quantitative composition or the special manufacturing process which gives the product its particular nutritional characteristics;
- (b) the available energy value expressed in kilojoules and kilocalories and the carbohydrate, protein and fat content per 100 grams or 100 millilitres of the product as marketed and, where appropriate, per specified quantity of the product as proposed for consumption.

If, however, the energy value is less than 50 kilojoules (12 kilocalories) per 100 grams or 100 millilitres of the product as marketed, these particulars may be replaced either by the words 'energy value less than 50 kilojoules (12 kilocalories) per 100 grams' or by the words 'energy value less than 50 kilojoules (12 kilocalories) per 100 millilitres'.

⁽¹⁾ OJ No L 33, 8. 2. 1979, p. 1.

⁽²⁾ See page 17 of this Official Journal.

4. The particular labelling requirements for those products for which a specific Directive has been adopted shall be laid down in that Directive.

Article 8

1. The products referred to in Article 1 shall only be allowed on the retail market in pre-packaged form, and the packaging shall completely cover the products.

2. Member States may, however, permit derogations from these provisions for purposes of the retail trade provided that the product is accompanied by the particulars provided for in Article 7 at the time when it is put on sale.

Article 9

To permit efficient official monitoring of foodstuffs intended for a particular nutritional use which do not belong to one of the groups listed in Annex I the following specific provisions shall apply:

- 1. When a product as referred to above is placed on the market for the first time the manufacturer or, where a product is manufactured in a third State, the importer, shall notify the competent authority of the Member State where the product is being marketed by forwarding it a model of the label used for the product.
- 2. Where the same product is subsequently placed on the market in another Member State the manufacturer or, where appropriate, the importer, shall provide the competent authority of that Member State with the same information, together with an indication of the recipient of the first notification.
- 3. Where necessary, the competent authority shall be empowered to require the manufacturer or, where appropriate, the importer, to produce the scientific work and the data establishing the product's compliance with Article 1 (2) together with the information provided for in Article 7 (3) (a). If such work is contained in a readily available publication, a mere reference to this publication shall suffice.
- 4. Member States shall communicate to the Commission the identity of the competent authorities within the meaning of this Article and any other useful information on them.

The Commission shall publish this information in the *Official Journal of the European Communities*.

Detailed rules for implementing this paragraph may be adopted in accordance with the procedure laid down in Article 13.

- 5. Four years after notification of this Directive, the Commission shall send the Council a report on the implementation of this Article, if necessary, together with appropriate proposals.

Article 10

1. Member States shall not, for reasons related to their composition, manufacturing specifications, presentation or labelling, prohibit or restrict trade in products referred to in Article 1 which comply with this Directive and where appropriate, with Directives adopted in implementation of this Directive.

2. Paragraph 1 shall not affect national provisions which are applicable in the absence of Directives adopted in implementation of this Directive.

Article 11

1. Where a Member State has detailed grounds for establishing that a foodstuff intended for a particular nutritional use which does not belong to one of the groups listed in Annex I does not comply with Article 1 (2) or endangers human health, albeit freely circulating in one or more Member States, that Member State may temporarily suspend or restrict trade in that product within its territory. It shall immediately inform the Commission and the other Member States thereof and give reasons for its decision.

2. The Commission shall examine as soon as possible the grounds adduced by the Member State concerned, consult the Member States within the Standing Committee for Foodstuffs, and shall then deliver its opinion without delay and take appropriate measures.

3. If the Commission considers that the national measure must be dispensed with or modified, it shall initiate the procedure laid down in Article 13 for the adoption of appropriate measures.

Article 12

1. Where a Member State, as a result of new information or of a reassessment of existing information made since one of the specific Directives was adopted, has detailed grounds for establishing that a foodstuff intended for particular nutritional uses endangers human health although it complies with the relevant specific Directive, that Member State may temporarily suspend or restrict application of the provisions in question within its territory. It shall immediately inform the other Member States and the Commission thereof and give reasons for its Decision.

2. The Commission shall examine as soon as possible the grounds adduced by the Member State concerned and shall consult the Member States within the Standing Committee for Foodstuffs, and shall then deliver its opinion without delay and take appropriate measures.

3. If the Commission considers that amendments to this Directive or to the specific Directives are necessary in order to

remedy the difficulties mentioned in paragraph 1 and to ensure the protection of human health, it shall initiate the procedure laid down in Article 13 with a view to adopting those amendments. The Member State which has adopted safeguard measures may in that event retain them until the amendments have been adopted.

Article 13

Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Standing Committee for Foodstuffs, hereinafter referred to as 'the Committee', either on his own initiative or at the request of the representative of a Member State.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If 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 relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date on which the matter was referred to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 14

Directive 77/94/EEC is hereby repealed.

References to the repealed Directive shall be construed as references to this Directive and are to be read in accordance with the correlation table set out in Annex II.

Article 15

1. Member States shall amend their laws, regulations and administrative provisions in such a way as:

— to permit trade in products complying with this Directive not later than 16 May 1990,

- to prohibit trade in products not complying with this Directive with effect from 16 May 1991.

Article 16

This Directive is addressed to the Member States.

They shall forthwith inform the Commission thereof.

Done at Brussels, 3 May 1989.

2. Paragraph 1 shall not affect those national provisions which in the absence of the Directives referred to in Article 4 apply to certain groups of foodstuffs intended for particular nutritional uses.

For the Council

The President

P. SOLBES

ANNEX I

Groups of foods for particular nutritional uses for which specific provisions will be laid down by specific Directives ⁽¹⁾

1. Infant formulae
2. Follow-up milk and other follow-up foods
3. Baby foods
4. Low-energy and energy-reduced foods intended for weight control
5. Dietary foods for special medical purposes
6. Low-sodium foods, including low-sodium or sodium-free dietary salts
7. Gluten-free foods
8. Foods intended to meet the expenditure of intense muscular effort, especially for sportsmen
9. Foods for persons suffering from carbohydrate-metabolism disorders (diabetes)

⁽¹⁾ It is understood that products already on the market when the Directive is adopted will not be affected by it.

ANNEX II

CORRELATION TABLE

Directive 77/94/EEC	This Directive
Article 1 (1)	Article 1 (1)
Article 1 (2)	Article 2 (2)
Article 1 (3)	—
Article 2 (1)	Article 3 (1)
Article 2 (2) first subparagraph	Article 2 (1)
Article 2 (2) second subparagraph	—
Article 2 (3)	Article 2 (2)
Article 2 (4)	Article 2 (3)
Article 3	Article 3 (2)
—	Article 4
Article 4 (1)	Article 6 (1)
Article 4 (2)	Article 5
Article 4 (3)	Article 6 (2)
Article 5 (1)	Article 7 (1)
Article 5 (2) point (a)	Article 7 (2)
Article 5 (2) points (b) and (c)	Article 7 (3) points (a) and (b)
Article 5 (2) point (d)	—
Article 5 (2) point (e)	Article 7 (4)
Article 5 (3)	—
Article 6	Article 8
—	Article 9
Article 7 (1)	Article 10 (1)
—	Article 10 (2)
Article 7 (2)	—
Article 8	—
—	Article 11
—	Article 12
Article 9	Article 13
Article 10	—
Article 11	—
—	Article 14
Article 12	Article 15
Article 13	Article 16
—	Annex I