Commission Regulation (EC) No 445/2007 of 23 April 2007 laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products (Codified version)

COMMISSION REGULATION (EC) No 445/2007

of 23 April 2007

laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products

(Codified version)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2991/94 of 5 December 1994 laying down standards for spreadable fats[(1)], and in particular Article 8 thereof,

Having regard to Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in the marketing of milk and milk products[(2)], and in particular Article 4(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 577/97 of 1 April 1997 laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products[(3)] has been substantially amended several times[(4)]. In the interests of clarity and rationality the said Regulation should be codified.

(2) Regulation (EC) No 2991/94 provides that the sales descriptions of the products referred to in Article 1 thereof must be those indicated in the Annex thereto. There are exceptions to that rule. The rule does not apply in particular to designations where the exact nature of the product is clear from traditional usage and/or where the designation is clearly used to describe a characteristic quality of the product. Certain detailed rules should be laid down for the application of that provision.

(3) Article 1(3) of Regulation (EC) No 2991/94, which stipulates that that Regulation is to be applied without prejudice in particular to Regulation (EEC) No 1898/87, must be complied with. The aim of the two Regulations is essentially the same, namely to avoid any confusion in the mind of the consumer as to the true nature to the products in question. Therefore, in order to ensure the consistency of Community legislation,

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 445/2007. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

the detailed rules for applying Regulations (EC) No 2991/94 and (EEC) No 1898/87 regarding the use of the designation 'butter' should be laid down in a single text.

(4) In order to identify clearly the scope of the derogations referred to in Regulation (EC) No 2991/94, an exhaustive list of the designations concerned should be drawn up, together with a description of the products to which they refer.

(5) The first criterion of the derogation provided for in the first indent of the third subparagraph of Article 2(2) of Regulation (EC) No 2991/94 relates to the traditional character of a designation. Such traditional character may be considered proven where the designation has been used for a period preceding 9 April 1997, at least equal to the duration usually attributed to a human generation. The derogation must be limited to those products for which the designation has actually been used so that such traditional character is not lost.

(6) The second criterion of the that derogation relates to the use of the designations in the Annex to Regulation (EC) No 2991/94 to describe a characteristic feature of the marketed products. In this case, the exception relates logically to products which are not listed as such in that Annex.

(7) That derogation should be restricted to products which were marketed on 9 April 1997. The Member States forwarded to the Commission, before that date, the list of products which they considered as meeting the criteria of that derogation within their territory.

(8) Commission Decision 88/566/EEC of 28 October 1988 listing the products referred to in the second subparagraph of Article 3(1) of Council Regulation (EEC) No 1898/87[(5)] already contains exceptions with regard to the designation 'butter'. Account should be taken of them.

(9) In the Community list provided for in Regulation (EC) No 2991/94, the designations of the products in question should be listed only in the Community language in which those designations may be used.

(10) The designations on the labelling of foodstuffs containing products as defined in the Annex to Regulation (EC) No 2991/94 or concentrated products as defined in the second indent of the third subparagraph of Article 2(2) of that Regulation may refer to the corresponding designations given in that Annex, provided that Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs[(6)] is complied with. There is therefore no need for the list of the abovementioned exceptions to mention such foodstuffs.

(11) In view of present technical conditions, any obligation to indicate the exact fat content without any tolerance would involve considerable practical difficulties. Therefore, certain special rules should be laid down in that regard.

(12) Regulations (EC) No 2991/94 and (EEC) No 1898/87 cover composite products of which an essential part is butter. Therefore, those products should be dealt with consistently, whilst adhering to the approach employed in Article 2(3) of Regulation (EEC) No 1898/87. The scope of that paragraph should therefore be defined more

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 445/2007. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

clearly with regard to composite products of which an essential part is butter, by laying down an objective criterion for determining whether an essential part of the composite products is actually butter and whether the designation 'butter' is therefore justified. A minimum milk-fat content of 75 % in the final product seems to be the most appropriate criterion.

(13) The second subparagraph of Article 2(2) of Regulation (EC) No 2991/94 provides that the sales descriptions listed in the Annex thereto are to be reserved for products which meet the criteria set out in that Annex. Therefore, trade marks which employ those designations may continue to be used in the future solely for products which meet those criteria.

(14) Actual market conditions will show whether or not it will be appropriate to lay down measures at a later date with regard to composite products of which the main ingredient is margarine or composite fats.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

1 The list of products covered by the derogation provided for in the first indent of the third subparagraph of Article 2(2) of Regulation (EC) No 2991/94 shall be as shown in Annex I hereto.

2 The designations listed in the Annex to Decision 88/566/EEC which contain the word 'butter' in one of the Community languages shall not be affected by this Regulation.

Article 2

1 The indication of the fat content as provided for in Article 3(1)(b) of Regulation (EC) No 2991/94 shall comply with the following rules:

a the average fat content shall be declared without the use of decimals;

b the average fat content may not differ by more than one percentage point from the percentage declared. Individual samples may not differ by more than two percentage points from the percentage declared;

c in all cases, the average fat content must comply with the limits laid down in the Annex to Regulation (EC) No 2991/94.

2 Notwithstanding paragraph 1, the fat content declared in respect of the products referred to in Parts A(1), B(1) and C(1) of the Annex to Regulation (EC) No 2991/94 shall correspond to the minimum fat content of the product.

3 The procedure to be applied to verify compliance with paragraph 1 shall be as set out in Annex II.

Article 3

1 The designation 'butter' may be used for composite products of which an essential part within the meaning of Article 2(3) of Regulation (EEC) No 1898/87 is butter if the end product contains at least 75 % milk fat and has been manufactured solely from butter within

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 445/2007. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

the meaning of Part A(1) of the Annex to Regulation (EC) No 2991/94 and the other added ingredient(s) mentioned in the description.

2 The designation ‘butter’ may be used for composite products containing less than 75 % but at least 62 % milk fat if the other requirements specified in paragraph 1 are met and if the product designation includes the term ‘butter preparation’.

3 By derogation from paragraphs 1 and 2, the designation ‘butter’ may be used in association with a word or words to designate the products listed in Annex III containing at least 34 % milk fat.

4 The use of the designation ‘butter’ under paragraphs 1, 2 and 3 shall be subject to the requirement to indicate in the labelling and presentation of the products the milk fat content and, if the other added ingredients contain fat, the total fat content.

5 The term ‘butter preparation’ in paragraph 2 and the indications in paragraph 4 must appear in a conspicuous place and be easily visible and clearly legible.

Article 4

Regulation (EC) No 577/97 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex V.

Article 5

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 23 April 2007.

For the Commission

The President

José Manuel BARROSO