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(Acts whose publication is obligatory)

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 94/34/EC

of 30 June 1994

amending Directive 89/107/EEC on the approximation of the laws of Member States concerning food additives authorized for use in foodstuffs intended for human consumption

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

Whereas rules for harmonization in the field of additives should not affect the application of provisions of Member States existing on 1 January 1992, which prohibit the use of certain additives in certain specific foodstuffs which are considered as traditional and are produced on their territory, provided that those provisions do not cover a whole series of foodstuffs including foodstuffs which do not come under this Directive but regarding which Community provisions provide for authorization of additives;

Whereas these products could be distinguished by an appropriate labelling;

Whereas the free circulation of foodstuffs conforming with directives concerning additives should not be affected;

Whereas the freedom of establishment, the production and sale on the territory of each Member State of foodstuffs conforming with Directives concerning additives should not be affected,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The following Article 3a shall be inserted in Directive 89/107/EEC [4]:

'*Article 3a*

1. By way of derogation from Article 3 (2) (a) and (b), the Council shall, acting on a proposal from the Commission pursuant to the procedure laid down in Article 100a of the Treaty, authorize the Member States to maintain the prohibition on the use of certain additives in the production of certain foodstuffs considered as traditional provided that:

— this prohibition existed on 1 January 1992,

— the Member States concerned authorize on their territory the production and sale of all foodstuffs not considered as traditional which conform to the rules provided for in Article 3.

2. Without prejudice to Regulations (EEC) No 2081/92 [1] and (EEC) No 2082/92 [2], before 1 July 1994, Member States shall communicate to the list of foodstuffs which they consider as traditional, giving their reasons in detail, together with the relevant legislative provisions prohibiting the use of certain additives in such foodstuffs.

Before 1 April 1995, the Commission shall submit a proposal to the Council on the criteria to be applied for deciding whether or not a product is traditional

(1) OJ No C 206, 13. 8. 1992, p. 1.
(2) OJ No C 73, 15. 3. 1993, p. 4.
(3) Opinion of the European Parliament of 26 May 1993 (OJ No C 176, 28. 6. 1993, p. 117), confirmed on 2 December 1993 (OJ No C 342, 20. 12. 1993), Council common position of 9 March 1994 (not yet published in the Official Journal) and Decision of the European Parliament of 9 March 1994 (OJ No C 91, 28. 3. 1994, p. 75).
(4) OJ No L 40, 11. 2. 1989, p. 27.