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 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;