Council Directive of 21 December 1988 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption (89/108/EEC)

COUNCIL DIRECTIVE

of 21 December 1988

on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption

(89/108/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,

In cooperation with the European Parliament[(1)],

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

Whereas the manufacture of and trade in quick-frozen foodstuffs intended for human consumption (hereinafter referred to as 'quick-frozen foodstuffs') are assuming increasing importance in the Community;

Whereas the differences between national laws relating to quick-frozen foodstuffs hamper the free movement thereof; whereas they may create unequal conditions of competition and therefore have a direct effect on the establishment and functioning of the common market;

Whereas it is therefore necessary to approximate these laws;

Whereas to that end the Community rules must be given the widest possible scope, extending to all quick-frozen foodstuffs intended for human consumption and including not only products intended for supply without further processing to the ultimate consumer and to restaurants, hospitals, canteens and to other similar mass caterers, but also products having to be further processed or prepared;

Whereas, however, these rules need not apply to products not offered for sale as quick-frozen foodstuffs;

Whereas it is in any case appropriate to lay down the general principles which any quick-frozen foodstuffs must satisfy;

Whereas at a later stage special provisions over and above the general principles may, where necessary, be adopted for certain categories of quick-frozen foodstuffs, in accordance with the procedure applicable to each of these categories;

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Whereas the purpose of quick-freezing is to preserve the intrinsic characteristics of foodstuffs by a process of rapid freezing; whereas it is necessary to attain a temperature of -18 °C or lower at all points in the product;

Whereas at -18 °C all microbiological activity likely to impair the quality of a foodstuff is suspended; whereas it is therefore necessary to maintain at least that temperature, subject to a certain technically inevitable tolerance, during the storage and distribution of quick-frozen foodstuffs before their sale to the ultimate consumer;

Whereas for technical reasons certain temperature increases are inevitable and may therefore be tolerated provided they do not harm the quality of the products, which may be ensured by complying with good storage and distribution practice, taking account in particular of the proper level of stock rotation;

Whereas the performance of certain technical equipment at present in use for the local distribution of quick-frozen foodstuffs is not capable of ensuring in every case full compliance with the temperature limits imposed in this Directive, and it is therefore necessary to provide for a transitional system allowing for existing material to be used for its normal lifetime;

Whereas this Directive need merely state the objectives to be attained as regards both the equipment used for the quick-freezing process and the temperatures to be observed in the storage, handling, transport and distribution installations and equipment;

Whereas it is incumbent upon Member States to ensure by means of official checks that the equipment used is capable of meeting these objectives;

Whereas such checks render superfluous any system of official certification for trade purposes;

Whereas it is desirable to provide for the possibility of using cryogenic fluids in direct contact with quick-frozen foodstuffs; whereas therefore these fluids must be sufficiently inert not to impart to the foodstuffs any constituents in quantities liable to constitute a hazard to human health, or to give rise to an unacceptable change in the composition of foodstuffs, or to impair their organoleptic characteristics;

Whereas in order to attain this objective it is necessary to adopt a list of these substances and to lay down criteria for their purity and conditions for their use;

Whereas quick-frozen foodstuffs intended for the ultimate consumer and for restaurants, hospitals, canteens and other similar mass caterers are subject, as far as their labelling is concerned, to the rules laid down by 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 for sale to the ultimate consumer[(3)], as last amended by Directive 86/197/EEC[(4)]; whereas the present Directive need therefore merely lay down the particulars which are specific to quick-frozen foodstuffs;

Whereas, to facilitate trade, rules should also be adopted for the labelling of quick-frozen foodstuffs not intended for supply in the frozen state to the ultimate consumer or to restaurants, hospitals, canteens and other similar mass caterers;

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Whereas, in order to simplify and speed up the procedure, the Commission should be assigned the task of adopting implementing measures of a technical nature;

Whereas, in all cases in which the Council empowers the Commission to implement the rules laid down for foodstuffs, a procedure establishing close cooperation between the Member States and the Commission within the Standing Committee on Foodstuffs set up by Council Decision 69/414/EEC[(5)] should be laid down,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1 This Directive shall apply to quick-frozen foods intended for human consumption, hereinafter referred to as 'quick-frozen foodstuffs'.

2 For the purposes of this Directive 'quick-frozen foodstuffs'means foodstuffs

— which have undergone a suitable freezing process known as 'quick-freezing' whereby the zone of maximum crystallization is crossed as rapidly as possible, depending on the type of product, and the resulting temperature of the product (after thermal stabilization) is continuously maintained at a level of -18 °C or lower at all points, and

— which are marketed in such a way as to indicate that they possess this characteristic.

For the purposes of this Directive, ice-cream and other edible ices shall not be regarded as quick-frozen foodstuffs.

3 This Directive shall apply without prejudice to Community provisions relating to:

a the common organization of markets in the agricultural and fisheries sectors;

b veterinary hygiene.

Article 2

Only the products defined in Article 1 (2) may bear the names provided for in Articles 8 and 9.

Article 3

1 Raw materials used in the manufacture of quick-frozen foodstuffs must be of sound, genuine and merchantable quality and be of the required degree of freshness

2 Preparation and quick-freezing of products must be carried out promptly, using appropriate technical equipment, in order to limit chemical, biochemical and microbiological changes to a minimum.

Article 4

The cryogenic media authorized, to the exclusion of all others, for use in direct contact with quick-frozen foodstuffs shall be the following:

— air,

— nitrogen,

— carbon dioxide.

By way of derogation from the first paragraph, Member States may retain until 31 December 1992 national laws authorizing the use of dichlorodifluoromethane (R 12) as a cryogenic medium.

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[[F1]The purity criteria to be satisfied by those cryogenic media shall be determined, as far as necessary, by the Commission. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(2).**]**

Textual Amendments

F1 Substituted by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 adapting a number of instruments subject to the procedure laid down in Article 251 of the Treaty to Council Decision 1999/468/EC, with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part One.

Article 5

1 The temperature of quick-frozen foodstuffs must be stable and maintained, at all points in the product, at -18 °C or lower, with possibly brief upward fluctuations of no more than 3 °C during transport.

2 However, tolerances in the temperature of the product in accordance with good storage and distribution practice shall be permitted during local distribution and in retail display cabinets subject to the following conditions:

a these tolerances shall not exceed 3 °C;

b they may, however reach 6 °C in retail display cabinets, if and to the extent that the Member States so decide. In that case, the Member States shall select the temperature in the light of stock or product rotation in the retail trade. They shall inform the Commission of the measures taken and of the grounds for those measures.

The Commission shall review the tolerance provided for in the previous subparagraph in the light of technical developments and shall make proposals to the Council if appropriate before 1 January 1993.

3 For a period of eight years from the notification of this Directive, the Member States may, for local distribution, authorize tolerances of up to 6 °C.

Article 6

1 The Member States shall:

a ensure that the equipment used for quick-freezing, storage, transport, local distribution and retail display cabinets is such that compliance with the requirements of this Directive can be guaranteed;

b conduct random official checks on the temperature of quick-frozen foodstuffs.

2 Member States shall not require that, as a preliminary to or during the marketing of quick-frozen foodstuffs, compliance with the provisions of paragraph 1 be attested by means of an official certificate.

Article 7

Quick-frozen foodstuffs intended for supply to the ultimate consumer must be packed by the manufacturer or packer in suitable pre-packaging which protects them from microbial or other forms of external contamination and against drying.