II

(Acts whose publication is not obligatory)

COUNCIL

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 for sale to the ultimate consumer

(79/112/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 227 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 differences which exist at present between the laws, regulations and administrative provisions of Member States on the labelling of foodstuffs impede the free circulation of these products and can lead to unequal conditions of competition;

Whereas, therefore, approximation of these laws would contribute to the smooth functioning of the common market;

Whereas the purpose of this Directive should be to enact Community rules of a general nature applicable horizontally to all foodstuffs put on the market;

Whereas rules of a specific nature which apply vertically only to particular foodstuffs should be laid down in provisions dealing with those products;

Whereas, moreover, the field of application of this Directive should be limited to foodstuffs intended for sale to the ultimate consumer, and the rules governing the labelling of products intended for subsequent processing or preparation should be fixed at a later stage;

Whereas the prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer;

Whereas, therefore, a list should be drawn up of all information which should in principle be included in the labelling of all foodstuffs;

Whereas, however, the horizontal nature of this Directive does not allow, at the initial stage, the inclusion in the compulsory indications of all the indications which must be added to the list applying in principle to the whole range of foodstuffs; whereas, during the second stage, Community provisions should be adopted, aimed at supplementing the existing rules; whereas it would accordingly seem necessary to adopt as a matter of priority Community provisions regarding the indication of certain ingredients in the sales description or by indicating a quantity;

(1) OJ No C 91, 22. 4. 1976, p. 3.
(2) OJ No C 178, 2. 8. 1976, p. 52.
(3) OJ No C 285, 2. 12. 1976, p. 3.

Whereas, furthermore, if in the absence of Community rules of a specific nature Member States should retain the right to lay down certain national provisions which may be added to the general provisions of this Directive, nevertheless these provisions should be subject to a Community procedure;

Whereas the said Community procedure may consist simply in informing the Commission and the Member States when the matter concerns the maintenance of national provisions that precede this Directive, but must be that of a Community Decision when a Member State wishes to enact new legislation;

Whereas provision should also be made for the Community legislator to derogate, in exceptional cases, from certain obligations that have been fixed generally;

Whereas the rules on labelling should also prohibit the use of information that would mislead the purchaser or attribute medicinal properties to foodstuffs; whereas, to be effective, this prohibition should also apply to the presentation and advertising of foodstuffs;

Whereas Member States should retain the right, depending on local conditions and circumstances, to lay down rules in respect of the labelling of foodstuffs sold in bulk; whereas, in such cases, information should nevertheless be provided for the consumer;

Whereas, with the aim of simplifying and accelerating the procedure, the Commission should be entrusted with the task of adopting implementing measures of a technical nature;

Whereas in all cases where the Council makes the Commission responsible for implementing rules laid down in respect of foodstuffs, provision should be made for a procedure instituting close cooperation between Member States and the Commission within the Standing Committee on Foodstuffs, set up by Decision 69/414/EEC [1];

Whereas foodstuffs in Greenland are manufactured and marketed under conditions fundamentally different from those prevailing in the other parts of the Community because of the island's general situation and, in particular, because of its commercial structures, low population, considerable area and special geographical situation,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive concerns the labelling of foodstuffs to be delivered as such to the ultimate consumer and certain aspects relating to the presentation and advertising thereof.

2. Without prejudice to the Community provisions to be adopted in this field, this Directive shall apply also to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers, in so far as the Member States shall so decide.

3. For the purpose of this Directive,

(a) 'labelling' shall mean any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff;

(b) 'pre-packaged foodstuff' shall mean any single item for presentation as such to the ultimate consumer, consisting of a foodstuff and the packaging into which it was put before being offered for sale, whether such packaging encloses the foodstuff completely or only partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging.

Article 2

1. The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production,

[1] OJ No L 291, 29. 11. 1969, p. 9.

(ii) by attributing to the foodstuff effects or properties which it does not possess,

(iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics;

(b) subject to the provisions applicable to foodstuffs for particular nutritional uses, attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties; Community provisions or, where there are none, national provisions may derogate from this rule in the case of natural mineral waters.

The procedure laid down in Article 16 shall apply to any such national provisions.

2. The Council, in accordance with the procedure laid down in Article 100 of the Treaty, shall draw up a non-exhaustive list of the claims within the meaning of paragraph 1, the use of which must at all events be prohibited or restricted.

3. The prohibitions or restrictions referred to in paragraphs 1 and 2 shall also apply to:

(a) the presentation of foodstuffs, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are displayed;

(b) advertising.

Article 3

1. In accordance with Articles 4 to 14 and subject to the exceptions contained therein, indication of the following particulars alone shall be compulsory on the labelling of foodstuffs:

(1) the name under which the product is sold,

(2) the list of ingredients,

(3) in the case of prepackaged foodstuffs, the net quantity,

(4) the date of minimum durability,

(5) any special storage conditions or conditions of use,

(6) the name or business name and address of the manufacturer or packager, or of a seller established within the Community.

However, the Member States shall be authorized, in respect of butter produced in their territory, to require only an indication of the manufacturer, packager or seller.

Without prejudice to the notification provided for in Article 22, Member States shall inform the Commission and the other Member States of any measure taken pursuant to this paragraph,

(7) particulars of the place of origin or provenance in the cases where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff,

(8) instructions for use when it would be impossible to make appropriate use of the foodstuff in the absence of such instructions.

2. Notwithstanding the previous paragraph, Member States may retain national provisions which require indication of the factory or packaging centre, in respect of home production.

3. The provisions of this Article shall be without prejudice to more precise or more extensive provisions regarding weights and measures.

Article 4

1. Community provisions applicable to specified foodstuffs and not to foodstuffs in general may provide for derogations, in exceptional cases, from the requirements laid down in Article 3 (1), points 2 and 4, provided that this does not result in the purchaser being inadequately informed.

2. Community provisions applicable to specified foodstuffs and not to foodstuffs in general may provide that other particulars in addition to those listed in Article 3 must appear on the labelling.

Where there are no Community provisions, Member States may make provision for such particulars in accordance with the procedure laid down in Article 16.

Article 5

1. The name under which a foodstuff is sold shall be the name laid down by whatever laws, regulations or administrative provisions apply to the foodstuff in question or, in the absence of any such name, the

name customary in the Member State where the product is sold to the ultimate consumer, or a description of the foodstuff and, if necessary, of its use, that is sufficiently precise to inform the purchaser of its true nature and to enable it to be distinguished from products with which it could be confused.

2. No trade mark, brand name or fancy name may be substituted for the name under which the product is sold.

3. The name under which the product is sold shall include or be accompanied by particulars as to the physical condition of the foodstuff or the specific treatment which it has undergone (e.g. powdered, freeze-dried, deep-frozen, concentrated, smoked) in all cases where omission of such information could create confusion in the mind of the purchaser.

Article 6

1. Ingredients shall be listed in accordance with this Article and the Annexes.

2. Ingredients need not be listed in the case of:

(a) — fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated,

— carbonated water, the description of which indicates that it has been carbonated,

— fermentation vinegars derived exclusively from a single basic product, provided that no other ingredient has been added;

(b) — cheese,

— butter,

— fermented milk and cream,

provided that no ingredient has been added other than lactic products, enzymes and micro-organism cultures essential to manufacture, or the salt needed for the manufacture of cheese other than fresh cheese and processed cheese;

(c) products consisting of a single ingredient.

3. In the case of beverages containing more than 1·2 % by volume of alcohol, the Council, acting on a proposal from the Commission, shall, before the expiry of a period of four years following notification of this Directive, determine the rules for labelling ingredients and, possibly, indicating the alcoholic strength.

4. (a) 'Ingredient' shall mean any substance, including additives, used in the manufacture or preparation of a foodstuff and still present in the finished product, even if in altered form.

(b) Where an ingredient of the foodstuff is itself the product of several ingredients, the latter shall be regarded as ingredients of the foodstuff in question.

(c) The following shall not be regarded as ingredients:

(i) the constituents of an ingredient which have been temporarily separated during the manufacturing process and later reintroduced but not in excess of their original proportions;

(ii) — additives:

— whose presence in a given foodstuff is solely due to the fact that they were contained in one or more ingredients of that foodstuff, provided that they serve no technological function in the finished product,

— which are used as processing aids;

— substances used in the quantities strictly necessary as solvents or media for additives or flavouring.

(d) In certain cases Decisions may be taken in accordance with the procedure laid down in Article 17 as to whether the conditions described in (c) (ii) are satisfied.

5. (a) The list of ingredients shall include all the ingredients of the foodstuff, in descending order of weight, as recorded at the time of their use in the manufacture of the foodstuff. It shall appear preceded by a suitable heading which includes the word 'ingredients'.

However:

— added water and volatile products shall be listed in order of their weight in the finished product; the amount of water added as an ingredient in a foodstuff shall be calculated by deducting from the total amount of the finished product the total amount of the other ingredients used. This amount need not be taken into consideration if it does not exceed 5 % by weight of the finished product;

— ingredients used in concentrated or dehydrated form and reconstituted at the time of manufacture may be listed in order of weight as recorded before their concentration or dehydration;

— in the case of concentrated or dehydrated foods which are intended to be reconsituted by the addition of water, the ingredients may be listed in order of proportion in the reconstituted product provided that the list of ingredients is accompanied by an expression such as 'ingredients of the reconstituted product', or 'ingredients of the ready-to-use product';

— in the case of mixtures of fruit or vegetables where no particular fruit or vegetable significantly predominates in proportion by weight, those ingredients may be listed in another order provided that that list of ingredients is accompanied by an expression such as 'in variable proportion';

— in the case of mixtures of spices or herbs, where none significantly predominates in proportion by weight, those ingredients may be listed in another order provided that that list of ingredients is accompanied by an expression such as 'in variable proportion';

(b) ingredients shall be designated by their specific name, where applicable, in accordance with the rules laid down in Article 5.

However:

— ingredients which belong to one of the categories listed in Annex I and are constituents of another foodstuff need only be designated by the name of that category;

— ingredients belonging to one of the categories listed in Annex II must be designated by the name of that category, followed by their specific name or EEC number; if an ingredient belongs to more than one of the categories, the category appropriate to the principal function in the case of the foodstuff in question shall be indicated; amendments to this Annex based on advances in scientific and technical knowledge shall be adopted in accordance with the procedure laid down in Article 17;

— flavouring matter shall be described in accordance with the national provisions applicable thereto, until the entry into force of the Community provisions;

— the Community provisions or, where there are none, the national provisions applicable to certain specified foodstuffs, many also provide for categories additional to those specified in Annex I. Without prejudice to the notification provided for in Article 22, Member States shall inform the Commission and the other Member States of any measure taken pursuant to this indent.

6. Community provisions or, where there are none, national provisions may lay down that the name under which a specific foodstuff is sold is to be accompanied by mention of a particular ingredient or ingredients.

The procedure laid down in Article 16 shall apply to any such national provisions.

7. In the case referred to in paragraph 4 (b), a compound ingredient may be included in the list of ingredients, under its own designation in so far as this is laid down by law or established by custom, in terms of its overall weight, provided that it is immediately followed by a list of its ingredients.

Such a list, however, shall not be compulsory:

— where the compound ingredient constitutes less than 25 % of the finished product; however, this exemption shall not apply in the case of additives, subject to the provisions of paragraph 4 (c),

— where the compound ingredient is a foodstuff for which a list of ingredients is not required under Community rules.

8. Notwithstanding paragraph 5 (a), the water content need not be specified:

(a) where the water is used during the manufacturing process solely for the reconstitution of an ingredient used in concentrated or dehydrated form;

(b) in the case of a liquid medium which is not normally consumed.

Article 7

1. Where the labelling of a foodstuff places emphasis on the presence or low content of one or