



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.04.1995  
COM(95) 126 final

95/0085 (COD)

Proposal for a

**EUROPEAN PARLIAMENT AND COUNCIL DECISION**

**on the maintenance of national laws prohibiting the use of  
certain additives in the production of certain foodstuffs**

**(presented by the Commission)**

## **EXPLANATORY MEMORANDUM**

### **1. Subsidiarity impact statement**

- 1. What are the objectives of the proposed measure with regard to the Community's obligations?*

During its discussions on the adoption of the sweeteners Directive, the Council recognized the need to protect the wealth of Europe's food heritage. To that end it seemed expedient to authorize Member States to allow derogations from the various additives directives so as to enable special production methods to be maintained for foods considered traditional and produced on their territory.

- 2. Does competence for the proposed measure lie solely with the Community or is it shared with the Member States?*

Competence for the proposed measure lies solely with the Community.

- 3. To what extent is this a problem on a Community scale?*

On 30 June 1994 the Council adopted Directive 94/34/EC amending framework Directive 89/107/EEC on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption.

The amending Directive introduced a new Article 3a into the framework Directive on additives, enabling Parliament and the Council, under the Article 100a procedure, to authorize Member States to maintain their prohibitions on the use of certain additives in the production of certain foodstuffs considered traditional. Such prohibitions must have been in force since 1 January 1992. The Member States concerned must also authorize the production and sale on their territory of all foodstuffs not considered traditional which conform to the rules provided for in Article 3 of Directive 89/107/EEC.

Member States had to send the Commission a list of the foodstuffs they consider traditional before 1 July 1994. The three new Member States were granted an extended deadline.

Paragraph 2 of the new Article 3a required that the list be accompanied by an explanation of why the foodstuffs were considered traditional, together with the relevant legislative provisions.

Before 1 April 1995 the Commission must submit a proposal to Parliament and the Council, on which they must act before 1 April 1996.

Paragraph 3 of the new Article stipulates that, until such time as the Council has given a ruling, Member States may maintain any prohibitions which have been communicated to the Commission provided they comply with the general conditions laid down in paragraph 1.

4. *What is the most effective solution taking into account the means available to the Community and the Member States?*

The Commission feels the experience gained since the adoption of Directive 89/107/EEC and the recent adoption of three new texts on additives shows that the adoption of measures at Community level is an effective way of creating an internal market in foodstuffs while at the same time showing proper concern for public health. Radical amendment or outright abolition of existing Community provisions would create a climate of uncertainty which would be damaging to the long-term interests of producers and consumers.

5. *What practical additional benefit will the proposed measure provide and what would be the cost of failure to take action?*

The Commission's proposals will protect the traditional character of certain very specific foodstuffs. Failure to adopt the proposed measure will lead to a situation of legal uncertainty.

6. *What forms of action are open to the Commission?*

A decision adopted by Parliament and the Council on the basis of Article 100a seems the best way of allowing for such derogations.

7. *Is it absolutely necessary to adopt uniform rules or would a directive establishing general principles and leaving implementation to the Member States be sufficient?*

Since the main aim of the proposed measure is to allow laws to be maintained, the most appropriate legal framework would appear to be a decision.

## **2. PARTICULAR COMMENTS**

### **1. Facts**

All 15 Member States now covered by the Directive replied within the given deadlines. The new Member States were granted an extended deadline for communicating their lists.

Six Member States said they had no traditional foodstuffs liable to fall within the scope of such a text. These were Belgium, Ireland, Luxembourg, the Netherlands, Portugal and the United Kingdom.

Nine Member States notified products. These totalled around 300 foodstuffs, mainly cheeses, prepared meat products and spirit drinks.

2. *General selection criteria for the notified foodstuffs*

Some Member States felt it would be unhelpful to notify a list of foodstuffs which might be considered traditional; to enumerate them in that way would necessarily be reductive. Accordingly, a lot of Member States notified very few or no products, or accepted large cuts in the lists they did communicate. The Commission shares this point of view, finding that the number and range of traditional products would make any list limitative. It believes the Member States would do better to protect their products through Regulations (EEC) Nos 2081/92 and 2082/92 on designations of origin and certificates of specific character.

The Commission has chosen the following selection criteria for specific foodstuffs considered traditional within the framework of Community legislation on additives.

The Commission wanted to avoid introducing preferential arrangements for specific additives within a single category. Its aim is to avoid pointless derogations from Community harmonization. It therefore discounted foodstuffs for which Member States authorized a particular additive but excluded other additives from the same category.

Furthermore, the Commission felt that requests were not justified where the main aim in prohibiting an additive was to protect public health; partly because protection of public health does not point to any traditional character in a product, but mainly because all Community legislation on additives pays scrupulous attention to essential health requirements, which means requests for derogation are without object.

Foodstuffs with a defined geographical designation were also discounted as they could be better protected under the Regulation on designations of origin. Similarly, foodstuffs were rejected because they could be better protected under the Regulation on certificates of specific character.

Spirit drinks were excluded as they are already defined and protected as traditional spirit drinks by Regulation (EEC) No 1576/89. The Regulation establishes their recipes, while Article 4(2) lays down that "the list of authorized food additives, the directions for their use and the spirit drinks concerned shall be determined by the procedure laid down in Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States on the additives which may be used in foodstuffs."

3. *Further comments*

The Commission has been unable to clarify all the technical details owing to lack of time.

As certain notifications do not contain all the data required by Article 3a(2) (particularly the Spanish and Italian notifications), the Commission reserves the right to amend the list proposed in annex if necessary.

**DECISION ....EC of the European Parliament and the Council**

**of**

**on the maintenance of national laws prohibiting the use of  
certain additives in the production of certain foodstuffs**

**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 Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption,<sup>1</sup> as amended by Directive 94/34/EC,<sup>2</sup> and in particular Article 3a thereof,

Having regard to the proposal from the Commission,<sup>3</sup>

Having regard to the opinion of the Economic and Social Committee,<sup>4</sup>

Acting in accordance with the procedure referred to in Article 189b of the Treaty,<sup>5</sup>

Whereas the rules on additives harmonization ought not to affect the application of provisions in force in the Member States on 1 January 1992 which prohibit the use of certain additives in certain specific foodstuffs considered traditional and produced on their territory;

Whereas the list of foodstuffs considered traditional must be drawn up on the basis of notifications made by the Member States to the Commission before 1 July 1994; whereas, however, notifications from the new Member States sent after that date must be considered;

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<sup>1</sup> OJ L 40, 11.2.1989, p. 27.

<sup>2</sup> OJ L 237, 10.9.1994, p. 1.

<sup>3</sup>

<sup>4</sup>

<sup>5</sup>

Whereas, however, the general purpose of this Decision is not to define the traditional character of foodstuffs; whereas, in particular, traditional character is not determined simply by a prohibition on the use of additives in such products;

Whereas, however, account must be taken of how significant the national legal prohibition in force on 1 January 1992 on the use of certain categories of additives is in foodstuff production practices as a whole; whereas the particular features of such a means of production should be retained; whereas account should be taken of fair practice in commercial transactions involving these products and in respect of consumers so as to be able to authorize the maintenance of the prohibition on the use of certain categories of additives;

Whereas designation of a product as a traditional product for which a Member State might maintain its national legislation must be without prejudice to the provisions of Regulations (EEC) No 2081/92<sup>6</sup> and No 2082/92<sup>7</sup> on designation of origin and certificates of specific character respectively;

Whereas Directive 89/107/EEC and its implementing directives only authorize additives which do not harm human health; whereas protection of public health cannot therefore be a criterion warranting prohibition of the use of certain additives in certain specific foodstuffs considered traditional;

Whereas prohibition of the use of certain additives must not lead to discrimination with regard to other additives belonging to the same category as mentioned in Annex I to Directive 89/107/EEC and so must not affect Community harmonization;

Whereas, in the interests of transparency, bans on the use of certain categories of additive in certain categories of foodstuff which Member States may maintain in derogation from the provisions of Directive 89/107/EEC and its specific Directives 94/35/EC,<sup>8</sup> 94/36/EC<sup>9</sup> and 95/.../EC<sup>10</sup> should be identified;

Whereas freedom of establishment and the free movement of goods must not be jeopardized either by the authorization to maintain national laws thus granted or by any regulations on labelling to distinguish these products from similar foodstuffs; whereas the free movement, placing on the market and manufacture in all Member States of similar foodstuffs considered traditional or non-traditional must therefore be maintained in accordance with the provisions of the Treaty,

**HAVE DECIDED AS FOLLOWS:**

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<sup>6</sup> OJ L 208, 24.7.1992, p. 1.

<sup>7</sup> OJ L 208, 24.7.1992, p. 9.

<sup>8</sup> OJ L 237, 10.9.1994, p. 3.

<sup>9</sup> OJ L 237, 10.9.1994, p. 13.

<sup>10</sup>

*Article 1*

Pursuant to Article 3a of Directive 89/107/EEC, as amended by Directive 94/34/EC, and under the conditions specified therein, the Member States listed in annex are hereby authorized to maintain in their legislation the prohibition on the use of categories of additives in the production of the corresponding foodstuffs listed in that annex.

This Decision shall be applied without prejudice to Regulations (EEC) No 2081/92 and No 2082/92.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



**ANNEX**

**Table of products for which the Member States concerned may maintain the prohibition of certain categories of additive**

<b>Member State</b>	<b>Foodstuffs</b>	<b>Categories of additives for which a prohibition may be maintained</b>
Germany	beer	all except propellant gases
Greece	"feta" cheese	all
France	"traditional French bread"	all
France	preserved truffles	all
France	preserved snails	all
France	goose, duck and turkey preserves ("confit")	all except preservatives
Austria	"Bergkäse"	all except preservatives
Finland	"Mämmi"	all except preservatives

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