

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(89)2151 final - SYN 235

Brussels, 20 December 1989

Proposal for a

COUNCIL DIRECTIVE

on the approximation of the laws of the Member States
relating to the labelling, presentation and
advertising of foodstuffs

(presented by the Commission)

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.

(OJ No L 33 of 08.02.1979, p. 1)

amended by the Acts of Accession

of Greece (OJ No L 291 of 19.11.79, p.17)

of Spain and Portugal (OJ No L 302 of 15.11.85, p.218)

and by the Directives

83/463/EEC of the Commission (OJ No L 255 of 15.09.1983, p. 1)
85/ 7/EEC of the Council (OJ No L 2 of 03.01.1985, p. 22)
86/197/EEC of the Council (OJ No L 144 of 29.05.1986, p. 38)
87/250/EEC of the Commission (OJ No L 113 of 30.04.1987, p. 57)
89/395/EEC of the Council (OJ No L 186 of 30.06.1989, p. 17)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original Instrument and partly in later amending ones. Considerable research work, comparing many different Instruments, is thus needed to identify the current rules. For this reason a consolidation of rules that have frequently been amended is essential if Community law is to be clear and transparent.

2. In its resolution of 26 November 1974 concerning consolidation of its acts (1), the Council recommended that those of its acts which have been amended several times be assembled into a single text. It stressed that, in the interests of legal certainty, a genuine legislative consolidation, involving the repeal of earlier acts, should wherever possible be effected (as is being done in this case). It consequently invited the Commission to let it have proposals for consolidation and undertook to examine them "as quickly as possible, without bringing into question, during that consolidation, the substantive solutions contained in the consolidated texts".
3. By its decision of 1 April 1987 the Commission instructed its departments to produce a formal consolidated version of legislative instruments no later than after their tenth amendment, but made it clear that this was a minimum requirement, and that in the interests of clarity and of the ready comprehension of Community law, an effort should be made by each department to consolidate the Instruments for which it is responsible at more frequent intervals.

The attached proposal for a consolidation of Council Directive 79/112/EEC applies the fundamental principles on which the Council, Parliament and the Commission agreed in 1974 and aims at legislative consolidation : the existing directives would be replaced by one new one, which would leave their substance untouched but would assemble them into a single text, with only the formal amendments required by the operation itself.

4. As in the past the text supplied here is collated from the original Directives as published in the Official Journal; the use of photocopies means that any improvements to the wording are immediately identifiable. The old numbering of the Articles has been retained for ease of reference, the new numbering being entered in the margin; Annex IV provides a concordance table relating the old system of numbering to the new. In order to preserve the dates for transposal of Directive 79/112/EEC and its successive amendments a new Annex III lists the deadline for implementation of each of the directives now being repealed.

(1) OJ No C 20 of 28.01.1975, p. 1

Proposal for a
COUNCIL DIRECTIVE

of the Member States relating to the labelling,
presentation and advertising of foodstuffs.

89/395/EEC

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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 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 89/395/EEC ⁽⁴⁾, has been
amended several times and to a
substantial extent; whereas for the
sake of clarity the Directive should
therefore be consolidated;

Whereas measures must be adopted with the aim
of progressively establishing the internal
market over a period expiring on 31 December 1992;
whereas the internal market is to comprise an
area without internal frontiers in which the free
movement of goods, persons, services and capital
is ensured;

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;

1. 79/112/EEC

(1) OJ No C

(2) OJ No C

(3) OJ No L 33, 8.2.1979, p.1

(4) OJ No L 186, 30.6.1989, p. 17

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

2.

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;

3.

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

4.

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;

5.

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

6.

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

7.

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;

8.

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;

9.

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;

10.

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

11.

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;

12.

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;

13.

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;

14.

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 Council Decision 69/414/EEC (1);

15.

Whereas this Directive is without prejudice to the dates by which the Member States must comply with Directive 79/112/EEC and the successive amendments to it listed in Annex III

HAS ADOPTED THIS DIRECTIVE:

(1) OJ No L 291, 29. 11. 1969, p. 9.

Article 1

79/112/EEC

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. This Directive shall apply also to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers (hereinafter referred to as "mass caterers").

89/395/EEC

3. For the purpose of this Directive,

79/112/EEC

(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 and to mass caterers 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.

89/395/EEC

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.

(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 Community provisions applicable to natural mineral waters and foodstuffs for particular nutritional uses, attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties.

89/395/EEC

2. The Council, in accordance with the procedure laid down in Article 100 a 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.

79/112/EEC

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 16 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 or, in the case of foodstuffs which, from the microbiological point of view, are highly perishable, the "use by" date.

89/395/EEC

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

79/112/EEC

(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 25 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,

79/112/EEC

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

(9) with respect to beverages having an actual alcoholic strength of more than 1.2% vol, the actual alcoholic strength by volume.

86/197/EEC

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.

79/112/EEC

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 18.

3. The Community provisions referred to in paragraphs 1 and 2 shall be adopted in accordance with the procedure laid down in Article 19.

89/395/EEC

Article 5

79/112/EEC

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 and to mass caterers, 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.

→ 89/395/EEC

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.

79/112/EEC

Any foodstuff which has been treated with ionizing radiation must bear one of the following indications:

— in Spanish

"irradiado" or "tratado con radiación ionizante"

— in Danish:

"bestrålet/ ..." or "strålekonserven" or
"behandlet med ioniserende stråling" or
"konserven med ioniserende stråling"

— in German:

"bestrahlt" or "mit ionisierenden Strahlen
behandelt"

— in Greek:

"επεξεργασμένο με ιονίζουσα ακτινοβολία" or
"ακτινοβολημένο"

— in English:

"irradiated" or "treated with ionizing radiation"

— in French:

"traité par rayonnements ionisants" or "traité par
ionisation"

— in Italian:

"irradiato" or "trattato con radiazioni ionizzanti"

— in Dutch:

"doorstraald" or "door bestraling behandeld" or
"met ioniserende stralen behandeld"

— in Portuguese:

"irradiado" or "tratado por irradiação" or "tratado
por radiação ionizante"

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Article 6

79/112/EEC

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 having an actual alcoholic strength of more than 1.2% vol, 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. /

→ 86/197/EEC

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 due solely 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 19 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 reconstituted 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 a different order provided that that list of ingredients 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 may be designated by the name of that category only. Alterations to the list of categories in Annex I may be effected in accordance with the procedure laid down in Article 19;
- 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 19;

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

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These provisions shall be adopted in accordance with the procedure laid down in Article 19.

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— the specific Community provisions governing the indication of treatment of an ingredient with ionizing radiation shall be adopted subsequently in accordance with Article 100a of the Treaty.

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.

79/112/EEC

The procedure laid down in Article 18 shall apply to any such national provisions.

The Community provisions referred to in this paragraph shall be adopted in accordance with the procedure laid down in Article 19.

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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.

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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

79/112/EEC

1. Where the labelling of a foodstuff places emphasis on the presence or low content of one or more ingredients which are essential to the specific properties of the foodstuff, or where the description of the foodstuff has the same effect, the minimum or maximum percentage, as the case may be, used in the manufacture thereof shall be stated.

This information shall appear either immediately next to the name under which the foodstuff is sold or in the list of ingredients in connection with the ingredient in question.

In accordance with the procedure laid down in Article 19, it may be decided that, in the case of certain ingredients, the percentage referred to in this paragraph shall be expressed in absolute terms.

2. Paragraph 1 shall not apply:

(a) in the case of labelling which is intended to characterize a foodstuff in accordance with Article 5 (1) or which is required under Community provisions or, where there are none, under national provisions applicable to certain foodstuffs;

(b) in the case of ingredients used in small quantities only as flavourings.

3. Community provisions or, where there are none, national provisions may stipulate for certain foodstuffs, as well as in the case referred to in paragraph 2 (a), that quantities of certain ingredients must be indicated either in absolute terms or as percentages and that, where appropriate, mention should be made of any alteration in the quantities of these ingredients.

The procedure laid down in Article 18 shall apply to any such national provisions.

The Community provisions referred to in this paragraph shall be adopted in accordance with the procedure laid down in Article 19.

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Article 8

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1. The net quantity of prepackaged foodstuffs shall be expressed:

— in units of volume in the case of liquids,

— in units of mass in the case of other products,

using the litre, centilitre, millilitre, kilogram or gram, as appropriate.

Community provisions or, where there are none, national provisions applicable to certain specified foodstuffs may derogate from this rule.

The procedure laid down in Article 18 shall apply to any such national provisions.

2. (a) Where the indication of a certain type of quantity (e.g. nominal quantity, minimum quantity, average quantity) is required by Community provisions or, where there are none, by national provisions, this quantity shall be regarded as the net quantity for the purposes of this Directive.

Without prejudice to the notification provided for in Article 23 Member States shall inform the Commission and the other Member States of any measure taken pursuant to this point.

- (b) Community provisions or, where there are none, national provisions may, for certain specified foodstuffs classified by quantity in categories, require other indications of quantity.

The procedure laid down in Article 18 shall apply to any such national provisions.

- (c) Where a prepackaged item consists of two or more individual prepackaged items containing the same quantity of the same product, the net quantity shall be indicated by mentioning the net quantity contained in each individual package and the total number of such packages. Indication of these particulars shall not, however, be compulsory where the total number of individual packages can be clearly seen and easily counted from the outside and where at least one indication of the net quantity contained in each individual package can be clearly seen from the outside.

- (d) Where a prepackaged item consists of two or more individual packages which are not regarded as units of sale, the net quantity shall be given by indicating the total net quantity and the total number of individual packages. Community provisions or, where there are none, national provisions need not, in the case of certain foodstuffs, require indication of the total number of individual packages.

Without prejudice to the notification provided for in Article 23 Member States shall inform the Commission and the other Member States of any measure taken pursuant to this point.

3. In the case of foodstuffs normally sold by number, Member States need not require indication of the net quantity provided that the number of items can clearly be seen and easily counted from the outside or, if not, is indicated on the labelling.

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Without prejudice to the notification provided for in Article 23, Member States shall inform the Commission and the other Member States of any measure taken pursuant to this paragraph.

4. Where a solid foodstuff is presented in a liquid medium, the drained net weight of the foodstuff shall also be indicated on the labelling.

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For the purposes of this paragraph, "liquid medium" shall mean the following products, possibly in mixtures and also where frozen or quick-frozen, provided that the liquid is merely an adjunct to the essential elements of that preparation and is thus not a decisive factor for the purchase: water, aqueous solutions of salts, brine; aqueous solutions of food acids, vinegar; aqueous solutions of sugars, aqueous solutions of other sweetening substances; fruit or vegetable juices in the case of fruit or vegetables.

This list may be supplemented in accordance with the procedure laid down in Article 19.

Methods of checking the drained net weight shall be determined in accordance with the procedure laid down in Article 19.

5. It shall not be compulsory to indicate the net quantity in the case of foodstuffs:

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(a) which are subject to considerable losses in their volume or mass and which are sold by number or weighed in the presence of the purchaser;

(b) the net quantity of which is less than 5 g or 5 ml; however, this provision shall not apply to spices and herbs.

Community provisions or, where there are none, national provisions applicable to specified foodstuffs may in exceptional cases lay down thresholds which are higher than 5 g or 5 ml provided that this does not result in the purchaser being inadequately informed.

Without prejudice to the notification provided for in Article 23, Member States shall inform the Commission and the other Member States of any measure taken pursuant to this paragraph.

6. Until the end of the transitional period during which the use of the imperial units of measurement contained in Chapter D of the Annex to Directive 71/354/EEC of 18 October 1971 on the approximation of the laws of the Member States relating to units of measurement ⁽¹⁾

, is authorized in the Community, Ireland and the United Kingdom may permit the quantity to be expressed only in imperial units of measurement calculated on the basis of the following conversion rates:

- 1 ml = 0.0352 fluid ounces,
- 1 l = 1.760 pints or 0.220 gallons,
- 1 g = 0.0353 ounces (avoirdupois),
- 1 kg = 2.205 pounds.

7. The Community provisions referred to in paragraphs 1, 2 (b) and (d) and 5 shall be adopted in accordance with the procedure laid down in Article 19.

Article 9

1. The date of minimum durability of a foodstuff shall be the date until which the foodstuff retains its specific properties when properly stored.

It shall be indicated in accordance with the provisions of this Article.

2. The date shall be preceded by the words:

- 'Best before ...' when the date includes an indication of the day,
- 'Best before end ...' in other cases.

.../...

79/112/EEC

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79/122/EEC

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(1) OJ No L 243, 29. 10. 1971, p. 29.

3. The words referred to in paragraph 2 shall be accompanied by:

- either the date itself, or
- a reference to where the date is given on the labelling.

If need be, these particulars shall be followed by a description of the storage conditions which must be observed if the product is to keep for the specified period.

4. The date shall consist of the day, month and year in uncoded chronological form.

However, in the case of foodstuffs:

- which will not keep for more than three months, an indication of the day and the month will suffice,
- which will keep for more than three months but not more than 18 months, an indication of the month and year will suffice,
- which will keep for more than 18 months, an indication of the year will suffice.

The manner of indicating the date may be specified according to the procedure laid down in Article 19.

5. In their own territories the Member States may, until 31 December 1992, permit the minimum durability period to be expressed otherwise than in terms of the date of minimum durability. Without prejudice to the notification provided for in Article 23, Member States shall notify the Commission and the other Member States of any measure taken under this paragraph.

6. Subject to Community provisions imposing other types of date indication, an indication of the durability date shall not be required for:

- fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated. This derogation shall not apply to sprouting seeds and similar products such as legume sprouts,
- wines, liqueur wines, sparkling wines, aromatized wines and similar products obtained from fruits other than grapes, and beverages falling within CN codes 2206 00 91, 2206 00 93 and 2206 00 99 and manufactured from grapes or grape musts,
- beverages containing 10 % or more by volume of alcohol,

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- soft drinks, fruit juices, fruit nectars and alcoholic beverages in individual containers of more than five litres, intended for supply to mass caterers,
- bakers' or pastry cooks' wares which, given the nature of their content, are normally consumed within 24 hours of their manufacture,
- vinegar,
- cooking salt,
- solid sugar,
- confectionery products consisting almost solely of flavoured and/or coloured sugars,
- chewing gums and similar chewing products.
- individual portions of ice-cream.

Article 9a

1. In the case of foodstuffs which, from the microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability shall be replaced by the "use by" date.

2. The date shall be preceded by the words:

- in Spanish: "fecha de caducidad",
- in Danish: "sidste anvendelsesdato",
- in German: "zu verbrauchen bis",
- in Greek: "ανάλωση μέχρι",
- in English: "use by",
- in French: "à consommer jusqu'au",
- in Italian: "da consumare entro",
- in Dutch: "te gebruiken tot",
- in Portuguese: "a consumir até".

These words shall be accompanied by:

- either the date itself, or
- a reference to where the date is given on the labelling.

These particulars shall be followed by a description of the storage conditions which must be observed.

3. The date shall consist of the day, the month and, possibly, the year, in that order and in uncoded form.

4. In some cases it may be decided by the procedure laid down in Article 19 whether the conditions laid down in paragraph 1 are fulfilled.

89/395/EEC

Article 10

89/395/EEC

Article 10

1. The instructions for use of a foodstuff shall be indicated in such a way as to enable appropriate use to be made thereof.

2. Community provisions or, where there are none, national provisions may, in the case of certain foodstuffs, specify the way in which the instructions for use should be indicated.

The procedure laid down in Article 18 shall apply to such national provisions.

The Community provisions referred to in this paragraph shall be adopted in accordance with the procedure laid down in Article 19.

Article 10a

The rules concerning indication of the alcoholic strength by volume shall, in the case of products covered by NC codes 2204, excluding codes NC 2204 30 91 and 2204 30 99, be those laid down in the specific Community provision applicable to such products.

In the case of other beverages having an actual alcoholic strength of more than 1.2% vol., these rules shall be laid down in accordance with the procedure provided for in Article 19.

Article 11

1. (a) When the foodstuffs are prepackaged, the particulars provided for in Articles 3 and 4 (2) shall appear on the prepackaging or on a label attached thereto.

(b) Notwithstanding point (a) and without prejudice to Community provisions on nominal quantities, where prepackaged foodstuffs are:

- intended for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage,
- intended for supply to mass caterers for preparation, processing, splitting or retail sale,

Article 11

79/112/EEC

89/395/EEC

Article 12

86/197/EEC

→ 87/250/EEC

Article 13

89/395/EEC

the particulars required under Articles 3 and 4 (2) need appear only on the commercial documents referring to the foodstuffs where it can be guaranteed that such documents, containing all the labelling information, either accompany the foodstuffs to which they refer or were sent before or at the same time as delivery.

- (c) In the cases referred to in (b), the particulars referred to in Article 3 (1) (1), (4) and (6) and, where appropriate, that referred to in Article 10, shall also appear on the external packaging in which the foodstuffs are presented for marketing.

2. These particulars shall be easy to understand and marked in a conspicuous place in such a way as to be easily visible, clearly legible and indelible.

They shall not in any way be hidden, obscured or interrupted by other written or pictorial matter.

- 3. (a) The particulars listed in Article 3 (1), points 1, 3, 4 and 9 shall appear in the same field of vision.

This requirement may be extended to the particulars provided for in Article 4 (2).

- (b) However, for glass bottles intended for re-use, upon which one of the particulars listed in point (a) is indelibly marked, this requirement shall not apply for a period of 10 years following notification of this Directive.

4. In the case of the glass bottles intended for re-use which are indelibly marked and which therefore bear no label, ring or collar and packaging or containers the largest surface of which has an area of less than 10 cm² only the particulars listed in Article 3 (1) (1), (3) and (4) need be given.

In this case, paragraph 3 (a) shall not apply.

5. Member States may, until 31 December 1996, refrain from requiring the minimum durability date or the "use by" date to be mentioned in respect of bottles referred to in paragraph 4.

6. Ireland, the Netherlands and the United Kingdom may derogate from Article 3 (1) and paragraph 3 (a) of this Article in the case of milk and milk products put up in glass bottles intended for re-use.

7. The Member States shall inform the Commission of any measure taken pursuant to paragraphs 5 or 6.

Article 12

Where foodstuffs are offered for sale to the ultimate consumer or to mass caterers without prepackaging, or where foodstuffs are packaged on the sales premises at the consumer's request or prepackaged for direct sale, the Member States shall adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4 (2) are to be shown.

They may decide not to require the provision of all or some of these particulars, provided that the purchaser still receives sufficient information.

Article 14

79/112/EEC

→ 89/395/EEC

→ 89/395/EEC

Article 13

This Directive shall not affect the provisions of national laws which, in the absence of Community provisions, impose less stringent requirements for the labelling of foodstuffs presented in fancy packaging such as figurines or souvenirs.

Article 15

Article 14

Member States shall refrain from laying down requirements more detailed than those already contained in Articles 3 to 13 concerning the manner in which the particulars provided for in Article 3 and Article 4 (2) are to be shown.

Article 16

The Member States shall, however, ensure that the sale of foodstuffs within their own territories is prohibited if the particulars provided in Article 3 and Article 4 (2) do not appear in a language easily understood by purchasers, unless other measures have been taken to ensure that the purchaser is informed. This provision shall not prevent such particulars from being indicated in various languages.

Article 15

1. Member States may not forbid trade in foodstuffs which comply with the rules laid down in this Directive by the application of non-harmonized national provisions governing the labelling and presentation of certain foodstuffs or of foodstuffs in general.

2. Paragraph 1 shall not apply to non-harmonized national provisions justified on grounds of:

- protection of public health,
- prevention of fraud, unless such provisions are liable to impede the application of the definitions and rules laid down by this Directive,
- protection of industrial and commercial property rights, indications of provenance, registered designations of origin and prevention of unfair competition.

Article 16

Where reference is made to this Article, the following procedure shall apply:

- (1) When a Member State maintains the provisions of its national laws, it shall inform the Commission and the other Member States thereof within a period of two years after notification of this Directive;
- (2) Should a Member State deem it necessary to adopt new legislation, it shall notify the Commission and the other Member States of the measures envisaged and give the reasons justifying them. The Commission shall consult the Member States within the Standing Committee on Foodstuffs if it considers such consultation to be useful or if a Member State so requests.

Member States may take such envisaged measures only three months after such notification and provided that the Commission's opinion is not negative.

In the latter event, and before the expiry of the abovementioned period, the Commission shall initiate the procedure provided for in Article 19 in order to determine whether the envisaged measures may be implemented subject, if necessary, to the appropriate modifications.

Article 17

79/112/EEC

Article 18

Article 17

Where the procedure laid down in this Article is to be followed, the matter shall be referred to the Standing Committee on Foodstuffs (hereinafter called "the Committee") by its chairman, either on his own initiative or at the request of a representative of a Member State.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of Decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are, in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 19

If temporary measures prove necessary to facilitate the application of this Directive, they shall be adopted in accordance with the procedure provided for in Article 19.

Article 19

89/395/EEC

Article 20

79/112/EEC

Article 20

This Directive shall not affect Community provisions relating to the labelling and presentation of certain foodstuffs already adopted at the time of its notification.

Any amendments necessary to harmonize such provisions with the rules laid down in this Directive shall be decided in accordance with the procedure applicable to each of the provisions in question.

Article 21

This Directive shall not apply to products for export outside the Community.

Article 22

1. Member States shall make such amendments to their laws as may be necessary to comply with the provisions of this Directive and shall forthwith inform the Commission thereof; the laws thus amended shall be applied in such a way as to:

- permit trade in those products which comply with the provisions of this Directive no later than two years after its notification,
- prohibit trade in those products which do not comply with the provisions of this Directive four years after its notification.

2. However, Member States may:

- (a) in the case of certain foodstuffs, reduce the period specified in the second indent of paragraph 1;
- (b) in the case of certain foodstuffs which keep for a long time, extend the period specified in the second indent of paragraph 1;

3. In the cases referred in paragraph 2 :

as regards subparagraph (a), the procedure laid down in Article 18 (2) shall apply to any national provision;

Article 21

79/112/EEC

Article 22

Article 23

as regards subparagraph (b), Member States shall inform the Commission and the other Member States of any measure taken pursuant to that subparagraph.

79/112/EEC

Article 24

This Directive shall also apply to the French overseas departments.

Article 25

1. Member States shall take the measures necessary to comply with this Directive not later than the date listed for each Directive separately in Annex III. They shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission the texts of provisions of national law which they adopt in the field governed by this Directive.

79/112/EEC

Article 26

1. Directive 79/112/EEC is hereby repealed.
2. Reference to the said Directive shall be understood as referring to the present Directive and shall be read in accordance with the attached table of reference.

Article 27

This Directive is addressed to the Member States.

Done at Brussels

For the Council
The President

ANNEX I

79/112/EEC

Categories of ingredients which may be designated by the name of the category rather than the specific name

Definition

Designation

Refined oils other than olive oil.

'Oil', together with

- either the adjective 'vegetable' or 'animal', as appropriate, or
- an indication of their specific vegetable or animal origin.

The adjective 'hydrogenated' must accompany the indication of a hydrogenated oil where the vegetable origin or the specific vegetable or animal origin is mentioned.

However, in either case, Member States may lay down requirements which are more stringent in the case of foodstuffs consisting essentially of oils and fats; emulsified sauces or preparations where the oil serves as a liquid medium; in that case the procedure laid down in Article 10 shall apply.

Refined fats.

'Fat', together with

- either the adjective 'vegetable' or animal', as appropriate, or
- an indication of their specific vegetable or animal origin.

However, in either case, Member States may lay down requirements which are more stringent in the case of foodstuffs consisting essentially of oils and fats or emulsified sauces; in that case the procedure laid down in Article 10 shall apply.

Mixtures of flour obtained from two or more cereal species.

'Flour', followed by a list of the cereals from which it has been obtained in descending order by weight.

Starches, and starches modified by physical or enzymatic means.

Starch.

All species of fish where the fish constitutes an ingredient of another foodstuff and provided that the name and presentation of such foodstuff does not refer to a specific species of fish.

Fish.

All types of poultrymeat where such meat constitutes an ingredient of another foodstuff and provided that the name and presentation of such a foodstuff does not refer to a specific type of poultrymeat.

Poultrymeat.

All types of cheese where the cheese or mixture of cheeses constitutes an ingredient of another foodstuff and provided that the name and presentation of such foodstuff does not refer to a specific type of cheese.

Cheese.

<i>Definition</i>	<i>Designation</i>
All spices and spice extracts not exceeding 2 % by weight of the foodstuff.	Spice(s) or mixed spices.
All herbs or parts of herbs not exceeding 2 % by weight of the foodstuff.	Herb(s) or mixed herbs.
All types of gum preparations used in the manufacture of gum base for chewing gum.	Gum base.
All types of crumbed baked cereal products.	Crumbs or rusks as appropriate.
All types of sucrose.	Sugar.
Anhydrous dextrose and dextrose monohydrate.	Dextrose.
All types of caseinates.	Caseinates.
Press, expeller or refined cocoa butter.	Cocoa butter.
All crystallized fruit not exceeding 10 % of the weight of the foodstuff.	Crystallized fruit.

79/112/EEC

ANNEX II

Categories of ingredients which must be designated by the name of the category to which they belong, followed by their specific name or EEC number

- Colour
- Preservative
- Antioxidant
- Emulsifier
- Thickener
- Gelling agent
- Stabilizer
- Flavour enhancer
- Acid
- Acidity regulator
- Anticaking agent
- Modified starches (*)
- Artificial sweetener
- Raising agent
- Antifoaming agent
- Glazing agent
- Emulsifying salts (*)
- Flour improvers

(*) Indication of specific name or EEC number is not required.
(*) Only for processed cheese and processed cheese products.

A N N E X I I I

DIRECTIVE

TIME LIMIT

79/112/EEC	(OJ. N° L 33 of 8.02.1979, p.1)	trade permitted 22.12.80 trade prohibited 22.12.82
83/463/EEC ^(*)	(OJ. N° L 255 of 15.09.1983, p.1)	trade permitted 1.07.84
85/7/EEC	(OJ. N° L 2 of 3.01.1985, p.22)	
86/197/EEC	(OJ. N° L 144 of 29.05.1986, p.38)	trade permitted 1.05.88 trade prohibited 1.05.89
87/250/EEC ^(*)	(OJ. N° L 113 of 30.04.1987, p.57)	trade permitted 1.05.88 trade prohibited 01.05.89
89/395/EEC	(OJ. N° L 186 of 30.06.1989, p.17)	trade permitted 20.12.90 trade prohibited 20.06.92

^(*) Commission Dir.

A N N E X IV

CORRELATION TABLE

DIRECTIVE 79/112/EEC	:	Present directive
Article 1	:	Article 1
Article 2	:	Article 2
Article 3	:	Article 3
Article 4	:	Article 4
Article 5	:	Article 5
Article 6	:	Article 6
Article 7	:	Article 7
Article 8	:	Article 8
Article 9	:	Article 9
Article 9 bis	:	Article 10
Article 10	:	Article 11
Article 10 bis	:	Article 12
Article 11	:	Article 13
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Article --	:	Article 26
Article 26	:	Article 27

COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

Consolidated version of Council Directive on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs. (Council Directive 79/112/EEC of 18 December 1978).

This proposal from the Commission meets the wish expressed many times by the Member States and the European Parliament that measures should be taken to speed up the codifying and simplifying of Community law. The proposal contains no new provisions, and therefore has no particular impact on SMEs; but it should be noted because its aim, the transparency of Community law, is in the long-term interests of SMEs.