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OPINION

drawn up by the Committee on Public Health and the Environment

on the amended proposal from the Commission of the European Communities to the Council (Doc. 235/75) for a directive on the approximation of the laws of the Member States relating to fruit jam, jellies and marmalades and chestnut puree

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PE 42.006/fin/ann.

English Edition

On 2 October 1975 the Committee on Public Health and the Environment appointed Mr LIOGIER draftsman.

It considered the draft opinion at its meeting of 20 November 1975 and adopted it unanimously.

Present: Mr Della Briotta, chairman; Mr Spicer, vice-chairman; Mr Liogier, draftsman of the opinion; Lord Bethell, Lady Fisher of Rednal, Mr Martens, Mr Meintz, Mr Noé, Mr Premoli, Mr Radoux (deputizing for Mrs Orth) and Mr Rosati.

I. Consideration of the amended proposal

1. The Commission's amended proposal, like the original one, is based in particular on Article 43 of the EEC Treaty, despite the fact that the Committee on Health Protection had asked in paragraph 3 of the opinion[1] drawn up by Mr LENZ that Article 100 of the EEC Treaty also be used as the legal basis.

The Commission's substantially accurate observations contained in the first three recitals refer unmistakably to Article 100 of the EEC Treaty and have nothing to do with the requirement for an efficiently functioning common organization of the market in fruit and sugar (Article 43 of the EEC Treaty).

The President of the European Parliament clearly takes the same view, since, by decision of 9 September 1975, he referred the Commission's amended proposal to the Committee on Economic and Monetary Affairs, as the committee responsible, and not - as in the case of the original Commission proposal - to the Committee on Agriculture, which is responsible for the common agricultural policy (Articles 38-47 of the EEC Treaty).

The Committee on Public Health and the Environment therefore insists that an addition be made to the text of the Commission's amended proposal, which should include a reference to Article 100 of the EEC Treaty as a legal basis.

2. Article 2(2) contains a provision to the effect that Member States may restrict the use of the designations referred to in Annex I to products with a content of soluble dry matter of 63% or more as determined by refractometer[2]. The purpose of this provision is undoubtedly to ensure that the products conform to precise quality standards.

In its Explanatory Memorandum (p.8) the Commission concedes that 'in most Member States the terms 'jam', 'jelly' and 'marmalade' are used solely for products whose conservation is ensured exclusively by the manufacturing processes employed and by the use of sugar, to the exclusion of the use of any artificial preservatives.' It considers that artificial preservatives are not required for products with 63% or more soluble dry matter, whereas with a lower percentage it is frequently necessary to use artificial preservatives. By offering this option the Commission also allows Member States which permit the use of the designations prescribed by the directive for products with a content of soluble dry matter of less than 63%, to authorize the use of artificial preservatives for such products. The Explanatory Memorandum goes on to say that the Commission intends to make a subsequent

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[1] Doc.104/66, p.17

[2] Instrument for measuring the refractive index of rays

examination to ascertain whether and under what conditions such a measure could be extended to the Community as a whole 'in order to ensure free movement for all the products covered by the sector under review'.

The committee has always taken the view that the free movement of goods must in some situations be subordinated to overriding considerations of public health protection. This is the case here, since it is by no means proven that the use of artificial preservatives in marmalades is harmless. The Commission itself admits this in referring to the need for a subsequent examination of the problem.

The committee stresses the need to stop at the outset the dangerous developments referred to by the Commission. It asks that the facultative provision of Article 2(2) be made mandatory. The word 'may' is therefore to be replaced by the word 'must'.

This restriction of the prescribed designations to high-quality products that are perfectly safe from the health standpoint in no way interferes with the free movement of goods, since all Member States would be treated in the same way, whereas the Commission's facultative solution would allow obstacles to trade to continue, with the result that the approximation called for in Article 100 of the EEC Treaty would be difficult to implement.

3. Article 3 stipulates that only raw materials corresponding to the definitions given in Annex II may be used in the manufacture of the products covered by this directive. The annex defines the following raw materials: fruit, fruit pulp, fruit purée, fruit juice, aqueous extracts of fruit and sugars. It also specifies the treatments authorized for the raw materials. These may be heated or cooled, freeze-dried, concentrated, or - in the case of apricots and apricot pulp - dried. In the manufacture of jam, jelly, marmalade and marmalade jelly, sulphur dioxide or its salts may also be used.

The Commission is asked whether there is really any technological necessity to use these additives - which the committee doubts.

Finally, chestnuts for use in the manufacture of chestnut purée may be soaked for a short time in an aqueous solution of sulphur dioxide. Here again the committee doubts whether there is any technological need for this procedure. At all events, it recommends that the vague term 'a short time' be replaced by a specific maximum period, in order to ensure the uniform application of this provision. There is no question that chestnut purée made from chestnuts soaked too long in a sulphur dioxide solution can have harmful effects on the health of the consumer.

4. Article 4 states that the substances specified in Annex III may be added, in the manner prescribed therein, to the products in question. As regards the additives listed in Annex III(2), which may all be used in unlimited quantities, the Commission is asked why it has not set a limit on the quantities of sodium and potassium tartrate and sodium and potassium bitartrate that may be used. Is the addition of these substances technologically necessary? If so, why?

Moreover, it is difficult to see the sense of providing for the addition of colouring matter - and in unlimited quantities at that - to jams, jellies, marmalades and marmalade jellies. Even if one postulates that colouring matter is not harmful to health[1], its authorization can mislead and confuse the consumer, who generally assumes that what he sees is the natural colours of the fruit used as the raw materials. That the Commission itself does not regard colouring matter as particularly high-grade ingredients for improving the quality of products is demonstrated by the fact that it prohibits their use in 'first-quality jam', 'first-quality jelly' and chestnut purée.

The danger of misleading the consumer as to the true quality of the products concerned through the use of colouring matter is especially acute since there is no requirement of any kind that products should be labelled. Nor need the additives listed in Annex III (2) be specified on the containers.

The committee therefore requests that

- either the addition of colouring matter to the products should be totally forbidden or at least a limit should be set on the quantity so added.
- at all events, there should be a requirement that all colouring matter used should be shown on the label.

5. Article 5 stipulates that 'irrespective of the substance involved, products may not contain substances in quantities such as to endanger human health'. This provision is worded in such general terms as to make it extremely vague, and the question arises of who is to decide in each individual case whether or not human health is actually endangered. For health reasons, and to avoid interpretation difficulties and hence legal uncertainty, the committee reiterates the request it made when in connection with Article 4 that the Commission should lay down precise maximum quantities for each authorized additive.

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[1] In this connection, it is interesting to note that colouring matter is included in the Commission's revised list of second-category pollutants (Doc.404/74) to be investigated under the Programme of Action for the Environment.

According to Article 5(2), the products may not contain sulphur (SO_2) in amounts exceeding the limits fixed in Annex IV. The sulphur dioxide content of first-quality jam, first-quality jelly and chestnut purée must not exceed 10 mg/kg, and in the case ofthe other products 50 mg/kg.

The Commission is asked whether the latter limit was not set too high and whether there is really no danger to the consumer's health. In any event, the committee asks that it be made obligatory to show on the label the inclusion of SO_2.

6. According to Article 6 a number of particulars, printed in indelible characters, and in such a manner as to be clearly visible and easily readable, must be displayed on containers or labels. These particulars include:

- 'where required, any additives used, to be shown in the manner prescribed by the rules relating to labelling in force in the Member State in which the product is to be consumed.'

The committee is in basic agreement with the provisions for labelling products. It should, however, be pointed out that there can be no question of approximating the different legislations, as the title of the directive implies, if the information about additives used has to conform to the labelling regulations in force in the particular Member State in which the product is to be consumed. Such a system must inevitably lead to obstacles to trade and, in any case, creates labelling difficulties for the manufacturer.

In addition, the committee has always been in favour of a general obligation to specify additives so as to take account of the consumer's justified desire for adequate information.

Quite apart from the points made in paragraphs 4 and 5 of its opinion, the committee is therefore in favour of an obligation to specify additives used in the products covered by this directive. This would not only take account of the consumer's need for information, but also make it possible to approximate the laws of the Member States and eliminate obstacles to trade.

Consequently, in Article 6(5), the words: 'in the manner prescribed by the rules relating to labelling in force in the Member State in which the product is to be consumed' should be deleted.

7. Article 8, first paragraph, contains the axiomatic provision that Member States may not lay down labelling requirements more specific than those stipulated in Article 6.

An exception to this rule is authorized in the second paragraph of Article 8. This provision leaves it open to Member States to prohibit the sale in their territory of the products in question if the prescribed particulars are not given in the national language or languages.

The committee protests at the fact that once again the Commission has gone against a provision advocated by the European Parliament over the past decades, namely that manufacturers be required to label their products in the national language of the consumer. In considering Commission directives, the committee has pointed out countless times that the Commission persistently leaves it to the discretion of the Member States whether or not clear and unambiguous labelling which the consumer can understand is to be made obligatory. Too much is asked of the consumer if he is expected to understand information in a language not his own. This leaves the way open to error and misunderstanding, which can often place the consumer at a serious disadvantage.

Consequently, the committee has consistently urged that the proposed facultative provision be made mandatory. This means that in the present directive the word 'may' in Article 8, second paragraph, should be replaced by the word 'must'.

8. Article 9 provides for further derogations to Article 6, under which Member States may additionally prescribe a number of particulars. To what extent these optional provisions may lead to obstacles to trade may be left to the judgment of the Committee on Economic and Monetary Affairs as the committee responsible.

The option of requiring a date to be specified is, however, a question that falls within the terms of reference of the Committee on Public Health and the Environment. It does in fact seem to be appropriate, and in the interests of the consumer, that he should be informed as to the date of manufacture of the product. With this information he can decide how long he can keep a given product in storage.

The committee therefore requests that, in line with the progressive regulations already in force in several Member States, specification of the date of manufacture or the date by which the product should be used be made mandatory.

The optional provision proposed by the Commission in Article 8 should thus be deleted and the corresponding mandatory provision called for by the committee inserted in Article 6.

9. Article 11 states that detailed rules concerning methods of sampling and analysis to check the composition of and manufacturing specifications for products will be determined in accordance with a procedure under which the Standing Committee for Foodstuffs, set up in 1969, must be consulted.

Since this is a question of technical implementing provisions, the committee basically accepts these arrangements, with a view to simplifying and expediting the procedure. The committee considers, however, in line with the position it has adopted in connection with similar cases in the past, that the Commission should be called upon to stipulate that the rules for the proposed methods of sampling and analysis be determined not later than the date of application of the directive.

Accordingly, the following phrase should be inserted at the end of Article 11:
'.....not later than the date of application of the directive'.

10. Article 12 lays down the working procedure to be used in connection with the consultation of the Standing Committee for Foodstuffs.

In conformity with the attitude adopted hitherto by the European Parliament on the institutional aspect of this question, the committee endorses the amendments to the working procedure, usually put forward in the past.

11. Article 13 contains a derogation under which the directive will not affect national provisions by virtue of which preservatives may be added to the products provided those products have a content of dry soluble matter of less than 63%. Article 11 further states that this derogation will, within five years from the date of notification of this directive, be reviewed by the Commission which will, if appropriate, propose suitable amendments to the Council.

This provision manifestly aims, as can also be seen from the Commission's Explanatory Memorandum, (p.8) to authorize within five years products of lower quality, i.e. with a content of dry soluble matter of less than 63%, on the same basis as quality products. Since preservatives have not been shown to be harmless (see paragraph 5 of this opinion), the committee asks the Commission to delete Article 13, which would lead to an undesirable development.

12. According to Article 14, this directive does not apply

- to products that are manifestly intended for export to countries outside the Community,
- pending the entry into force of common provisions on the matter, to dietary products.

In considering similar cases, the committee has always advocated that products intended for export should be clearly labelled as such if they are to be excluded from the field of application of Community provisions. Unless this is done, there is a danger that the directive will be circumvented through the manufacture and storage of products ostensibly destined for third countries. The committee has therefore advocated the implementation of strict controls to reduce the risk that such a directive may be circumvented. To facilitate such controls, it is essential to stipulate that products for export must be unmistakably labelled as such.

Accordingly, the first part of Article 14 must be amended as follows:

'This directive shall not apply to products intended for export to countries outside the Community, provided that they are clearly labelled as such.'

13. Article 15(1) lays down time limits for the implementation of the directive as follows:

- Member States shall, within one year following notification of this Directive, 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.
- Member States shall permit trade in products complying with the provisions laid down in this Directive two years after notification,
- Member States shall prohibit trade in products not complying with the provisions laid down in this Directive, three years after notification.

In this connection the committee would point out that the preliminary work on the proposal for a directive, which began as far back as 1964, has lasted far too long, so that the implementation of the directive, which has been put off for ten years, must be expedited. In addition, one fails to see why two or three years are required for its implementation, quite apart from the fact that provision is also made for its being spread over a period. It is perfectly realistic for the directive to be implemented one year after notification, and manufacturers should be expected to comply with it. With the present state of technology, this period should give the industry quite enough time to make any readjustments that may be necessary.

Accordingly, Article 15(1) should be amended as follows:

> 'Member States shall, within one year following notification of this Directive, make such amendments to their laws as may be necessary to comply with the provisions of this Directive and arrange for its implementation; they shall forthwith inform the Commission thereof.'

14. There is also an objection to Article 15(2) since it runs counter to the view taken by the European Parliament in the past. Here the Commission does no more than instruct the Member States to communicate to it the text of the main provisions of internal law which they subsequently adopt in the field covered by this directive.

Like the Legal Affairs Committee, the Committee on Public Health and the Environment has always urged that

- the obligation to communicate material should apply to all internal laws,
- this should be done quickly enough for the Commission to be able to give its opinion, in other words to prevent it from being placed before a fait accompli.

Here again, therefore, the committee asks that Article 15(2) be amended as follows:

> 'Furthermore, Member States shall communicate to the Commission the text of all provisions of internal law which they subsequently intend to adopt in the field covered by this Directive, in good time to enable the Commission to express its opinion on them.

II. Conclusions

15. On the basis of its consideration of the Commission's amended proposal, the Committee on Public Health and the Environment asks the Commission to make the following changes in its proposal:

(a) Article 100 of the EEC Treaty should be used as a legal basis for the Commission's proposal for a directive in addition to Article 43, so that the preamble should be amended accordingly (see paragraph 1, last sub-paragraph of this opinion).

(b) The designations listed in Annex I should be restricted to high-quality products that are perfectly safe from the standpoint of health. Consequently, the provision contained in Article 2(2) should be made mandatory, i.e. the word 'may' should be replaced by the word 'must' (see paragraph 1, second-last sub-paragraph).

(c) The term 'short time', which refers to the period during which chestnuts for use in the manufacture of chestnut purée may be soaked in an aqueous solution of sulphur dioxide, is too vague. In Annex II(2)(c), therefore it should be replaced by a specific maximum period (see paragraph 3, last sub-paragraph).

(d) Either the addition of colouring matter to the products in question should be totally forbidden or at least provision should be made for limiting the amounts used. At all events there should be a requirement that all colouring matter used should be shown on the label. Annex III(2) should be amended accordingly (see paragraph 4, last sub-paragraph).

(e) Precise maximum quantities should be fixed for each authorized additive, so that Annex III(2) needs to be amended accordingly.

(f) An indication on the label should be given in all cases where the product contains sulphur dioxide (SO_2) (a provision to this effect will therefore have to be inserted in Annex IV or elsewhere in the proposal for a directive). (see paragraph 5, last sub-paragraph).

(g) The requirement that an indication be given on the label whenever additives are used in products covered by the directive must not be undermined by derogations, so that in Article 6(5) the words 'in the manner prescribed by the rules relating to labelling in force in the Member State in which the product is to be consumed' should be deleted, (see paragraph 6, last sub-paragraph).

(h) The provision requiring products to be labelled in the national language of the consumer should be made mandatory. Accordingly, the word 'may' in Article 8, second paragraph, should be replaced by the word 'must' (see paragraph 7, last sub-paragraph).

(i) Indication of the date of manufacture or the date by which the product ought to be used should be made mandatory. The facultative provision proposed by the Commission in Article 8 should therefore be deleted and a mandatory provision incorporated in Article 6 (see paragraph 8, last sub-paragraph).

(k) Rules for the methods of sampling and analysis should be determined not later than the date of implementation of the directive. Article 11 must be amended accordingly (see paragraph 9, last sub-paragraph).

(l) In conformity with the attitude adopted hitherto by the European Parliament on the institutional aspect of this question, the working procedure connected with the consultation of the Standing Committee for Foodstuffs provided for in Article 12 should be amended in the usual manner (see paragraph 10).

(m) The derogation provided for in Article 13, according to which the directive does not affect national provisions authorizing the

addition of preservatives to products, provided that they have a dry soluble matter content of less than 63%, should be deleted (see paragraph 11, second sub-paragraph).

(n) Products intended for export must be clearly labelled as such if they are to be excluded from the field of application of Community legislation. The first part of Article 14 must therefore be amended as follows:

'This directive shall not apply to products intended for export to countries outside the Community, provided that they are clearly labelled as such' (see paragraph 12, last sub-paragraph).

(o) The directive should be implemented one year after its notification, so that Article 15(1) should be amended as follows:

'Member States shall, within one year following notification of this Directive, make such amendments to their laws as may be necessary to comply with the provisions of this Directive and arrange for its implementation; they shall forthwith inform the Commission thereof.' (see paragraph 13, last sub-paragraph).

(p) Member States must communicate to the Commission the text of all provisions of internal law which they subsequently intend to adopt in the field covered by this Directive in good time to enable the Commission to express its opinion on them (corresponding amendment to Article 15(2) (see paragraph 14, last sub-paragraph).

16. In addition, the Committee on Economic and Monetary Affairs as the committee responsible is requested to consider whether the option provided for in Article 9 of prescribing additional particulars could lead to obstacles to trade and, if necessary, to delete Article 9 (see paragraph 8, first sub-paragraph).

17. Finally, the Committee on Public Health and the Environment requests the committee responsible to adopt the foregoing observations, amendments and additions and to incorporate them in the resolution.