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Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs

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COUNCIL DIRECTIVE of 14 June 1989 on the official control of foodstuffs (89/397/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas trade in foodstuffs is one of the most important aspects of the common market; whereas all the Member States must endeavour to protect the health and economic interests of their citizens; whereas the protection of health must be given unconditional priority and whereas, therefore, official control of foodstuffs must be harmonized and made more effective;

Whereas, however, the differences between national legislations with respect to this type of control are such as to represent barriers to the free movement of goods;

Whereas it is therefore necessary to approximate these legislations;

Whereas, first of all, the general principles governing the carrying-out of such control must be harmonized;

Whereas specific provisions, in addition to the general principles, may, if necessary, be adopted subsequently;

Whereas the subject of this Directive is verification of the compliance of foodstuffs with legislation on foodstuffs; whereas such legislation contains provisions on health, rules on composition and rules on quality designed to protect consumers' economic interests as well as provisions on consumer information and fair commercial transactions;

Whereas, at the same time as foodstuffs, materials and articles intended to come into contact with such foodstuffs should be controlled;

Whereas for the purposes of the completion of the internal market, foodstuffs intended to cross intra-Community

frontiers must be inspected with the same care as those intended for marketing in the Member State of production;

Whereas inspection must therefore be based in principle on the provisions in force in the Member State of production; whereas, however, such a principle should not apply where it has been established to the the satisfaction of the inspecting authority by appropriate means, including the submission of commercial documents, that the product in question is intended for consignment to another Member State and that it complies with the provisions in force in that Member State;

Whereas, to be effective, inspections must be carried out regularly; whereas they must not be limited as to the subject, stage or moment at which it is convenient to carry them out, and whereas they must take the most suitable forms to guarantee their effectiveness;

Whereas in order to ensure that inspection procedures are not evaded, it is necessary to provide that Member States shall not exclude a product from appropriate inspection on the grounds that it is intended for export outside the Community;

Whereas the inspectors must be granted adequate powers;

Whereas although, on the one hand, undertakings should not have the right to oppose the inspections, on the other hand their legitimate rights must be preserved, in particular the right to manufacturing secrecy and the right of appeal;

Whereas the authorities made responsible for the control of foodstuffs may differ from one Member State to another; whereas it is, therefore, desirable to publish a list of the competent authorities in the field in each Member State, with an indication of the territories for which they are competent, and approved laboratories for the analyses to be carried out in connection with such control;

Whereas official controls should contribute effectively to the prevention of food law infringements; whereas to that end programmes should be drawn up on the basis of appropriate criteria;

Whereas, although it is primarily for Member States to lay down their inspection programmes, it is necessary, with a view to the completion and operation of the internal market, to arrange also for coordinated programmes at Community level;

Whereas simultaneous implementation of national programmes and coordinated programmes will provide

experience which is still widely lacking at present; whereas, in the light of that experience, it may prove necessary to revise this Directive to improve the arrangements which it introduces;

Whereas Member States should be allowed a certain degree of freedom as to the practical means of carrying out inspections so as not to interfere with systems of proven worth which are best suited to the particular situation in each Member State,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive lays down the general principles for the performance of official control of foodstuffs.

2. For the purposes of this Directive 'official control of foodstuffs' - hereinafter called 'control' - means an inspection by the competent authorities of the compliance:

- of foodstuffs,

- of food additives, vitamins, mineral salts, trace elements and other additives intended to be sold as such,

- of materials and articles intended to come into contact with foodstuffs,

with provisions aimed at preventing risks to public health, guaranteeing fair commercial transactions or protecting consumer interests, including provisions on consumer information.

3. This Directive shall apply without prejudice to the provisions adopted in the context of more specific Community rules.

4. This Directive shall not apply to metrological control.

Article 2

1. Member States shall take all necessary measures to ensure that control is carried out in accordance with this Directive.

2. Member States shall ensure that products intended for consignment to another Member State are inspected with the same care as those intended for marketing on their own territory.

Article 3

Member States shall not exclude a product from appropriate control on the grounds that it is intended for export outside the Community.

Article 4

1. Inspections shall be carried out:

(a) regularly;

(b) where non-compliance is suspected.

2. Inspections shall be carried out using means proportionate to the end to be observed.

3. Inspection shall cover all stages of production, manufacture, import into the Community, processing, storage, transport, distribution and trade.

4. As a general rule, inspections shall be carried out without prior warning.

5. As a general rule, inspections shall, in each case, select the stage or stages which it considers the most appropriate for its examination from those listed in paragraph 3.

Article 5

Control shall comprise one or more of the following operations in accordance with the conditions laid down in Articles 6 to 9 and in the light of the examination to be carried out:

1. inspection;

2. sampling and analysis;

3. inspection of staff hygiene;

4. examination of written and documentary material;

5. examination of any verification systems set up by the undertaking and of the results obtained.

Article 6

1. The following shall be subject to inspection:

(a)

the state and use which is made at the different stages enumerated in Article 4 (3) of the site, premises, offices, plant surroundings, means of transport, machinery and equipment;

(b)

raw materials, ingredients, technological aids and other products used for the preparation and production of foodstuffs;

(c)

semi-finished products;

(d)

finished products;

(e)

materials and articles intended to come into contact with foodstuffs;

(f)

cleaning and maintenance products and processes and pesticides;

(g)

processes used for the manufacture or processing of foodstuffs;

(h)

labelling and presentation of foodstuffs;

(i)

preserving methods.

2. The operations enumerated in paragraph 1 may, where necessary, be supplemented by:

- interviews with the head of the inspected undertaking and with persons working for that undertaking,

- the reading of values recorded by measuring instruments installed by the undertaking,

- inspections carried out by the competent authority, with its own instruments, of measurements taken with the instruments installed by the undertaking.

Article 7

1. Samples of the products enumerated in Article 6 (1) (b) to (f) may be taken for the purposes of analysis.

Member States shall take the necessary steps to ensure that those subject to inspection may apply for a second opinion.

2. The analyses shall be carried out by official laboratories.

Member States may also empower other laboratories to carry out these analyses.

Article 8

Persons who, in the exercise of their activity, come into contact, whether directly or indirectly, with the materials and products referred to in Article 6 (1) (b) to (f) shall be subject to the hygiene inspection referred to in Article 5 (3).

The purpose of this inspection shall be to check that the health standards concerning personal cleanliness and clothing are respected. It shall be carried out without prejudice to medical examinations.

Article 9

1. Inspectors may take note of written and documentary material held by the natural and legal persons at the various stages enumerated in Article 4 (3).

2. Inspectors may also make copies or take extracts of written and documentary material submitted to them for examination.

Article 10

Where inspectors discover or suspect an irregularity, they shall take the requisite measures.

Article 11

1. Member States shall ensure that inspectors have the right to carry out the operations provided for in Articles 6 to 10.

2. Member States shall prescribe that the natural and legal persons concerned shall be obliged to undergo any inspection carried out in accordance with this Directive and to assist inspectors in the accomplishment of their tasks.

Article 12

1. Member States shall take the measures necessary to ensure that natural and legal persons concerned by the inspection have a right of appeal against measures taken by the competent authority for the purpose of inspection.

2. They shall prescribe that inspectors shall be bound by professional secrecy.

Article 13

In order to ensure that the application of this Directive is uniform throughout the Member States, the Commission shall, within one year of its adoption, make a report to the European Parliament and to the Council on:

(a) the current standard of training provision for food inspectors in the Member States;

(b) the possibility of establishing Community provisions on what should constitute the basic and further training of inspectors;

(c) the possibility of establishing Community quality standards for all laboratories involved in inspection and sampling under this Directive;

(d) the possibility of establishing a Community inspection service, including opportunities for all institutions and persons involved in the inspections to exchange information.

Article 14

1. The competent authority or authorities of the Member States shall draw up forward programmes laying down the nature and frequency of the inspections to be carried out regularly in accordance with Article 4 (1) (a) over a specific period.

2. By 1 May of each year the Member States shall send to the Commission all the necessary information on implementation during the previous year of the programmes referred to in paragraph 1, specifying:

- the criteria applied in drawing up these programmes,

- the number and type of inspections carried out,

- the number and type of infringements established.

3. By 16 October of each year, and for the first time in 1991, the Commission shall transmit to the Member States, after having consulted them within the framework of the Standing Committee for Foodstuffs, a recommendation concerning a coordinated programme of inspections for the following year. This recommendation may be subsequently adjusted as required during implementation of the coordinated programme.

The coordinated programme shall set out in particular the priority criteria to be applied in its implementation.

The information provided for in paragraph 2 shall contain a special, separate section on implementation of the coordinated programme.

4. Five years after notification of this Directive the Commission shall transmit to the Council a report on the application of this Article, accompanied, if necessary, by any appropriate proposals.

Article 15

Each Member State shall communicate to the Commission the names of:

- the competent authority or authorities and the extent of their territorial responsibility and functions,

- the official laboratories or laboratories authorized by the competent authorities, which are responsible for carrying out analyses in connection with the control.

These lists shall be published in the 'C' series of the Official Journal of the European Communities.

Article 16

Member States shall adopt and publish, not later than 12 months after notification of this Directive, the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 months after its notification (4). They shall forthwith inform the Commission thereof.

Article 17

This Directive is addressed to the Member States.

Done at Luxembourg, 4 June 1989.

For the Council

The President

P. SOLBES

(1) OJ No C 20, 27. 1. 1987, p. 6, OJ No C 88, 5. 4. 1987, p. 14, and OJ No C 131, 27. 5. 1989, p. 6.

(2) OJ No C 345, 21. 12. 1987, p. 80, and OJ No C 120, 16. 5. 1989.

(3) OJ No C 347, 22. 12. 1987, p. 1.

(4) This Directive was notified to the Member States on 20 June 1989.