EUROPEAN COMMISSION



Brussels, 24.9.2010 COM(2010) 506 final

2010/0259 (COD) C7-0285/10

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on indications or marks identifying the lot to which a foodstuff belongs

(Codification)

EN EN

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to meak accessible to the citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

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 codification of rules that have frequently been am ended is also essential if the law is to be clear and transparent.

- 2. On 1 April 1987 the Commission decided ¹ to instruct its staff that all acts should be codified after no m ore than ten a mendments, stressing that the is was a m inimum requirement and that depart ments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
- 3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of <u>codification</u> as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the norm al procedure for the adoption of acts of the Union.

Given that no changes of substance m ay be made to the instrum ents affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement date d 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake the codification of Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs ³. The new Directiv e will supe rsede the v arious ac ts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

See Annex 3 to Part A of the Conclusions.

Entered in the legislative programme for [...].

See Annex I, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a prelim inary consolidation, in 22 official languages, of Directive 89/396/EEC and the instrum ents amending it, carried out by the Publications Office of the European Union, by m eans of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex II to the codified Directive.

▼ 89/396/EEC (adapted) 2010/0259 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on indications or marks identifying the lot to which a foodstuff belongs

(Codification)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the T reaty on the Functioning of the European Union, and in particular Article ≥ 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:



(1) Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs⁶ has been substantially amended several times⁷. In the interests of clarity and rationality the said Directive should be codified.

♦ 89/396/EEC recital 1 (adapted)

(2) The internal market comprises an area withou t internal frontiers in which the f ree movement of goods, persons, services and capital is ensured.

♦ 89/396/EEC recital 2

(3) Trade in foodstuffs occupies a very important place in the internal market.

OJ C [...], [...], p. [...].

⁶ OJ L 186, 30.6.1989, p. 21.

⁷ See Annex I, Part A.

▶ 89/396/EEC recital 3

(4) Indication of the lot to which a foodstuff belongs meets the need for better information on the identity of products. It is therefore a useful source of information when foodstuffs are the subject of dispute or constitute a health hazard for consumers.

▶ 89/396/EEC recital 4 (adapted)

(5) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation a nd advertising of foodstuffs 8 contains no provisions on indication of lot identification.

♦ 89/396/EEC recital 5 (adapted)

(6) At international level there is a general obligation to provide a reference to the manufacturing or packaging lot of prepackaged foodstuffs. It is the duty ⋈ of the Union ⋈ to contribute to the development of international trade.

♦ 89/396/EEC recital 6 (adapted)

(7) It is therefore advisable to ⊠ provide for ⊠ rules of a general and horizontal nature in order to ⊠ manage ⊠ a common lot identification system.

♦ 89/396/EEC recital 7 (adapted)

(8) The efficiency of ⋈ that ⋈ system depends on its ap plication at the var ious marketing stages. It is nevertheless de sirable to exclude certain products and operations in particular those taking place at the start of the distribution network for agricultural products.

◆ 91/238/EEC recitals 1 and 2 (adapted)

(9) It is necessary to take acc ount of the fact that the im mediate consumption on purchase of certain foodstuffs such as ice cream in individual portions means that indicating the lot directly on the individual packaging would serve no useful purpose. However, it ⊠ should ⊠ be compulsory in the case of ⊠ those ⊠ products to indicate the lot on the combined package.

▶ 89/396/EEC recital 8 (adapted)

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⁸ OJ L 109, 6.5.2000, p. 29.

individual specificity or heterogeneous nature, \boxtimes cannot \boxtimes be considered as forming a homogeneous batch.

♦ 89/396/EEC recital 9 (adapted)

(11) In view of the variety of identification methods used, it ⊠ should be ⊠ up to the trader to determine the lot and to affix the corresponding indication or mark.

◆ 89/396/EEC recital 10 (adapted)

In order to satisfy the information requirements for which it is intended, that indication

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♦ 89/396/EEC recital 11

(13) The date of m inimum durability or 'use by' date, may, in confor mity with Directive 2000/13/EC, serve as the lot identification, provided it is indicated precisely.

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(14) This Directive should be without prejudice to the obligations of the Mem ber States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

♦ 89/396/EEC

Article 1

- 1. This Dire ctive concerns the indic ation which allows ide ntification of the lot to which a foodstuff belongs.
- 2. For the purposes of this Directive, 'lot' means a batch of sales units of a foodstuff produced, manufactured or packaged under practically the same conditions.

Article 2

1. A foodstuff may not be marketed unless it is accompanied by an indication as referred to in Article 1(1).

♦ 89/396/EEC (adapted)

- 2. Paragraph 1 shall not apply:
- (a) to agricultural products which, on leaving the holding are:
 - (i) sold or delivered to temporary storage, preparation or packaging stations;
 - (ii) transported to producers' organisations; or
 - (iii) collected f or imm ediate in tegration into an opera tional prep aration or processing system;

♦ 89/396/EEC

- (b) when, at the point of sale to the ultime at consumer, the foodstuffs are not prepackaged, are pack aged at the request of the purchaser or are perpackaged for immediate sale;
- (c) to packagings or containers, the largest side of which has an area of less than 10 cm²;

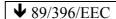
♦ 91/238/EEC Art. 1 (adapted)

(d) to individual portions of ice cream. The indication enabling the lot to be identified ⋈ shall ⋈ appear on the combined package.

▶ 89/396/EEC (adapted)

Article 3

The lot shall be determ ined in each case by the producer, m anufacturer or packager of the foodstuff in question, or the first seller established within the \boxtimes Union \boxtimes .



The indication referred to in Article 1(1) shall be determ ined and affixed under the responsibility of one or other of those operators. It shall be preceded by the letter 'L' except in cases where it is clearly distinguishable from the other indications on the label.

Article 4

When the foodstuffs are prepackaged, the indica tion referred to in Ar ticle 1(1) and, where appropriate, the letter 'L' shall appear on the prepackaging or on a label attached thereto.

When the foodstuffs are not prepackaged, the indication referred to in Article 1(1) and, where appropriate, the letter 'L' shall appear on the packaging or on the container or, failing that, on the relevant commercial documents.

It shall in all cases appear in such a way as to be easily visible, clearly legible and indelible.

Article 5

When the date of minimum durability or 'us e by' date ap pears on the label, the indication referred to in Article 1(1) need not appear on the foodstuff, provided that the date consists at least of the uncoded indication of the day and the month in that order.

Article 6

♦ 89/396/EEC (adapted)

This Direc tive shall a pply without prejudice to the indications laid down by specific provisions \boxtimes of the Union \boxtimes .

The Commission shall publish and keep up to date a list of the provisions in question.



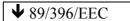
Article 7

Directive 89/396/EEC, as am ended by the Directives listed in Annex I, Part A, is repealed, without prejudice to the obligatio ns of the Member States re lating to the tim e-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the rep ealed Directive shall be c onstrued as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 8

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.



Article 9

This Directive is addressed to the Member States.

Done at [...]

For the European Parliament The President For the Council
The President



ANNEX I

Part A

Repealed Directive with list of its successive amendments

(referred to in Article 7)

Council Directive 89/396/EEC

(OJ L 186, 30.6.1989, p. 21)

Council Directive 91/238/EEC

(OJ L 107, 27.4.1991, p. 50)

Council Directive 92/11/EEC

(OJ L 65, 11.3.1992, p. 32)

Part B List of time-limits for transposition into national law (referred to in Article 7)

Directive	Time-limit for transposition
89/396/EEC	20 June 1990 ^(*)
91/238/EEC -	
92/11/EEC -	

^(*) In acc ordance wi th t he fi rst para graph of A rticle 7 of Di rective 89/396/EEC, as amended by Directive 92/11/EEC:

EN 9

[&]quot;Member States shall, where necessary, amend their laws, regulations or administrative provisions so as to:

authorise trade in products complying with this Directive by not later than 20 June 1990,

prohibit trad e in p roducts not complying with this Di rective with effect from 1 July 1992. However, trade in products placed on the market or labelled be fore that date and not conforming with this Directive may continue until stocks run out."

ANNEX II

CORRELATION TABLE

Directive 89/396/EEC	This Directive
Article 1	Article 1
Article 2(1) and (2)	Article 2(1) and (2)
Article 2(3)	-
Articles 3 to 6	Articles 3 to 6
Article 7	-
- Artic	le 7
- Artic	le 8
Article 8	Article 9
- Annex	I
- Annex	II