



Notification Number: 2004/79/E

Draft Order regulating additional information for the labelling of frozen foodstuffs offered without pre-packaging and establishing the method of analysis for determining the weight of glazing

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Message

Message 002

Communication from the Commission - SG(2004) D/50555

Directive 98/34/EC

Translation of the message 001

Notification: 2004/0079/E

Fristerne indledes ikke - Kein Fristbeginn - Καμμία έναρξη προθεσμίας - Does not open the delays - No abre el plazo - N'ouvre pas de délais - Non fa decorrere la mora - Geen termijnbegin - Nao inicia o prazo - Määräaika ei ala tästä - Inleder ingen frist.

(MSG: 200400555.EN)

1. Structured Information Line

MSG 002 IND 2004 0079 E EN 12-03-2004 E NOTIF

2. Member State

Spain

3. Department Responsible

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4. Notification Number

2004/0079/E – C60A

5. Title

Draft Order regulating additional information for the labelling of frozen foodstuffs offered without pre-packaging and establishing the method of analysis for determining the weight of glazing

6. Products Concerned

The draft Order adds to the information required for frozen foodstuffs sold without pre-packaging at points of sale, making it compulsory to indicate the price of the product by net drained weight and also the percentage of glazing where this exceeds 5 per cent. In addition, it approves the method of analysis for determining the weight of glazing of foodstuffs other than fishery and aquaculture products.

It must be stressed that products labelled as deep-frozen would not be affected by the future Order as these cannot be sold in bulk.

7. Notification Under Another Act

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8. Main Content

In accordance with the circumstances of the sale of frozen foodstuffs sold without pre-packaging (not labelled as deep-frozen foodstuffs), the consumer must receive, on the sales premises, at the same time as particulars on the price per kilogram of the product's net weight, information on both the price per kilogram of the net drained weight and the percentage of glazing of the product, apart from in the case of the exception specified for products with a percentage of glazing less than 5 per cent. This Order adds to the information originally specified in Article 15 of the general regulation on labelling, presentation and advertising of foodstuffs and also, where applicable, in the specific regulations. It also approves the method for determining the weight of glazing of frozen foodstuffs other than fishery and aquaculture products given that the latter are nowadays subject to a method of control similar to that appearing in the draft.

9. Brief Statement of Grounds

As things stand, the indication of the unit price of the drained product is not required for frozen foodstuffs sold without pre-packaging. The consumer therefore does not have, at the time of purchase, sufficient means to determine, check and compare the relationship existing between the final sale price and the price actually paid for the effective quantity of product purchased (net drained weight), given that the weight includes both that of the foodstuff and that of the glazing water.

10. Reference Documents - Basic Texts



A) Although the future Order does not amend any provision in particular, the following national regulations are provided in electronic format (Royal Decree No 1945 of 22 June 1983 regulating offences and penalties with regard to consumer protection and protection of agri-food production and Royal Decree No 1521 of 1 August 1984 approving the technical and health regulation on fishery and aquaculture establishments and products intended for human consumption). These are the only regulations which do not correspond to transpositions of European directives and which are mentioned in the draft's preamble.

11. Invocation of the Emergency Procedure

Yes

12. Grounds for the Emergency

In Spain, Consumer Protection Act No 26 of 19 July 1984 recognises, in Article 2 thereof, as basic consumer rights, among others, the protection of their legitimate economic interests and correct information on various products.

With the fundamental aim of immediately ending a fraudulent practice in the bulk sale of products identified as frozen which is seriously compromising the interests of consumers, the Spanish authorities have decided to publish a Ministerial Order laying down the obligation to indicate, in the retail trade, two aspects which are considered essential for achieving said aim. These aspects relate to the percentage of glazing of the product and the price per kilogram of the net drained weight. It must be stressed that products labelled as deep-frozen would not be affected by the future Order as these cannot be sold in bulk.

With regard to the first piece of information on the percentage of glazing, it must be borne in mind that Article 14 of 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 labelling, presentation and advertising of foodstuffs allows Member States to adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4(2) are to be shown on foodstuffs offered for sale to the ultimate consumer or to mass caterers without pre-packaging or on foodstuffs packaged on the sales premises at the consumer's request or pre-packaged for direct sale.

In addition, the fact that the Community regulations give decisive importance to information on the net drained weight of packaged foodstuffs offered in a covering liquid on its own justifies this information being extended to frozen products without pre-packaging, given the impact on these of the weight of glazing, thereby achieving an equivalent level of protection of consumers' interests when the latter decide to purchase products using this form of sale. The fact can also not be ignored that the knowledge by the purchaser of a more or less abundant presence of glazing on a product will undoubtedly affect their choice and the price which the latter is prepared to pay.

On the national market, following a situation analysis prior to the adoption of any measures, it was calculated through analytical checks that accumulated glazing on fishery products sold without pre-packaging is in the region of an average of 40% (result of calculating glazing formed on a pin ranging from 15.65% to 77.68%). This figure is regarded as too high and sufficiently worrying for legislative mechanisms aimed at achieving a market correction to be established, given that this weight of glazing is not discounted from the price which the consumer is obliged to pay for the product purchased.

Given the above and based essentially on the possibility offered by the Community legislation itself, the indication of the percentage of glazing in the bulk sale of frozen products will become compulsory while allowing, however, a certain flexibility limited to those products for which the percentage of glazing is less than 5%, in which case this information will not need to be included on the board or label.

With regard to the information on the price per kilogram of the net drained weight, it must be borne in mind that Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, in the second subparagraph of Article 4, establishes that "where national or Community provisions require the indication of the net weight and the net drained weight for certain pre-packed products, it shall be sufficient to indicate the unit price of the net drained



weight.” In view of this precise wording, the conclusion can be drawn that this requirement is not applicable in the case of frozen foodstuffs sold without pre-packaging, which is why the consumer does not have, at the time of purchase, sufficient means to determine, check and compare the relationship existing between the final sale price and the price actually paid for the effective quantity of product purchased (net drained weight), given that the weight includes both that of the foodstuff and that of the glazing water.

In accordance with all the circumstances of this particular form of marketing, it is therefore necessary for the consumer to receive, on the sales premises, at the same time as the particulars on the price per kilogram of the product's net weight, information on the price per kilogram of the net drained weight. This is an aspect which, being limited to domestic trade, does not affect cross-border trade.

As a result of the above, if the Commission departments, regardless of the procedure initiated in accordance with Article 19 of 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 labelling, presentation and advertising of foodstuffs, cited in the preamble to the future Order, were to decide to also notify the draft in accordance with Directive 98/34/EEC of the European Parliament and Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, it is requested that the emergency procedure be applied in accordance with the provisions of Article 8 and Article 9(7) of said Directive given that, at this time, there are urgent and reasonable grounds for ending a situation which is seriously harming the interests of consumers and given that the intended measures do not affect cross-border trade.

13. Confidentiality

No

14. Fiscal measures

No

15. Impact assessment

No

16. TBT and SPS aspects

TBT

A) No

B) III) The draft will not have a perceptible effect on international trade.

SPS

A) No

B) I) The draft is not a sanitary or phytosanitary measure in accordance with the Annex to the SPS Agreement.

III) The draft will not have a perceptible effect on international trade.

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