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EUROPEAN COMMISSION

Brussels, 24.9.2010  
COM(2010) 506 final

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)**

## 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 make it clearer and more 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 amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided<sup>1</sup> to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this was a minimum requirement and that departments 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 this<sup>2</sup>, stressing the importance of codification 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 normal procedure for the adoption of acts of the Union.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 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<sup>3</sup>. The new Directive will supersede the various acts incorporated in it<sup>4</sup>; 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.

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<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Entered in the legislative programme for [...].

<sup>4</sup> See Annex I, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Directive 89/396/EEC and the instruments amending it, carried out by the Publications Office of the European Union, by means 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.

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↓ 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 Treaty 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 Committee<sup>5</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

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(1) Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs<sup>6</sup> has been substantially amended several times<sup>7</sup>. In the interests of clarity and rationality the said Directive should be codified.

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↓ 89/396/EEC recital 1 (adapted)

(2) The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.

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↓ 89/396/EEC recital 2

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

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<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> OJ L 186, 30.6.1989, p. 21.

<sup>7</sup> See Annex I, Part A.

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↓ 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.
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↓ 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 and advertising of foodstuffs<sup>8</sup> contains no provisions on indication of lot identification.
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↓ 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.
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↓ 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.
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↓ 89/396/EEC recital 7 (adapted)

- (8) The efficiency of that system depends on its application at the various marketing stages. It is nevertheless desirable to exclude certain products and operations in particular those taking place at the start of the distribution network for agricultural products.
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↓ 91/238/EEC recitals 1 and 2  
(adapted)

- (9) It is necessary to take account of the fact that the immediate 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.
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↓ 89/396/EEC recital 8 (adapted)

- (10) The concept of a lot implies that several sales units of a foodstuff have almost identical production, manufacture or packaging characteristics. That concept should, therefore, not apply to bulk products or products which, owing to their
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<sup>8</sup> OJ L 109, 6.5.2000, p. 29.

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

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↓ 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.

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↓ 89/396/EEC recital 10 (adapted)

(12) In order to satisfy the information requirements for which it is intended, that indication  should  be clearly distinguishable and recognisable as such.

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↓ 89/396/EEC recital 11

(13) The date of minimum durability or 'use by' date, may, in conformity 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 Member 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:

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↓ 89/396/EEC

#### *Article 1*

1. This Directive concerns the indication which allows identification 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).
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↓ 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 for immediate integration into an operational preparation or processing system;

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↓ 89/396/EEC

- (b) when, at the point of sale to the ultimate consumer, the foodstuffs are not prepackaged, are packaged at the request of the purchaser or are prepackaged for immediate sale;
- (c) to packagings or containers, the largest side of which has an area of less than 10 cm<sup>2</sup>;
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↓ 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.
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↓ 89/396/EEC (adapted)

### *Article 3*

The lot shall be determined in each case by the producer, manufacturer or packager of the foodstuff in question, or the first seller established within the ☒ Union ☒.

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↓ 89/396/EEC

The indication referred to in Article 1(1) shall be determined 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 indication referred to in Article 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 'use by' date appears 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*

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↓ 89/396/EEC (adapted)

This Directive shall apply without prejudice to the indications laid down by specific provisions ☒ of the Union ☒.

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



*Article 7*

Directive 89/396/EEC, as amended by the Directives listed in Annex I, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed 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*.

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*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 <sup>(*)</sup>
91/238/EEC	-
92/11/EEC	-

<sup>(\*)</sup> In accordance with the first paragraph of Article 7 of Directive 89/396/EEC, as amended by Directive 92/11/EEC:

"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 trade in products not complying with this Directive with effect from 1 July 1992. However, trade in products placed on the market or labelled before 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	-
-	Article 7
-	Article 8
Article 8	Article 9
-	Annex I
-	Annex II