II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 October 1999

on the national provisions notified by the Kingdom of Denmark concerning the use of sulphites, nitrites and nitrates in foodstuffs

(notified under document number C(1999) 3416)

(Only the Danish text is authentic)

(Text with EEA relevance)

(1999/830/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

Whereas:

THE FACTS

1. Community legislation

(1) Council Directive 89/107/EEC on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption was adopted on 21 December 1988 [1]. Article 3(2) of this Directive provides that the Council shall, acting on a proposal from the Commission under the procedure laid down in former Article 100a of the EC Treaty, adopt a list of additives the use of which is authorised to the exclusion of all others and the list of foodstuffs to which these additives may be added, the conditions under which they may be added and, where appropriate, a limit on the technological purpose of their use.

(2) Pursuant to the above provision, the Commission presented three proposals for specific directives, the first on sweeteners, the second on colours and the third on additives other than colours and sweeteners. These proposals were prepared in accordance with the requirements of Article 6 of Directive 89/107/EEC after consultation with the Scientific Committee for Food (SCF) which had been asked earlier by the Commission to evaluate the safety of additives. The opinions of the SCF, on which the Commission based its proposals for directives, were constantly taken into consideration throughout the discussions on these proposals in the European Parliament and the Council, right up to the adoption of the directives themselves. Three specific directives constituting stages in the comprehensive directive referred to in Article 3 of Directive 89/107/EEC were thus adopted [2]. Only the third of these three Directives is concerned with this Decision, i.e. European Parliament and Council Directive 95/2/EC of 20 February 1995 on food additives other than colours and sweeteners.

2. National provisions

(3) Before the entry into force of Directive 95/2/EC, the Danish legislation consisted of a positive list drawn up in October 1988 determining the conditions of use in foodstuffs of additives, including nitrates, nitrites and sulphites, and Order No 242 of 17 April 1991. Member States were required to bring into force the laws, regulations and administrative provisions necessary to

[1] OJ L 40, 11.2.1989, p. 27. Directive 89/107/EEC as last amended by Directive 94/34/EC (OJ L 237, 10.9.1994, p. 1).

[2] Directive 94/35/EC on sweeteners (OJ L 237, 10.9.1994, p. 3). Directive 94/35/EC as last amended by Directive 96/83/EC (OJ L 48, 19.2.1997, p. 16). Directive 94/36/EC on colours (OJ L 237, 10.9.1994, p. 13). Directive 95/2/EC (OJ L 61, 18.3.1995, p. 1). Directive 95/2/EC as last amended by Directive 98/72/EC (OJ L 295, 4.11.1998, p. 18).

comply with the directive before 25 September 1996. Directive 95/2/EC was transposed in Denmark by Order No 1055 of 18 December 1995 ([3]). This Order of 18 December 1995 was supplemented by a positive list ([4]) determining the conditions of use of additives in foodstuffs. By letter of 15 July 1996, the Danish Government forwarded to the Commission a copy of these national measures transposing Directive 95/2/EC, pointing out, however, that these measures did not concern sulphites, nitrites and nitrates and that it intended, with regard to those additives, to enact national provisions derogating from Directive 95/2/EC in accordance with Article 100a(4) of the EC Treaty. On 23 September 1996, namely two days before the time limit for transposing Directive 95/2/EC, Order No 834 was adopted, supplementing the previous Order No 1055 and the positive list as concerned specifically sulphites, nitrites and nitrates ([5]).

3. **Sulphites**

(4) Directive 95/2/EC on food additives other than colours and sweeteners determines the conditions of use of a certain number of additives belonging to several categories such as preservatives and antioxidants. Article 1(3) of Directive 95/2/EC defines preservatives as 'substances which prolong the shelf-life of foodstuffs by protecting them against deterioration caused by micro-organisms' and antioxidants as 'substances which prolong the shelf-life of foodstuffs by protecting them against deterioration caused by oxidation, such as fat rancidity and colour changes'. For this category of additive, Article 2(1) of the Directive provides that only substances listed in Annex III may be used in foodstuffs for the purposes mentioned in Article 1(3). Article 2(4) provides that the additives listed in Annex III may only be used in the foodstuffs referred to in that Annex and under the conditions specified therein. Annex III, Part B specifies, in the form of a table, the conditions of use for sulphur dioxide (E 220) and sulphites ([6]): sodium sulphite (E 221), sodium hydrogen sulphite (E 222), sodium metabisulphite (E 223), potassium metabisulphite (E 224), calcium sulphite (E 226), calcium hydrogen sulphite (E 227), and potassium hydrogen sulphite (E 228) ([7]):

Foodstuff	Maximum level in relation to the quantity available (mg/kg or mg/l, as appropriate) expressed as SO_2
Burger meat with a minimum vegetable and/or cereal content of 4%	450
Breakfast sausages	450
Longaniza fresca and *butifarra fresca*	450
Dried salted fish of the *Gadidae* species	200
Crustaceans and cephalopods:	
— fresh, frozen and deep-frozen	
Crustaceans, *penaeidae solencerides, Aristeidae* family:	
— up to 80 units	150
— between 80 and 120 units	200
— over 120 units	300
— cooked	50
Dry biscuits	50
Starches (excluding starches for weaning foods, follow-on formulae and infant formulae)	50
Sago	30
Pearl barley	30
Dehydrated granulated potatoes	400
Cereal- and potato-based snacks	50
Peeled potatoes	50
Processed potatoes (including frozen and deep-frozen potatoes)	100
Potato dough	100
White vegetables, dried	400
White vegetables, processed (including frozen and deep-frozen white vegetables)	50
Dried ginger	150
Dried tomatoes	200

([3]) Sundhedsministeriets bekendtgørelse nr. 1055 af 18 December 1995 om tilsætningsstoffrer til levnedsmidler. Sundhedsmin., j.nr. 95-3400-24. Levnedsmiddelstyrelsen, j.nr. 100-0066. Lovtidende A hæfte 198 udgivet den 30 December 1995 s. 5571. GBEK.

([4]) Fortegnelse over tilsætningsstoffer til levnedsmidler-Positivlisten (Levnedsmiddelstyrelsen Sundhedsministeriet). Publikation nr. 231, December 1995.

([5]) Lovtidende A 1996 hæfte 145 udgivet den 23 September 1996 s. 5089. GBEK.

([6]) The term 'sulphite agents' comprises both sulphur dioxide and sulphites. In the present Decision, the term 'sulphites' will be used to describe 'sulphite agents'.

([7]) These extracts from the Directive are reproduced for information purposes. They do not create any right or obligation other than those deriving from the text of the Directive as published in its entirety in the *Official Journal of the European Communities*. Only the latter text is authentic.

Foodstuff	Maximum level in relation to the quantity available (mg/kg or mg/l, as appropriate) expressed as SO_2
Horseradish pulp	800
Onion, garlic and shallot pulp	300
Vegetables and fruits in vinegar, oil or brine (except olives and golden peppers in brine)	100
Golden peppers in brine	500
Processed mushrooms (including frozen mushrooms)	50
Dried mushrooms	100
Dried fruits	
— apricots, peaches, grapes, plums and figs	2 000
— bananas	1 000
— apples and pears	600
— other (including nuts in shell)	500
Dried coconut	50
Candied, crystallised or Glico fruit, vegetables, angelica and citrus peel	100
Jam, jelly and marmalade as defined in Directive 79/693/EEC (except extra jam and extra jelly) and other similar fruit spreads including low-calorie products	50
Jams, jellies and marmalades made with sulphated fruit	100
Fruit-based pie fillings	100
Citrus-juice based seasonings	200
Concentrated grape juice for home wine-making	2 000
Mostarda di frutta	100
Jellying fruit extract, liquid pectin for sale to the final consumer	800
Bottled whiteheart cherries, rehydrated dried fruit and lychees	100
Bottled, sliced lemon	250
Sugars as defined in directive 73/437/EEC, except glucose syrup, whether or not dehydrated	15
Glucose syrup, whether or not dehydrated	20
Treacle and molasses	70
Other sugars	40
Toppings (syrups for pancakes, flavoured syrups for milkshakes and ice cream; similar products)	40
Orange, grapefruit, apple and pineapple juice for bulk dispensing in catering establishments	50
Lime and lemon juice	350
Concentrates based on fruit juice and containing not less than 2,5 % barley (barley water)	350
Other concentrates based on fruit juice or comminuted fruit; *capilé groselha*	250
Non-alcoholic flavoured drinks containing fruit juice	20 (carry-over from concentrates only)
Non-alcoholic flavoured drinks containing at least 235 g/l glucose syrup	50
Grape juice, unfermented, for sacramental use	70
Glucose-syrup-based confectionery	50 (carry-over from the glucose syrup only)
Beer, including low-alcohol and alcohol-free beer	20
Beer, with a second fermentation in the cask	50

Foodstuff	Maximum level in relation to the quantity available (mg/kg or mg/l, as appropriate) expressed as SO_2
Wine	In accordance with Council Regulations (EEC) No 822/87, (EEC) No 4252/88, (EEC) No 2332/92 and (EEC) No 1873/84 and their implementing Regulations.
Alcohol-free wine	200
Made wine	260
Cider, perry, fruit wine, sparkling fruit wine (including alcohol-free products)	200
Mead	200
Fermentation vinegar	170
Mustard, excluding Dijon mustard	250
Dijon mustard	500
Gelatin	50
Vegetable- and cereal-protein-based meat, fish and crustacean analogues	200

(5) The Danish Order of 23 September 1996 introduces an Annex, Annex No 9, into the Order of 18 December 1995, specifying in the form of a table the conditions of use of sulphites other than those covered by Community Regulations on wine [8]:

Foodstuff	Maximum quantity added (mg/kg or mg/l, as appropriate) expressed as SO_2
Garlic pulp	300
Horseradish pulp	600
Apricots	1 000
Granulated potatoes	100
Jams, jellies, marmalades and chestnut puree (covered by Directive 79/693/EEC)	50
Other jams	50
Glucose-syrup-based confectionery	50
Dry biscuits	150
Deep-water fresh lobster	30
Frozen crustaceans	30
Cooked crustaceans	30
Sugar products (covered by Directive 73/437/EEC)	15
Glucose syrup	20
Vinegar with an acid content of 8 %	100
Lime juice	100
Lemon juice	300
Flavoured drinks based on concentrated fruit juice	20
Beer	20
Cider and perry	50
Fruit wine	300

4. **Nitrites and nitrates**

(6) Article 1(3) of Directive 95/2/EC on food additives other than colours and sweeteners provides a definition of preservatives and antioxidants [9]. For this category of additives, Article 2(1) provides that only substances listed in Annex III may be used in foodstuffs for the purposes

[8] These extracts from the Danish legislation are reproduced for information purposes. They do not create any right or obligation other than those deriving from legal texts that have been adopted in law and published in the official Danish publications. Only the latter texts are authentic.

[9] See recital 4 of this Decision.

mentioned in Article 1(3). Article 2(4) provides that the additives listed in Annex III may only be used in the foodstuffs referred to in that Annex and under the conditions specified therein. Annex III, Part C specifies, in the form of a table, the conditions of use for potassium nitrite (E 249), sodium nitrite (E 250), sodium nitrate (E 251) and potassium nitrate (E 252) ([10]):

Potassium nitrite (E 249) and sodium nitrite (E 250)

Foodstuff	Indicative ingoing amount (mg/kg)	Residual amount (mg/kg)
Non-heat-treated, cured, dried meat products	150	50
Other cured meat products and canned meat products *Foie gras, foie gras entier, blocs de foie gras*	150	100
Cured bacon		175

Sodium nitrate (E 251) and potassium nitrate (E 252)

Foodstuff	Indicative ingoing amount (mg/kg)	Residual amount (mg/kg)
Cured meat products Canned meat products	300	250
Hard, semi-hard and semi-soft cheese Dairy-based cheese analogue		50
Pickled herring and sprats		200

(7) The conditions of use for nitrates and nitrites in foodstuffs other than meat products feature in the positive list ([11]), to which the Order of 18 December 1995 refers in its paragraph 11. The Commission has examined these provisions and has decided that they comply with the corresponding provisions of Directive 95/2/EC. The Danish Order of 23 September 1996 introduces an Annex 8 into the Order of 18 December 1995, specifying, in the form of a table, the conditions of use of nitrites and nitrates in meat products ([12]):

([10]) See footnote 7 of this Decision.
([11]) See footnote 4 of this Decision.
([12]) See footnote 8 of this Decision.

Potassium nitrite (E 249) and sodium nitrite (E 250)

Foodstuff	Quantity added (mg/kg)
Non-heat-treated meat-based products derived from whole pieces of meat, including slices of products	60
Bacon of the Wiltshire type and related cuts, including saltcured ham	150
Heat-treated meat-based products derived from whole pieces of meat, including slices of products	60
Rullepølse (rolled meat sausage)	100
Entirely preserved or semi-preserved heat-treated meat-based products derived from whole pieces of meat, including slices of products	150
Bacon and related cuts of the Wiltshire type, including saltcured ham	150
Non-heat-treated meat-based products derived from minced meat	60
Fermented Danish salami	100
Entirely preserved or semi-preserved non-heat-treated meat-based products derived from minced meat	150
Heat-treated meat-based products derived from minced meat	60
Meatballs or liver paté	150
Entirely preserved or semi-preserved heat-treated meat-based products derived from minced meat	150

Sodium nitrate (E 251) and potassium nitrate (E 252)

Foodstuff	Quantity added (mg/kg)
Bacon of the Wiltshire type and related cuts, including saltcured ham	300
Bacon of the Wiltshire type and related cuts, including saltcured ham	300

THE PROCEDURE

(8) When the Council adopted Directive 95/2/EC on 15 December 1994 as an A item, the Danish delegation asked to make a voting declaration, as follows: 'The Danish delegation votes against the adoption of the European Parliament and Council Directive on food additives other than colours and sweeteners. With regard to the use of nitrites/nitrates, sulphites and sodium aluminium phosphates, the Directive does not respond satisfactorily to health requirements, to which the Danish delegation ascribes a crucial importance in provisions regulating food additives. […] In addition, the Danish Government remains firmly convinced that the Scientific Committee for Food ought, in accordance with the declarations put forward by the Commission, to deliver an opinion on nitrites/nitrates and sulphites as soon as possible. The Government will welcome the conclusions of the Scientific Committee and reserves the right to maintain national provisions needed to safeguard human life and health in accordance with Article 100a(4) of the Treaty'. Directive 95/2/EC was signed by the Presidents of the European Parliament and of the Council on 20 February 1995. The Directive provides that Member States are required to bring into force national measures implementing the Directive by 25 September 1996.

(9) The Permanent Representation of Denmark to the European Union addressed a letter to the Secretariat-General of the Commission on 15 July 1996. By means of this letter, the Danish authorities forwarded to the Commission a copy of their national measures to implement Directive 95/2/EC [13]. The Danish authorities pointed out, however, that 'Denmark has not transposed the provisions in Directive 95/2/EC concerning nitrates and nitrites in meat products and concerning sulphites (see comparative table). Reference should be made to the voting declaration made by Denmark when the Directive was adopted. Pursuant to former Article 100a(4) of the Treaty, concerning these substances, the Danish Government intends to apply its national measures, which are justified by the major needs referred to in Article 36. Please refer to the enclosed scientific report' [14]. Given the incomplete character of the file at this stage, the Commission departments did not consider that this letter was a formal notification within the meaning of Article 100a(4). In parallel with this communication, correspondence was exchanged between the competent Danish Minister and the competent Member of the European Commission. The Minister confirmed the Danish position as expressed in the voting declaration. The Commission Member took note of Denmark's intention to ask for a derogation from the Directive under Article 100a(4), adding that the Commission departments would examine this request as soon as they had received the complete, official notification.

(10) The Commission departments were made aware of Order No 834 of 23 September 1996 through a complaint introduced in November 1996. In a letter requesting information addressed to the Danish authorities on 20 January 1997 to follow up this complaint, Commission officials considered that the intention expressed by the Danish authorities in July 1996 to derogate from Directive 95/2/EC had been followed by the later adoption of the Order which was the subject of the complaint. Following informal contacts, the Danish authorities provided a detailed reply on 20 May 1997 to the Commission letter asking for more information. An examination of all the various items of correspondence led Commission officials to regard the letter dated 15 July 1996 from the Danish authorities, when read together with their detailed letter of 20 May 1997, as being equivalent to notifying their legislation on nitrites, nitrates and sulphites, pursuant to Article 100a(4) of the EC Treaty. At the same time, other complaints were reaching the Commission denouncing obstacles to the marketing in Denmark of foodstuffs containing sulphites and meat products containing nitrites and/or nitrates. Further informal talks were held between Commission officials and the Danish authorities in order to discuss the scientific and technical aspects of this dossier. These contacts did not make it possible to reach a common position. The only agreement reached was that the Danish authorities would forward further information to the Commission to bolster the justifications needed to support their request for a derogation. This additional information was addressed to the Commission on 14 July 1998.

(11) The notification file, comprising the memorandum attached to the letter of 15 July 1996 and the additional information last forwarded by the Danish authorities, was then forwarded to the other Member States for their opinions. The Commission received opinions from Germany, France, the Netherlands, Portugal, Finland, Sweden and the United Kingdom.

— Germany points out that the conditions of use of sulphites, nitrites and nitrates in foodstuffs were determined taking account of the evaluations of the SCF. Germany nevertheless feels that it would be useful to invite the SCF to examine the documentation forwarded by the Danish authorities,

— France thinks that, on some points, the Danish legislation appears discriminatory. France recognises that it would be useful to re-examine at Community level the conditions of use of sulphites, nitrites and

[13] See recital 3 of this Decision.

[14] 'Memorandum' on the evaluation of safety and of other aspects of using nitrates and sulphites in 'foodstuffs', hereinafter referred to as 'the memorandum'

nitrates, and believes that it would be preferable to await the results of studies on the consumption of food additives carried out by the Member States before undertaking this re-examination,

— The Netherlands does not support the Danish derogation request, since it thinks that the Danish authorities have not demonstrated that their restrictive measures are particularly justified on account of the eating habits of the Danish population,

— Portugal recalls that the reasons invoked by the Danish authorities in their request for a derogation had already been put forward during the discussions preceding the adoption of Directive 95/2/EC, but had not been accepted by the Council. Portugal recommends waiting for the results of the studies on the consumption of food additives to see whether the conditions of use of additives as provided for in the Directive should be changed,

— Finland understands the concern of the Danish authorities to see the conditions of use of nitrites, nitrates and sulphites in foodstuffs tightened up. Finland points out that Directive 95/2/EC ought to be reviewed on these points, depending on the assessments of the levels of consumption of additives in the Member States, which should be available at the end of 1999,

— Sweden believes that it has no reason to oppose the Danish rules, considering that it will be necessary to review the conditions of use of the additives in question in the Community, and stating that the application of the Danish rules does not appear to hamper trade,

— The United Kingdom affirms that the Danish authorities have not supplied proof that the risk is greater for Danish consumers than for those in the other Member States.

(12) On 1 May 1999, the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed at Amsterdam on 2 October 1997, entered into force. The Treaty of Amsterdam amended substantially the provisions of Article 100a of the Treaty establishing the European Community, replacing paragraphs 3, 4 and 5 of this Article by eight new paragraphs, numbered from 3 to 10. The Article amended in this way became, due to the new numbering of the Articles, Article 95 of the Treaty establishing the European Community. By letter dated 29 July 1999, the Secretariat-General of the Commission informed the Danish authorities that their notification on the use of sulphites, nitrites and nitrates in foodstuffs had been taken into account within the framework of the new provisions of the Treaty.

LEGAL ASSESSMENT

1. **Applicable rules**

(13) The Treaty of Amsterdam does not contain any specific transitional provisions concerning the rules applicable to notifications made before the date of entry into force of this Treaty, such as the Danish notification which is the subject of this Decision. In the absence of specific provisions extending their application, the former provisions of Article 100a(4) of the EC Treaty are considered abrogated from the day of the entry into force of the new provisions (1 May 1999).

(14) The Commission has informed the Kingdom of Denmark that the notification which it submitted under the provisions of the former Article 100a(4) of the EC Treaty has been regarded as maintained within the framework of the new provisions of this Treaty. Indeed, a comparison of the form of the provisions of Article 100a(4) of the EC Treaty and the new provisions of Article 95(4) and (6) of the said Treaty, reveals that these are comparable, where not identical. These new provisions of the Treaty, which have replaced the old provisions of Article 100a(4) since 1 May 1999, thus constitute the law which is applicable when examining this notification.

2. **Consideration of admissibility**

(15) The notification presented by the Danish authorities seeks to obtain authorisation to maintain certain national provisions which are incompatible with Directive 95/2/EC, which constitutes a harmonisation measure adopted on the basis of the former Article 100a (which has since become Article 95) of the EC Treaty. Indeed, although the letters dated 15 July 1996 and 20 May 1997 from the Danish authorities refer to national provisions which postdate the adoption of Directive 95/2/EC, it is necessary to note, as indicated in recital 3, that the national provisions substantially reproduce national rules which existed before its adoption. It must therefore be considered that, in the case in point, the condition provided for in Article 95(4) of the Treaty has been fulfilled, according to which rules notified under this provision are those which a Member State wishes to 'maintain' following the adoption of a harmonisation measure.

(16) In addition, the Commission was informed by the Kingdom of Denmark of its intention to maintain national measures which were incompatible with Directive 95/2/EC before the date on which this Directive was to be implemented. Indeed, with their letter of 15 July 1996, the Danish authorities informed the Commission of their intention to maintain their national provisions derogating from Directive 95/2/EC. This initial letter, supplemented by later communications which clarified its exact meaning, did indeed include a description of the derogating national provisions. In the case in point, therefore, the Commission was aware of the Danish derogation measures as from July 1996, which is before the time limit for the implementation of measures to transpose the Directive.

(17) In the light of the above considerations, the Commission believes that the notification made by the Kingdom of Denmark is admissible under Article 95(4) of the EC Treaty.

3. **Assessment of the merits**

(18) In accordance with the key provisions of Article 95(4) of the EC Treaty, the Commission must ascertain that the national provisions notified are justified by the major needs referred to in Article 30 of the EC Treaty (formerly Article 36 of the Treaty) or which concern the protection of the environment or the working environment. In their letter of notification, the Danish authorities invoke the objective of safeguarding public health. The Commission must therefore verify whether these measures are necessary and proportionate to the objective pursued. When the Commission has concluded that the national notified provisions are justified, it must then verify, pursuant to Article 95(6) EC, whether these measures constitute or not a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market. In addition, it should be pointed out that, from now on, Article 95(4) of the Treaty expressly compels Member States to prove that these conditions are fulfilled in order for a derogation to be authorised.

(a) ***Justification with regard to the major need to protect public health***

(i) *Sulphites*

(19) In their memorandum, the Danish authorities base their argument on framework Directive 89/107/EEC concerning additives to justify their request for a derogation. Annex II of this Directive sets out general criteria for the use of food additives. The Danish authorities criticise the Community legislators for not having followed these criteria to establish the conditions of use of sulphites in foodstuffs when Directive 95/2/EC was adopted.

(20) However, the elements put forward by the Danish authorities with regard to two of the criteria defining the conditions of use of additives, namely technological need and the risk of misleading consumers, have nothing to do with the objective of public health protection as mentioned in Article 30 of the EC Treaty, neither do they refer to the other objectives listed in Article 95(4) of this Treaty. These elements are not in any case pertinent, therefore, if they are compared with the limited cases for justification that have been listed in the abovementioned Article 95(4), and the Commission believes, moreover, that the arguments put forward are not founded.

(21) As far as the technological need is concerned, the Danish authorities insist on the need for a strict framework for the conditions of use of sulphites in foodstuffs and stress the fact that, since the introduction in 1988 in Denmark of a restrictive legislation regarding the use of these additives, several of the foodstuffs mentioned in Directive 95/2/EC have been marketed in Denmark without the addition of sulphites and with no problem for food safety. The Danish authorities quote the example of peeled potatoes, mustard, dried fruits and canned fruits and vegetables. The Commission affirms that Community legislation took proper account of the need for a strict framework for the conditions of use of sulphites in foodstuffs. It specifies, however, that sulphites are authorised as preservatives and/or antioxidants ([15]) by Directive 95/2/EC, and that these additives thus perform a technological function and correspond to a technological need which cannot be satisfied by other economically and technologically usable methods. The Commission believes, moreover, that this argument cannot be invoked for the purposes of public health protection, since it is up to the Danish authorities to establish that the presence of sulphites constitutes a risk to public health.

(22) Turning to the risk of misleading consumers, the Danish authorities question once again the justification for using sulphites established by Directive 95/2/EC, believing that these additives have a bleaching effect on fruit and vegetables, which could possibly be regarded as misleading consumers. The Commission recalls that sulphites are authorised by Directive 95/2/EC as preservatives and/or antioxidants, but not as bleaching agents. The function of antioxidants is to 'protect [foodstuffs] against deterioration caused by oxidation, such as […] colour changes' ([16]). The Commission believes that a function of this kind cannot lead a consumer to be misled as to the nature of the product, given that the product labelling mentions the presence of the additive in question. What is more, this argument could not constitute a justification with regard to the objective of public health protection.

(23) The specific community directives on additives were adopted on the basis of a rigorous safety assessment of all the additives carried out by the SCF so that only those additives whose use in foods was judged risk-free would feature in the specific directives and could hence be used in the Community. Annex II to Directive 89/107/EEC provides that 'to assess the possible harmful effects of a food additive or derivatives thereof, it must be subjected to appropriate toxicological testing and evaluation. The evaluation should also take into account, for example, any cumulative, synergistic or potentiating effect of its use and the phenomenon of human intolerance to substances foreign to the body'. On several occasions the SCF has been called on to carry out a toxicological evaluation of sulphites, the last being in an opinion

([15]) See the definitions of preservatives and antioxidants in recital 4.
([16]) Article 1(3)(b) of Directive 95/2/EC.

delivered on 25 February 1994 ([17]). The Danish authorities are using this opinion as a basis for their argument to condemn the risks of exceeding the acceptable daily intake (ADI) and the risks of allergies connected with the consumption of sulphites.

(24) The evaluation of the safety of an additive may highlight the need to establish an ADI to safeguard public health. This ADI represents the quantity which can be safely ingested on average every day throughout a lifetime. The ADI, which comprises a habitual safety factor of 100, which may be as high as 500, is expressed in milligrams per kilogram of body weight (mg/kg bw). The approval of any food additive and the determination of its conditions of use must therefore take into account the technological need for this additive (the quantity needed to reach the desired effect) while simultaneously taking account of the probable daily intake of the additive in all food products, in order to check that the authorised use does not risk leading to the ADI that has been established for the additive in question being exceeded.

(25) In its opinion of 25 February 1994, the SCF established an ADI of 0,7 mg/kg bw per day for sulphites ([18]), corresponding to 49 mg/day for an adult (0,7 mg/kg × 70 kg) and 21 mg/day for a child (0,7 mg/kg × 30 kg). This value is based on a quantity which has no effect on the gastrointestinal system. The conditions of use of sulphites defined in Directive 95/2/EC may, according to the Danish authorities, lead to the ADI being exceeded. The Danish authorities quote the example of wine, in which sulphites are authorised up to 160 mg/l ([19]). The consumption of two glasses of wine represents an intake of 40 mg of sulphites (25 cl × 160 mg/l) which is not far from the daily admissible intake for an adult. The Danish authorities believe that any additional authorisation of sulphite use will lead to the ADI being exceeded or will increase the risk of its being exceeded.

(26) The Danish authorities are not however seeking to tighten up the conditions of the use of sulphites in wine, but their conditions of use in other foodstuffs, such as those defined in Directive 95/2/EC. To tighten up the conditions of use of sulphites, the Danish authorities have reduced the number of foodstuffs in which sulphites may be used. Thus, the Danish Order of 23 September 1996 retains only 16 categories of foodstuffs in which sulphites may be used out of the 61 categories which are included in Directive 95/2/EC.

(27) The Commission notes that the Danish authorities have not justified the choice which they have made. This choice may appear arbitrary to the extent that the Danish authorities have not indicated how technological need has been demonstrated in some cases and not in others. For example, the Danish authorities prohibit the use of sulphites in mustard, without having provided information on the levels of consumption of mustard in Denmark, which would show the importance of this foodstuff in the eating habits of the population and hence the need to outlaw the use of sulphites in this product in order to reduce the sulphite intake in the diet as a whole. To tighten up the conditions of use of sulphites in some foodstuffs the Danish authorities have lowered the levels of use of sulphites ([20]). The Danish Order of 23 September 1996 determines the added quantity, which is the opposite of Directive 95/2/EC, which determines the maximum quantity available in the finished product ([21]). For example, the use of sulphites in dehydrated potato granules is authorised up to a level of 100 mg/kg in Denmark, while Directive 95/2/EC authorises a total available quantity of 400 mg/kg of sulphites. The Danish authorities have not justified this measure and, more specifically, have not taken account of the fact that the use of sulphites is authorised by Directive 95/2/EC in a certain number of foodstuffs, including dehydrated potato granules, which can only be consumed after cooking or reconstitution. It is precisely these treatments which reduce substantially the sulphite content in foodstuffs when they are consumed. The Commission is therefore inclined to question the choice made by the Danish authorities of the foodstuffs in which sulphites may be used.

(28) The Commission points out that the Community provisions on sulphites are still likely to be the subject of a review. The safeguard clause provided for in Article 4 of Directive 89/107/EEC may lead to the changing of the positive list. Article 7 of Directive 95/2/EC, which imposes on the Member States and on the Commission the tasks of monitoring additive consumption trends, should permit a re-examination of the conditions of use of the additives provided for in the Directive and lead to its adaptation.

([17]) Reports of the SCF, 35th series.

([18]) In its previous opinion on sulphites delivered in 1981, the SCF considered that it was not necessary to set an ADI.

([19]) Directive 95/2/EC in fact refers back to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ L 84, 27.3.1987, p. 1), last modified by Council Regulation (EC) No 1627/98 of 20 July 1998 (OJ L 210, 28.7.1998, p. 8). In its Article 65, this Regulation provides that the total sulphur dioxide content of still wines 'may not exceed […] 160 mg/litre for red wine, 210 mg/litre for white and rosé wine'.

([20]) It is not feasible to lower generally the levels of use of sulphites in foodstuffs. The levels of use which feature in the Directive were calculated to produce the effects which are the intrinsic technological function of these additives; below such levels, the desired effects are not produced.

([21]) See the first footnote of Annex III, Part B, to Directive 95/2/EC. For dry biscuits, for instance, the quantity allowed in the Danish Order is as a result higher than that which features in Directive 95/2/EC. Nevertheless, the Danish authorities do not specify that the maximum level in the finished product is not higher than that set by the Community text.

(29) Apart from the question of exceeding the ADI, the Danish authorities stressed the risk of allergic reactions caused by sulphites which may occur in certain predisposed individuals at low levels of exposure. The Danish authorities refer here directly to the opinion of the SCF of 25 February 1994 to insist on the need to limit the use of sulphites to as small a number of products as possible and to provide information for consumers on the presence of sulphites in foodstuffs.

(30) The Commission acknowledges that sulphites, like a certain number of other additives, may provoke allergic reactions in certain individuals and points out that these risks of allergies have been taken into account in the Community legislation. The Commission believes that the Community legislation provides an appropriate response to the problem of food allergies in general. The Community legislator admits that it is perfectly legitimate to avoid, in so far as it is possible, subjecting such individuals to the risks of allergic reactions. The Community legislator did not nevertheless deem it necessary to outlaw generally the use of these allergenic ingredients, among which additives such a sulphites feature. The solution opted for at Community level is based on informing consumers: individuals who suffer from an allergy attributable to certain ingredients should have the possibility of choosing to consume foodstuffs which do not contain these ingredients. Council Directive 79/112/EEC of 18 December 1978 on the labelling of foodstuffs ([22]) offers them this possibility since it provides for the compulsory listing of ingredients on the labelling of foodstuffs. In particular, pursuant to Article 6 of Directive 79/112/EEC, all additives which serve a technological function must of necessity be mentioned on the labelling. Thus sulphites appear in the list of ingredients. The Commission believes, therefore, that existing Community legislation gives consumers or, when such consumers are children, gives their parents or members of their entourage, such as officials in schools, a guarantee of sufficiently clear and detailed information as regards the presence of sulphites in foodstuffs.

(31) The Commission acknowledges that the labelling does not always indicate the presence of sulphites in certain circumstances. This is the case of sulphites which, having been used in the preparation of foodstuffs, remain present in the finished product without at that stage serving any technological function ([23]). This is also the case of sulphites which are present in a large number of foodstuffs without having been voluntarily added ([24]). These two examples correspond to very low levels of sulphites which may nevertheless cause allergies in some individuals. The Commission notes that the regulation applicable in Denmark does not solve this problem of a lack of labelling of sulphites with such low content levels. Work is in progress at community level to make it systematically compulsory to label allergenic ingredients such as the sulphites quoted in the examples above. Information for consumers on the presence of sulphites could also be incomplete as regards foodstuffs offered for sale which have not been prepackaged. The Commission would point out that Article 12 of Directive 79/112/EEC allows Member States to decide on the manner of labelling such foodstuffs, such as the obligation of affixing descriptions to accompany products sold loose (without prepackaging) and containing certain particulars regarding these products. In order to inform all consumers fully about the content of some foodstuffs, Member States may thus oblige restaurant owners to record on the menu the list of ingredients of the dishes that they offer. The Danish authorities also evoke the case of alcoholic beverages, in whose labelling the list of ingredients does not necessarily appear. The Commission would stress that, pursuant to Article 6(3) of Directive 79/112/EEC, it presented a proposal for a European Parliament and Council Directive amending Directive 79/112/EEC, aimed at making the labelling of ingredients in alcoholic drinks ([25]) compulsory. This proposal for a Directive follows other proposals formulated by the Commission in the past but which led to no tangible result. That is why the Commission did not propose the adoption by some Member States of national legislations making the indication of ingredients compulsory in the labelling of certain alcoholic beverages.

(32) In the light of the information supplied by Denmark, the Commission also examined whether sulphites constituted a particular health problem for the Danish population as compared with the populations of the other Member States. In their memorandum, the Danish authorities did not refer to any epidemiological study, did not offer any data on the prevalence of food allergies nor of allergies to additives nor, more specifically, of allergies to sulphites which would have made it possible to make comparisons with the averages for the European or world population with a view to establishing whether the Danish population is in a specific situation with regard to the prevalence of allergies to sulphites. The Commission has no knowledge of any such studies concerning Denmark or any other Member State or any third country. The Commission also tried to analyse the situation in greater detail by referring to a report issued by the SCF on 22 September 1995 concerning adverse reactions to foodstuffs and the ingredients of

([22]) OJ L 33, 8.2.1979, p. 1. Directive as last amended by Directive 97/4/EC of 27 January 1997 (OJ L 43, 14.2.1997, p. 2).

([23]) Article 6(4)(c)(ii) of Directive 79/112/EEC. Apart from the foodstuffs to which the provisions of Directive 95/2/EC are applicable with respect to sulphites, sulphites may legally be transferred to a certain number of other foodstuffs in accordance with Article 3(1) of this Directive through the application of the carryover principle.

([24]) The second footnote of Annex III, Part B to Directive 95/2/EC specifies for this reason that sulphites whose content does not exceed 10 mg/kg are not considered to be present in the finished product.

([25]) Proposal for a Directive published in OJ C 106, 4.4.1997, p. 5.

foodstuffs ([26]). In this report, the SCF indicates that, according to the available studies carried out throughout the world, 'the prevalence of food allergy is clearly less than 1% in the adult population and may be slightly higher in the case of children'. The SCF mentions several studies which reveal that this prevalence when related more specifically to food additives is less than 0,1% for the population. But it mentions a further crucial element in its report, namely that genetic and environmental factors as well as eating habits may increase the prevalence of food allergies. The SCF quotes the example of regions where allergens are present in the environment. It also quotes the case of regions where allergens are widely consumed. Consequently, the SCF concludes that 'the prevalence of food allergy depends greatly on the geographical region'. The Commission therefore felt bound to check whether the Danish authorities had actually supplied proof of the existence and importance of such factors, linked to genetics, the environment or eating habits. The Commission has not detected anything in the memorandum which throws the existence of any of these factors into relief. Consequently, the information available to the Commission has not made it possible to conclude that the Danish population is in a specific situation compared with the populations of other Member States, notably its immediate neighbours, as regards this question of allergies related to sulphites.

(33) What is more, the Commission finds that the Danish measures as notified are inconsistent with the declared objective of protecting public health. Indeed, the restrictive measures refer only to sulphites. Sulphites, however, are not the only additives which present allergy risks. We may also quote the example, based on the already quoted report by the SCF of 22 September 1995, of benzoates and certain colourings such as azo dyes. The Commission observes that these various sources of allergies have not been subject to the same sort of restrictions as those applicable to sulphites in Denmark.

(34) In the light of these facts, the Commission is led to conclude that the Danish measures, though based on public health considerations, are still not justified by the need to protect public health.

(ii) *Nitrites and nitrates*

(35) The Danish authorities want to maintain their restrictive provisions regarding the use of nitrites and nitrates in meat products. The conditions of use for these additives in cheese and in fish as laid down in Directive 95/2/EC have not been questioned. The Danish Order of 23 September 1996 authorises the use of nitrites in the meat products referred to in Directive 95/2/EC within limits lower, on average, than half those provided for by the Directive, except for bacon of the Wiltshire type and rolled meat sausage (rullepølse), in which levels of nitrites used may be comparable to those provided for by the Directive. The use of nitrates is not authorised by the Order of 23 September 1996 in any of the products referred to in the Directive, except in bacon of the Wiltshire type, at levels close to those provided for in the Directive. The Danish authorities are keen to apply their restrictive measures since they believe that the use of nitrites and nitrates in meat products in the conditions set out in Directive 95/2/EC is not necessary from the technological viewpoint and that these additives present a danger to health ([27]).

(36) Nitrites and nitrates are used in meat products as preservatives ([28]) to inhibit or halt the growth of undesirable micro-organisms such as *Clostridium botulinum*, the bacterium responsible for botulism, or *Staphylococcus aureus*. The Danish authorities do not contest that nitrites and nitrates perform such a technological function, but consider that the levels of use of these additives set out in Directive 95/2/EC exceed what is required to satisfy this technological need. It is all the more important to limit the conditions of use of nitrites and nitrates to what is strictly necessary given that there are particular health risks which are connected with these additives ([29]). The Danish authorities refer to reports by the Danish National Food Agency showing that restrictive conditions of use of nitrites and nitrates in force in Denmark since the adoption of Directive 95/2/EC have not led to cases of botulism among the population. Experiments carried out in Denmark during the production phase and based, in particular, on the application of the HACCP ([30]) system regarding hygiene show that the levels of nitrites and nitrates in meat products provided for in the Danish regulation are sufficient from the technological standpoint.

(37) The Commission does not share the Danish authorities' view and considers that the conditions of use of nitrites and nitrates in meat products defined in Directive 95/2/EC correspond to what is required from the technological viewpoint in order to achieve the desired effects. The Commission observes that the Danish Order of 23 September 1996 authorises the use of nitrites and nitrates in conditions comparable to those of Directive 95/2/EC in two types of meat product: bacon of the

([26]) SCF reports, 37th series.

([27]) This would mean that the first two of the three cumulative conditions for the authorisation of additives set out in Directive 89/107/EEC would not be fulfilled.

([28]) The technological function of these additives is to extend the shelf life of foodstuffs by protecting them from deterioration due to micro-organisms, in accordance with the definition of preservatives given in Article 1(3)(a) of Directive 95/2/EC. The use of nitrites and nitrates also has direct consequences on the determination of the final date for the consumption of a product in that they make it possible to retain the water which the meat product contains naturally in order to preserve its organoleptic qualities, particularly its aromas, colour and texture.

([29]) These risks are described in recitals 35 et seq. of this Decision.

([30]) HACCP denotes the 'Hazard analysis and critical control points' system. See Article 3 of Council Directive 93/43/EEC on the hygiene of foodstuffs (OJ L 175, 19.7.1993, p. 1). The Directive does not however deal with meat products during the stages preceding their sale to the final consumer.

Wiltshire type and rolled meat sausage (rullepølse). The Danish authorities have not explained why these products, which are, moreover, traditional Danish products, require higher levels of nitrites and nitrates than other meat products. The Commission does not see that there are any substantial differences between these categories of products which could justify discriminatory treatment of this kind.

(38) The Commission confirms that the conditions of use of nitrites and nitrates in meat products do not exceed what is required for these additives to perform their technological function. Nitrites and nitrates used in meat products tend to inhibit or halt the growth of undesirable micro-organisms such as *Clostridium botulinum*. Contamination of meat products by this bacterium is likely to occur throughout the food production process, particularly at the carcasse-cutting stage, during the production process, up to and including the consumption stage ([31]). The levels of nitrites and nitrates must therefore be calculated so that these additives fulfil their role as preservatives right up to the last stage of the food production and consumption process. But from the moment that they have been incorporated into meat products, the quantities of nitrites and nitrates diminish considerably over a period of time and transform themselves into nitrosamines. That is why Directive 95/2/EC determines both the indicative ingoing amount and the residual amount. The Danish Order of 23 September 1996 is more restrictive than Directive 95/2/EC: it determines only the quantities of nitrites and nitrates added and these quantities are generally lower than the indicative ingoing amounts defined in the Directive. The Order does not therefore guarantee that the presence of additives in products at the end of the food production process is sufficient to perform their technological function, which is to guarantee the microbiological safety of products.

(39) The Danish authorities base their arguments on the opinions of the SCF of 19 October 1990 ([32]) and 22 September 1995 ([33]) to denounce the serious health risks connected with nitrites and nitrates. The Danish authorities refer in particular to the latter opinion of the SCF which, having been formulated after the adoption of Directive 95/2/EC, might have contained new elements capable of bringing certain aspects of this Directive into question. In this opinion of 22 September 1995, having recalled that, after their addition to a meat product, nitrates transform themselves into nitrites and these nitrites lead to the formation of nitrosamines, the SCF specified that 'there is an obvious correlation between the addition of nitrites for the curing of meat and the formation of volatile nitrosamines'. Nitrosamines are genotoxic, carcinogenic substances. For this type of substance, there is no threshold below which the formation of cancerous cells and tumours can be excluded. It is therefore vital to reduce the exposure to preformed nitrosamines present in foodstuffs by using appropriate technological methods to arrive at the minimum needed to obtain the desired preservative effect and to guarantee microbiological safety.

(40) The Danish authorities are of the opinion that the Community legislation does not meet this health protection objective in that it uses an inappropriate methodology. The Danish authorities point out that there is no relation between the quantity of nitrites and nitrates added and the residues which may be detected in the food product ready for consumption, but that there is an 'obvious correlation' between the quantity added and the formation of nitrosamines. According to the Danish authorities, legislation justified by health reasons ought to be based on limiting the quantity added, and not on limiting the residual amount. But Directive 95/2/EC in fact determines the ingoing amounts only indicatively. If there is a need to establish a limit for the residual amount, there is a simultaneous need to establish a limit for the added quantity. The Danish authorities consider that, quite apart from the methodology followed, the figures for the maximum levels of nitrites and nitrates given in the Directive are too high compared with the minimum needed to obtain the desired preservative effect and to guarantee microbiological safety. The Danish authorities are therefore led to evoke the possibility that the ADI is being exceeded. They do not however give any details, but quote the SCF, which, in its opinion of 22 September 1995, stated that 'if the levels of nitrite residues were as high as those authorised by Directive 95/2/EC, the ADI could be exceeded'.

(41) The Commission notes in the first place that the Danish measures do not appear consistent with the declared objective of health protection in that they do not in any way prevent nitrosamines from forming in products which are widely consumed in Denmark, such as bacon of the Wiltshire type, rolled meat sausage and fermented Danish salami, since the use of nitrites and nitrates is authorised in these products by the Danish Order of 23 September 1996 in conditions which are comparable with those provided for in the Community legislation.

(42) The Commission then examined with particular attention the fundamental questions raised by the Danish authorities. In its opinion of 1990, the SCF had already evoked the connection between nitrites and nitrosamines and had recommended reducing the levels of nitrites and nitrates in foodstuffs as much as possible in order to limit exposure by consumers to preformed nitrosamines. The SCF reported a lack of scientific data concerning the formation of nitrosamines, especially as regards

([31]) Infection caused by a consumer when handling the product.
([32]) Reports of the SCF, 26th series.
([33]) Reports of the SCF, 38th series.

endogenous nitrosamines, the main source of which is the nitrites naturally present in saliva. Directive 95/2/EC was adopted taking into account all these questions raised by the SCF. In its opinion of 1995, the SCF upheld its opinion of 1990. If the memorandum of the Danish authorities had contained new elements which would help evaluations to progress, the SCF would have been informed at once of the dossier. But the Commission is forced to acknowledge that such is not the case of the information communicated by the Danish authorities. The Commission wishes to insist on the responsibility incumbent on a legislator, whether Community or national, with regard to risk management. The Community legislator did fix the levels of nitrites and nitrates in meat products, precisely in order to achieve the desired technological aim and at the same time to attain the objective of public health protection. Since nitrites and nitrates greatly inhibit the proliferation of *Clostridium botulinum*, they do effectively contribute to avoiding cases of botulism. This technological need, which the Danish authorities are not questioning for some meat products, such as bacon of the Wiltshire type, is, in the Commission's view, crucial from the health point of view. The levels of use of these additives have been calculated in order to attain this health objective. It is not however excluded that, in the future, these levels of use could be lowered in Community regulations to take account of possible developments in the HACCP approach with respect to the hygiene of meat products ([34]).

(43) As regards the exceeding of the ADI, the Commission would point out that the SCF has established an ADI of 5 mg/kg bw, expressed as sodium nitrate, for nitrites and an ADI of 0,1 mg/kg bw, expressed as sodium nitrite, for nitrites. The daily admissible intake for an adult is 350 mg (5 mg/kg x 70 kg) in the first case and 7 mg (0,1 mg/kg x 70 kg) in the other. To reach the level of this admissible daily intake, it would be necessary to consume approximately 1 400 g of prepared meat products (350 mg/kg/250 mg/kg) every day in the first case and 40 g of bacon (7 mg/kg/175 mg/kg) in the other. The figures for the nitrates exclude a priori any risk of exceeding the ADI ([35]). As far as nitrites are concerned, the Danish authorities put forward no data on the levels of consumption of meat products containing nitrites in Denmark. Such data might have justified the restrictive measures and even led to the adaptation of Community legislation on this point. But the Danish authorities have not mentioned any study in their memorandum enabling them to make comparisons with average data concerning the European or world population, with a view to determining whether the Danish population is in a specific situation with regard to the danger which the use of nitrites and nitrates could represent. In this context the Commission would point out that the review of Directive 95/2/EC could be initiated in several ways. The safeguard clause provided for in Article 4 of Directive 89/107/EEC might lead to the amendment of the positive list. Article 7 of Directive 95/2/EC, which makes it compulsory for Member States and the Commission to monitor trends in the consumption of additives ought to permit a reexamination of the conditions of use of the additives provided for in the Directive. Directive 95/2/EC could be reviewed as a result of any new information provided, such as a precise study on the levels of consumption of foodstuffs likely to contain nitrites and nitrates and on the possible need to impose further restrictions on the conditions of use of nitrites in order for consumers not to exceed the ADI. This is not however the case of the information communicated by Denmark to support its request for a derogation. What is more, so far no other Member State has forwarded any such new information to the Commission.

(44) The Commission therefore considers that, while the Danish measures are aimed at protecting public health, they are excessive in relation to this aim.

(b) ***Absence of arbitrary discrimination***

(45) Since the measures in question are not justified by the need to protect public health, the Commission does not have to verify whether this condition is satisfied.

(c) ***Absence of a disguised restriction on trade between Member States***

(46) Since the measures in question are not justified by the need to protect public health, the Commission does not have to verify whether this condition is satisfied.

(d) ***Absence of an obstacle to the functioning of the internal market***

(47) Since the measures in question are not justified by the need to protect public health, the Commission does not have to verify whether this condition is satisfied.

CONCLUSION

(48) In the light of the above considerations, the Commission concludes that the national provisions notified by the Kingdom of Denmark pursuant to the former Article 100a(4) of the EC Treaty, concerning the conditions of

([34]) See note 33 of this Decision. Work is in progress at Community level to examine the possibility of developing the HACCP approach with regard to foodstuffs of animal origin which are not covered by Directive 93/43/EEC.

([35]) The conditions of use of nitrates were determined taking account of the fact that their use as additives in foodstuffs contributes only a small proportion of the total intake, most of which comes from vegetables and water.

use of sulphites, nitrites and nitrates in foodstuffs, though pursuing the objective of protecting public health, which is one of the major needs referred to in Article 30 of the EC Treaty (formerly Article 36 of the Treaty), are not justified since they are not strictly necessary for achieving that objective. The Commission therefore has reason to consider that the national provisions notified cannot be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Danish national provisions derogating from Directive 95/2/EC notified pursuant to the former Article 100a(4) of the EC Treaty and examined by the Commission pursuant to Article 95(4) and (6) are not approved.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 26 October 1999.

For the Commission

Erkki LIIKANEN

Member of the Commission