COMMISSION

COMMISSION DECISION

of 8 January 2008

concerning a draft Regulation from the Hellenic Republic on the labelling of bakery products from frozen dough

(notified under document number C(2007) 6750)

(Only the Greek text is authentic)

(2008/35/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 [1], and in particular Articles 19 and 20 thereof,

Whereas:

(1) In accordance with the procedure provided for in Article 19(2) of Directive 2000/13/EC, the Greek authorities notified to the Commission on 15 May 2007 a draft Regulation on specific provisions on the compulsory labelling of bakery products from frozen dough.

(2) Pursuant to the notified draft, bakery products from frozen dough should be labelled with the date of production and the origin of the frozen dough.

(3) In accordance with the provisions of Article 19(2) of Directive 2000/13/EC, the Commission consulted Member States via the Standing Committee on the Food Chain and Animal Health.

(4) Directive 2000/13/EC contains provisions on the labelling of the origin of foodstuffs (Article 3(1) points 7 and 8) and of the types of date indications for foodstuffs (Article 9(5)). According to these rules, particulars of the place of origin or provenance of a foodstuff shall only be compulsory on the labelling of foodstuff, where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff (Article 3(1) point 8).

(5) A mandatory labelling of the country of origin of the frozen dough would be an extra burden for those food business operators that produce bread with dough from another EU Member State and therefore constitute a potential barrier to the free movement of goods and endangers the smooth functioning of the single market. The cases where non-harmonised national provisions governing the labelling and presentation of certain foodstuffs or foodstuffs in general may be acceptable are listed in an exhaustive manner in Article 18(2) of Directive 2000/13/EC. Apart from cases relating to the protection of public health, such measures may be admissible only where justified for the prevention of fraud or the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and prevention of unfair competition.

(6) The grounds of the Greek notification do refer to hygienic reasons and thus to the protection of public health. The Greek notification does not take into account that there is an established basis of common rules on food hygiene, especially Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs [2]. The Greek notification does not provide any evidence that the notified measures are necessary to attain a higher level of public health protection.

[1] OJ L 109, 6.5.2000, p. 29. Directive as last amended by Commission Directive 2007/68/EC (OJ L 310, 28.11.2007, p. 11).

[2] OJ L 139, 30.4.2004, p. 1. Corrected version in OJ L 226, 25.6.2004, p. 3.

(7) According to Article 9(5) dash 5 of Directive 2000/13/EC, an indication of the durability date for bakers' or pastry cooks' wares shall not be required, subject to Community provisions imposing other types of date indication. Community law does not provide any rule on any other type of date indications but the exemption for bakers' wares for the indication of the durability date.

(8) A compulsory labelling of the production date of the frozen dough would concern in particular products from other Member States that only can be marketed after having undergone a preservation procedure like freezing. This obligation therefore constitutes a potential barrier to the free movement of goods and endangers the smooth functioning of the single market.

(9) According to the case law the competent national authorities have to proof, that the draft measures are on the one hand necessary in order to achieve the objective they aim for and that the draft measures comply on the other hand with the principle of proportionality (cf. ruling of 30 November 1983, *Van Bennekom*, Case 227/82, ECR 1983, p. 03883, paragraph 40; ruling of 13 March 1997, *Morellato*, Case C-358/95, ECR 1997, p. I-01431, paragraph 14, and ruling of 8 May 2003, *ATRAL*, Case C-14/02, ECR 2003, p. I-4431, paragraph 67).

(10) The notified measures applied unilaterally and indiscriminately by the Hellenic Republic would very likely hinder intra-Community trade to a disproportionate extent. It would oblige producers or operators processing dough from other Member States to provide specific labelling.

(11) The Commission will be continuing discussions with the Member States with regard to origin labelling of foodstuffs.

(12) In light of these observations, the Commission has delivered a negative opinion pursuant to Article 19(3) of Directive 2000/13/EC.

(13) The measures provided for in this Decision are in line with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

The Hellenic Republic is required to refrain from adopting its draft Decree on the labelling of bakery products from frozen dough.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 8 January 2008.

For the Commission
Markos KYPRIANOU
Member of the Commission