II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/88/EEC

of 26 October 1992

amending Directive 74/63/EEC on undesirable substances and products in animal nutrition

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas experience has demonstrated that there are grounds for amending certain provisions of Directive 74/63/EEC (4);

Whereas, moreover, the restriction of the scope of Directive 74/63/EEC to animals belonging to species normally nourished and kept or consumed by man does not rule out the possibility that feedingstuffs containing undesirable substances or products might be distributed to animals living freely in the wild;

Whereas it is accordingly advisable that the definition of the term 'animals' should in future cover species living freely in the wild in order that all feedingstuffs conform to the requirements prescribed by Directive 74/63/EEC;

Whereas Directive 74/63/EEC must apply to raw materials and feedingstuffs from the date of their introduction into the Community; whereas it should therefore be stipulated that the maximum levels of undesirable substances or products set apply in general from the date on which the raw materials and feedingstuffs are put into circulation, including all stages of marketing, and in particular from the date of their importation;

Whereas it is advisable to establish the principle that raw materials used in animal nutrition must be sound, genuine and of merchantable quality; whereas, therefore, it is necessary to prohibit the use or putting into circulation of raw materials which, because they contain too high a level of undesirable substances or products, result in the maximum levels for compound feedingstuffs laid down in Annex I to the Directive 74/63/EEC being exceeded;

Whereas Directive 74/63/EEC set maximum levels for certain substances or products undesirable in certain raw materials; whereas, for such a restriction to have full effect, namely a reduction in the total quantity of undesirable substances ingested by animals, it is advisable to state clearly that the measure applies to all consignments immediately they are put into circulation in the Community; whereas it is therefore forbidden to mix severely contaminated consignements with other consignments of raw material or with consignemnts of feedingstuffs in order to comply: with the maximum levels set by the Directive 74/63/EEC;

Whereas experience has shown that the information system introduced by the Directive 74/63/EEC within the official control departments should be improved so that Member States are also informed by operators of cases where the provisions of the Directive are not complied with; whereas, in such cases, Member States will be required to take all measures to enable use in animal

(1) OJ No C 288, 6. 11. 1991, p. 6 and OJ No C 260, 9. 10. 1992, p. 10.
(2) OJ No C 241, 21. 9. 1992, p. 222.
(3) OJ No C 79, 30. 3. 1992, p. 17.
(4) OJ No L 38, 11. 2. 1974, p. 31. Last amended by Commission Directive 92/63/EEC. (OJ No L 221, 6. 8. 1992, p. 49).

nutrition to be excluded; whereas Member States will, if appropriate, be obliged to ensure that the effected consignments of raw materials or feedingstuffs is destroyed, if this has been decided by its owner;

Whereas the Community should apply to exporters to third countries at least the same rules on health as apply within the Community,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 74/63/EEC is hereby amended as follows:

1. Article 2 (f) shall be replaced by the following:

'(f) animals: animals belonging to species normally nourished and kept or consumed by man as well as animals living freely in the wild in cases where they are nourished with feedingstuffs;'.

2. The following Article shall be inserted:

'Article 2a

1. Member States shall prescribe that raw materials may only be put into circulation in the Community if they are sound, genuine and of merchantable quality.

2. In particular, and subject ot the provisions in Part A of Annex II, raw materials cannot be considered as sound, genuine and of merchantable quality if the level of undesirable substances or products is so high as to make it impossible to respect the maximum levels fixed for compound feedingstuffs in Annex I.'

3. In Article 3a (1) and (2) the word 'marketed' shall each time be replaced by the words 'put into circulation'.

4. The following Article shall be added:

'Article 3c

Member States shall prescribe that a consignment of a raw material detailed in Part A of Annex II with a content of an undesirable substance or product higher than the maximum level fixed in column 3 of the abovementioned Annex must not be mixed with other consignments of raw material or with consignments of feedingstuffs.'

5. In Article 7 the words 'marketing restrictions' shall be replaced by the words 'restrictions on their circulation'.

6. Article 8 shall be amended as follows:

(a) the following paragraph shall be inserted:

'2a. Member States shall prescribe that where an operator (importer, producer, etc.) or a person who, by virtue of his professional activities, possesses, or has possessed, or has had direct contact with a consignment of raw materials or of feedingstuffs and has knowledge to the effect that:

— the consignment of raw materials is unsuitable for any use in animal feedingstuffs because of contamination by an undesirable substance or product covered by this Directive, and therefore does not meet the provisions of Article 2a (1) and consequently constitutes a serious risk for animal and public health;

— the consignment of feedingstuffs does not meet the provisions of Annex I, and therefore constitutes a serious risk for animal and public health;

such a person or operator shall immediately inform the official authorities even if the destruction of the consignment is envisaged.

After verifying the information received, Member States shall ensure that, in the case of a contaminated consignment, the measures necessary are taken to ensure that the consignment is not used in animal nutrition.

Member States shall ensure that the final destination of the contaminated consignment, including possible destruction, cannot have harmful effects on public or animal health or on the environment.'

(b) Paragraph 3 shall be replaced by the following:

'3. If a consignment of raw material or a consignment of feedingstuffs is likely to be sent to a Member State after it has been judged not to comply with the provisions of this Directive on account of an excessive content of undesirable substances or products in another Member State, the latter Member State shall immediately give the other Member States and the Commission any useful information concerning that consignment.'

7. Article 11 shall be replaced by the following:

'Article 11

1. The Member States shall apply at least the provisions of this Directive to feedingstuffs intended for export to third countries.

2. Paragraph 1 does not affect the right of Member States to allow the re-exportation to the exporting third country of consignments of feedingstuffs which do not fulfil the requirements of this Directive.'

Article 2

Member States shall bring into force not later than 31 December 1993 the laws, regulations and administrative provisions necessary to comply with the provisions of this Directive. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Member States shall communicate to the Commission the texts of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 26 October 1992.

For the Council

The President

J. GUMMER