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COMMISSION REGULATION (EC) No 577/97

of 1 April 1997

laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products

(OJ L 87, 2.4.1997, p. 3)

Amended by:

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		No	page	date
►**M1**	Commission Regulation (EC) No 1278/97 of 2 July 1997	L 175	6	3.7.1997
►**M2**	Commission Regulation (EC) No 2181/97 of 3 November 1997	L 299	1	4.11.1997

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laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2991/94 of 5 December 1994 laying down standards for spreadable fats [1], and in particular Article 8 thereof,

Having regard to Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in the marketing of milk and milk products [2], as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 4 (2) thereof,

Whereas Article 2 (2) of Regulation (EC) No 2991/94 provides that the sales descriptions of the products referred to in Article 1 thereof must be those indicated in the Annex thereto; whereas there are exceptions to that rule; whereas the rule does not apply in particular to designations where the exact nature of the product is clear from traditional usage and/or where the designation is clearly used to describe a characteristic quality of the product; whereas certain detailed rules should be laid down for the application of that provision;

Whereas Article 1 (3) of Regulation (EC) No 2991/94, which stipulates that that Regulation is to be applied without prejudice in particular to Regulation (EEC) No 1898/87, must be complied with; whereas the aim of the two Regulations is essentially the same, namely to avoid any confusion in the mind of the consumer as to the true nature to the products in question; whereas, therefore, in order to ensure the consistency of Community legislation, the detailed rules for applying Regulations (EC) No 2991/94 and (EEC) No 1898/87 regarding the use of the designation 'butter' should be laid down in a single text;

Whereas, in order to identify clearly the scope of the derogations referred to in Regulation (EC) No 2991/94, an exhaustive list of the designations concerned should be drawn up, together with a description of the products to which they refer;

Whereas the first criterion of the derogation provided for in the first indent of the third subparagraph of Article 2 (2) of Regulation (EC) No 2991/94 relates to the traditional character of a designation; whereas such traditional character may be considered proven where the designation has been used for a period preceding the date of entry into force of this Regulation at least equal to the duration usually attributed to a human generation; whereas the derogation must be limited to those products for which the designation has actually been used so that such traditional character is not lost;

Whereas the second criterion of the abovementioned derogation relates to the use of the designations in the Annex to Regulation (EC) No 2991/94 to describe a characteristic feature of the marketed products; whereas in this case the exception relates logically to products which are not listed as such in that Annex;

Whereas that derogation should be restricted to products currently marketed; whereas the Member States have forwarded to the Commission the list of products which they consider to meet the criteria of that derogation within their territory;

Whereas Commission Decision 88/566/EEC of 28 October 1988 listing the products referred to in the second subparagraph of Article 3 (1) of Council Regulation (EEC) No 1898/87 [3] already contains exceptions with regard to the designation 'butter'; whereas account should be taken of them;

(1) OJ No L 316, 9. 12. 1994, p. 2.
(2) OJ No L 182, 3. 7. 1987, p. 36.
(3) OJ No L 310, 16. 11. 1988, p. 32.

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Whereas, in the Community list provided for in Regulation (EC) No 2991/94, the designations of the products in question should be listed only in the Community language in which those designations may be used;

Whereas the designations on the labelling of foodstuffs containing products as defined in the Annex to that Regulation or concentrated products as defined in the second indent of the third subparagraph of Article 2 (2) may refer to the corresponding designations given in that Annex, provided that Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs ([1]), as last amended by Directive 97/4/EC ([2]), is complied with; whereas there is therefore no need for the list of the abovementioned exceptions to mention such foodstuffs;

Whereas, in view of present technical conditions, any obligation to indicate the exact fat content without any tolerance would involve considerable practical difficulties; whereas, therefore, certain special rules should be laid down in that regard;

Whereas Regulations (EC) No 2991/94 and (EEC) No 1898/87 cover composite products of which an essential part is butter; whereas, therefore, those products should be dealt with consistently, whilst adhering to the approach employed in Article 2 (3) of Regulation (EEC) No 1898/87; whereas the scope of the abovementioned Article 2 (3) should therefore be defined more clearly with regard to composite products of which an essential part is butter, by laying down an objective criterion for determining whether an essential part of the composite products is actually butter and whether the designation 'butter' is therefore justified; whereas a minimum milk-fat content of 75 % in the final product seems to be the most appropriate criterion;

Whereas provision should nevertheless be made for a special procedure allowing the Member States and the Commission to assess, on application by the parties concerned, whether for technical and/or organoleptic reasons, in the case of a product of which an essential part is butter, the minimum fat content of the final product must be lower than 75 % and to authorize the use of the designation 'butter' in that case;

Whereas the introduction of the rules for applying Article 2 (3) of Regulation (EEC) No 1898/87 to composite products of which an essential part is butter calls for certain transitional provisions to allow operators a certain period in which to adapt to the rules;

Whereas the second subparagraph of Article 2 (2) of Regulation (EC) No 2991/94 provides that the sales descriptions listed in the Annex thereto are to be reserved for products which meet the criteria set out in that Annex; therefore, trade marks which employ those designations may continue to be used in the future solely for products which meet those criteria;

Whereas actual market conditions will show whether or not it will be appropriate to lay down measures at a later date with regard to composite products of which the main ingredient is margarine or composite fats;

Whereas the management committees concerned have not delivered an opinion within the time limit laid down by their chairmen,

HAS ADOPTED THIS REGULATION:

Article 1

1. The list of products covered by the derogation provided for in the first indent of the third subparagraph of Article 2 (2) of Regulation (EC) No 2991/94 shall be as shown in the Annex hereto.

2. The designations listed in the Annex to Decision 88/566/EEC which contain the world 'butter' in one of the Community languages shall not be affected by this Regulation.

([1]) OJ No L 33, 8. 2. 1979, p. 1.
([2]) OJ No L 43, 14. 2. 1997, p. 21.

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Article 2

1. The indication of the fat content as provided for in Article 3 (1) (b) of Regulation (EC) No 2991/94 shall comply with the following rules:

(a) the average fat content shall be declared without the use of decimals;

(b) the fat content of an individual sample may not differ by more than one percentage point from the percentage declared;

(c) in all cases, individual samples must comply with the limits laid down in the Annex to Regulation (EC) No 2991/94.

2. Notwithstanding points (a) and (b) of paragraph 1, the minimum fat content declared in respect of the ►**M1** products referred in Parts A (1), B (1) and C (1) of the Annex ◄ to Regulation (EC) No 2991/94 shall correspond to the minimum fat content of the product.

▼M2

3. The procedure to be applied as from 1 July 1998 to verify compliance with paragraph 1 shall be as set out in Annex II.

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Article 3

The designation 'butter' may be used only for composite products of which an essential part within the meaning of Article 2 (3) of Regulation (EEC) No 1898/87 is butter if the end product contains at least 75 % milk fat and has been manufactured solely from butter within the meaning of Part A (1) of the Annex to Regulation (EC) No 2991/94 and the other added ingredient(s) mentioned in the description.

Article 4

1. Any manufacturer may submit a reasoned request to the competent authorities of the Member State in which he has his registered office with a view to obtaining authorization to use the designation 'butter' for a composite product of which an essential part is butter but of which the milk-fat content does not comply with the minimum laid down in Article 3 for technical and/or organoleptic reasons.

The Member State shall consider such requests and forward them to the Commission, together with the documents on which it has based its decision, where it deems that the requirements set out in the first subparagraph are met.

2. Notwithstanding the procedure set out in the first subparagraph of paragraph 1, Member States may, in the six months following the entry into force of this Regulation and of their own initiative, forward requests to the Commission together with the documents upon which they have based their opinion that the requirements set out in the first subparagraph of paragraph 1 are met, in order to obtain the authorization mentioned in that subparagraph. Such requests may only be presented in respect of products being marketed in the requesting Member State at the date of the entry into force of this Regulation.

3. The Commission shall, as soon as possible, consider requests as referred to in paragraphs 1 and 2 and shall decide, in accordance with the procedure laid down in Article 30 of Council Regulation (EEC) No 804/68 [1], whether they may be accepted. The Commission may take any steps necessary to obtain information on the technical aspects of the requests. The Commission's decision to grant authorization shall be published in the *Official Journal of the European Communities*.

4. Authorizations as provided for in paragraph 3 shall also be valid for the same products produced by other manufacturers.

[1] OJ No L 148, 28. 6. 1968, p. 13.

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Article 5

Composite products using the designation 'butter' in accordance with Article 2 (3) of Regulation (EEC) No 1898/87 and marketed at the time of entry into force of this Regulation which do not comply with the provisions of Articles 3 and 4 of this Regulation may continue to be marketed using the designation 'butter' for two years following the date of the latter's entry into force.

▼M1

Article 5a

Where a trade mark registered in Austria, Finland or Sweden prior to 1 January 1995 and using the sales description 'butter' referred to in Part A (1) of the Annex to Regulation (EC) No 2991/94 was applied prior to that date to products not complying with Part A (1) of the Annex, it may continue to be applied to such products for a transitional period of 10 years from the abovementioned date.

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Article 6

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

However, Article 2 shall apply at the same time as the method provided for in paragraph 3 thereof.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX ►M2 *I* ◄

I.	*(Spanish)*	‘Mantequilla de Soria’ or ‘Mantequilla de Soria dulce’, ‘Mantequilla de Soria azucarada’: for a sweetened aromatized milk product with a minimum milk-fat content of 39 %
II.	*(Danish)*	
III.	*(German)*	— ‘Butterkäse’: for cow’s milk cheese which has a semi-soft, fatty consistency and a minimum milk-fat content in the dry matter of 45 % — ‘Kräuterbutter’: for a butter-based preparation containing herbs and a minimum milk-fat content of 62 % — ‘Milchmargarine’: for margarine containing at least 5 % whole milk, skimmed milk or other suitable milk products
IV.	*(Greek)*	
V.	*(English)*	— ‘Brandy butter’, ‘Sherry butter’ or ‘Rum butter’: for a sweetened, alcoholic product with a minimum milk-fat content of 34 % — ‘Buttercream’: for a sweetened product with a minimum milk-fat content of 22,5 %
VI.	*(French)*	‘Beurre d’anchois, de crevettes, de langouste, de homard, de crabe, de langoustine, de saumon, de saumon fumé, de coquille Saint-Jacques, de sardine’: for products containing sea foods and a minimum milk-fat content of 10 %
VII.	*(Italian)*	
VIII.	*(Dutch)*	
IX.	*(Portuguese)*	
X.	*(Finnish)*	‘Munavoi’: for a product containing eggs and a minimum milk-fat content of 35 %
XI.	*(Swedish)*	— ‘flytande margarin’: for a product of a liquid consistency containing at least 80 % vegetable fats such as margarine yet whose composition is such that the product is not spreadable — ‘messmör’: for a whey-based milk product, whether or not sweetened, of a minimum milk-fat content of 2 % — ‘vitlökssmör’, ‘persiljesmör’ or ‘pepparrotssmör’: for a product containing foodstuffs having a flavouring effect and of a minimum milk-fat content of 66 %

▼**M2**

ANNEX II

Verification of the declared fat content of spreadable fats

Five samples are to be taken randomly from the batch to be checked and analysed. The following two procedures are applied:

A. The arithmetic mean of the five results obtained is compared with the declared fat content. The declared fat content is deemed to comply where the arithmetic mean fat content does not differ by more than 0,5 percentage points from the declared fat content.

B. The five individual results are compared with the tolerance (2 %) shown in Article 2 (1) (b).

   If the difference between the maximum value and the minimum value of the five individual results is less than or equal to 2 %, the requirements of Article 2 (1) (b) are deemed to be met.

Where compliance with the conditions set out under A and B is established, the batch being checked is deemed to comply with the requirements of Article 2 (1) (a) to (c), even where, under the combined test procedure, one of the five values falls outside the tolerance range of ± 1 %.