

Press and Information Division

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Judgment of the Court in Case C-3/00

*Kingdom of Denmark v Commission*

**THE COURT ANNULS THE COMMISSION'S DECISION REFUSING  
AUTHORISATION FOR DANISH PROVISIONS STRICTER THAN COMMUNITY  
PROVISIONS ON THE USE OF NITRATES AND NITRITES AS FOOD  
ADDITIVES.**

*A Member State may maintain existing national provisions and derogate from a harmonisation measure when it considers that the risk to public health is greater than that found by the Community legislature at the time the harmonisation measure was adopted.*

For the first time, the Court has been called upon to rule in an action by a Member State contesting a refusal by the Commission to authorise it to maintain national measures which derogate from a harmonisation directive. The Treaty allows the Member States to maintain or to introduce national measures which derogate from a harmonisation measure for reasons relating, *inter alia*, to the protection of public health.

A Council framework directive of 1988 on food additives provides that, in order to be included in the list of authorised additives, they must be essential for the purpose of achieving the desired objective and must not present any risk to health. If there is any doubt as to the risk to health posed by an additive, the Scientific Committee for Food (SCF) must be consulted. A 1995 directive relates to food additives other than colours and sweeteners. Denmark had voted against the directive at the time of its adoption, on the ground that it did not meet health requirements as regards, in particular, nitrites, nitrates and sulphites.

Sulphites are preservatives used, *inter alia*, in wine, jam, pastries and dried fruit. Ingested in large amounts, they can cause lesions in the digestive tract and provoke severe allergic reactions in asthmatics.

Nitrites and nitrates also have a preservative effect and are used, *inter alia*, in meats. They inhibit the growth of bacterial pathogens such as *Clostridium botulinum*, which is responsible for botulism, and it is recognised that they can cause cancer.

Denmark requested authorisation to maintain its provisions concerning those additives. In 1999, the Commission decided not to authorise the national provisions, which were considered disproportionate in relation to the objective of protecting public health. Denmark then requested the Court of Justice to annul that decision.

The Court first points out that the EC Treaty provides harmonisation measures for the purpose of establishing the internal market. In that context, the Treaty also lays down an approval procedure for derogating national provisions, whilst distinguishing between pre-existing and new national provisions. The former may be justified on grounds of the major needs referred to in Article 30 EC or the protection of the environment or the working environment, because they are known to the Community legislature at the time harmonisation takes place. By contrast, a Member State which wishes to adopt national provisions subsequent to harmonisation must provide new scientific evidence and demonstrate the existence of a problem specific to the Member State concerned which arose after the adoption of the harmonisation measure.

The Court observes that the maintenance of the national provisions at issue was not considered to be justified by a problem specific to Denmark or on new scientific evidence. Nevertheless, the Court considers that **a Member State which asks to maintain derogating national provisions may argue that its assessment of the risk to public health is different from that made by the Community legislature.** In the light of the uncertainty inherent in assessing public health risks, divergent assessments of those risks can legitimately be made, without necessarily being based on new or different scientific evidence. The Court **considers that a Member State may ask to maintain derogating national provisions which already exist on the basis of an assessment of the risk to public health different from that accepted by the Community legislature at the time it adopted the harmonisation measure.** The Member State must prove that the derogating national provisions ensure a level of health protection which is higher than the Community harmonisation measure and that they do not go beyond what is necessary to attain that objective.

In its consideration of the Community harmonisation measures for **sulphites**, the Court takes the view that they appear to be sufficient in the light of the 1994 opinion by the SCF and that the Commission's decision not to authorise the stricter Danish system does not contain any error of fact or assessment in that regard.

None the less, as regards **nitrites and nitrates**, the Court finds that the Commission decision did not take sufficient account of the 1995 opinion by the SCF, which called into question the maximum amounts of nitrites set under the 1995 directive.

The Court therefore holds that, by failing to take into account that opinion when assessing the Danish provisions on nitrites and nitrates, the Commission's decision is **unlawful** and must be **annulled**.

*Unofficial document for media use; not binding on the Court of Justice.*

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**[www.curia.eu.int](http://www.curia.eu.int)**  
at approximately 3 pm today.*

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