COUNCIL DIRECTIVE

of 10 October 1978

amending for the sixth time Directive 73/241/EEC on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption

(78/842/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 100 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 paragraph 2 (a) of Annex II to Council Directive 73/241/EEC of 24 July 1973 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption (4) as last amended by Directive 78/609/EEC (5), authorizes the new Member States to maintain until 31 December 1977, in the case of products marketed on their territories, national laws existing on the date of their accession to the Communities which permit the use of phosphoric acid, certain flavouring substances and certain emulsifiers;

Whereas the aforementioned Annex provides in paragraph 2 (b) for the possibility of including these substances in Annex I before 1 January 1978; whereas, however, a new examination of the situation did not allow such a decision to be taken;

Whereas, in fact, technological developments that have occurred since the adoption of Directive 73/241/EEC would seem to indicate that there is no longer any real technological need for the use of phosphoric acid as a neutralizing agent in cocoa products; whereas, however, provision should be made for the possibility of re-examining, where appropriate, this situation before 1 July 1981;

Whereas, pending the adoption of Community provisions on the use of flavouring substances in foodstuffs, it should be possible for Member States to be able to continue to use substances other than those listed in paragraph 5 (a) of Annex I to Directive 73/241/EEC; whereas however a decision must be made before 1 January 1983 on the date on which this derogation shall end;

Whereas, finally, Council Directive 74/329/EEC of 18 June 1974 on the approximation of the laws of the Member States relating to emulsifiers, stabilizers, thickeners and gelling agents for use in foodstuffs (6) as last amended by Directive 78/612/EEC (7) allows Member States, for five years after notification, to authorize the use of the emulsifiers listed in Annex II to Directive 73/241/EEC; whereas, therefore, the same period should be adopted for the purposes of the latter Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 73/241/EEC shall be amended as follows:

(a) The title of Annex II shall be as follows:

'Special measures';

(b) With effect from 1 January 1978, paragraph 2 of Annex II shall be replaced by the following:

'2. (a) This Directive shall not affect those provisions of national laws which are in force on 1 August 1973 and which authorize the use of:

(i) phosphoric acid as a neutralizing agent in cocoa products alkalized in accordance with Annex I, paragraph 2;

(ii) flavouring substances other than those referred to in paragraph 5 (a) of Annex I, in the cocoa and chocolate products referred to in that paragraph;

(iii) polyglycerol polyricinoleate, sorbitan monostearate, sorbitan tristearate, polyoxyethylene (20) sorbitan monostearate and ammonium salts of phosphatidic acids in the chocolate and cocoa products referred to in the first subparagraph of paragraph 6 of Annex I.

(1) OJ No C 8, 10. 1. 1978, p. 2.
(2) OJ No C 108, 8. 5. 1978, p. 16.
(3) OJ No C 84, 8. 4. 1978, p. 7.
(4) OJ No L 228, 16. 8. 1973, p. 23.
(5) OJ No L 197, 22. 7. 1978, p. 10.
(6) OJ No L 189, 12. 7. 1974, p. 1.
(7) OJ No L 197, 22. 7. 1978, p. 22.

(b) The derogation provided for :

(i) in (a) (i) shall end on 30 June 1981 ; however, before that date, the Council may, in accordance with the procedure laid down in Article 100 of the Treaty, include in Annex I the substance specified in point (a) (i); a decision to include this substance in Annex I may be adopted only if scientific research has established that it is not harmful to human health and if its use is necessary on economic grounds ;

(ii) in point (a) (ii) shall end on a date to be fixed by the Council before 1 January 1983, in accordance with the procedure laid down in Article 100 of the Treaty and at any rate at the time of the entry into force of Community rules listing the flavouring substances which may be used in foodstuffs ;

(iii) in point (a) (iii) shall end on 20 June 1979 ; before that date, however, the Council may, in accordance with the procedure laid down in Article 100 of the Treaty, include the substances specified in point (a) (iii) in the first subparagraph of paragraph 6 of Annex I.'

Article 2

This Directive is addressed to the Member States.

Done at Luxembourg, 10 October 1978.

For the Council

The President

R. OFFERGELD