II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE 93/8/EEC

of 15 March 1993

amending Council Directive 82/711/EEC laying down the basic rules necessary for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 89/109/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to materials and articles intended to come into contact with foodstuffs (1), and in particular Article 3 thereof,

Whereas the Community measures envisaged by this Directive are not only necessary but also indispensable for the attainment of the objectives of the internal market; whereas these objectives cannot be achieved by Member States individually, and whereas furthermore their attainment at Community level is already provided for by Directive 89/109/EEC;

Whereas Commission Directive 90/128/EEC of 23 February 1990 relating to plastic materials and articles intended to come into contact with foodstuffs (2), as amended by Directive 92/39/EEC (3), provides the possibility of carrying out the migration tests either on foodstuffs or on food simulants, whilst Council Directive 82/711/EEC (4) requires the migration tests to be carried out only on food simulants unless the method of analysis which enables migration into foodstuffs to be established has been adopted officially; whereas this discrepancy is capable of affecting the proper application of the Directives and whereas it is therefore necessary to eliminate it;

Whereas the increasing use of microwave ovens makes it necessary to establish new specific test conditions;

Whereas it is necessary to remove the possibility given to the Member States to adopt national rules for high-temperature testing in order to eliminate the existing discrepancies;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Foodstuffs,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 82/711/EEC is amended as follows:

1. Articles 2 and 3 are replaced by the following:

'*Article 2*

The overall and specific migration levels of constituents of the materials and articles referred to in Article 1 into or onto foodstuffs or food simulants must not exceed the limits laid down in Commission Directive 90/128/EEC (*) or in any other relevant specific directive.

Article 3

1. Verification of compliance of migration into foodstuffs with the migration limits shall be carried out under the most extreme conditions of time and temperature foreseeable in actual use.

(1) OJ No L 40, 11. 2. 1989, p. 38.
(2) OJ No L 75, 21. 3. 1990, p. 19, rectified by OJ No L 349, 13. 12. 1990, p. 26.
(3) OJ No L 168, 23. 6. 1992, p. 21.
(4) OJ No L 297, 23. 10. 1982, p. 26.

Verification of compliance of migration into food simulants with the migration limits shall be carried out using conventional migration tests, the basic rules for which are laid down in the Annex to this Directive.

2. (a) However, where a Member State, as a result of new information or of a reassessment of existing information made since this Directive was adopted, has detailed grounds for establishing that for a given plastic material or article the basic rules laid down in the Annex for migration tests are technically unsuitable or because the actual conditions of use are basically different from the test conditions specified in the table in the Annex, that Member State may, within its territory and only for the particular case, temporarily suspend application of the basic rules referred to in the Annex and permit the use of more appropriate basic rules. It shall immediately inform the other Member States and the Commission thereof and give the reasons for its decision.

(b) The Commission shall examine, as soon as possible, the reasons given by the Member States concerned and shall consult the Member States within the Standing Committee for Foodstuffs and shall then deliver its opinion forthwith and amend this Directive, if necessary. In that case, the Member State which has adopted the more appropriate basic rules may retain them until the said amendments enter into force.

(*) OJ No L 75, 21. 3. 1990, p. 19, amended by OJ No L 349, 13. 12. 1990, p. 26.'

2. The Annex is replaced by the Annex hereto.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive as from 1 April 1994. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 15 March 1993.

For the Commission

Martin BANGEMANN

Member of the Commission