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## COUNCIL DIRECTIVE

of 13 July 1970

on the approximation of the laws of the Member States concerning the antioxidants authorised for use in foodstuffs intended for human consumption

(70/357/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 227 (2) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas all laws relating to the antioxidants which may be used in foodstuffs intended for human consumption must give priority to the protection of public health, the protection of the consumer against falsification and, so far as health protection allows, economic and technological needs must also be taken into consideration;

Whereas differences between national laws concerning these substances hinder the free movement of foodstuffs intended for human consumption and may create conditions of unfair competition, thereby directly affecting the establishment or functioning of the common market;

Whereas the approximation of those laws is necessary for the free movement of foodstuffs intended for human consumption;

Whereas such approximation must involve, as a first stage, the establishment of a single list of the substances in question whose use is authorised for the protection of foodstuffs intended for human consumption against deterioration caused by oxidation and the laying down of the criteria of purity which those substances must satisfy;

Whereas, in order to take the economic and technological needs of certain Member States into account, a period should be set during which such Member States may, in respect of certain of those substances, maintain their existing laws;

Whereas it is desirable that for all cases where the Council empowers the Commission to implement rules relating to foodstuffs, provision should be made for a procedure establishing close co-operation between the Member States and the Commission within the Standing Committee for Foodstuffs set up by Council Decision of 13 November 1961<sup>1</sup>;

Whereas, during a second stage, the Council must decide on the approximation of the laws concerning individual foodstuffs intended for human consumption to which the antioxidants listed in the Annex to this Directive may be added, and on the conditions governing the addition of such antioxidants, account being taken of the relevant scientific information;

Whereas the approximation of the national laws provided for in this Directive does not prejudice the application of the provisions of Articles 31 and 32 of the Treaty;

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Member States shall not authorise the use, for the protection of foodstuffs intended for human consumption (hereinafter called 'foodstuffs') against deterioration caused by oxidation, such as fat deterioration and colour changes in foodstuffs caused

<sup>1</sup> OJ No L 291, 19.12.1969, p. 9.

by autoxidation, of any substances other than those listed in Parts I to III of the Annex to this Directive which may, if necessary, be dissolved in or diluted with the substances listed in Part IV of the Annex.

#### Article 2

By way of derogation from Article 1, Member States may, for a period of three years following notification of this Directive, maintain the provisions of their national laws authorising the use in foodstuffs of synthetic beta-tocopherol, calcium disodium ethylene diamine tetra-acetate, propyl gallate and L-ascorbic acid esters of the unbranched fatty acids C<sub>14</sub> and C<sub>18</sub>.

Before expiry of the period set in paragraph 1 the Council may, under Article 100 of the Treaty, act on a proposal for a Directive authorising the inclusion in the Annex to this Directive of the substances referred to in paragraph 1.

The decision to include those substances in the Annex to this Directive may be taken only if, after scientific investigation, they are proved harmless to human health and if their use is necessary for economic reasons.

#### Article 3

1. Where the use in foodstuffs of one of the substances listed in the Annex, or the level of one or more of the components referred to in Article 4 contained in such substances, might endanger human health, a Member State may, for a maximum period of one year, suspend the authorisation to use that substance or reduce the maximum authorised level of one or more of the components in question. It shall inform the Commission thereof forthwith and the Commission shall consult the Member States.

2. The Council, acting unanimously on a proposal from the Commission, shall decide without delay whether the list in the Annex should be amended, and, if so, adopt by directive the necessary amendments. The Council, acting by a qualified majority, on a proposal from the Commission, may also, if necessary, extend for a maximum of one year the period set in the first sentence of paragraph 1.

#### Article 4

The Member States shall take all measures necessary to ensure that the substances listed in the Annex and intended for use in foodstuffs satisfy:

- (a) the following general criteria of purity:
  - they must contain not more than 3 milligrams per kilogramme of arsenic and not more than 10 milligrams per kilogramme of lead;
  - they must contain not more than 50 milligrams per kilogramme of copper and zinc taken together, of which the zinc content must not be higher than 25 milligrams per kilogramme, always subject however to any exceptions implicit in the specific criteria referred to in subparagraph (b);
  - they must not contain any measurable trace of toxicologically dangerous elements, in particular other heavy metals, always subject however to any exceptions implicit in the specific criteria referred to in subparagraph (b);
- (b) the specific criteria of purity laid down in accordance with Article 5 (1).

#### Article 5

1. The Council shall, acting unanimously on a proposal from the Commission, lay down by directive the specific criteria of purity for the substances listed in Parts I to III or IV (4) to (7) of the Annex to this Directive.

2. The procedure laid down in Article 6 shall be used to determine:

- the methods of analysis needed to verify that the general and specific criteria of purity referred to in Article 4 are satisfied;
- the procedure for taking samples and the methods for the qualitative and quantitative analysis of antioxidants in and on foodstuffs.

#### Article 6

1. Where the procedure laid down in this Article is to be followed, matters shall be referred by the Chairman either on his own initiative or at the request of the representative of a Member State, to the Standing Committee for Foodstuffs (hereinafter called the 'Committee') set up by Council Decision of 13 November 1969.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time limit set by the Chairman according to the urgency of the matter. Opinions shall be delivered by a majority of 12 votes, the votes of the Member States being weighted as provided in Article 148 (2) of the Treaty. The Chairman shall not vote.