

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 658 final.

Brussels, 9 December 1977

Proposal for a  
COUNCIL DIRECTIVE  
amending for the fifth 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

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(submitted to the Council by the Commission)

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Proposal for a Council Directive amending for the fifth 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.

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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;

Having regard to the Opinion of the European Parliament;

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

Whereas paragraph 1.19 of Annex I to 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<sup>1</sup>, as last amended by Directive 76/628/EEC of 20 July 1976<sup>2</sup>, defines gianduja nut chocolate;

Whereas the definition of gianduja nut chocolate given in Annex I does not provide for the use of milk in various forms; and whereas this could eventually prevent further manufacture of this type of chocolate, which is, moreover, a quality product;

Whereas the product may traditionally contain a certain quantity of milk and whereas, therefore, a better definition should be laid down and the addition of small quantities of milk in various forms should be authorized;

Whereas Annex II, paragraph 2(a), of Directive 73/241/EEC authorizes the new Member States to maintain, until 31 December 1977, and in the case of products marketed on their territories, the national laws existing on the date of their accession to the European Economic Community and permitting the use of phosphoric acid, certain flavouring substances and certain emulsifiers;

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<sup>1</sup>OJ No L 228, 16.8.1973, p. 23

<sup>2</sup>OJ No L 223, 16.8.1976, p. 1

Whereas the aforementioned Annex II provides in paragraph 2(b) for the possibility of including these substances in Annex I before 1 January 1978; whereas a new examination of the conditions of use of the said substances has led to the conclusion that a decision on their use in the Community cannot be taken by the said date; whereas the deadline must therefore be withdrawn and the Member States must be authorized to use these substances;

Whereas there continues to be a technological need for the use of phosphoric acid as a neutralizing agent in cocoa products in certain Member States, even if not throughout the Community, and whereas this is a permanent need;

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 other substances other than those listed in Annex I, paragraph 5(a), of Directive 73/241/EEC;

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<sup>3</sup> allows Member States, for five years after notification, to authorize the use of the emulsifiers listed in Annex II to Directive 72/241/EEC, and whereas, therefore, the same period should be adopted for the purposes of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 72/241/EEC is amended in accordance with the following Articles.

Article 2

Paragraph 1.19 of Annex I to Directive 73/241/EEC is amended to read as follows:

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<sup>3</sup>OJ No L 189, 12.7.1974, p. 1

"1.19 gianduja (or one of the derivatives of the word 'gianduja') nut chocolate

The product obtained firstly from chocolate having a minimum total dry cocoa solids content of 32% including a minimum of dry non-fat cocoa solids content of 8% and secondly from finely ground hazelnuts in such quantities that 100 g of the product contain not less than 20 g and not more than 40 g of nuts."

The following may also be added:

"milk or dry matter produced by the partial or complete dehydration of whole milk or partially or fully skimmed milk, provided that it does not exceed 5% and contains not more than 1.25% of butterfat in the finished product,

- almonds, hazelnuts and other nut varieties, either whole or broken, in such quantities that, together with the ground hazelnuts, they do not exceed 60% of the total weight of the product."

Article 3

The title of Annex II shall be as follows:

"Special measures".

Article 4

In Annex II, paragraph 2 is amended to read as follows:

"2. This Directive shall not affect the provisions of national laws authorizing the use of:

- phosphoric acid as a neutralizing agent in cocoa products alkalized in accordance with Annex I (2);
- flavouring substances other than those referred to in Annex I (5)(a) in the cocoa and chocolate products referred to in that paragraph, without prejudice to the relevant provisions to be adopted by the Community;
- 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 sub-paragraph of Annex I (6)".

Article 5

Within one year from the date of notification of this Directive, the Member States shall amend their laws, where necessary, in order to comply with the provisions of this Directive and shall forthwith inform the Commission thereof.

The laws thus amended shall be applied so as to:

- permit within two years of notification the marketing of products complying with the provisions of this Directive;
- prohibit within three years of notification the marketing of products not complying with the provisions of this Directive.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President