

**COMMON POSITION (EC) No 45/2000****adopted by the Council on 20 July 2000****with a view to adopting Directive 2000/.../EC of the European Parliament and of the Council amending Directive 95/2/EC on food additives other than colours and sweeteners**

(2000/C 300/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption<sup>(1)</sup>, and in particular Articles 3(2) and 5(3) thereof,

Having regard to the proposal from the Commission<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty<sup>(4)</sup>,

Whereas:

(1) Directive 95/2/EC of the European Parliament and of the Council of 20 February 1995 on food additives other than colours and sweeteners<sup>(5)</sup> lays down a list of food additives that may be used in the Community and the conditions for their use.

(2) There have been technical developments in the field of food additives since the adoption of Directive 95/2/EC.

(3) Directive 95/2/EC should be adapted to take account of these developments.

<sup>(1)</sup> OJ L 40, 11.2.1989, p. 27. Directive as amended by European Parliament and Council Directive 94/34/EC (OJ L 237, 10.9.1994, p. 1).

<sup>(2)</sup> OJ C 21 E, 25.1.2000, p. 42.

<sup>(3)</sup> OJ C 51, 23.2.2000, p. 27.

<sup>(4)</sup> Opinion of the European Parliament of 11 April 2000 (not yet published in the Official Journal), Council Common Position of 20 July 2000 and Decision of the European Parliament of ... (not yet published in the Official Journal).

<sup>(5)</sup> OJ L 61, 18.3.1995, p. 1. Directive as last amended by Directive 98/72/EC (OJ L 295, 4.11.1998, p. 18).

(4) Food additives may be approved for use in foodstuffs only if they comply with the general criteria laid down in Annex II to Directive 89/107/EEC.

(5) According to Article 5(1) of Directive 89/107/EEC, a Member State may authorise the use of a new food additive for a two-year period in its territory.

(6) In accordance with requests from Member States, the following nationally authorised additives should be approved at Community level: propane, butane and isobutane; these products should be labelled according to Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers<sup>(6)</sup>.

(7) The Scientific Committee on Food, established under Commission Decision 97/579/EC<sup>(7)</sup>, has been consulted on the adoption of provisions liable to have an effect on public health, pursuant to Article 6 of Directive 89/107/EEC,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

The Annexes to Directive 95/2/EC are amended as follows:

1. Annex I shall be amended as follows:

(a) the following additive shall be inserted in the table:

'E 949 Hydrogen (\*)';

(b) in point 3 of the note, the following shall be inserted in the text corresponding to the symbol (\*):

'E 949';

<sup>(6)</sup> OJ L 147, 9.6.1975, p. 40. Directive as last amended by Commission Directive 94/1/EC (OJ L 23, 28.1.1994, p. 28).

<sup>(7)</sup> OJ L 237, 28.8.1997, p. 18.

2. in Annex II:

the following row shall be added:

'Prepacked and/or processed carrots	peeled and unpro-	E 401 Sodium alginate	quantum satis'
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3. in Annex IV:

(a) the following shall be added in the third and fourth columns to the row for E 445: Glycerol esters of wood rosin:

'Cloudy spirit drinks in accordance with Council Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks*'	100 mg/l
Cloudy spirit drinks containing less than 15 % alcohol by volume	100 mg/l

(\*) OJ L 160, 12.6.1989, p. 1.'

(b) the following rows shall be added:

'E 650	Zinc acetate	Chewing gum	1000 mg/kg
E 943a	Butane	Vegetable oil pan spray (for professional use only)	quantum satis'
E 943b	Iso-butane		
E 944	Propane	Water-based emulsion sprays	

4. in Annex V the first row shall be replaced by the following:

'E 1520	Propane-1,2-diol (propylene glycol)	Colours, emulsifiers, antioxidants and enzymes (maximum 1g/kg in the foodstuff)
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#### Article 2

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by ...(\*) at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field covered by this Directive.

#### Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

#### Article 4

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

For the Council

The President

The President

(\*) Eighteen months after the date of entry into force of this Directive.

## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

1. On 23 July 1999, the Commission submitted to the Council a proposal for a European Parliament and Council Directive based on Article 95 of the Treaty, amending Directive 95/2/EC of the European Parliament and of the Council on food additives other than colours and sweeteners<sup>(1)</sup>.
2. The Economic and Social Committee delivered its opinion on 9 December 1999<sup>(2)</sup>.
3. The European Parliament delivered its opinion on 11 April 2000<sup>(3)</sup>. Following that opinion, the Commission will submit an amended proposal.
4. The Council adopted its Common Position in accordance with Article 251 of the Treaty on 20 July 2000.

### II. PURPOSE

The aim of the draft Directive is to adapt Directive 95/2/EC on food additives other than colours and sweeteners<sup>(4)</sup> to recent scientific and technical developments, taking account of the requirements of both industry and consumers.

The draft Directive aims in particular to authorise:

- the use of some new food additives which have recently been evaluated by the Scientific Committee on Food,
- the use of certain food additives at Community level which have already been authorised provisionally in certain Member States for a limited period of two years and which have now been evaluated by the Scientific Committee on Food,
- certain new applications for food additives already authorised.

Thus, the draft Directive constitutes also a necessary measure to help ensure proper operation of the internal market in the foodstuffs sector.

### III. ANALYSIS OF THE COMMON POSITION

#### A. GENERAL COMMENTS

In general, the Council endorsed the Commission's approach with respect to the European Parliament's amendments by:

- accepting amendment 3,
- rejecting amendments 1, 2 and 6, 4 and 5.

The following specific comments can be made.

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<sup>(1)</sup> OJ C 21 E, 25.1.2000, p. 42.

<sup>(2)</sup> OJ C 51, 23.2.2000, p. 27.

<sup>(3)</sup> Doc. 7671/00 CODEC 274 DENLEG 23.

<sup>(4)</sup> OJ L 61, 20.2.1995, p. 1.

**B. SPECIFIC COMMENTS**

- *Amendment 3*: The Commission, though having rejected this amendment in the plenary session of the European Parliament, later on decided to consult the Scientific Committee on Food again on additive E 467 and withdraw this item from the proposal. The Council considers this to be justified and consequently accepts that amendment,
- *Amendment 1*: Even if the Council agrees that the precautionary principle is of great importance in the foodstuffs sector, it considers that a specific Directive is not the appropriate place to introduce such a principle of general scope. Furthermore, the Council is of the opinion that the precautionary principle is already taken into account in this specific area because additives are only authorised to be used in foodstuffs after having been evaluated and declared safe by the Scientific Committee as laid down in Annex II to Directive 89/107/EEC<sup>(1)</sup>. The Council considers it appropriate to point this out in a new recital (see recital 4),
- *Amendment 5*: The Council has rejected this amendment because it does not consider it to be appropriate to prohibit additives which are already in use. The matter of the inflammability of the three gases is taken care of by restricting the vegetable oils containing these gases to professional use only. Furthermore, these products are to be labelled with a warning according to Council Directive 75/324/EEC relating to aerosol dispensers<sup>(2)</sup>. This is stated in recital 6.

**IV. CONCLUSIONS**

The Council considers that the Common Position at one and the same time substantially meets the most important wishes expressed by the European Parliament and takes sufficient account of recent technological requirements and developments. The Council is of the opinion that the Common Position reflects a sound balance between the technological requirements of the industry and consumer expectations.

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<sup>(1)</sup> OJ L 40, 11.2.1989, p. 27.

<sup>(2)</sup> OJ L 147, 9.6.1975, p. 40.