

COMMISSION DIRECTIVE 2004/13/EC
of 29 January 2004
amending Directive 2002/16/EC on the use of certain epoxy derivatives in materials and articles
intended to come into contact with foodstuffs
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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,

After consulting the European Food Safety Authority,

Whereas:

- (1) Commission Directive 2002/16/EC of 20 February 2002 on the use of certain epoxy derivatives in materials and articles intended to come into contact with foodstuffs⁽²⁾ lays down certain rules applicable to the use/presence of 2,2-bis(4-hydroxyphenyl)propane bis(2,3-epoxypropyl) ether ('BADGE'), bis(hydroxyphenyl) methane bis(2,3-epoxypropyl) ethers ('BFDGE'), novolac glycidyl ethers ('NOGE'), and some of their derivatives, in materials and articles intended to come into contact with foodstuffs.
- (2) That Directive provides that the use and/or presence of BADGE in the manufacture of those materials and articles may only be continued until 31 December 2004.
- (3) The Scientific Committee on Food (SCF) requested toxicological data to permit the evaluation of BADGE within certain deadlines. The SCF also requested that new toxicological data be supplied to evaluate the potential carcinogenicity of chlorinated derivatives which were included in the quantitative restriction to be applied to the migration of BADGE provided for in Annex I to Directive 2002/16/EC.
- (4) On 4 December 2002, the SCF noted the negative results on the potential carcinogenicity of the chlorinated derivatives of BADGE and the low exposure of the European consumer to BADGE as a consequence of the considerable reduction of the content of BADGE found in canned food in the recent enquiries carried out by the Member States and by the Joint Research Centre of the European Commission. Therefore, it is considered admissible to extend the provisional authorisation of BADGE

for one year, pending the submission of the new toxicological data and their evaluation by the European Food Safety Authority.

- (5) Directive 2002/16/EC provides that the requirements of that Directive concerning BADGE, BFDGE and NOGE do not apply to materials and articles covered by surface coatings, and adhesives, which are brought into contact with foodstuffs before 1 March 2003. Those materials and articles may continue to be placed on the market provided that the date of filling appears on the materials and articles. In the interest of an unequivocal interpretation of how the date of filling should be applied on materials and articles, it is appropriate to provide that this date may be replaced by the 'best before' date as provided for by Directive 2000/13/EC of the European Parliament and of the Council⁽³⁾, or another indication such as the lot number required by Council Directive 89/396/EEC⁽⁴⁾ for the foodstuffs packed in such materials and articles. It is, though, necessary that a link is established between such indication and the date of filling so that the latter can be always identified.
- (6) Directive 2002/16/EC should therefore be amended accordingly.
- (7) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2002/16/EC is amended as follows:

1. in Article 2, second paragraph, the date '31 December 2004' is replaced by the date '31 December 2005';
2. Article 5 is replaced by the following:
'*Article 5*
1. Articles 2, 3 and 4 shall not apply to the materials and articles referred to in points (b) and (c) of the second subparagraph of Article 1(1) which are brought into contact with foodstuffs before 1 March 2003.

⁽¹⁾ OJ L 40, 11.2.1989, p. 38.

⁽²⁾ OJ L 51, 22.2.2002, p. 27.

⁽³⁾ OJ L 109, 6.5.2000, p. 29.

⁽⁴⁾ OJ L 186, 30.6.1989, p. 21.

Those materials and articles may be placed on the market provided that the date of filling appears on the materials and articles. However, the date of filling may be replaced by another indication, provided that this indication permits the identification of the date of filling. Upon request, the date of filling shall be made available to the competent authorities and any person enforcing the requirements of this Directive.

2. Paragraph 1 shall apply without prejudice to the requirements of Directive 2000/13/EC.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29 January 2005 at latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a 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 national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 29 January 2004.

For the Commission

David BYRNE

Member of the Commission