

EUROPEAN PARLIAMENT

# Working Documents

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3 October 1983

DOCUMENT 1-770/83

## Report

drawn up on behalf of the Committee on the Environment,  
Public Health and Consumer Protection

on the proposal from the Commission of the European  
Communities to the Council

(Doc. 1-955/80 - COM(80) 917 final)

for a Directive amending for the third time Directive  
76/768/EEC on the approximation of the laws of the  
Member States relating to cosmetic products

Rapporteur: Mrs Vera SQUARCIALUPI

By letter of 25 January 1981, the President of the Council requested the European Parliament to deliver an opinion, pursuant to Article 100 of the EEC Treaty, on the proposal from the Commission for a Council Directive amending for the third time Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products.

On 9 March 1981, the President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection, which appointed Mrs Squarcialupi rapporteur on 19 March 1981.

Pursuant to Article 149, second paragraph, of the EEC Treaty, the Commission revised its proposal on 8 October 1982. The Committee on the Environment, Public Health and Consumer Protection considered the proposal and the draft report at its meetings of 10 November 1981, 26 January 1982, 10 October 1982, 16 June 1983 and 21 September 1983. At the last meeting, the committee decided by 8 votes to 0 with 6 abstentions to recommend to Parliament that it approve the Commission's amended proposal with the following amendments.

The committee decided to reserve the right to propose to Parliament the application of Rule 36(2), after hearing the opinion of the Commission.

The motion for a resolution as a whole was adopted by 8 votes to 2 with 4 abstentions.

The following took part in the vote: Mr COLLINS, chairman, Mr RYAN, vice-chairman, Mr ALBER, Mr CERAVOLO (deputizing for Mr SPINELLI), Mr FORTH, Mr GHERGO, Mrs KROUWEL-VLAM, Mr MERTENS (deputizing for Mrs LENTZ-CORNETTE), Mrs PANTAZI, Mrs SCHLEICHER, Mrs SEIBEL-EMMERLING, Mrs SPAAK, Mrs SQUARCIALUPI and Mr VERROKEN (deputizing for Mr DEL DUCA).

The report was tabled on 28 September 1983.

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The Committee on the Environment, Public Health and Consumer Protection hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution together with explanatory statement :

- I. Proposal for a Council directive amending for the third time the directive on the approximation of the Laws of the Member States relating to cosmetic products as amended by the Commission in document COM(82) 623 final.

Amendments tabled by the Committee on the Environment, Public Health and Consumer Protection

Text proposed by the Commission of the European Communities

Amendment No. 1

Article 5(1) (c)

(c) The date of minimum durability of of a cosmetic product shall be the date until which this product, under appropriate conditions of storage, fulfils the primary functions for which it is intended and, in particular, remains in conformity with Article 2 . . . (rest unchanged)

(c) The date of minimum durability. The date of minimum durability of a cosmetic product shall be the date until which this product, under appropriate conditions of storage and use, retains its specific characteristics and, in particular, remains in conformity with Article 2.

1. Where amendments to the annexes of this Directive are necessary to take account of technical progress, the Commission shall transmit such proposed amendments to the European Parliament.
  2. Where the European Parliament wishes to deliver an opinion on such proposed amendments, it shall notify the Commission to that effect not later than three months after receipt of the proposed amendment. The opinion shall be delivered within three months of such notification or after two part-sessions - whichever period is the longer.
  3. Where the European Parliament does not notify the Commission within the time limit laid down in paragraph (2) that it wishes to deliver an opinion on the amendments, or has not delivered its opinion within the second time limit laid down in paragraph (2), the proposed amendments shall be referred to the committee provided for in Article 5. The deadline for
1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by the chairman, either on his own initiative or at the request of the representative of a Member State.
  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 adopted by a majority of 41 votes, the votes of Member States being weighted as provided for in Article 148(2) of the Treaty. The chairman shall not vote.
  - 3.a) The Commission shall adopt the proposed measures when they are in accordance with the opinion of the Committee.  
b) Where the proposed measures are not in accordance with the opinion of the Committee, or if no opinion is adopted, the Commission shall without delay

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Parliament's opinion may, in special cases, be extended with the Commission's assent.

propose to the Council the measures to be adopted. The Council shall act by a qualified majority.

c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

4. Where the European Parliament delivers an opinion on the amendments the Commission shall immediately submit

- a) where Parliament approves its amendments, these amendments,
- b) where Parliament has proposed amendments of its own which the Commission has endorsed, these new amendments,
- c) where it does not wish to follow Parliament's opinion, its own amendments and Parliament's opinion,

to the Council for a decision. The Council shall act by qualified majority.

5. If the Council has not acted within three months of the proposals being submitted to it, the proposed measures shall be adopted by the Commission.

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Directive amending for the third time Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(80) 917 final)<sup>1</sup>,
  - having been consulted by the Council (Doc. 1-955/80),
  - having regard to the Commission's own proposed amendments to the text (COM(82) 623 final, 8 October 1982),
  - having regard to the second action programme of the European Communities for a consumer protection and information policy<sup>2</sup>,
  - having regard to the report of the Committee on the Environment, Public Health and Consumer Protection (Doc. 1-770/83),
  - having regard to the result of the vote on the Commission's proposal
- A. Having noted the Commission's decision to amend its own proposals amending the directive for the third time pursuant to Article 149 of the Treaty of Rome,
  - B. Aware that some concern has been expressed as a result of studies on the effects of certain suntan oils;
1. Welcomes the fact that a series of amendments has been tabled to improve the wide variety of cosmetics which are being increasingly and routinely used by the peoples of Europe;

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<sup>1</sup> OJ No. C 32, 9.2.82, p.2

<sup>2</sup> OJ No. C 133, 3.6.81

2. Underlines, however, its regret and concern that proposed amendments that are not always clear create the risk of making it impossible to exercise effective control and ensure the requisite market transparency;
3. Regrets the fact that Parliament no longer has an opportunity of expressing its views on the Commission Directives amending for the fourth and fifth times the outline Directive on cosmetic products, and calls for Parliament to be informed whenever the so-called committee procedure is used and to continue to have the opportunity of expressing its position if it deems this necessary;
4. Welcomes the revised nomenclature of chemical substances contained in the Annexes, some of which were incorrect in some languages;
5. Approves the principle adopted by the Commission of positive lists rather than negative lists and in this particular case regards the proposed list of substances which may be used as sunscreen agents as important;
6. Nevertheless calls for the Annexes to the third amendment to be referred back for further consideration by the experts to prevent confusion over the maximum authorized concentrations as in the case of some Methoxycinnamic compounds;
7. Considers it advisable to standardize the terms used in all laws and forms of labelling of concern to consumers, in order to avoid confusion. Since the term 'date of minimum durability' was introduced into the law on foodstuffs by Directive 79/112/EEC on labelling, it would seem appropriate to use the same term in the cosmetics field;
8. Welcomes the fact that the 1976 outline Directive introduced a comprehensive requirement to label all cosmetic products, and requests the Commission to produce a report examining whether this form of labelling is adequate or whether still fuller labelling is required;
9. Considers it essential for the Commission to devote greater attention to the cosmetics sector and to promote and coordinate more careful scientific research into it in order to increase consumer confidence and safety;



10. Invites the Commission - on the basis of the objectives of the second programme of the European Communities for a consumer protection and information policy - to submit proposals for suitable information on the characteristics of cosmetic products and to encourage meetings between representatives of consumers, producers, distributors and suppliers of services - such as hairdressers and beauticians - in order better to protect the health, safety and economic interests of consumers and those who work in the sector.
  
11. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

EXPLANATORY STATEMENT

1. The Community texts to which this report refers are the following :
  - (a) Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products;
  - (b) Council Directive 82/368/EEC of 17 May 1982 amending for the second time Directive 76/768/EEC;
  - (c) the proposal for a Council directive amending for the third time Directive 76/768/EEC (Doc. 1-955/80). The Committee on the Environment, Public Health and Consumer Protection had already held a wide-ranging debate on the Commission's third amendment and had even voted on amendments to both the proposal for a directive and the resolution accompanying it. However, the Commission then submitted the attached statement (PE 82.665) (Annex 1) which was followed by a series of amendments to the proposal for a Council directive amending for the third time Directive 76/768/EEC. The Commission's amendments are contained in COM(82) 623 final (Annex 2).

2. Your committee has thus had to work on not three, but four texts which are very difficult to consult and by no means clear as a result of the constant amendments. In Article 10 of Directive 82/368/EEC amending for a second time Directive 76/768/EEC, the Council adopted the Commission's proposal to adapt Annexes II to VI to Directive 76/768/EEC to technical progress in accordance with the committee procedure provided for in Articles 9 and 10 of the 1976 directive, which read as follows :

'9.1 The Committee on the Adaptation to Technical Progress of the Directives on the Removal of Technical Barriers to Trade in the Cosmetics Products Sector, hereinafter called 'the Committee', is hereby set up. It shall consist of representatives of the Member States with a representative of the Commission as chairman.

2 The Committee shall adopt its own rules of procedure.

10.1 Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by the chairman, either on his own initiative or at the request of the representative of a Member State.

- 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 adopted by a majority of 41 votes, the votes of Member States being weighted as provided for in Article 148(2) of the Treaty. The chairman shall not vote.
- 3 (a) The Commission shall adopt the proposed measures when they are in accordance with the opinion of the Committee.  
  
(b) Where the proposed measures are not in accordance with the opinion of the Committee, or if no opinion is adopted, the Commission shall without delay propose to the Council the measures to be adopted. The Council shall act by a qualified majority.  
  
(c) If, within three months of a proposal being submitted to it, the Council has not acted, the proposed measure shall be adopted by the Commission.'

Thus, according to these articles of the 1976 Directive, technical adaptation of the annexes by the Commission must take the form of directives. However, amendments to the articles of the Directive and the proposed lists of permitted substances (such as the sunscreen agents contained in the third amendment) remain subject to the provisions of Article 100 and will therefore be the subject of Council directives issued after consultation of the European Parliament and the Economic and Social Committee.

3. In view of this, the Commission has decided to alter its proposal for a third amendment pursuant to Article 149 of the Treaty of Rome which reads as follows :

'Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal.'

As long as the Council has not acted, the Commission may alter its original proposal, in particular where the Assembly has been consulted on that proposal.'

4. The amendments proposed by the Commission (COM(82) 623 final of 8 October 1982) delete articles 2, 3, 4 and 5 of the proposal for a Council directive (COM(80) 917 final) amending for the third time Directive 76/768/EEC of 20 January 1981

on the adaptation of Annexes II, III, IV and V to technical progress. However, the opinion of the European Parliament is requested on the subsequent articles, correspondingly renumbered.

5. The sphere in which the European Parliament can express an opinion has therefore been reduced considerably and many of the amendments tabled by members of the Committee on the Environment, Public Health and Consumer Protection have therefore lapsed.

6. The fourth and fifth amendments to the July 1976 Directive on which Parliament was asked for its opinion and which lay within our committee's terms of reference dealt with fluorides in toothpastes (COM(81) 653 final, 11 November 1981) and hair dyes (COM(81) 774 final, 14 January 1982). However, the Commission simply decided to withdraw them without further ado since they merely concern the adaptation of Annexes II, III, IV and V to technical progress, and to follow the new procedure adopted by the Council.

7. From the point of view of Community law, the Commission's decision is particularly serious since it was a belated decision after considerable criticism had been expressed in the European Parliament of both the Commission's third (PE 74.358) and fourth (PE 80.319) amendments. Mention must also be made of the serious concern caused by the proposals contained in the fifth amendment on hair dyes which required some states - which had withdrawn from the market mutagenic colorants suspected of being carcinogenic - to reintroduce them on the market although there were insufficient scientific grounds for so doing.

8. However, your committee has only felt able to give its conditional approval to the intended broadening of the scope of the procedure of the Committee on the Adaptation to Technical Progress. It has made the approval of the revised proposal (Doc. 1-955/80), in which a number of the amendments in the initial proposal are dropped, entirely subject to the adoption of Amendment No. 2, which is intended to amend Article 10 of the original directive in such a way as to prevent the powers of the European Parliament from being undermined.

9. The request made in the resolution for more thorough consideration of the lists is based on the lack of clarity and in some the contradictions as regards concentrations such as that for methoxycinnamate. According to the list the maximum authorized concentrations are as follows:

- 10% for 2-Ethylhexyl p-methoxycinnamate
- 5% for 2-Ethoxyethyl p-methoxycinnamate
- 1% for Cyclohexyl p-methoxycinnamate.

The filter group is the same for each sunscreen agent and the molecular weight is almost the same for each of the three products. Why therefore the variation from 1-10 in the maximum authorized concentrations?

10. The comments and the amendments made by your committee to the new Commission text also refer to the Council resolution of 19 May 1981 on the second programme of the European Economic Community for a consumer protection and information policy, particularly those concerning principles for protecting the health and safety of consumers (paragraphs 12.1 and 12.2), product safety controls (paragraph 20.2), information on products (26.6), and protection of consumers' economic interests (28.5). Particular reference is made to the priority measures (paragraph 40, first indent) :

'Under this programme, the Commission will take the following measures :

- include in any proposals on given products or services which it puts up to the Council, special provisions to take account of their specific properties, with the aim of guaranteeing that the consumer receives proper information on the properties and the quality of the goods and services supplied.
- organize meetings and consultation between consumer representatives, manufacturers, distributors and suppliers of services as a means of promoting the introduction and development of a voluntary labelling system or of any other voluntary means (like instructions for use or packaging) of informing consumers about the capabilities of certain kinds of products or services.'

#### 11. Minority opinion

A minority on the committee felt that 'date of minimum durability' should have been replaced by 'expiry date'.