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Working Documents

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~~DOCUMENT~~ 2-1563/84

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. 1-190/84 - COM(84)
5 final) for a Regulation on the designations used in
the marketing of milk and milk products

Rapporteur: Mrs Caroline JACKSON

PE 94.406/fin.

Or. En.

By letter of 17 April 1984, the President of the Council of the European Communities requested the European Parliament to deliver an opinion pursuant to Article 43 of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council for a regulation on the designation used in the marketing of milk and milk products.

On 11 September 1984, the President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection as the committee responsible and to the Committee on Agriculture, Fisheries and Food for an opinion.

At its meeting on 17 October 1984, the Committee on the Environment, Public Health and Consumer Protection appointed Mrs Jackson rapporteur.

The committee considered the Commission's proposal and the draft report at its meeting of 27 November 1984, 20 December 1984 and 29 January 1985.

At the last meeting, the committee decided by 20 votes for and with 2 abstentions to recommend to Parliament that it approve the Commission's proposal with the following amendments.

The committee then adopted the motion for a resolution as a whole by 20 votes for and with 2 abstentions.

The following took part in the vote: Mrs Weber, chairman; Mrs Schleicher, Mrs Bloch von Blottnitz and Mr Collins, vice-chairmen; Mrs Jackson, rapporteur; Mr Avgerinos (substitute for Mr Muntingh); Mrs Banotti; Mr Bombard, Mrs Dupuy, Mr Hughes, Mr Iversen, Mr Lambrias (substitute for Mr Michelini); Mr Van der Lek, Mr McMillan Scott (substitute for Mr Pearce); Mr Mertens, Mrs Peus (substitute for Mr Alber); Mr Roelants du Vivier; Mr Ryan (substitute for Mr Parodi); Mr Schmid, Dr Sherlock, Mrs Squarcialupi, Mr Vittinghoff.

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The opinion of the Committee on Agriculture, Fisheries and Food is attached.

The report was tabled on 31 January 1985.

The deadline for amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated. PE 94.406/fin.

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Opinion of the Committee on Agriculture, Fisheries and Food

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:

Text proposed by the Commission
of the European Communities

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

Title

Proposal from the Commission for a regulation (EEC) on the designations used in the marketing of milk and milk products.

Title

Amendment No. 1

Proposal from the Commission for a Council Directive amending Council Directive No. 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer.⁽¹⁾

Preamble unchanged

Article 1

1.

2. The designations referred to in paragraph 1 shall apply to human and animal foodstuffs which are:

- a) marketed in the Community, or
- b) intended for export outside the Community subject to the provisions of Article 3.

3.

Article 2

1.

2. The provisions of Article 1 shall not apply where the designation of a foodstuff indicates a product which cannot be confused with one of those given in the Annex.

Article 1

Amendment No. 2

2. The designations referred to in paragraph 1 shall apply to human ~~and animal~~ foodstuffs which are:

- a) marketed in the Community, or
- b) intended for export outside the Community subject to the provisions of Article 3.

Article 2

Amendment No. 3

2. The provisions of Article 1 shall not apply where the designation of a foodstuff indicates a product which cannot be confused with one of those given in the Annex, either because the description is sufficiently qualified (e.g. soya milk, imitation cream) or because of the nature of the product involved (e.g. cream crackers)

3. The Member States shall, for the purpose of information, provide the Commission, by 1 January 1985, with a list of the products which they consider as meeting, on their territory, the conditions set out in paragraph 2 and, where necessary, shall subsequently extend it.

Article 3 - Article 6 unchanged

ANNEX

1. Definition

The products defined in Article 3(1) of Regulation No 1411/71 and those derived from the milking of one or more buffaloes, ewes or goats

2.

3. Definition

The solid product obtained by the elimination of water from milk

4.

Amendment No 4

3. The Member States shall, for the purpose of information, provide the Commission, within 12 months of the adoption of the amendment to the Directive, with a list of the products which they consider as meeting, on their territory, the conditions set out in paragraph 2 and, where necessary, shall subsequently extend it.

ANNEX

Amendment No 5

1. Definition

(i) The product derived from milk of cows, to be given the specific designations laid down in Article 3 of Regulation (EEC) No 1411/71;

(ii) The products derived from buffaloes, ewes, goats or other mammals, to be designated as buffalo milk, ewe milk, goat milk or milk of the other mammal in question.

Where a dairy product is derived from buffalo, ewes or goats milk or the milk of another mammal, this should be included in the designation of that product.

Amendment Nr. 6

3. Definition

The powdered product obtained by the removal of water from milk consistent with current processing techniques.

5. Definition
The solid product obtained by the
elimination of water from whey

5. Definition
The powdered product obtained by
the removal of water from whey
consistent with current processing
techniques.

6. Definition
The product obtained from milk or
whey in the form of a fat-in-water
emulsion having a fat content ex-
ceeding 12%

Amendment No. 8
6. Definition
The product obtained from milk or
whey in the form of a fat-in-water
emulsion (delete "having a fat
content exceeding 12%")

7.

Amendment No. 9
Insert a new Designation 6.a.
6.a. Designation
Recombined cream
Definition
The product obtained by mixing
butter, dried milk, solids-not-
fat and water.

8. Definition
The solid product obtained by the
elimination of water from cream

Amendment No. 10
8. Definition
The powdered product obtained by
the removal of water from cream
consistent with current processing
techniques.

9. Definition
The product obtained exclusively
from milk or cream in the form
of a solid, malleable water-in-
fat emulsion containing not less
than 82% butter fat.

Amendment No. 11
9. Definition
The product obtained exclusively
from milk or cream in the form
of a solid, malleable water-in-
fat emulsion containing not less
than 82% butyrin.

10. ...

Amendment No. 12

11. Definition

The milk by-product derived from
butter manufacture

11. Definition

The milk by-product obtained after
the churning of cream to manufacture butter.

12. Definition

The solid product obtained by
the elimination of water from butter-
milk

Amendment No. 13

12. Definition

The powdered product obtained by
the removal of water from buttermilk
consistent with current processing
techniques.

13. Definition

The product obtained by the coagu-
lation and draining after renneting
and/or acidification, of milk, cream
or mixtures. Whether in the unaltered
state or after appropriate treatments

Amendment No. 14

13. Definition

The product obtained:
(a) by coagulating milk, skimmed
milk, partly skimmed milk,
cream, whey cream or buttermilk
or any combination of these
materials, through the action
of a milk coagulating enzyme
and by partially draining the
whey resulting from such coagu-
lation,

or

(b) by processing techniques invol-
ving coagulation of milk and/or
materials obtained from milk
which give an end product which
has similar physical, chemical,
nutritional and organoleptic
characteristics as the products
defined under (a)

Text proposed by the Commission
of the European Communities

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

15. Definition

Milk products the characteristics
of which are determined by the action
of acids, enzymes, yeasts and rennet

Amendment No. 15

15. Definition

Milk products the characteristics
of which are determined by the action
of acids, enzymes, yeasts, (delete "and")
rennet and bacterial cultures.

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 regulation on the designations used in the marketing of milk and milk products (1)

The European Parliament,

- having regard to the proposal from the Commission to the Council (2),
 - having been consulted by the Council pursuant to Article 43 of the EEC Treaty (Doc. 1-190/84),
 - having regard to the need to serve the interests of Europe's consumers as well as Europe's dairy farmers,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Protection and the opinion of the Committee on Agriculture, Fisheries and Food (Doc. 2.1563/84),
 - having regard to the result of the vote on the Commission's proposal,
1. agrees that consumers would be better informed if a clearer distinction were made between milk products and imitation non-milk products;
 2. fully supports the principle of giving the consumer full and clear product information;
 3. agrees that consumers would be better informed if a clearer distinction were made between:
 - a. milk products as defined in the annex to the Commission's proposal;
 - b. imitation non-milk products;
 - c. new foodstuffs made in part from dairy ingredients;
 4. notes that the Commission has not in fact produced any evidence that consumers are being misled or not being given full information;

(1) see Amend. n° 1 to the Commission's proposal

(2) OJ C 111 of 26.4.1984, p. 7

5. notes that the European Commission has not consulted the Consumers' Consultative Committee or the European Consumers' Bureau about this proposal.
6. considers the Commission's description of the reason for the decline in milk consumption as incomplete, since it omits factors of consumer preference, and concern for health;
7. considers that this legislation would be more acceptable, and have a greater chance of securing agreement in the Council, if it took the form of an amendment to Council Directive 79/112/EEC of 18 December 1978 (the basic food labelling Directive) and calls on the Commission to submit to the Council this Directive amending Council Directive 79/112/EEC of 18 December 1978;
8. draws attention, in accordance with the opinion of the Committee on Agriculture, Fisheries and Food, to the anomalous situation where the EEC is allowing the duty-free import for manufacture of milk substitutes which are then marketed, under possibly inadequate designations, to the disadvantage of genuine milk products which are in enormous surplus;
9. warns, however, that given established consumer preference and the expertise of the marketing and advertising industry in the Community, there is absolutely no guarantee that this proposal will increase milk consumption;
10. warns also that this directive may endanger technological advance designed to allow milk to be broken down into its component parts and re-built with non-dairy ingredients to produce new food products;
11. notes that the descriptions in the Annex are in need of further refinement;
12. considers therefore that the Commission's present proposal is ill-conceived, and that, if action is considered desirable in this area it should be done by means of an amendment to the 1979 food labelling Directive;

13. hopes that, for the sake of public opinion in certain parts of the Community, the Commission will include an Annex 2 relating to Article 2.2, listing products which will not be affected by this regulation, although their nomenclature involves the use of a word or words connected with milk;
14. 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. Background

The aim of food labelling is to give the consumer enough information to be able to choose between competing brands. This information needs to be clear and comprehensive to the average, non-specialised consumer. The question is: how much information is it useful or necessary to give?

Discussion at a European level began with the Council Resolution of 17 December 1973 on industrial policy (1), which mentioned food labelling as one of its main priorities. Labelling rules existed already for some specific products or groups of products, but it was recognised that there was a need for a comprehensive approach covering all foodstuffs. Following lengthy discussions and substantial amendments to the original proposals, the Council adopted Directive 79/112/EEC relating to labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer.⁽²⁾ This directive aimed to prohibit misleading labelling. To that effect it stipulated that the labelling of foodstuffs must include the following:

- the name under which the product is sold;
- the list of ingredients;
- the net quantity (for pre-packaged foods);
- the date of minimum durability;
- any special storage conditions or conditions of use;
- the name and address of the manufacturer;
- the place of origin;
- + and instructions for use.

What is the situation regarding milk and dairy products? Definitions of milk and dairy products were laid down in Regulation (EEC) 1411/71 (3), which specified quality requirements for: raw milk, full cream milk; semi-skimmed milk and skimmed milk.

(1) OJ C 117 of 31.12.1973 page 1

(2) OJ L 33 of 8.2.1979 page 1

(3) OJ L 148 of 3.7.1971 page 4

In December 1975, Directive (EEC) 76/118 (1) was adopted covering the designation of concentrated milk and milk powder. Discussion continued, however, on the possibility of introducing rules concerning the labelling of milk and dairy products and their substitute and imitation products, so as to reserve the designation "milk and dairy products" for ingredients based on milk. These discussions were brought to an end with the adoption of Directive 79/112, which, it was felt, superseded any proposals on the labelling of milk and dairy products alone.

In the Commission's view, Directive 79/112 has not been effective in protecting the consumer from being misled by imitation or substitute milk products. They have provided no evidence to substantiate this belief.

2. The need for the Regulation

From its own explanatory statement it is clear that the Commission sees the interests of farmers and consumers as being closely linked on this regulation. Milk consumption has fallen or remained static while production has increased. Even following the introduction of dairy quotas the Community has 28 per cent (21 million tonnes) more milk than it can consume.

The Commission believes that part of the explanation for the pattern of consumption of milk and milk products lies in the success of cheaper imitation milk products, which have not been labelled sufficiently clearly to allow consumers to distinguish between them and the real milk products.

This explanation is insufficient. In particular it ignores factors of consumer preference which are linked to concern for health. The established connection between a fatty diet and heart disease has meant that many people avoid milk products in favour of the vegetable-derived alternatives. Consumers may also prefer vegetable oil products because they are cheaper, or easier to use, or because they prefer the taste.

The Commission's failure to recognise this may have led them to place too much faith in the idea that a Regulation will in fact increase the consumption of milk and milk products. This has not been proved.

(1) OJ L 24 of 30.1.1976 page 49

3. The Consumer interest

The Regulation has come forward from the Agriculture Directorate General. There is no evidence that consumers were consulted via the Consumer Consultative Committee. According to the Commission, the consumer representatives in the Dairy Sector Advisory Committee had a chance to give their views and state their reservations if they wished. We believe that this was an inadequate means of consulting consumers.

The result is that the Commission has no evidence of any consumer demand for such a measure, and it lacks the support of consumers in introducing it.

This is in spite of the fact that the Commission claims that consumers "are misled" by the present situation.

It is, on the contrary, possible to argue that the draft regulation, if implemented, would act against the consumers' interest by disrupting the marketing of well-known products and forcing producers to change labels and market strategies. The cost of this would eventually be borne by the consumer.

Nevertheless the Consumer Protection Committee did agree that existing labelling could mislead consumers, and that a case for change could therefore be made out.

4. Why do we need a new Regulation?

The Commission has not been able to explain fully why it is proposing to introduce an entirely new Regulation rather than an amendment to the 1979 food labelling directive. (See above). It is in the interest of the consumer that the 1979 directive, which can take account of differing national conditions, should remain the basic method by which problems of the kind encountered over milk and milk products are resolved. We would like the Commission to withdraw the Regulation and to amend the food labelling directive to achieve what the draft regulation sets out to do.

One example of how existing law already works is the case of "Beurre vegetale" sold in Belgium. Once this product came to the notice of the Belgian enforcement authorities it was declared illegal and the company was obliged to withdraw the use of such labelling.

5. Will the Regulation help farmers?

The opinion of the Committee on Agriculture, Fisheries and Food (annexed to this report) makes it clear that they hope the Regulation will help stimulate the consumption of milk products.

But opinions received from the dairy trade suggest that the Regulation may be so rigid in its definitions that it acts against farmers' interests. In particular the Regulation will need to take account of

technological advance. This may allow milk to be broken down into its component parts and then re-built with non-dairy ingredients to produce new food products. These could themselves help increase milk consumption. But over-restrictive labelling requirements could hinder their successful marketing.

6. The proposed amendments

The arguments for Amendment 1 have been presented in part 4 of this explanatory statement.

Amendment 2

The reference to animal foodstuffs is not necessary since these are already covered by separate regulations.

Amendment 3

The rapporteur feels that Article 2(2) of the Commission proposals is not sufficiently clear and may lead to the banning of products such as "creme de cassis" or "imitation cream", which clearly could not be confused with genuine milk products.

Amendment 4

Since the regulation will not come into force by the date originally foreseen, it is clearly necessary to amend the date by which the relevant lists should be provided.

Amendments 5 - 15 refer to the annex to the Commission's proposal, dealing with definitions of milk products. The majority of the definitions proposed by the Commission were quite inadequate, being for the most part insufficiently precise and so not achieving what they set out to do in the first place.

Amendment 5

As drafted the Commission proposal extends the definition of milk beyond cows. In most Member States "milk" invariably means "cow's milk". Milk from other species should include the name of the animal in the description as it already does in many Member States.

Amendments 6, 7, 10, 13

These are necessary because the Commission's proposal does not take account of the fact that current techniques do not allow the complete elimination of water from milk, whey, cream and buttermilk.

Amendment 8

Member States have differing standards for the fat content of products called "cream". The rapporteur believes that including a figure for fat content will confuse the issue, and may lead to a lowering of standards where more stringent national standards exist at present.

Amendment 9

While it is clear that the Commission intended "recombined cream" to come under the definition of cream, the rapporteur considers that a separate designation is necessary to prevent consumer deception.

Amendment 12

The more precise definition is preferable here because it takes into account the processing technique used in the manufacture of buttermilk.

Amendment 14

The rapporteur feels that the Commission's proposal is too restrictive since it would prohibit the use of other milk products from the manufacture of chesse; nor would it allow the use of modern techniques, such as ultra-filtration, in the manufacture of cheese.

Amendment 15

In order to cover yoghurt, the definition must include the use of bacterial cultures since these are used in its manufacture.

OPINION

(Rule 101 of the Rules of Procedure)

of the Committee on Agriculture, Fisheries and Food

Draftsman: Mr Richard SIMMONDS

On 19 September 1984, the Committee on Agriculture, Fisheries and Food appointed Mr Simmonds draftsman of the opinion.

The Committee considered the draft opinion at its meetings of 26 September 1984, 7 October 1984 and 19 November 1984. It adopted the draft opinion on 19 November 1984 by 28 votes to 6 with 2 abstentions.

The following took part in the vote: Mr Tolman, Chairman; Mr Eyraud and Mr Mouchel, Vice-Chairmen; Mr Simmonds, Draftsman; Mr Abens (deputizing for Mr Vennimmen), Mr Battersby, Mr Bocklet, Mr Borgo, Mr Christensen, Mr Clinton, Mrs Crawley, Mr Dalsass, Mr Ducarme (deputizing for Mrs S. Martin), Mr Elles (deputizing for Sir Henry Plumb), Mrs Ewing (deputizing for Mr Fanton), Mr Gatti, Mr Guarraci, Mr Happart, Mr Herman (deputizing for Mr Debatisse), Mrs Jepsen, Mr Klinkenberg (deputizing for Mrs Rothe), Mr MacSharry, Mr Marck, Mr Mertens, Mr Newens (deputizing for Mrs Castle), Mr B. Nielsen, Mr F. Pisoni, Mr Pranchère, Mr Provan, Mr Raftery (deputizing for Mr N. Pisoni), Mr Remacle (deputizing for Mr Wettig), Mr Späth (deputizing for Mr Früh), Mr Stavrou, Mr Sutra, Mr Thareau and Mr Woltjer.

INTRODUCTION

The Commission proposal is stated as being designed to protect consumers from being misled by imitation milk products, by ensuring that designations of milk and milk products are uniformly adopted in all Member States. The Commission's explanatory statement makes clear that the proposed regulation is mainly based on the fact that imitation milk products have increased their market share, and that this has been facilitated by economic factors and the existence of legislation which is, in certain Member States, fairly flexible with regard to the definition and labelling of milk products.

COMMENTARY

However, another reason for the proposal - and this is explicitly stated in the preamble to the proposed regulation - is to help dispose of milk surpluses in the Community through the promotion of consumption.

The Committee on Agriculture, Fisheries and Food is concerned about both these subjects: that the consumer should not be misled and that milk surpluses should be reduced. However, it must express serious reservations about the efficacy of the proposed regulation.

The trends which have led to the increase in sales of so-called imitation milk products are connected with economic factors such as the strain on family incomes caused by the economic crisis, but also by other factors, such as fear of heart disease, and also, the simple fact that consumer choice has been increased by the availability of these new products. In this sense, the use of the term "imitation" milk products is not quite justified; in many cases, the products are substitute products, quite legally and properly marketed under the foodstuff labelling laws of the Member States.

The implication of the proposal is that products containing vegetable oils and proteins have gained their market share due to improper labelling or misrepresentation. This assertion is altogether dubious and the Committee would welcome substantiation of it by the Commission. It appears far more likely that the main reason for the growth in market share of these products is to do with consumer preference based on price and taste.

The Committee agrees that consumers should be protected from being misled by fraudulent practices, but a Directive on this subject already exists - Council Directive 79/112/EEC, and if this Directive is not perceived by the Commission as being adequate, it should be amended. It is unhelpful to create a new Regulation (as proposed here) which will go alongside Directive 79/112/EEC, since the effect of these two measures can only be to lead to confusion amongst producers and consumers alike (not to speak of the bureaucratic problem involved).

An example of the type of confusion that would be created is if, as the Commission's Explanatory Memorandum states, the proposed designation of milk and its typical derivatives should be reserved for products containing only ingredients coming from milk, this would affect many products on the market including milk drinks containing fruit, and fruit yogurt.

However, the Committee on Agriculture, Fisheries and Food, recognizing that different traditions and regulations prevail in Member States other than that of the Draftsman, concluded as follows:

The Committee on Agriculture, Fisheries and Food submits to the Committee on the Environment, Public Health and Consumer Protection the following conclusions:

CONCLUSIONS

1. Notes that the duty-free import of raw materials for the manufacture of milk substitutes promotes the production and consumption of such products and artificially favours competition with natural milk products.
2. Considers the Council Regulation (EEC) on the designations used in the marketing of milk and milk products proposed by the Commission to be necessary in the interests of both producers and consumers.
3. Regards the proposed regulation put forward by the Commission as only a first step towards a satisfactory Community arrangement which takes into account the provisions of each Member State (e.g. bans on manufacture or distribution).
4. Hopes that there will be greater respect for Community preference and a genuine harmonization of standards governing the composition of milk and milk products.
5. Hopes that substitute and imitation milk products are not given the same names as natural milk products.

6. Calls on the Commission to put forward without delay a proposal for a regulation to provide effective protection at European level against imitation milk products.
7. Considers that from the point of view of both consumer protection and the equilibrium of the milk product market the proceedings instituted by the Commission in the European Court of Justice against some Member States which ban the import and sale of substitute milk products are inappropriate at this time.
8. Reiterates the request already made by the European Parliament¹ that the use of an indicator substance in milk powder intended for use as animal feed be made obligatory in order to prevent its use in food products intended for human consumption.

¹ DIANA report, Doc. 1-1175/82, OJ C96, 11 April 1983