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## REPORT

drawn up by the Committee on the ~~Environment~~ <sup>Environment, Public Health and Consumer Protection</sup>

on the proposal from the Commission of the European Communities to the Council (COM(83) 787 final - Doc. 1-1363/83) for a directive on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption

Rapporteur: Mr J. T. NORDMANN



By letter of 31 January 1984, the President of the Council of the European Communities requested the European Parliament to deliver an opinion, pursuant to Article 100 of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption.

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. The Committee on Development and Cooperation was asked for an opinion on 15 April 1985.

At its meeting of 20 September 1984, the Committee on the Environment, Public Health and Consumer Protection appointed Mr NORDMANN rapporteur.

The committee considered the Commission's proposal and the draft report at its meetings of 27 February 1985, 25 June 1985 and 19 September 1985.

At the last meeting the committee decided by 13 votes to 10 to recommend to Parliament that it approve the Commission's proposal, subject to the following amendments.

The committee then adopted the motion for a resolution as a whole by 14 votes to 10.

The following took part in the vote: Mr Collins, acting chairman; Mr Nordmann, rapporteur; Mr Avgerinos (deputizing for Mr Bombard), Mrs Banotti, Mr Ciancaglini (deputizing for Mr Michelini), Mr Cottrell, Mr Dalsass (deputizing for Mr Alber), Mr Elliott (deputizing for Ms Tongue), Mr Fitzgerald (deputizing for Mrs Dupuy), Mr Hughes, Mrs Jackson, Mrs Lentz-Cornette, Mrs Marinaro (deputizing for Mr Moravia), Mr Mertens, Mr Muntingh, Mr Parodi, Mr Pearce, Mr Roelants du Vivier, Mr Schwalba-Hoth (deputizing for Mrs Bloch von Blottnitz), Mr Sherlock, Mrs Squarcialupi, Mr Stevenson (deputizing for Mr Schmid), Mrs Van Hemeldonck (deputizing for Mr Vittinghof) and Mrs Veil.

The opinion of the Committee on Development and Cooperation is attached.

The report was tabled on 26 September 1985.

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

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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 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption

Text proposed by the Commission of the European Communities

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

Sixth recital

Whereas Directive 73/241/EEC and subsequent amendments have not been solved, in a uniform manner throughout the Commission, the problem of the use of certain ingredients in the various kinds of cocoa and chocolate products; whereas it is desirable to find a more lasting solution to this problem in the context of this consolidation;

AMENDMENT No. 1

Delete the words: 'whereas it is desirable to find a more lasting solution to this problem in the context of this consolidation;

9th recital

Whereas, in the second place, the use of certain additives, which has been maintained in several Member States, can be permitted throughout the Community, since within the limits imposed by technological considerations, such additives do not endanger human health;

Delete

AMENDMENT No. 2

10th recital

Whereas this applies to ammonium phosphatides [442] which are intended to replace lecithins [332] in whole or in part, as well as to polyglycerol polyricinoleate [467], which facilitates the production of figurines and thin films, and to sorbitan tristearate [492], which is used in the coating process

Delete

AMENDMENT No. 3

Text proposed by the Commission  
of the European Communities

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

11th recital

Whereas, moreover, it has recently been found that magnesium silicate [553a] and shellac [904] offer advantages for the coating of chocolate vermicelli or chocolate flake products without endangering human health;

AMENDMENT No. 4

Delete

Article 3(1) third indent

- the designation 'pralina' or 'cioccolato' may be used in Italian and the designation 'a chocolate' may be used in English to denote any chocolate product in single-mouthful sizes;

AMENDMENT No. 5

Add the following:

- the designation 'pralina' or 'cioccolato' may be used in Italian and the designation 'a chocolate' may be used in English to denote any chocolate product in single-mouthful sizes defined in Annex I, Section A (28);

Article 9(2)(b)(ii) third indent

- put up in packages that are not transparent but on which the decorations are depicted;

Delete

AMENDMENT No. 6

Article 9(4)

4. Products put up in fancy packages such as figurines or 'souvenir' articles, are not required to bear the list of ingredients or the date of minimum durability.

Delete

AMENDMENT No. 7

Text proposed by the Commission  
of the European Communities

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

Annex III, Section A (1.1)(iv)

(iv) more than 5% in the case of vegetable fats other than cocoa butter, this percentage being included in the maximum quantities laid down in (i), (ii) and (iii).

AMENDMENT No. 8

(iv) more than 5% in the case of vegetable fats other than cocoa butter, this percentage being included in the maximum quantities laid down in (i), (ii) and (iii). The designation of these products shall then be changed to indicate the presence of vegetable fats in substitution for cocoa butter and to prevent any confusion with the products defined in Annex I points 16, 17, 18, 20, 21, 22, 23, 25 and 26 in respect of which such a substitution has not taken place.

Annex III, Section B

1. ...
2. Polyglycerol polyricinoleate (476)
3. Sorbitan tristearate (492)
4. Magnesium silicate (553a)
5. Shellac (904)

AMENDMENT No. 9

2. Delete
3. Delete
4. Delete
5. Delete

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 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(83) 787 final) <sup>1</sup>,
- having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 1-1363/83)
- having regard to Council 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>2</sup> as subsequently amended<sup>3</sup>,
- having regard to Council Directive 79/112/EEC of 18 December 1978 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<sup>4</sup>,
- having regard to the first<sup>5</sup> and second<sup>6</sup> European Economic Community programmes for a consumer protection and information policy,
- having regard to the 1980 International Cocoa Agreement<sup>7</sup>,

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<sup>1</sup>OJ No. C 32, 7.2.1984, p. 3

<sup>2</sup>OJ No. L 228, 16.8.1973, p. 23

<sup>3</sup>OJ No. L 221, 12.8.1974, p. 17  
 OJ No. L 349, 28.12.1974, p. 63  
 OJ No. L 64, 11.3.1975, p. 21  
 OJ No. L 223, 16.8.1976, p. 1  
 OJ No. L 197, 22.7.1978, p. 10  
 OJ No. L 291, 17.10.1978, p. 15  
 OJ No. L 170, 3.7.1980, p.33

<sup>4</sup>OJ No. L 33, 8.2.1979, p. 1

<sup>5</sup>OJ No. C 92, 25.4.1975

<sup>6</sup>OJ No. C 133, 3.6.1981

<sup>7</sup>OJ No. L 313, 31.10.1981



- having regard to its previous resolutions<sup>1</sup>
  - having regard to the reports of the Scientific Committee for Food<sup>2</sup>,
  - having regard to 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>,
  - having regard to the proposal for a Council directive amending for the third time Directive 74/329/EEC<sup>4</sup>,
  - having regard to the report of the Committee on the Environment, Public Health and Consumer Protection and the opinion of the Committee on Development and Cooperation (Doc. A 2-101/85),
  - having regard to the result of the vote on the Commission's proposal,
- A. whereas cocoa and chocolate products play an important part in human diet,
- B. whereas any Community rules on foodstuffs must be based on the need to protect human health and to protect the consumer against fraud and adulteration,
- C. whereas the Commission's proposal would allow vegetable fats to be added to chocolate products, replacing cocoa butter up to a content of 5%,
- D. whereas, pursuant to the first and second European Community programmes for a consumer protection and information policy, measures for achieving the objective of protecting consumer health and safety should be based on the following principle: 'Substances or preparations which may form part of or be added to foodstuffs should be defined and their use regulated, for example by endeavouring to draw up in Community rules, clear and precise positive lists',
- E. whereas this proposal does not however draw up a clear and precise list of vegetable fats, and the absence of such a list prevents any checks on the nature of those fats and hence any assessment of their effect on human health,
- F. whereas, moreover, the use of vegetable fats is dependent on the availability of reliable methods of analysis to verify the quality and quantity of each of these vegetable fats which might have been added to chocolate products; and whereas, as this proposal states, such methods of analysis have not yet been perfected,

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<sup>1</sup>OJ No. C 108, 8.5.1978, p. 16 and OJ No. C 34, 11.2.1980, p. 104

<sup>2</sup>Reports of the Scientific Committee for Food, 7th Series, 1978, 8th Series, 1979, and 12th Series 1982 respectively

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

<sup>4</sup>OJ No. C 20, 27.1.1984, p. 13

- G. whereas the maximum of 5% vegetable fats set in the proposal is meaningless in practice, as in the absence of adequate methods of verification the actual percentage of vegetable fats in the finished product could not be determined; and whereas it would therefore be impossible to check the accuracy of the vegetable fat content stated on labels, and the consumer could not be protected against fraud,
- H. whereas, according to the Community programmes for a consumer protection and information policy, one of the principles on which the protection of the economic interests of the consumer should be based is that all information provided on labels, at the point of sale or in advertisements must be accurate,
- I. whereas, moreover, Article 2 of the Council Directive of 18 December 1978 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 states that the labelling and methods used must not be such as could mislead the purchaser particularly as to the characteristics of the foodstuffs and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production,
- J. whereas the Commission's proposal is unable to guarantee appropriate labelling as regards the composition not to say the quality of chocolate products to which vegetable fats had been added and whereas therefore the consumer could be misled,
- K. whereas harmonization of laws on foodstuffs for the sake of the free movement of those products must take into account the paramount constraints of consumer protection and fair competition between manufacturers,
- L. whereas, pursuant to Article 48 (1) of the 1980 International Cocoa Agreement, the Community and the Member States undertook, as signatories to that agreement, not to use cocoa substitutes to mislead the consumer,
- M. whereas, according to this proposal, vegetable fats are substitutes for cocoa, and whereas, for the reasons stated above, the consumer might be misled,
- N. whereas, moreover, the proposal would authorize the use in cocoa and chocolate products of ammonium phosphatides, polyglycerol polyricinoleate and sorbitan tristearate as emulsifiers, and of magnesium silicate and shellac as coating agents,
- O. having regard to the increasing use of chemicals in foodstuffs and the implications of that practice for human health,
- P. whereas, in the matter of food additives, human health should be the prime consideration, followed by the genuine technological need for such additives, and whereas, in the case of cocoa and chocolate products, this proposal does not prove any genuine technological need for the additives proposed,

- Q. whereas the absence of reliable data on the Community-wide consumption of cocoa and chocolate products, and on the actual technical uses of the additives proposed, make it impossible to estimate the actual intake of these additives by consumers,
- R. having regard to the report of the Scientific Committee for Food on the sensitivity of individuals to food components and food additives, in which it concludes that a more rigorous appraisal should be undertaken on the technological need for food additives with a view to a reduction in the total ingestion either by lowering permitted levels or by limiting the number of foodstuffs in which they are permitted,
- S. concerned to protect human health and to safeguard the purity of foodstuffs,
1. Notes with concern that this Commission proposal would allow vegetable fat to be added to chocolate products in partial substitution for cocoa butter;
  2. Believes that, in respect of vegetable fats this proposal does not comply with the principles set out in the Community programmes for a consumer protection and information policy, which lay down the principle of clear and precise positive lists of substances which may be added to foodstuffs;
  3. Stresses that this proposal is unable to ensure proper labelling of the qualitative and quantitative composition of chocolate products to which vegetable fats have been added, and thus to ensure that consumers are properly informed, and to guarantee fair competition between manufacturers;
  4. Believes that, in any case, there is no doubt that the addition of vegetable fats other than cocoa butter to chocolate products would substantially lower the quality of those products;
  5. Believes that the consumer must be protected against the confusion which might arise from differing qualities of cocoa-based products;
  6. Urges that the traditional quality of chocolate products be maintained, and their designation protected;
  7. Accepts the Commission proposal which would allow the free movement in the Community of cocoa and chocolate products manufactured in any Member State;
  8. Doubts whether the Commission's proposal is compatible with the 1980 International Cocoa Agreement and refers to the undertakings given by the Community as an importer to non-EEC, cocoa-producing countries;
  9. Believes, moreover, that the prime consideration in any legislation permitting the use of food additives must be the protection of human health, and that such use must meet a genuine, and strictly defined, technological need;
  10. Believes that the Commission's arguments for the use of the additives proposed are too general and are therefore insufficient proof of a genuine technical need in the case of cocoa and chocolate products, which have already attained a given quality standard;

11. Considers moreover that the scientific data on which this proposal is based are not conclusive evidence that there is no risk to human health from such additives;
12. Calls for polyglycerol polyricinoleate, sorbitan tristearate, magnesium silicate and shellac to be excluded from the scope of this proposal for a directive;
13. Reiterates the reservations it has already expressed on the use of ammonium phosphatides;
14. Endorses the policy that the principles set out in the Community programmes for a consumer protection and information policy must be taken into consideration when other Community policies are being drawn up, and that consumers' rights recognized by these programmes must be exercised by action taken under those policies;
15. Calls on the Commission, pursuant to Article 149, second paragraph, of the EEC Treaty, to accept the amendments adopted by Parliament to its proposal;
16. 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 STATEMENTI. INTRODUCTION

1. Since 1973 the cocoa and chocolate industry has been subject to Community rules pursuant to Council 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>. The harmonization of the national provisions governing these products by means of this directive was justified by the fact that the differences between national laws at the time, such as those governing the designation of cocoa-based products according to the composition and method of manufacture, and packaging, were hampering the free movement of various types of cocoa and chocolate product, and were liable to distort competition between undertakings.

2. Directive 73/241/EEC laid down definitions and common rules on the composition, manufacturing specifications, packaging and labelling of cocoa and chocolate products. This directive has been amended seven times since it was adopted, clarifying the rules as regards the definition of a number of cocoa and chocolate products and the designation under which they are sold.

3. This proposal for a directive is intended, inter alia, to consolidate these amendments to the initial 1973 directive.

The proposal also makes new amendments to the present Community rules. These amendments, some of which would introduce new manufacturing procedures for cocoa and chocolate products throughout the Community, in particular provide for:

- the use of vegetable fats other than cocoa butter,
- the use of additives, such as:
  - . ammonium phosphatides (442) )
  - . polyglycerol polyricinoleate (476) ) as emulsifiers
  - . sorbitan tristearate (492) )
  - . magnesium silicate (553 a) )
  - . shellac (904) ) as coating agents
- the relaxation of the restrictions on the use of sugars other than saccharose,
- the application of the labelling rules established by Directive 79/112/EEC to<sup>2</sup>cocoa and cocoa products, and additions and exemptions to those rules.

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

<sup>2</sup>Council Directive 79/112/EEC of 18 December 1978 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, OJ No. L 33, 8.2.1979, p. 1

It has to be said that the particular complexity of this proposal is not very well matched to its proclaimed intention of clarifying matters.

## II. Individual comments on the proposal for a directive

4. Apart from the questions of consolidation and designation, the main problems with the Commission proposal concern the composition and manufacture of cocoa and chocolate products: on the one hand, the use of vegetable fats and on the other the use of additives in cocoa based products.

### Vegetable fats

5. For a number of years it has been customary in the United Kingdom, Ireland and Denmark for vegetable fats other than cocoa butter to be used in the manufacture of chocolate. They permit cocoa butter and other fats derived from vegetable fats and various oils to be added to chocolate products.

As the problem of the use of vegetable fats had arisen in 1973 with the accession of these three countries, Directive 73/241/EEC dealt with it in Article 14(2) (a) by means of optional harmonization; each Member State was provisionally allowed to retain its laws under which vegetable fats were or were not allowed to be added to various chocolate products. In deciding thus, the Council believed that the economic and technical data available at the time were not sufficient for it to decide finally to allow these fats to be used throughout the Community and therefore reserved the right to reconsider the matter in the light of developments. In 1976 the Commission began the procedure to extend the use of vegetable fats throughout the Community, but did not go through with it because no method had then been perfected for checking the presence and quantity of these substances in chocolate products.

6. This proposal would allow the use throughout the Community of vegetable fats to up to 5% of the total weight of the finished product, provided their presence is indicated in the list of ingredients on the label. It also proposes to ban the use of words relating to quality in the designation of chocolate containing vegetable fats. The Commission is assuming that it would be desirable to allow free movement throughout the Community for chocolate products produced in this way in the three Member States mentioned above.

7. A further condition for the use of vegetable fats relates to the perfection of analytical methods to detect their presence and quantity in chocolate products. However, in its proposal the Commission states that 'methods of analysis at present available do not allow the quantitative determination of all these fats; whereas, in order to prevent possible frauds, the general implementation of the free movement of goods should therefore be made conditional on future developments in the field of analysis'. Article 17(2) of the proposal therefore introduces a derogation to the general use of vegetable fats, by permitting Member States to restrict the use of these substances to those for which a Community method of analysis has been adopted.

8. One might therefore question the value of a proposal permitting the use of vegetable fats in partial replacement of cocoa butter when analytical methods for checking the quality and quantity of such fat added to chocolate products have not yet been perfected.

9. The Committee on the Environment, Public Health and Consumer Protection would point out that the 5% figure set in the proposal as a maximum for vegetable fats is meaningless in practice, as in the absence at present of any method of checking it, the actual percentage of vegetable fat in the finished product could not be determined; it would therefore be impossible to check any such figure shown on the labelling. The absence of any methods of verification to ensure observance of the rules on vegetable fats implies that Community legislation as contemplated could not prevent fraud. There is therefore a large loophole in the proposal which Article 17(2), if applied, would not adequately remedy. In this respect the proposal departs from the spirit of Community policy on consumer protection<sup>1</sup>.

10. The Commission provides no proof of the technical need to add vegetable fats other than cocoa butter to chocolate products, its aim apparently being to enable product manufactured in this way in the abovementioned Member States in time to move freely in the Community. Moreover, although the Community consumer protection and information programmes establish the principle of clear and precise positive lists of substances which may be added to foodstuffs, this proposal does not include a list of the vegetable fats which would allow their nature and quality to be verified. The committee therefore cannot make any informed comments on those substances. Moreover, it should be pointed out that in any case, replacing part of the cocoa butter content by other vegetable fats would inevitably substantially lower the quality of the chocolate products. This should not be allowed to result in the marketing of products that might be confused with chocolate products; it would necessitate the adoption of different designations, at least in countries where it deviates from the processes customarily in use.

11. This also raises the issue of the Community's relations with non-EEC countries producing cocoa, as laid down in the 1980 International Cocoa Agreement<sup>2</sup>, which the Community and its Member States have signed.

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<sup>1</sup>Pursuant to the first and second European Economic Community programmes for a consumer protection and information policy (OJ C 92, 25.4.1975, and OJ C 133, 3.6.1981), one principle on which the protection of the economic interests of the consumer should be based is that all information provided on labels at the point of sale or in advertisements must be accurate. Article 2 of Directive 79/112/EEC on the labelling and presentation of foodstuffs states that 'the labelling and methods used must not be such as could mislead the purchaser to a material degree, particularly as to the characteristics of the foodstuffs and, in particular as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production'.

<sup>2</sup>OJ No. L 313, 31.10.1981

Article 48(1) of this agreement <sup>1</sup> entitled 'Cocoa substitutes' states that members recognize that the use of substitutes may prejudice the expansion of cocoa consumption. In this regard, they agree to establish regulations on cocoa products and chocolate or to adapt existing regulations, if necessary, so that the said regulations shall prohibit materials of non-cocoa origin from being used in place of cocoa to mislead the consumer.'

12. These two sentences lead the committee to wonder whether the proposal for a directive accords with the International Cocoa Agreement. For, under that agreement, the signatories undertake not to use cocoa substitutes. Moreover, the absence of methods for detecting vegetable fats and verifying the accuracy of details of such fats on labels would be likely to mislead the consumer.

13. There is also reason to wonder what possible effect the substitution of vegetable fats might have on trade between the Community and countries which produce cocoa, particularly the ACP States, whose volume of cocoa exports to the Community might be jeopardized. While certain fats to replace cocoa butter originate in the same countries, their profits from exporting vegetable fats would obviously be less than from cocoa. The Community measures being contemplated would therefore probably be detrimental to those countries, which depend on revenue from commodity exports.

#### Additives

14. The Commission is proposing to allow three emulsifiers, ammonium phosphatides, polyglycerol polyricinoleate and sorbitan tristearate to be used in cocoa and chocolate products, as substances which do not endanger human health. This really means extending throughout the Community a practice current in the countries which joined the Community in 1973.

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<sup>1</sup>The objectives of the International Cocoa Agreement 1980 are as follows:

- (a) to alleviate serious economic difficulties which would persist if adjustment between the production and consumption of cocoa cannot be effected by normal market forces alone as rapidly as circumstances required;
- (b) to prevent excessive fluctuations in the price of cocoa which affect adversely the long-term interests of both producers and consumers;
- (c) to make arrangements which will help stabilize and increase the earnings from the exports of cocoa of producing Member Countries, thereby helping to provide the necessary incentive for a dynamic and rising rate of production and to provide such countries with resources for accelerated economic growth and social development, while at the same time taking into account the interests of consumers in importing member countries, in particular the need to increase consumption;
- (d) to assure adequate supplies at reasonable prices, equitable to producers and consumers; and
- (e) to facilitate expansion of consumption and, if necessary, and in so far as possible, an adjustment of production, so as to secure an equilibrium in the long term between supply and demand.



15. In fact, to meet the demands of the new Member States (United Kingdom, Ireland and Denmark), Directive 73/241/EEC, Annex II, laid down special measures permitting those countries temporarily to retain their laws allowing the use of these emulsifiers. The Council reserved the right to decide to add these substances to Annex I of Directive 73/241/EEC, i.e. to provide for their use throughout the Community. However, the Council stated that a decision to include these substances in Annex I might be adopted only if scientific research has established that they were not harmful to human health and their use was necessary on economic grounds. In subsequently adopting Directive 78/842/EEC amending Directive 73/241/EEC<sup>1</sup>, the Council considered that a review of the situation had not justified a decision to that effect, and allowed the Member States involved temporarily to continue to use the emulsifiers. The Council again reserved the right to decide on the matter at a later stage<sup>2</sup>.

16. Finally, in Council Directive 80/608/EEC of 30 June 1980 amending Directive 73/241/EEC for the seventh time<sup>3</sup>, the Council felt that the use of ammonium phosphatides seemed to offer technical advantages and did not pose a danger to public health. This directive then allowed all Member States to authorize the use of ammonium phosphatides in cocoa and chocolate products, and the Council reserved the right to decide at a later date, on the basis of experience, on the possibility of its use throughout the Community.

In respect of polyglycerol polyricinoleate and sorbitan tristearate the Council felt that the absence of reliable data on consumption of cocoa and chocolate products throughout the Community made it impossible to assess the amounts of each of these two substances which could be absorbed by consumers and it was therefore impossible to state categorically that no danger to human health existed, and that a further thorough examination was necessary in order to justify the use of these substances from the technological standpoint. It therefore postponed until 31 December 1983 any decision to extend the use of these two emulsifiers in cocoa and chocolate products.

17. Under the present proposal, ammonium phosphatides, being a mixture of the ammonium salts of phosphatidic acids derived from colza oil, with a proportion of triglycerides from the partially hardened oil, would partially or entirely

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<sup>1</sup>Council Directive 78/842/EEC of 10 October 1978 amending for the sixth 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, OJ L 291 of 17.10.1978, p. 15

<sup>2</sup>In doing so, the Council considered that 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 (OJ No. L 189, 12.7.1974, p. 1) allowed the Member States, for five years after notification, to authorize the use of the emulsifiers listed in Annex II to that directive. This annex contained the emulsifiers listed in Annex II to Directive 73/241/EEC. The Council thus decided to apply the same five-year period for Directive 73/241/EEC.

<sup>3</sup>OJ No. L 170, 3.7.1980, p. 33

replace the lecithins already permitted by Directive 73/241/EEC and widely used in the Member States of the Community<sup>1</sup>. The Commission, believing that the use of these substances offer technical advantages in that they do not affect the organoleptic properties of the products to which they are added, proposes that ammonium phosphatides may be authorized on the same terms as lecithins.

18. The advantage of polyglycerol polyricinoleate intended for the manufacture of certain types of chocolate seems to be that it increases the viscosity of unhardened chocolate before and during moulding. Sorbitan tristearate would prevent whitening of certain chocolate products when coated by means of a sugarizing process.

19. Two other additives, magnesium silicate and shellac, are proposed as coating agents. The Commission take the view that there is justification on technical grounds for using these substances 'within the limits of good manufacturing practice'.

20. The Committee on the Environment, Public Health and Consumer Protection, concerned to protect public health and on the assumption that the aim must be to improve or at least maintain the quality of foodstuffs, disapproves on principle of the use of additives in these foodstuffs except where absolutely necessary on technical grounds. In the present case, the arguments for the use of the additives recommended by the Commission are not convincing evidence of genuine technical need.

21. The committee would also refer to the standpoint taken by the European Parliament in previous resolutions concerning these additives. In its resolution on the proposal from the Commission for a directive amending for seventh time Directive 73/241/EEC<sup>2</sup>, Parliament referred to its opinion on the proposals for a fifth amendment to the basic directive and reiterated the recommendations therein, in particular the reservations on the addition of ammonium phosphatides to cocoa and chocolate products. Furthermore, in its resolution on the Commission's proposal for a directive amending for the fifth time Directive 73/241/EEC<sup>3</sup>, Parliament stressed that, from the point of the view of the protection of the health of consumers, it disapproved of the extension of special temporary measures on the use of additives in cocoa products in certain Member States, an arrangement which made the operation of a common market unnecessarily difficult.

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<sup>1</sup>The specific criteria of purity for lecithins were laid down in Council Directive 78/664/EEC of 25 July 1978 laying down specific criteria of purity for antioxidants which may be used in foodstuffs intended for human consumption, OJ L 223, 14.8.1978

<sup>2</sup>OJ No. C 34 of 11.2.1980, p.104

<sup>3</sup>OJ No. C 108, 8.5.1978, p. 16

22. On the toxicological aspect, in its opinion expressed on 7 February 1979<sup>1</sup> the Scientific Committee on Food set the acceptable daily intakes (ADIs) for these emulsifiers on the basis of three estimated levels of chocolate consumption (25, 50 and 100 g chocolate). However, that committee established the ADI for these emulsifiers calculated from the usage data for these emulsifiers on the basis of estimated intakes given in a previous report by that committee<sup>2</sup>, and various assumptions concerning the consumption of chocolate<sup>3</sup>.

23. In the committee's opinion these figures are not reliable data on the consumption of cocoa and chocolate products throughout the Community and therefore do not provide a guide to the quantities of these emulsifiers which consumers might actually be absorbing. The Scientific Committee's opinion is, moreover, incomplete in another respect, in that it does not provide any specific toxicological assessment of the toxic effects of these substances.

24. Another point is that the ADIs may be exceeded as a result of the technological use of these emulsifiers. They are apparently used in a variety of other products (e.g. biscuits, cakes, chocolate confectionery and the like). There is therefore no guarantee that the build-up of these substances resulting from consumption of various foodstuffs containing them will not lead to the ADIs being exceeded.

25. The two coating agents, magnesium silicate and shellac are not mentioned in this report by the Scientific Committee on Food and have apparently not been subjected to toxicological study.

26. More recent recommendations by the Scientific Committee on Food in its report on the sensitivity of individuals to food components and food additives<sup>4</sup> are especially important, as that committee believes that a more rigorous appraisal should be undertaken on the technological need for food additives with a view to a reduction in the total ingestion either by lowering permitted levels or by limiting the numbers of foodstuffs in which they are permitted.

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<sup>1</sup>Report of the Scientific Committee for Food, eighth series, 1979, on the use of certain emulsifiers in chocolate and related products

<sup>2</sup>See report of the Scientific Committee for Food, seventh series, 1978, on emulsifiers stabilizers, thickeners and gelling agents

<sup>3</sup>We would quote here a comment by the Scientific Committee in its opinion of 7 February 1979:

the committee: recalls that in its report on Emulsifiers, Stabilizers, Thickeners and Gelling Agents the Committee stated that the usage levels mentioned were not necessarily complete. Therefore the Committee suggests that accurate and up-to-date data on the levels of use and probable human intake of the emulsifiers listed in the table from chocolate, chocolate confectionery and other food commodities be obtained for various age groups in preference to mean estimates, so that probable intakes can be compared with ADIs.'

<sup>4</sup>Report of the Scientific Committee on Food, twelfth series, 1982

27. Finally, in the Explanatory memorandum to this proposal, the Commission states that it is preparing a new amendment to 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>1</sup>, and that, amongst other things, it would include the ammonium salts of phosphatidic acids, polyglycerol polyricinoleate and sorbitan tristearate in the list included in Directive 74/329/EEC<sup>2</sup>.

28. When we refer to this new proposal for an amendment to Directive 74/329/EEC, which the Commission has already submitted to the Council, on 13 January 1984<sup>3</sup>, we find that the three substances are not included in the list of emulsifiers in Directive 74/329/EEC.

29. The committee therefore wonders why the Commission, while proposing that these substances may be used in cocoa and chocolate products, has not proposed that they be included in the Community list of emulsifiers in its proposed amendment to Directive 74/329/EEC.

30. The committee believes that these substances should have been included in the list of emulsifiers in Directive 74/329/EEC before any proposal for their use in specific products and hence in the cocoa and chocolate products with which this proposal for a directive is concerned.

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<sup>1</sup>OJ No. L 189, 12.7.1984, p.1

<sup>2</sup>The inclusion of substances as emulsifiers in the Community list, i.e. Annex I to Directive 74/329/EEC, means that these substances are authorized for use throughout the Community. They are included on this list after their toxicological properties have been investigated. The Council also states at the earliest date the foodstuffs to which those substances may be added and under what conditions.

<sup>3</sup>Proposal for a Council directive amending for third time Directive 74/329/EEC on the approximation of the laws of the Member States relating to emulsifiers, stabilizers, thickeners and gelling agents for use in foodstuffs (COM(84) 4 final), OJ No. C 20, 27.1.1984, p.13

OPINION

(Rule 101 of the Rules of Procedure)

of the Committee on Development and Cooperation

Draftsman: Mrs C. RABBETHGE

On 24 April 1985, the Committee on Development and Cooperation appointed Mrs Rabbethge draftsman of the opinion.

The committee considered the draft opinion at its meetings of 26 June and 18 September 1985. It adopted the draft opinion on 18 September 1985 unanimously.

The following took part in the vote: Mrs Focke, chairman; Mr Bersani, vice-chairman; Mr Wurtz, vice-chairman; Mrs Rabbethge, draftsman; Mr Andrews, Mrs Cinciari Rodano, Mrs Daly, Mr Habsburg (deputizing for Mr Lemmer), Mr Kuijpers, Mr Luster, Mrs Pery, Mr Saby, Mr Simpson, Mr Ulburghs (deputizing for Mr Pannella) and Mr Verbeek.

1. The Committee on Development and Cooperation expresses the wish that the following opinion be taken into account by the Committee on the Environment, Public Health and Consumer Protection in the formulation of its motion for a resolution.

2. There are two underlying reasons for the drafting of this proposed directive: the first concerns Treaty obligations on the free movement of goods within the Community and the Commission's policy of bringing such 'free movement' about; and the second concerns the undertakings made in Council Directive 73/241/EEC and its subsequent amendments, which in the opinion of the Commission need to be further modified and consolidated.

3. Whereas the need to clarify and consolidate an existing directive can perhaps be understood, the proposed modifications to the current framework of rules regulating chocolate production are far less comprehensible.

4. The crux of the matter as far as the Committee on Development and Cooperation is concerned lies in the Commission's proposed modification concerning the use of vegetable fats other than cocoa butter in the production of chocolate<sup>1</sup>. In 1973, when the existing directive was adopted, Britain, Denmark and Ireland, the new members of the recently enlarged EEC, permitted the use of non-cocoa vegetable fats in the manufacture of chocolate products. At that time, a period of three years was granted to bring practices throughout the Community into line. The Commission was asked to report to the Council on the "possibilities and the forms of extending the use of these fats to the whole of the Community".

5. The alternative approach could have been to work towards eliminating the use of non-cocoa vegetable fats in the Community as a whole, thus placing Britain, Ireland and Denmark in a position where they would in time comply with majority practice. Indeed the use of the words "possibilities" in the

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<sup>1</sup> See the Explanatory memorandum submitted to the Council by the Commission (COM (83) 787 final), notably para 2

directive can be seen as leaving open such an option. As it is, the period during which possible changes could have been made can be said to have lapsed.

6. According to the proposed directive vegetable fats may be used up to a maximum of 5% of the total weight of the finished product, in the manufacture of chocolate. This has very clear implications of a detrimental nature on the potential exports of cocoa to the Community by developing countries, and in particular, by our ACP partners in the Lome Convention.

7. Vegetable fat substitutes are at the moment cheaper than cocoa butter, in fact about half the price. If cocoa prices were to rise considerably or even marginally in some cases the European chocolate manufacturers would clearly have a greater incentive to use non-cocoa fats in the production of their chocolate. Furthermore, even though substitute fats for cocoa butter may in some cases come from developing countries (coconut oil, palm oil, etc.), those countries who at present have the manufacturing capacity to process the raw materials concerned are principally the United States, Japan and the United Kingdom.

8. The following ACP countries are the principle exporters of cocoa to the Community

	Production in 1000 t 1982	Cocoa & cocoa products as % of total exports
Ivory Coast	360	27
Ghana	175	74
Nigeria	160	2.7
Cameroun	100	12.1
Papua New Guinea	31	5.5
Togo	11	14.1
Sierra Leone	9	10.4
Equatorial Guinea	8	n/a
Sao Tome & Principe	8	n/a
Liberia	5	n/a
Benin	n/a	22 (1980)
Western Samoa	n/a	12.5 (1981)

(Source: Eurostat 1985)

9. Clearly, any further reduction in imports of cocoa by the Community from these countries could have serious consequences on their national economies and their balance of payments, given that in recent years, chocolate consumption has been in decline and exports of cocoa have already fallen, in spite of much more strict quality controls in the countries concerned. For countries such as these, cocoa is in most cases a strategically important product and crucial to the livelihood of millions of families. The effect of the implementation of the proposed directive, unless substantially modified, could well be to impoverish even further, several countries, already considered to be amongst the world's poorest.

10. Another point of serious concern to the Committee on Development and Cooperation, and mentioned in the Nordmann report (in para 12), is the extent to which the proposed directive conflicts with the provisions of the 1980 International Cocoa Agreement. It is apparent that the use of alternative oils and fats in chocolate manufacturing is contrary to the spirit and the letter of Article 48 of the International Cocoa Agreement. This was made clear at the meeting of the International Cocoa Council held in London in July 1984. If the Council of Ministers were therefore to adopt the proposed directive in its present form it would be acting contrary to an agreement signed by the Council of Ministers in 1981 when the ICA was ratified<sup>2</sup>

11. Since May 1984, new discussions have been held on the Fourth International Cocoa Agreement. No conclusions have yet been reached. Yet the ACP-EEC Joint Committee meeting in Bujumbura in January 1985 did adopt a resolution which "calls urgently on the Community to approach the next round of negotiations with greater flexibility and political goodwill so that an

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<sup>2</sup>See OJ 81/850/EEC Vol. L 313 of 31.10.1981



international agreement may be concluded"<sup>3</sup>

12. The ACP Group of States have on a number of occasions expressed their concern at the proposed Council directive. In January 1985 a request was made by the ACP-EEC Committee of Ambassadors to begin consultations according to the provisions of Article 7 of Lome II. The issue was discussed at the ACP-EEC Council of Ministers on 20/21 June 1985, which decided to convene a meeting of a group of experts in order to try to resolve the difficulties inherent in the proposed directive. The work of the group of experts has not yet overcome the technical problems involved and no decisions have yet been reached. Meanwhile, the EEC Council of Ministers has agreed to suspend consideration of the directive.

13. A second motion for a resolution adopted in Bujumbura at the meeting of the Joint Committee<sup>4</sup> on the use of vegetable fat in the manufacture of chocolate called on the Community and its Member States to "maintain the original form and content" of the 1973 directive.

#### CONCLUSIONS

14. It was the Association of the Chocolate, Biscuit and Confectionery Industries of the EEC (CAOBISCO) which in 1980 requested the Commission to amend the directive of 1973 so as to allow the more widespread use of non cocoa vegetable fats in the manufacture of chocolate products. In making such a request, and judging by documentary evidence available, their objective was to reduce further the costs of chocolate production. Given the Commission's figures of a loss of 10-50,000 tonnes of cocoa exports under the hypothesis that manufacturers converted to using other vegetable fats, it would appear that European industry is indeed envisaging such a conversion - hence the fear of the ACP producers. Hence the scepticism with which one must treat the reply of Commissioner Cockfield to a written question from Mr. Fanton (RDE: France) on the subject, where the Commissioner says that it is impossible to predict what use industry would make of the revised directive.

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<sup>3</sup>See CA/CP/555/fin. of 31.1.1985

<sup>4</sup>CA/CP/554/fin. of 31.1.1985

15. The Committee on Development and Cooperation therefore is strongly opposed to the part of the directive dealing with cocoa fat substitutes in the form of alternative vegetable fats. Even though it is recognised that labelling would to a certain extent publicise such differences in the content of chocolate products the detrimental effect on cocoa producers could be such that their economies could not recover from such reductions in the output to the European Community.

16. The Committee further considers that no further action be taken in relation to the proposed directive until the formal meetings between the ACP and EEC representatives investigating the question have reached a mutually satisfactory conclusion.

17. Furthermore, the Committee formally requests the Commission to investigate, before the proposed directive is again considered by the Council the legal, technical and other considerations involved in requiring the UK, Ireland and Denmark to comply with manufacturing norms in other Community countries as regards cocoa and chocolate products where cocoa butter and not vegetable fat substitutes are used; and to report to the Committee on Development and Cooperation and to the Committee on the Environment, Public Health and Consumer Protection with a view to modifying the proposed directive accordingly.

18. In its present form, the directive is detrimental to the interests of European consumers, detrimental to the cocoa producers, contrary to the International Cocoa Agreement and beneficial only to the confectionery industry. In such circumstances the Committee on Development and Cooperation considers that unless it proves possible to extend present norms in the majority of EEC countries to the UK, Ireland and Denmark, that the status quo should remain as regards the use of non-cocoa vegetable fats in the manufacturing of cocoa and chocolate products.

19. The committee reserves the right to reconsider its opinion in the light of any modifications to the proposal for a directive which result from future discussions between the EEC and ACP.