

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(74) 1848 final
Brussels, 8 November 1974

Proposal for a

COUNCIL DIRECTIVE

amending for the second time Directive
No. 73/241/EEC on the approximation of
the laws of the Member States relating
to cocoa and chocolate products intended
for human consumption

(submitted to the Council by the Commission)

Explanatory Memorandum

1. It has appeared that the present wording of certain provisions of Council Directive 73/241/EEC on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption¹ can lead to conflicting interpretations.
 - 1.1 Article 6 (1) of the Directive lays down the individual weights¹ for bars and tablets of chocolate products weighing between 85 g and 500 g. The wording seems to exclude the sale of the 3 ounce (85 g approximately) units which are extremely common in Ireland and the United Kingdom. This was not, however, the Council's intention when it adopted the Directive and the wording of the paragraph in question should therefore be improved.
The derogation laid down in paragraph 2 (c) of Article 14 should be altered at the same time.
 - 1.2 The definition of "refined cocoa butter" appearing in paragraph 1.14 (3) of Annex I stipulates that this product shall be refined. However, certain types of cocoa butter have all the characteristics of so-called refined butter without undergoing the refining process. Such a process is considered optional in paragraph 3 (b) of Annex I to the Directive, where certain treatments for refined cocoa butter are listed as being permissible but not obligatory. The definition of the latter should therefore make clear that refining is a possibility and not an obligation.
 - 1.3 Certain chocolate products are characterized by the inclusion of various forms of milk. This is true of milk chocolate, milk chocolate with high milk content, milk chocolate vermicelli, gianduja nut milk chocolate and white chocolate, all of which are described in Annex I to the Directive.

According to these definitions, the milk used must be in the form of milk solids obtained by evaporation. The text rules out the use of, for example, cream or butter, unless paragraph 7 (c) were applied in which case the products would have to be mentioned on the label in accordance with paragraph 7 (b) which would then give the consumer the wrong impression of what the product really contained.

The range of milk ingredients should therefore be extended although any distortion, in the final chocolate product, of the natural balance between the different substances - other than butterfat - making up the milk must be excluded.

2. In addition to these amendments to clarify the text, the Commission proposes two other changes :

2.1 The expression "filled chocolate" used in the English edition of the Directive is little known in Ireland and the United Kingdom and other names with which consumers are more familiar should therefore be used.

2.2 The Directive on cocoa and chocolate products does not yet cover the labelling of large packages not intended for retail sale, where a certain amount of flexibility as to how the various details should figure could be introduced.

The Commission proposes that a further paragraph on packaging, along the lines of the more recent directives concerning certain sugars intended for human consumption ¹ and honey ², should be included.

3. In view of the amendments laid down in the present draft Directive, the Council, in its Directive 74/411/EEC of 1 August 1974 ³, extended the time limit for including the provisions of Directive 73/241/EEC as part of national law to 1 January 1975.

1 OJ N° L 356, 27 December 1973, p. 71

2 OJ N° L 221, 12 August 1974, p. 10

3 OJ N° L 221, 12 August 1974, p. 17

The prescribed time limit for implementing these provisions remains unchanged.

When it took this measure, the Council invited the Commission to study the question of a possible extension of the second time limit and to put forward any proposals on the subject.

The Commission now proposes that the time limit for implementing Directive 73/241/EEC should only be extended in respect of the rules on labelling where practical difficulties could well rise due to the reduced interval between inclusion as part of national law and entry into force.

Other rules have not given rise to the same sort of difficulty.

Proposal for a Council Directive amending, for the second time, Council Directive No. 73/241/EEC on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas it appears that the present wording of certain provisions of Council Directive No. 73/241/EEC (1) of 24 July 1974 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption may give rise to conflicting interpretations;

Whereas, in particular, Article 6 (2) of that Directive could, in certain cases at least, be interpreted to exclude the sale of bars or tablets of chocolate products weighing 85 g, which weight is very common in some Member States; whereas the definition of refined cocoa butter contained in Annex I to the Directive seems to imply that this product must be refined, whereas this process is not always used; whereas the definitions in that Annex of the various chocolate products containing milk in various forms could have the effect of limiting unjustifiably the manufacturers choice of basic products;

Whereas these provisions should therefore be worded more clearly;

.../...

(1) OJ No. L 221, 12th August 1974, p. 10.

Whereas the expression "filled chocolate" is not in common usage in English whereas, the use of other expressions better known to consumers should therefore be authorised also;

Whereas Directive No. 73/241/EEC does not provide for the labelling of charge packages not intended for retail as have recent Directives on foodstuffs and in particular Council Directive No. 74/409/EEC (1) of 22 July 1974 on the harmonization of the laws of the Member States relating to honey; whereas this situation must be remedied;

Whereas Council Directive No. 74/411/EEC (2) of 1 August 1974 extended until 1 January 1975 the time limit for amending national laws in accordance with the provisions of Directive No. 73/241/EEC but did not alter the date on which those provisions shall begin to apply;

Whereas the reduction of the period between the publication of the new national laws and their implementation may give rise to practical difficulties in printing the labels required under the rules laid down in Directive No. 73/241/EEC; whereas the period fixed for implementing these rules should therefore be extended;

HAS ADOPTED THIS DIRECTIVE:

.../...

(1) OJ No. L 221, 12 August 1974, p. 10

(2) OJ No. L 221, 12 August 1974, p. 17

Article 1

The following subparagraph is added to Article 3 (1) of Directive No. 73/241/EEC:

"- the name "filled chocolate" may be replaced in English by one of the following names: "chocolate with ... filling", "chocolate with ... centre", "chocolate-coated ... ", "chocolate-covered"

Article 2

Article 6 (1) of Directive No. 73/241/EEC is amended as follows:

"1. Chocolate, plain chocolate, gianduja nut chocolate, milk chocolate, milk chocolate with high milk content, gianduja nut milk chocolate, white chocolate and filled chocolate, in the form of bars or tablets each weighing not less than 85 g and not more than 500 g, shall be marketed in the following individual weights only: 100 g, 125 g, 150 g, 200 g, 250 g, 300 g, 400 g and 500g."

Article 3

The following paragraph 2a is added to Article 7 of Directive No. 73/241/EEC:

"2a. Where the products defined in Annex I are put up in packages or containers of a net weight equal to or exceeding 10 kilogrammes and are not retailed, the information referred to in paragraph 1(d), (e) and (f) may, if desired, appear only on the accompanying documents."

Article 4

The first sentence of Article 14(2)(c) of Directive No. 73/241/EEC is amended as follows:

"Prohibiting the marketing of bars of chocolate weighing not less than 75 g but not exceeding 85 g."

.../...

Article 5

The second paragraph of Article 15 of Directive No. 73/241/EEC is amended as follows:

"This latter period, however,

- shall be extended to three years for the application of Article 6,
- shall be extended until 31 Januari 1976 for the application of Article 7."

Article 6

The first and second paragraphs of the third indent of Annex I(1.14) to Directive No. 73/241/EEC is amended as follows:

"refined cocoa butter

cocoa butter obtained by pressure, by torsion (the expeller process), by extraction using a solvent or by a combination of these processes, from one or more of the following raw materials:

cocoa beans, cocoa nib, cocoa dust, cocoa mass, cocoa press cake, fat-reduced cocoa press cake, expeller press cake, and which may be refined in accordance with the provisions of paragraph 3(b); where cocoa fat, prepared either by the producer of 'refined cocoa butter' himself or by another producer, is employed as a secondary raw material, it must have been obtained from the raw materials listed above.

Article 7

Annex I (1.21) to Directive No. 73/241/EEC is amended as follows:

"1.21 Milk chocolate

the product obtained from cocoa nib, cocoa mass, cocoa powder or fat-reduced cocoa powder and sucrose, with or without added cocoa butter, and from solids obtained by partially or totally dehydrating whole milk or from partially or wholly skimmed milk, and where appropriate, from cream, partially or totally dehydrated cream, butter or butter fat;

It shall have the following characteristics, subject to the definitions of milk chocolate vermicelli, gianduja nut milk chocolate and couverture milk chocolate:

- total dry cocoa solids not less than 24 %
- dry non-fat cocoa solids not less than 2.5 %
- total dry milk solids - not less than 14 %
- the proportions of the various constituents remaining after the butter fat has been deducted correspond with those occurring naturally in milk
- butter fat not less than 3.5 %
- total fat not less than 25 %
- sucrose not more than 55 %,

these percentages to be calculated after the weight of the additions provided for in paragraphe 5 to 8 has been deducted;".

Article 8

Annex I (1.22) to Directive No. 73/241/EEC is amended as follows:

"1.22 Milkchocolate with high milk content

the product obtained from cocoa nib, cocoa mass, cocoa powder, or fat-reduced cocoa powder and sucrose, with or without added cocoa butter, and from solids obtained by partially or totally dehydrating whole milk or from partially or wholly skimmed milk, and where appropriate, from partially or totally dehydrated cream, butter or butter fat;

It shall have the following characteristics:

- total dry cocoa solids not less than 20 %
- dry non-fat cocoa solids not less than 2.5 %
- total dry milk solids - not less than 20 %
- the proportions of the various constituents remaining after the butter fat has been deducted correspond with those occurring naturally in milk

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| - butter fat | not less than 5 % |
| - total fat | not less than 25 % |
| - sucrose | not more than 55 % |

these percentages to be calculated after the weight of the additions provided for in paragraphs 5 to 8 has been deducted;"

Article 9

Annex I (1.23) to Directive No. 73/241/EEC is amended as follows:

"1.23 Milk chocolate vermicelli, milk chocolate flakes, milk chocolate in the form of granules or flakes having the following characteristics which differ from those laid down in paragraph 1.21:

- | | |
|--------------------------|--|
| - total dry cocoa solids | not less than 20 % |
| - total dry milk solids | - not less than 12 %
- the proportions of the various constituents remaining after the butter fat has been deducted correspond with those occurring naturally in milk |
| - butter fat | not less than 3 % |
| - total fat | not less than 12 % |
| - sucrose | not more than 66 %;" |

Article 10

Annex I (1.24) to Directive No. 73/241/EEC is amended as follows:

"1.24 Gianduja (or one of the derivatives of the word 'dianduja') nut milk chocolate

The product obtained firstly from milk chocolate having a minimum content of 10 % of dry milk solids, and secondly from finely-ground hazelnuts in such quantities that 100 g of the product contain not less than 15 g and not more than 40 g of hazelnuts. Almonds, hazelnuts and other nut varieties may also be added, either whole or broken in such quantities that, together with the ground hazelnuts, they do not exceed 60 % of the total weight of the product;"

Article 11

Annex I (1.26) to Directive No. 73/241/EEC is amended as follows:

"1.26 White chocolate

the product free of coloring matters, obtained from cocoa butter, sucrose and from solids obtained by partially or totally dehydrating whole milk or partially or wholly skimmed milk, and, where appropriate, from cream, partially or wholly dehydrated cream, butter or butter fat;

It shall have the following characteristics:

- cocoa butter not less than 20 %
- total dry milk solids
 - not less than 14 %
 - the proportions of the various constituents remaining after the butter fat has been deducted correspond with those occurring naturally in milk
- butter fat not less than 3.5 %
- sucrose not more than 55 %

these percentages to be calculated after the weight of the additions provided for in paragraphs 5 to 8 has been deducted;".

Article 12

Member States shall before 1 January 1975 take all measures necessary to comply with this Directive.

Article 13

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President

