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DOCUMENT 15/78

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. 485/77) for a directive amending for the fifth 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

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English Edition

By letter of 6 January 1978, the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive amending for the fifth 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.

The President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection.

On 25 January 1978 the committee appointed Mr Lamberts rapporteur.

It considered the proposal at its meetings of 22 February and 20 March 1978. At the latter meeting it adopted the draft report unanimously.

Present : Mr Jahn, acting chairman; Mr Baas, vice-chairman; Mr Lamberts, rapporteur; Mr van Aerssen, Mrs Cassanmagnago Cerretti, Mr Dewulf (deputizing for Mr Ney), Mr Guerlin, Lord Kennet , Mr Willi Müller, Mrs Squarcialupi and Mr Wawrzik.

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A

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

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive amending for the fifth 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

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 485/77),
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Protection (Doc. 15 /78),
1. Notes once again that the European Parliament is pressed for time as a result of the Commission's late submission of an important proposal amending the basic directive;
 2. Stresses yet again that, from the point of view of the protection of the health of consumers, it disapproves of the extension of special temporary measures on the use of additives in cocoa products in certain Member States, an arrangement which makes the operation of a common market unnecessarily difficult;
 3. Urges the Commission to expedite the investigations by the Scientific Committee for Food into the use of these additives, and to notify the European Parliament of the results of these investigations;

¹ OJ No. C 8, 10.1.1978, p. 2

4. Takes the view, therefore, that the present proposal should extend the use of these additives only for a short time, pending conclusion of the scientific investigations;
5. Expects the Commission to submit in good time its proposal on the further authorization under certain conditions, of the use in foodstuffs of a number of additives listed in Annex II of Directive 74/329/EEC, in order to permit the Council to take a decision by 1 July 1979 at the latest;
6. Approves the present proposal, subject to the following amendments.

Council directive amending for the fifth 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

Preamble and recitals 1 to 4 unchanged

Recital 5

Whereas the aforementioned Annex II provides in paragraph 2(b) for the possibility of including these substances in Annex I before 1 January 1978; whereas a new examination of the conditions of use of the said substances has led to the conclusion that a decision on their use in the Community cannot be taken by the said date; whereas the deadline must therefore be withdrawn and the Member States must be authorized to use these substances;

Whereas the aforementioned Annex II provides in paragraph 2(b) for the possibility of including these substances in Annex I before 1 January 1978; whereas a new examination of the conditions of use of the said substances has led to the conclusion that a decision on their use in the Community cannot be taken by the said date; whereas the deadline for the continued application in the relevant Member States of national legislation on the use of the said substances must therefore be extended to 30 June 1979 at the latest;

Recitals 6 and 7 deleted

Recital 8

Whereas, finally, 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 foodstuffs³ allows Member States, for five years after notification, to authorize the use of the emulsifiers listed in Annex II to Directive 72/241/EEC, and whereas, therefore, the same period should be adopted for the purposes of this Directive,

Whereas, pursuant to Article 3 of 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 foodstuffs³, the Council must decide, before 1 July 1979, whether the use of the substances mentioned in Annex II may continue to be authorized;

³ OJ No. L 189, 12.7.1974, p.1

Articles 1 to 3 unchanged

¹ For complete text, see
OJ No. C 8, 10.1.1978, p. 2

ARTICLE 4

In Annex II, paragraph 2 is amended to read as follows:

'2. This Directive shall not affect the provisions of national laws authorizing the use of:

- phosphoric acid as a neutralizing agent in cocoa products alkalized in accordance with Annex I (2);
- flavouring substances other than those referred to in Annex I (5) (a) in the cocoa and chocolate products referred to in that paragraph, without prejudice to the relevant provisions to be adopted by the Community;
- polyglycerol polyricinoleate, sorbitan monostearate, sorbitan tristearate, polyoxyethylene (20) sorbitan monostearate and ammonium salts of phosphatidic acids in the chocolate and cocoa products referred to in the first subparagraph on Annex I (6).

In Annex II, paragraph 2 is amended to read as follows:

'2(a) Notwithstanding Article 2 of this Directive, Member States may, until 30 June 1979, apply to the products marketed in their territory the national laws in force at the time of notification of the Directive and authorizing the use of:

- phosphoric acid as a neutralizing agent in cocoa products alkalized in accordance with Annex I (2);
- flavouring substances other than those referred to in Annex I (5) (a) in the cocoa and chocolate products referred to in that paragraph;
- polyglycerol polyricinoleate, sorbitan monostearate, sorbitan tristearate, polyoxyethylene (20) sorbitan monostearate and ammonium salts of phosphatidic acids in the chocolate and cocoa products referred to in the first subparagraph of Annex I (6).

(b) Pursuant to the procedure laid down in Article 100 of the Treaty, the Council acting on a proposal from the Commission may, not later than 1 July 1979, add to Annex I the substances referred to under (a)

A decision to include these substances in Annex I may be adopted only if scientific research has established that they are not harmful to human health and if their use is necessary on economic grounds¹.

Article 5 deleted

Article 6 unchanged

¹Original text of basic directive retained except for dates (see OJ No. L 228 16.8.1973, P. 35)

EXPLANATORY STATEMENT

A. GENERAL REMARKS

1. The late submission of this proposal is rather unsatisfactory. On 16 December 1977, the Commission submitted an amending proposal. On 5 January 1978, the Council decided to consult the European Parliament on this proposal, which related to the matters which should have been settled before 31 December 1977.
2. The committee might perhaps have been less concerned at the late submission of this amending proposal if a similar situation had not arisen during the December 1977 part-session, when the committee had to hold an extra meeting in view of the need to avoid a legal vacuum by dealing with an amending proposal a few weeks before the expiry of the agreed transitional period for the new Member States, i.e. 31 December 1977 (see Doc. 455/77).
3. It should also be pointed out that the Commission acted on the report adopted at the above meeting, and amended its proposal even at that late stage (see COM(77) 734 final).
4. The following two questions arise now that the deadline has expired and, legally speaking, cocoa and chocolate products containing additives provisionally authorized by virtue of special measures in certain Member States are prohibited:
 - (a) Why did the Commission take so long to act?
 - (b) Will the manufacture of the cocoa and chocolate products concerned be condoned in the hope that a directive with retrospective effect will be approved?

B. SPECIFIC REMARKS

5. Apart from a few justified improvements and additions to the basic directive, such as the addition of limited amounts of milk to gianduja hazel nut chocolate, the Commission's proposal does not provide a very satisfactory solution from the point of view of the protection of the health of consumers.

6. Five years after the implementation of Directive 73/241/EEC of 24 July 1973, the Commission's proposal no longer places any specific time limit on the special measures for the new Member States provided for in that Directive; moreover, it also deletes the clause which specifies that the additives mentioned in Annex II may be included in the cocoa and chocolate products listed in Annex I only if scientific research has established that they are not harmful to human health and if their use is necessary on economic grounds.

7. The committee cannot help thinking that the Commission has been guided by the latter condition or is perhaps anticipating the deliberations of the Standing Committee on Foodstuffs which, in the normal course of events, should soon be advising on the admissibility of the additives under consideration, some of which are also included in Annex II of another basic document, i.e. Directive No. 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 foodstuffs¹.

8. Under Articles 3 and 4 of the latter directive the Council must decide within five years from the notification of the directive, i.e. not later than 1 July 1979, whether such substances as phosphoric acid included in the list of permitted emulsifiers, stabilizers, thickeners and gelling agents may or may not under certain conditions be added to foodstuffs.

9. The committee takes the view that pending the conclusion of the scientific investigations and notification of the results of the deliberations of the Standing Committee on Foodstuffs, the position adopted in regard to the extension and possible application of the abovementioned special measures should be as cautious and non-committal as possible.

¹ OJ No. L 189, 12.07.1974, p. 1.

C. HEALTH PROTECTION

10. It is important to note that 80% of the phosphorus and 98% of the calcium present in the human body are located in the bones and teeth.

The normal daily intake of calcium is approximately 1 gram, only part of which can be assimilated by the body, most of the calcium contained in everyday food being unsuitable for this purpose.

11. Excessive phosphorus intake through food of more than half a gram per day usually gives rise to a reduction in the amount of calcium absorbed because calcium reacts with phosphorus to form insoluble compounds in the intestines.

12. The ratio between calcium and phosphorus intake in food must therefore be at least one to one and a half. Another factor to be taken into account is that phosphatides (natural lecithins and artificial amounts of YN) break down in the small intestine into anorganic phosphorus compounds and increase the body's phosphorus level. An unsuitable ratio of intake between the two substances is therefore undesirable and leads to deficiency of one of them.

13. With the increased consumption of sophisticated food in the Western world the increasing lack of calcium in our food is an urgent problem, especially for young people and for the aged.

14. An experiment carried out by your rapporteur some 25 or 30 years ago among about 1,000 children between the ages of 7 and 9 revealed that the Ca/P ratio through food intake in the blood of the children was jeopardized by an alarmingly low Ca intake.

15. An experiment which was carried out again under the direct personal supervision of your rapporteur, by a committee of the Netherlands Food Council among school children in the nine largest cities in the Netherlands, and naturally took into account many more aspects of the children's eating habits, showed that there was indeed reason for concern.

16. These fears have not yet been removed, not because proper food is not available in the present prosperous society, but because people in the West and particularly the socially and economically weak simply do not want to eat healthy food.

17. They do not want to eat healthy food in the first place because no information in the subject gets through to the socially and economically weak and secondly because advertising in its many forms has its strongest impact on such people and induces them to adopt habits detrimental to their health.

18. Now it is precisely the children living in such social environments who not only ruin their teeth by eating chocolates and other sweets but also, and even more seriously, suffer an imbalance in their Ca/P ratio through the large-scale addition of P_2O_5 to cocoa and chocolate products. It is precisely in these socially and economically weak groups that these cocoa and chocolate products, which moreover are often of inferior quality, are mostly and sometimes excessively consumed.

19. There are, however, other problems in connection with phosphates, as will be seen from the table in Annex I on the average P content of fresh surface water in the Netherlands.

This shows in particular how the large and increasing quantities of phosphates in human waste, in addition to the increase in the use of detergents with high phosphate content, are polluting fresh surface water in the Netherlands. The Netherlands are no exception in this respect; the figures given are roughly valid for each of the Member States of the Community.

20. Furthermore, the chocolate market is a sector in which little has been done over the years to approximate the laws of the states of the European Community. In order primarily to respect the widely divergent desires of producers and consumers in the various Member States, certain important questions, such as the problem of additives (phosphoric acid) and fatty additives, were settled by an optional arrangement in 1973 (i.e. each Member State may provisionally maintain its own legislation). With this fifth amendment to the directive phosphoric acid, emulsifiers and artificial flavouring substances, previously authorized only in the United Kingdom, Ireland and Denmark, may now be used by all Community states.

21. In all the founder states of the Community, citric acid and tartaric acid are used as neutralizing agents instead of the suspect phosphoric acid. The above additives are technologically unnecessary and there is no justification for injecting further chemicals into chocolate. The regrettably non-declared extraction of cocoa butter by petroleum spirit 60/75 is already bad enough. Previously cocoa butter was obtained only by pressure. Given that the phosphate level in human nutrition has already reached saturation point through the consumption of processed cheese, boiling sausages, soft drinks containing caffeine (Coca Cola), condensed milk and biscuits - indication of phosphate content being obligatory only in respect of the first two groups of products - the presence of this product and other additives in chocolate could readily be dispensed with.

22. The committee expects the Community countries to express their opposition to this deterioration in quality in order to protect the consumer's health and material interests, and hopes that the original six producer countries

will maintain their present methods of production. Should this not prove possible, the clearly legible indication on labels of the presence of the above additives is the very least that the consumer is entitled to expect.

23. Moreover, the now optional addition of extraneous fats is disturbing, particularly in view of the pressure of excessive raw cocoa prices and the insistence of, in particular, the United Kingdom, Ireland and Denmark. These countries, and Switzerland too, currently authorize the addition of 5% of other fats, in addition to cocoa butter, in the production of chocolate. These additives consist of various, usually hardened, fats and oils of varying quality and only in rare cases improve the quality of the chocolate. Fats and oils with unsaturated fatty acids cannot be used for these purposes since they would make the products too soft and more perishable.

24. The German Consumers' Association has repeatedly expressed its fears about a further deterioration in the quality of chocolate and has suggested that a minimum requirement for the authorization of added fats should be suitable and unequivocal labelling and 100% reliable methods of analysis. Only two years ago the Commission was still considering extending to the whole Community the practices followed in the abovementioned countries by amending the directives, which it is authorized to do by the provisions of the 1973 cocoa directive, without taking precautionary measures to prevent deception of the consumer, i.e. without adequate checks on the quantity and type of fat added and without making it compulsory to declare such adulteration.

25. Now that methods of analysis permitting the presence of added fats to be detected have been invented the proposal made by the European chocolate industry to the Commission seems questionable. If this proposal were adopted, the addition of up to 5% high quality vegetable fats, similar to cocoa butter fats, would be authorized in the production of chocolate. The presence of this additive must also be clearly indicated on the label.

26. Unless such requirements are laid down, there will be a risk of qualitatively inferior, falsified and ultimately also imitation 'chocolate' being put on to the market, which is prohibited by the provisions of the cocoa regulation and section 17 on misleading information on the German Law on Foodstuffs and Commodities (LMBG). German and Dutch chocolate has already sacrificed enough of its previous high quality thanks to 'Europeanization', in addition to the use of extraction butter by a reduction in the percentage of cocoa, especially in mixed chocolate etc. Any further deterioration must therefore be avoided in the interests of both the consumer and the serious producer.

27. That there is reason for serious concern about the quality of chocolate is clear from the recent appearance on the market of various types of imitation brown and white chocolate. By their appearance, smell or taste these sub-

stitutes can often be confused with real chocolate by the undiscerning consumer; they are of course usually sold in bars, often with incorrect weights shown on their labels. Although they are not actually described as 'chocolate' by the producer, they are often to be found with real chocolate in shops owing to their otherwise deceptive presentation. The fact that this constitutes a clear violation of the provisions of the cocoa regulation, especially paragraph 14(2), and the Law on Foodstuffs and Commodities, obviously does not worry those responsible. All the more reason to carry out closer checks and nip such practices in the bud! The committee has at the present time no objection to new products; they must however be presented and labelled in such a way that no misunderstandings can arise.

28. From a report of the meeting of the Commission on the draft proposals for a Council Directive amending for the fifth and sixth times Directive 73/241/EEC on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption it emerges that certain objections were raised to the Commission's proposal in respect of the addition of phosphoric acid (0.5% expressed in P_2O_5) as a neutralizing agent in the preparation of chocolate products. The UK and Ireland are strong advocates of this and received support from Italy and Denmark. Germany, Belgium and the Netherlands (France has still to adopt an opinion) were opposed to it, because there is concern in those countries about the phosphate load. It was decided to include phosphoric acid in Article 4 and to leave national authorities free to authorize or restrict its use. As regards polyglycerol-polyricinoleate, 'span's en tween's' and the emulsifier yN, for example, France asked for certain toxicological data to be supplied in the near future and the Commission accepted this request.

29. As regards matters of toxicology, phosphates are regularly used as stabilizers, emulsifiers and thickeners in a variety of foodstuffs (e.g. milk-based desserts, coffee cream, confectionery). Average phosphate consumption in the form of such foodstuffs is much greater than overall phosphate intake through cocoa powder treated with phosphoric acid. As stated above, the question of phosphate intake in the human body must primarily be seen in relation to the calcium level. It must be fully understood that the assumption that there is already so much P in our food that a little more or less P will not make any difference is unacceptable. On the contrary, there is every reason to be suspicious of even the slightest increase in the P content of our food.

30. Given the thousands of different chemical additives contained in our foods, which may be expressed in terms of kilograms per year of extraneous matter and have unexpectedly allergic, carcinogenic, mutagenic and teratogenic effects on the human body (consider, for example, EM₁₈ in Planta (Netherlands) and Rama (Germany), in 1961 when hundreds of thousands of people were affected

by allergies) and given the totally unexpected reactions to natural colouring agents and to cyclamates, saccharin and xylitol, which have all been shown to be carcinogenic, the utmost circumspection should be exercised in regard to our consumption of food, which is becoming steadily more unlike the natural food we used to eat. Sometimes, of course, this brings important benefits to consumers and may help to ease the world food problem, but extreme caution is becoming increasingly necessary. The committee therefore considers that this straightforward directive on cocoa and chocolate products provides an opportunity to raise, in the near future, the whole problem of the technology of the food we eat. This will enable us to ensure that considerations of public health are reconciled with the everyday interests of the consumer and the producer of food and drink and cosmetics. Attention should also be paid to the packing materials used.

D. CONCLUSIONS

31. In view of the foregoing considerations, it is proposed that this directive should be approved with the simplifying amendments to the relevant recitals and articles, provided that:

- (a) the necessary improvements and additions are retained;
and
- (b) the best possible protection is provided for the health of consumers.

SOURCE	Gross discharge	Net discharge	Net elimination by purification plants	Net	Net elimination by purification plants	Net % of overall total	Net % of total for Netherlands
	x 10 ⁹ g P/year			g P/m ² . year			
Human waste	9.5	6.6	5.7	1.54	1.33	23	39
Detergents	8.8	5.9	5.1	1.37	1.19	21	35
Industry	3.0	1.8	1.6	0.42	0.37	6	11
Agriculture	1.5	1.5	1.5	0.35	0.35	5	9
Soil	0.7	0.7	0.7	0.16	0.16	2	4
Rainfall	0.3	0.3	0.3	0.07	0.07	1	2
Total for Netherlands	23.8	16.8	14.9	3.9	3.4	58	100
International rivers	59.5	11.5	11.5	2.7	2.7	42	
Overall total	83.3	28.3	26.4	6.6	6.1	100	

Community imports and exports of cocoa products and preparations
in 1975¹

Nimexe Code	Description	Import x 1,000 kg	Export x 1,000 kg.
18.01	Cocoa beans, whole or broken, raw or roasted	455,330	9,616
18.02	Cocoa shells, husks, skins and wastes	54,838	26,981
18.03	Cocoa paste (in bulk or in block), whether or not defatted	58,747	13,378
18.04	Cocoa butter (fat or oil)	86,045	76,115
18.05	Cocoa powder, unsweetened	22,935	65,996
18.06	Chocolate and other food preparations containing cocoa	246,852	294,299

¹ Intra + Extra EC Eur. 9

