

# European Communities

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EUROPEAN PARLIAMENT

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## Report

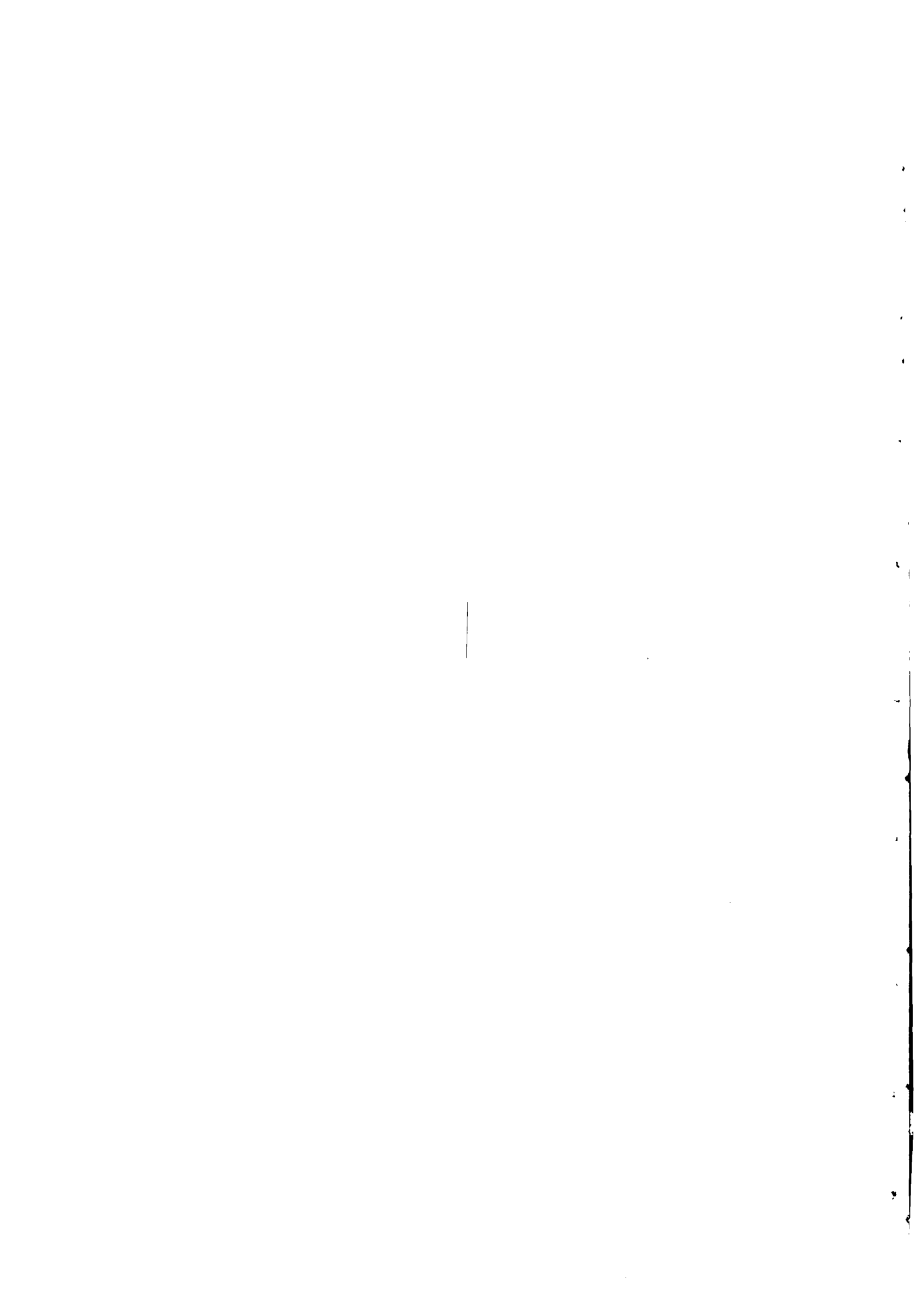
drawn up on behalf of the Committee on the Environment, Public Health and  
Consumer Protection

on the proposal from the Commission of the European Communities to the  
Council (Doc. 52/76) for a directive 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

Rapporteur: Mr K.-H. WALKHOFF  
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PE 44.774/fin.



By letter of 8 April 1976, 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 to the European Communities to the Council for a directive on the approximation of the laws of Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer.

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 Legal Affairs Committee and the Committee on Economic and Monetary Affairs for their opinions.

The Committee on the Environment, Public Health and Consumer Protection appointed Mr Walkhoff rapporteur at its meeting on 18 May 1976.

It considered the proposal at its meetings of 18 May and 24 June 1976.

On 24 June 1976 the committee unanimously adopted the motion for a resolution and the explanatory statement.

Present: Mr Jahn, vice-chairman and acting chairman; Lord Bethell and Mr Premoli, vice-chairmen; Mr Walkhoff, rapporteur; Miss Boothroyd, Mr Boudellès, Lady Fisher of Rednal, Mr Guerlin, Mr Hunault, Mr Kirk, Mrs Kruchow, Mr Martens, Mr Willi Müller, Mr Ney, Mr Noë, Mr Schulz (deputizing for Mr Härzschel) and Mr Spicer.

The opinions of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs are attached.

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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 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

The European Parliament,

- having regard to the preliminary programme of the European Economic Community for a consumer protection and information policy of 14 April 1975<sup>1</sup>,
  - having regard to the proposal from the Commission of the European Communities to the Council<sup>2</sup>,
  - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 52/76),
  - having regard to the report of the Committee on the Environment, Public Health and Consumer Protection and the opinions of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs (Doc. 211/76),
1. Welcomes the proposal for a directive as an important contribution towards the implementation of the consumer protection programme of the European Economic Community of 14 April 1975, but regrets that only now, 18 years after the establishment of the Common Market, has the Commission submitted its proposal, despite its importance for consumer policy and repeated calls by the European Parliament and the Economic and Social Committee;
  2. Calls on the Commission in future to forward to the European Parliament's Committee on the Environment, Public Health and Consumer Protection all opinions of the Advisory Committee on Foodstuffs and the Consumers Consultative Committee, so that it is in a position to examine the Commission's proposals with full knowledge of the facts;
  3. Regrets that the present proposal for a directive does not cover semi-finished foodstuffs, i.e. those requiring further processing or preparation, and therefore calls on the Commission to submit by the end of 1976 an appropriate proposal for a directive on semi-finished foodstuffs.

<sup>1</sup> OJ No. C 92, 25.4.1975, p.1

<sup>2</sup> OJ No. C 91, 22.4.1976, p.3

4. Points out that the list of terms constituting claims the use of which should be prohibited or restricted, provided for in Article 2, cannot be exhaustive, but can only serve as a guideline, and asks the Council to establish this list not later than the time the directive enters into force and to consult the European Parliament on the relevant proposal from the Commission beforehand;
5. Considers it essential for existing gaps in the legislation on individual foodstuffs to be filled as quickly as possible by Community regulations since the maintenance of national regulations, though possible for the time being, may lead to obstacles to trade within the Community in this area;
6. Stresses the need for the consumer to be informed by appropriate indications in cases where foodstuffs contain pesticide residues, so that he can make his purchasing decision in full possession of the facts;
7. Welcomes the fact that the manufacturers will be required to make the stipulated indications on products packing for the consumer's information in a language easily understood by purchasers, so as to avoid serious confusion and misunderstandings;
8. Holds to its repeatedly expressed view that strict controls are necessary to prevent the use within the Community of products intended for export, and to facilitate such controls, calls for distinctive marking of products to show whether they are intended for consumption in the Community or third countries;
9. Considers it essential, in view of the already considerable delays, for the periods laid down in Article 18 for implementing the directive to be shortened by one year, which will still leave manufacturers and the trade enough time to make the necessary adjustments and changes;
10. Calls on the Council to take an early decision on the changes necessary to adapt present Community legislation on foodstuffs to this directive, so that there will not be yet more delays in the long awaited harmonization in this area;
11. Urges the Council, moreover, to meet the obligation it undertook in the consumer protection programme of 14 April 1975 by taking a decision on the Commission's proposal within 9 months of its submission;
12. Requests the Commission to incorporate in its proposal the following amendments, pursuant to the second paragraph of Article 149 of the EEC Treaty.

Council directive on the approximation of the laws  
of Member States relating to the labelling, presentation  
and advertising of foodstuffs for sale to the ultimate  
consumer

Preamble and recitals unchanged

Article 1 unchanged

Article 2

Article 2

Paragraph 1 unchanged

2. The Council, in accordance  
with the procedure laid down  
in Article 100 of the Treaty,  
shall draw up a list of the  
terms which constitute such  
claims the use of which should  
be prohibited or restricted.

2. The Council, in accordance  
with the procedure laid down  
in Article 100 of the Treaty,  
shall draw up, as a guideline,  
not later than the date of  
entry into force of this  
directive, a list of the terms  
which constitute such claims  
the use of which should be  
prohibited or restricted.

Paragraph 3 unchanged

Article 3

Article 3

In accordance with Articles  
4 to 13 and subject to the  
exceptions contained therein,  
the following particulars shall  
appear on the labelling of  
foodstuffs:

In accordance with Articles  
4 to 13 and subject to the  
exceptions contained therein,  
the following particulars shall  
appear under the labelling of  
foodstuffs:

Items 1 to 3 unchanged

4. the date of minimum durability;

4. the date of minimum durability  
pursuant to Article 9;

Items 5 and 6 unchanged

7. particulars as to the place of  
origin or provenance in the  
exceptional cases where failure  
to give such particulars might  
give rise to confusion as to  
the true origin of the foodstuff;

7. particulars as to the place of  
origin or provenance;

<sup>1</sup>For complete text see OJ No. C 91, 22.4.1976, p. 3

Article 4 unchanged

Article 5

Paragraphs 1 and 2 unchanged

3. The name under which the product is sold shall also include particulars as to the physical condition of the foodstuff or the specific treatment which it has undergone (e.g. powdered, freeze-dried, deep-frozen, concentrated, smoked) in all cases where omission of such information could lead to confusion in the mind of the consumer.

Article 5

3. The name under which the product is sold shall also include particulars as to the physical condition of the foodstuff or the specific treatment which it has undergone (e.g. powdered, freeze-dried, deep-frozen, concentrated, smoked).

Article 6

Paragraph 1 unchanged

Paragraph 2 a) and 2 b) unchanged

2. c) The following, however, shall not be considered as ingredients:

- pesticide residues,
- additives whose presence in the foodstuff is due solely to the fact that they were present in one or more of the ingredients of the foodstuff, provided they no longer perform any function.

Article 6

2. c) The following, however, shall not be considered as ingredients: (two words deleted),

- additives whose presence in the foodstuff is due solely to the fact that they were present in one or more of the ingredients of the foodstuff, provided they no longer perform any function.

Paragraphs 3 to 5 unchanged

6. Additives must be added in sufficient quantity to affect the specific properties of the foodstuff.

Articles 7 to 9 unchanged



Article 10

Paragraphs 1 and 2 unchanged

3. The particulars specified in Article 3 (1) and (3)
- a) shall appear in all cases on that part of the pre-packaging which normally faces the purchaser at the time of the sale;
- b) shall be printed in characters at least 1.5 millimetres high, subject to the application of Community provisions relating to pre-packaging; this limit shall not apply to pre-packaging of which the largest surface is less than 20 square centimetres.

Paragraph 4 unchanged

Article 11

Where foodstuffs are offered for sale to the ultimate consumer without pre-packaging, Member States shall adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4 (2) are to be shown.

They may make the provision of certain particulars compulsory only, provided that the consumer receives sufficient information.

Articles 12 to 14 unchanged

Article 10

3. The particulars specified in Article 3 (1), (3) and (4)
- a) shall appear in all cases on that part of the pre-packaging which normally faces the purchaser at the time of sale; this part of the pre-packaging shall contain a reference to the list of ingredients located elsewhere;
- b) shall be printed in characters at least 1.5 millimetres high, subject to the application of Community provisions relating to pre-packaging.

Article 11

The provisions of Article 10 shall apply as appropriate to foodstuffs offered to the ultimate consumer without pre-packaging.

Article 15

Paragraphs 1 and 2 unchanged

3. a) Where the measures envisaged are in accordance with the Opinion of the Committee, the Commission shall adopt them.
- b) Where the measures envisaged are not in accordance with the Opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal on the measures to be taken. The Council shall act by qualified majority.
- c) If within three months of the proposal being submitted to it, the Council has not acted, the proposed measure shall be adopted by the Commission.

Article 15

- a) The Commission shall adopt measures, which shall be taken immediately.
- b) If, however, they are not in accordance with the Opinion of the Committee, they shall without delay be submitted by the Commission to the Council. In such cases the Commission may postpone application of the measures it has adopted by up to one month after submission.
- c) The Council may take a different decision within one month, acting by a qualified majority.

Article 16 and 17 unchanged

Article 18

Paragraph 1 unchanged

2. Member States shall also ensure that the Commission receives the text of any essential provision of national law which they adopt in the field governed by this Directive.

Article 18

2. The text of any provision of national law which Member States intend to adopt in the field governed by this Directive shall be communicated to the Commission early enough for it to give an opinion thereon.

Article 19 unchanged

Annexes 1 and 2 unchanged

EXPLANATORY STATEMENTI. General remarks

1. For some 15 years the European Parliament, when considering the Commission's sectoral harmonization proposals on foodstuffs law, has repeatedly called for the submission of a proposal for 'horizontal', i.e. comprehensive, directive on the labelling, presentation and packaging of foodstuffs, and the same appeal has been made for some time by the Economic and Social Committee. The Commission has assured the European Parliament and its appropriate committees that it would comply 'in the near future'.

As recently as 19 January 1976, it announced in its answer to Written Question No. 612/75 by Mr JAHN<sup>1</sup>, that it would be submitting a proposal for a general directive on the labelling of foodstuffs 'within the next few weeks'.

The Committee on the Environment, Public Health and Consumer Protection regrets the Commission's delay in complying with its obligations.

2. The Commission's answer referred to above goes on to say that consultations with Member States and the economic and social interests represented on the Advisory Committee on Foodstuffs had just been completed. Unfortunately, it is not clear from the present proposal for a directive how far account has been taken of the opinions of that body or of consumer organizations associated at European level. In reply to questions on the subject, the Commission stated that it had taken account of the main points of consumer demands. Your committee considers that it would be useful if in future the Commission submitted to it, as the parliamentary body responsible for consumer protection, all opinions of the Advisory Committee on Foodstuffs and the Consumers' Consultative Committee in good time, so that it can consider the Commission's proposals with full knowledge of the facts.

3. The proposed directive is rightly based on Article 100 of the ECC Treaty. Legislation on the labelling and presentation of foodstuffs does in fact differ from Member State to Member State and this directly affects, the establishment and operation of the Common Market. The aim of the present directive is, in particular, to remove these differences. As the Commission states in its answer to the abovementioned written Question by Mr JAHN, it is convinced that the labelling rules contained in its proposal will represent an advance on existing rules in all Member States.

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<sup>1</sup> OJ No. C. 37, 18.2.1976, p.10

4. The real aim of the directive is revealed by the preliminary programme of the European Economic Community for a consumer protection and information policy, adopted by the Council on 14 April 1975<sup>1</sup>. This contains, under the heading, 'Consumer information', the following principles:

'Sufficient information should be made available to the purchaser of goods or services (i.e. the consumer) to enable him to:

- to assess the basic features of the goods and services offered such as the nature, quality, quantity and price;
- make a rational choice between competing products and services;
- use these products and services safely and to his satisfaction;
- claim redress for any injury or damage resulting from the product supplied or service received.'

The measures proposed include:

- 'for foodstuffs, to draw up rules stating clearly the particulars that should be given to the consumer (e.g. the nature, composition, weight or volume, the food value, the date of manufacture or any other useful date marking, etc.)';
- to encourage the use and harmonization of systems of voluntary informative labelling.'

The consumer protection programme generally gives priority to the foodstuffs sector.

The further aim of the directive can be seen from one of its recitals, according to which the prime considerations for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer.

The committee will consider how far these objectives have been pursued in the present proposal for a directive.

5. As stated in the fifth recital, the field of application of the directive is limited to foodstuffs intended for sale to the ultimate consumer. The rules governing the labelling of products intended for subsequent processing and preparation are to be fixed at a later stage.

Your committee regrets that the present, long-awaited directive does not cover this area. It is clear that semi-finished food products, i.e. those requiring further processing or preparation, should be adequately labelled if the consumer is to be effectively protected. The Commission is therefore urged to submit by the end of 1976 an appropriate proposal for a directive in this area.

<sup>1</sup> OJ No. C 92, 25.4.1975, p.1

## II. The essential contents of the proposal for a directive

6. Article 1 defines the scope of the directive: it concerns the labelling of foodstuffs to be delivered as such to the ultimate consumer without further processing, and certain aspects relating to the presentation and advertising thereof.

According to Article 1(2) labelling includes any words, particulars, trade mark, brand name, pictorial matter or symbol relating to a foodstuff and placed on any document, notice, label, ring or collar accompanying such foodstuff. A definition of 'pre-packaged foodstuff' is also given.

7. Article 2(1) contains various prohibitions. Thus, in the labelling, presentation and packaging of foodstuffs, as well as advertising, the use of any kind of qualitative indications, illustrations or drawings, trade marks, imaginative designations, presentation or implication is prohibited if they:

- (a) could mislead the purchaser as to the nature, identity, properties, composition, quantity, origin or method of manufacture or production of the product;
- (b) attributes to the foodstuff effects and properties where the truth thereof has not been established;
- (c) ascribes to the foodstuff properties of preventing, curing or alleviating human disease.

Under Article 2(2) the Council will, in accordance with the procedure laid down in Article 100 of the EEC Treaty, draw up a list of the terms which constitutes such claims, the use of which should be prohibited or restricted.

Your committee calls on the Commission to set a date for the Council to meet this obligation, by adding to Article 2(2) 'not later than the date of entry into force of this directive'. This is the only way to ensure that the provisions of the directive are applied uniformly in the Member States from the outset, which is in the consumer's interests.

It is clear that this list cannot be exhaustive, since there are no limits to the imaginativeness of the advertising sector. The list is therefore intended as a guideline for manufacturers and the trade.

Accordingly, Article 2(2) should be extended as follows: 'The Council, in accordance with the procedure laid down in Article 100 of the Treaty shall draw up, as a guideline not later than the date of entry into force of this directive, a list of the terms which constitute such claims, the use of which should be prohibited or restricted'.

Your committee further points out that the European Parliament should be consulted before the abovementioned list is drawn up and therefore calls on the Commission to make express provision for this in its proposals.

8. The core of the directive is formed by Article 3, which lists the particulars that must appear on the labelling of foodstuffs. The following are compulsory:

- the name under which the product is sold,
- the list of ingredients,
- the net quantity,
- the date of minimum durability,
- any special storage conditions or conditions of use,
- the name or business name and address of the manufacturer or packer, or of a seller established within the Community,
- particulars as to the place of origin or provenance in the exceptional cases where failure to give such particulars might give rise to confusion as to the true origin of the foodstuff,
- instructions for use where the purchaser will be unable to make appropriate use of the foodstuff in the absence of such instructions.

Your committee is in principle in agreement with these provisions. However, it would seem desirable to word Article 3, item 4 as follows:

'the date of minimum durability pursuant to Article 9'.

The reason for this is that Article 9 lays down more detailed conditions for the indication of minimum durability.

9. Article 4 contains provisions for exceptional derogations from Article 3. Thus, additives and the date of minimum durability (Article 3, items 2 and 4) need not be indicated in the case of Community regulations applying only to individual foodstuffs, where this 'does not prejudice the information of the purchaser'.

Your rapporteur fails to see why the consumer should be less well informed about particular foodstuffs. He therefore suggested that the Commission amend the first subparagraph of Article 4(1) as follows:

'Community provisions applicable to specified foodstuffs and not to foodstuffs in general may provide for exceptional derogations from the requirements laid down in Article 3(2) and (4) in adequately justified cases, providing consumer interests are fully safeguarded and the approval of the European Parliament has been obtained'.

Your rapporteur also objects to the exceptional derogation whereby in the absence of Community provisions any Member State must inform the Commission of its intention to apply a derogation from the general provisions in the case of a particular foodstuff, the problem then being considered and solved in accordance with the procedure for consulting the Standing Committee on Foodstuffs.

The objection to this is that there will be no gap in Community legislation once this directive comes into force, since it applies, according to Article 1(1), to the labelling of foodstuffs (i.e. all foodstuffs). Moreover, this would leave room for Member States to implement exceptional rules for any particular foodstuff, which would be contrary to the interests of the consumer and negate the harmonization effect (Article 100 of the EEC Treaty) which is the objective. This view of the rapporteur is supported by the fact that according to Article 16 of the proposal for a directive, Community provisions relating to the presentation and labelling of certain foodstuffs already adopted at the time of the notification of the directive will not be affected, and that the Council will adopt amendments necessary to bring such provisions into line with the directive. Accordingly, no derogations are necessary, and they would in any case merely undermine this consumer-oriented directive. This would be contrary to the European-level harmonization of foodstuffs legislation long called for by the European Parliament and the Economic and Social Committee.

The rapporteur therefore suggested that Article 4(1), subparagraph 2, be worded as follows:

'When in the absence of Community provisions a Member State is of the opinion that such a derogation is necessary for a specified foodstuff, it shall inform the Commission thereof. The latter will submit to the Council an appropriate proposal for a directive pursuant to Article 100 of the EEC Treaty, provided that it considers the views of the Member State concerned to be sufficiently justified and the proposal does not conflict with consumer interests'.

However, the amendments proposed by the rapporteur were rejected by six votes to six (see Rule 35(5), subparagraph 2, of the Rules of Procedure).

10. The arrangements provided for in Article 4(2), according to which Community provisions applicable to specified foodstuffs may provide for other particulars to appear, appears justified since they are in general in the interests of the consumer. In the absence of a Community regulation, Member States' provisions may be retained, where they provide for such particulars to appear, if they are communicated to the Commission within one year of the notification of the directive.

In this connection the Committee on Economic and Monetary Affairs rightly points out in its opinion that the maintenance of varying provisions under national law could lead to barriers to trade in this area, which would not be compatible with the aims of the Common Market. It therefore calls for Community provisions to be drawn up in these sectors at the earliest opportunity. Your committee supports this request and has incorporated it in point 5 of the motion for a resolution.

11. Article 5(1) defines the term name under which a foodstuff is sold.

According to Article 5(2) no substitution of the trade mark, brand name or fancy name for the name under which the product is sold will be permitted.

The name under which the product is sold must also include particulars as to the physical condition of the foodstuff or the specific treatment which it has undergone, in all cases where omission of such information could lead to confusion about the actual state of the foodstuff (Article 5(3)).

Your committee requests the deletion of the last conditional phrase, since it could lead to difficulties of interpretation. Moreover, the consumer should always be informed of any special treatment of foodstuffs. The committee, which adopted this amendment by eight votes to one, thus agrees with the Legal Affairs Committee on this point (see point 32 of this explanatory statement).

12. Article 6 contains provisions on the list of ingredients.

'Ingredient' means any substance, including edible additives, used in the manufacture or preparation of a foodstuff and still present, even if in altered form.

According to Article 6(2)(c) however, the following will not be considered as ingredients:

- pesticide residues,
- additives whose presence in the foodstuff is due solely to the fact that they were present in one or more of the ingredients of the foodstuff, provided they no longer perform any function.

This provision is very problematical where it concerns pesticide residues. The consumer certainly has a right to know whether the foodstuff he intends to purchase contains such residues. This provision should therefore be deleted.

13. All ingredients are to be indicated in descending order of weight as recorded at the time of their use. Exceptions to this basic rule are made only in the case of water and ingredients used in concentrated or dehydrated form (Article 6(3)(a)).

In principle, ingredients are to be designated by their specific name. There are exceptions for ingredients belonging to one of the categories listed in Annex I (oil, fat, starch, modified starch, fish, cheese, spices or mixed spices, aromatics, basic gum, crumbs, sugar, dextrose, cocoa butter). These ingredients need only be designated by the name of the category.

A further derogation applies to ingredients belonging to one of the categories listed in Annex II (colouring, preservative, antioxidant, emulsifier, thickener, gelling agent, stabilizer, flavour enhancer, food acid, anticaking



agent, flavouring, artificial sweetener, baking powder, foaming agent, anti-foaming agent). These ingredients must be designated by the name of the category, followed by their specific name or EEC number (Article 6(3)(b)).

14. Article 6(4) contains fairly detailed provisions on the listing of compound ingredients; these provisions are also approved.

The same applies for the derogations provided for in Article 6(5), according to which the use of water need not be specified in the case of bread and other bakery products, sugar confectionery, or fermented drinks and spirits, or where its use is required solely for the reconstitution of an ingredient that is present in concentrated or dehydrated form.

15. However, Article 6 seems inadequate where it concerns the declaration of ingredients. A provision is called for that the ingredients listed in accordance with the provisions must be added in sufficient quantity to affect the specific properties of the foodstuff. This provision is essential in the interests of adequate protection of the consumer against confusion.

Your committee therefore insists that Article 6 have added to it a sixth paragraph containing the required provision.

16. Your committee approves Article 7(1), which provides for the minimum percentage of ingredients to be stated where the labelling or presentation of foodstuff places emphasis on them.

Article 7(2) provides that the minimum percentage need not be given in the case of 'reserved designations' or of aromatizing ingredients (e.g. flavourings, spices and spirits).

17. Article 8 contains provisions on measuring methods for designating the quantity of a foodstuff.

In the case of pre-packaged foodstuffs, the net quantity is to be expressed at the time of market preparation,

- in units of volume in the case of liquids,
- in units of mass in the case of other products (the units being either litre, centilitre, millilitre or kilogramme, gramme).

The net quantity need not be indicated for foodstuffs normally sold singly, provided that

- the contents are clearly visible from the outside,
- the number of items contained in the pre-packaging is indicated on the labelling.

Where a solid foodstuff is presented in a liquid medium, the drained net weight of the foodstuff must also be indicated.

The indication of the net quantity is not compulsory in the case of foodstuffs sold in quantities of less than 5 grammes or 5 millilitres.

During a transitional period, Ireland and the United Kingdom may stipulate that the quantity must be expressed not only in metric units, but also in those of the imperial system.

In the view of your committee, there are no objections to the provisions of Article 18 on consumer protection grounds.

18. Article 9 contains the provisions on the indication of the date of minimum durability. This means the date until which the foodstuff remains entirely edible and retains its specific properties (Article 9(1)).

The indication is to be given by the words 'will keep until....' followed by either the date itself or a reference to where the date is given on the labelling.

Under Article 9(3), the date of minimum durability must comprise the day, month and year. If the durability is more than twelve months, it suffices to indicate the month and year.

These provisions are also approved by your committee.

The Commission is, however, requested to bring the English text of Article 9(2) into line with the texts in the other languages.

19. Article 10 contains provisions concerning the methods of labelling. The particulars are to appear in easily readable, clearly legible and indelible characters and are to be separate from any advertising materials.

It is also provided that the name under which the product is sold and the net quantity must appear on the part of the pre-packaging which normally faces the purchaser at the time of sale.

Your committee calls for the date of minimum durability (Article 3(4)) also to appear on this part of the pre-packaging.

It also seems advisable for the list of ingredients (especially additives) (Article 3, item 2) to be given on the front of the pre-packaging. In this way the consumer, who normally does not look at the package from all sides when purchasing, will see at a glance what additives the foodstuff contains, and make his purchasing decision accordingly.

If it is impossible in practice to give the list of ingredients on the front, your committee calls for a reference to the ingredients on the front, for example: 'for ingredients see other side'. Article 10(3) should therefore have such a provision added to it.

The particulars to be given on the front must appear in characters at least 1.5 millimetres high. However, this minimum size does not apply to pre-packaging of which the largest surface is less than 20 square centimetres.

It should be noted that this minimum height of 1.5 millimetres is relatively small. If smaller characters are authorized, it is questionable whether the conditions laid down in Article 10(2) (easily readable and clearly legible characters) will still be met. Your committee voted by three votes to one, with four abstentions, in favour of deleting this derogation.

20. Article 11 governs labelling of foodstuffs offered to the ultimate consumer without pre-packaging. It is left to Member States to provide for the compulsory indication of only certain particulars (Article 3 and Article 4(2)), provided that the consumer receives sufficient information. However, all of the particulars in Article 3 serve to inform the consumer. It is not clear why foodstuffs without pre-packaging should be subject to a less stringent arrangement. Moreover, it is quite practicable for such foodstuffs, which in today's marketing system are in any case rather rare, to print appropriate labels to accompany the goods or be attached to their outer wrapping with an adhesive.

It is also clear that what constitutes sufficient information for the consumer may lead to differing interpretations, which would be prejudicial to the harmonization aimed at and make it uncertain as to what the law is.

For these reasons your committee decided, by eight votes to one, that Article 11 should be amended to read as follows:

'The provisions of Article 10 shall apply as appropriate to foodstuffs offered to the ultimate consumer without pre-packaging'.

21. Article 12 states that the directive will not affect national legislation which, in the absence of Community provision, imposes less stringent requirements, for the labelling of particular foodstuffs in fancy packaging, such as figurines or souvenirs. Your committee has no objections to this derogation.

22. In the interests of the greatest possible harmonization, your committee approves the provision of Article 13, first paragraph, according to which Member States must refrain from laying down requirements more detailed than those in Articles 4 to 11.

The second paragraph of Article 13 stipulates that Member States must ensure that the sale of foodstuffs within their territory is prohibited if the necessary particulars do not appear in a language easily understood by purchasers; the particulars may also appear in more than one language.

Your committee welcomes the fact that the Commission has at last come closer to the position put forward for many years by the European Parliament, by making this provision compulsory for the first time. At first sight the proposed wording could be approved. However, the term 'a language easily understood by purchasers' is in the opinion of your rapporteur not unambiguous and could lead to differing interpretations. There is after all no doubt that despite all the progress in the learning of foreign languages, the overwhelming majority of the population of a country understands only the national language easily.

Your rapporteur therefore proposed that the Commission should be requested, in accordance with the appeals the European Parliament has been making for many years in similar cases, to amend Article 13, second paragraph, by replacing 'in a language easily understood by purchasers' by 'in the language(s) of the country'.

This proposal was, however, rejected by the committee by four votes to four with one abstention (see Rule 35(5), subparagraph 2, of the Rules of Procedure).

23. According to Article 14, the trade in foodstuffs which comply with the rules laid down in the directive, may not be forbidden by the application of non-harmonized national provisions governing the labelling and presentation of certain foodstuffs or of foodstuffs in general.

This provision is also in the interest of the greatest possible harmonization, and is therefore approved by your committee.

24. Article 15 refers to the procedures of the Standing Committee on Foodstuffs.

In line with the European Parliament's attitude hitherto to the institutional aspect of this problem, your committee calls for the usual amendments.

25. The first paragraph of Article 16 provides that the directive must not affect Community provisions relating to the presentation and labelling of certain foodstuffs already adopted at the time of its notification.

The second paragraph of Article 16 calls on the Council to adopt the amendments necessary to bring such provisions into line with the rules laid down in the directive.

Your committee appeals to the Council to make these indubitably necessary adjustments quickly, to prevent still further delays in the long awaited harmonization in this sphere.

26. Pursuant to Article 17, the directive will not apply to products which are shown to be intended for export from the Community.

Your committee agrees with this provision, but insists that the proof also be actually brought. In accordance with its consistent position, it therefore calls for strict controls to prevent manufacturers evading the provisions of the directive on the pretext that foodstuffs are intended for export. To ensure this control, it is essential that products be distinctively marked to show whether they are for consumption in the Community or third countries.

The Commission's objection to this position, that foodstuffs in general are not exported by the retail trade, does nothing to change your committee's views on this subject. It should be recalled that as regards the labelling and presentation of foodstuffs this directive will apply mainly to manufacturers, and it is above all the manufacturers who export foodstuffs. Evasion of the provisions of the directive is therefore not a priori excluded.

27. Article 18 sets out the time-limits for implementation of the directive.

Member States are required to amend their laws within one year of notification of the directive, and to inform forthwith the Commission of the amendments.

The laws thus amended must be applied in such a way as to

- permit trade in those products which comply with the provisions of the directive two years after notification;
- prohibit trade in those products which do not comply with the provisions of the directive three years after notification.

In view of the long delay that has already occurred in this matter, your committee advocates the reduction of these periods of two and three years by one year, that is, to one and two years respectively. Manufacturers and the trade will still have sufficient time to make the necessary adjustments.

The Council is urged to meet the obligation it undertook in the consumer protection programme of 14 April 1975 by taking a decision on the Commission's proposal within nine months of receiving it.

### III. Consideration of the opinions of the committee

#### (a) Opinion of the Legal Affairs Committee

28. The Legal Affairs Committee submitted its opinion to the Chairman of the Committee on the Environment, Public Health and Consumer Protection in a letter from its chairman of 2 June 1976. The text of this letter is attached to this report.

29. The Legal Affairs Committee agrees with your committee that Article 100 of the EEC Treaty constitutes the correct legal basis for this proposal for a directive.

30. According to Article 2(1)(a)(ii) the labelling and methods used must not be such as could mislead the purchaser as to the effects and properties attributed to the foodstuff where the truth thereof has not been established. The Legal Affairs Committee considers the last phrase of this sentence unnecessary since the purchaser will not be misled if the truth of the claims made for the foodstuff has been established.

Your committee feels, however, that this phrase should be retained in the interests of effective protection for the consumer. The phrase means that the truth of the claims made concerning the effects and properties of the foodstuff must be proved. Failing this, such claims as to effects and properties may not be made on the label, even if they are objectively correct. Your committee therefore recommends that the text proposed by the Commission should remain unchanged.

31. Article 3, item 7 provides that the labelling of foodstuffs must contain particulars as to the place of origin or provenance in the exceptional cases where failure to give such particulars might give rise to confusion as to the true origin of the foodstuff. The Legal Affairs Committee comments that this provision could lead to a lack of uniformity in application of the directive if the individual Member States are allowed to determine the exceptional cases themselves. It feels it would be preferable to stipulate that particulars as to the place of origin or provenance should always be given.

Your committee shares this view, since these provisions could give rise to divergent interpretations, which would be detrimental to the desired harmonization.

32. Your committee also fully agrees with the Legal Affairs Committee as regards the deletion of the conditional phrase in Article 5(3), since the retention of this limiting phrase could also lead to difficulties of interpretation (see point 11, paragraph 3 and 4 of the explanatory statement).

33. Finally the Legal Affairs Committee objects to Article 18(2) according to which the Member States must ensure that the Commission receives the text of any essential provision of national law which they adopt in the field governed by this directive. In order that the Commission should remain constantly informed, the Legal Affairs Committee feels that it should also receive the text of provisions which Member States intend to adopt.

Your committee considers this to be a sound argument. It maintains the view it has previously expressed in similar cases that the Commission should be informed of all provisions of national law sufficiently in advance to allow it to give an opinion on them, since the word 'essential' can lead to varying interpretations. Moreover, provisions which do not at first sight appear 'essential' to the Commission may be important. In addition, provisions of national law which Member States intend to adopt must be communicated to the Commission early enough for it to ensure that they are consistent with the aims of the directive and, if necessary, to veto them.

Article 18(2) should therefore be amended to read as follows: '... any provision of national law which Member States intend to adopt in the field governed by this directive shall be communicated to the Commission early enough for it to give an opinion thereon'.

(b) Opinion of the Committee on Economic and Monetary Affairs

34. The Committee on Economic and Monetary Affairs also submitted its opinion to the chairman of your committee in a letter dated 4 June 1976 from its draftsman, Mr Mitterdorfer. The complete text of the letter is attached to this report.

35. The opinion deals in particular with the proposal in Article 4(2) for the maintenance of varying national legislation and the negative effects this may have on the proper functioning of the Common Market.

In this connection reference is made to point 5 of the motion for a resolution in conjunction with point 10, second paragraph of the explanatory statement.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Letter from the Chairman to Mr DELLA BRIOTTA, Chairman of the Committee on the Environment, Public Health and Consumer Protection

Luxembourg, 2 June 1976

Dear Mr Chairman,

At its meeting on 31 May 1976 the Legal Affairs Committee considered 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 the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (Doc. 52/76), on which the committee has been asked to give an opinion to your committee.

The proposal has two objects. Firstly, it provides for uniform labelling of all food products, whether pre-packaged or otherwise, ready for the ultimate consumer. Harmonised provisions with regard to labelling will overcome the obstacles to trade which at present exist as a result of the divergent laws of the Member States in this field. Secondly, the proposal provides that the consumer should be fully informed as to the nature of the foodstuff which he buys. To this end, the proposal contains provisions designed to prevent fraud and fraudulent claims by restrictions on advertising and presentation as well as control of labelling. Labels which comply with the proposal should also ensure that the consumer knows how to make the best use of any product.

The proposal under consideration relates only to foodstuffs ready for consumer use. The Commission intends to draw up at a later date a proposal on products not immediately intended for the consumer, because they must first undergo processing of some kind.

Article 100 of the EEC Treaty is the correct legal basis for the proposal.

Existing Community legislation on the presentation and labelling of certain foodstuffs is to remain in force and will be amended by the Council as necessary - in accordance with the procedure applicable to each of the provisions in question - so that it is in line with the present proposal (Art. 16).



The Legal Affairs Committee has the following observations, mostly of a drafting nature, to make on the proposal:

Article 2, (1)(a)(ii) It seems doubtful whether the words 'where the truth thereof has not been established' add anything to this phrase as, if the truth of the claims made for the foodstuff has been established the purchaser would not be misled.

Article 3(7) It seems that the Member States may themselves determine what are the exceptional cases in which particulars of the place of origin or provenance of the foodstuff must be given because their omission might give rise to confusion as to the true nature of the foodstuff. This could lead to a lack of uniformity in application of the directive. It would be preferable, unless the Commission envisages only a very few of these cases, to provide that particulars as to the place of origin or provenance should always be given.

Article 5(3) A similar situation exists here to that under Article 3(7) - certain particulars must be given if their omission could lead to confusion in the mind of the consumer. If the Member States are to decide when this might be, they are liable to arrive at different conclusions.

Article 18(2) So that the Commission is kept fully informed at all stages, this paragraph should be amended to read '.... any essential provision of national law which they intend to adopt or adopt in the field governed by this Directive.'

Subject to what has been said above, the Legal Affairs Committee<sup>1</sup> approved the proposal by 12 votes to three abstentions.

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<sup>1</sup> Present: Sir Derek Walker-Smith, chairman, Mr Jozeau-Marigné, vice-chairman, Mr Brugger, vice-chairman, Lord Ardwick, Mrs Ewing, Mr Lautenschlager, Mr Memmel, Mr Pianta, Mr Santer, Mr Schwörer, Mr Shaw and Mr Vernaschi.

In accordance with a request from the President, the committee considered whether this proposal might be dealt with without debate in plenary sitting and could see no reason why that procedure should not be followed.

Yours sincerely,

Derek WALKER-SMITH

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Letter from Mr MITTERDORFTER, draftsman of the opinion, to Mr DELLA BRIOTTA, chairman of the Committee on the Environment, Public Health and Consumer Protection

Luxembourg, 24 June 1976

Dear Mr Chairman,

At its meeting of 3 and 4 June 1976, the Committee on Economic and Monetary Affairs considered the proposal for a directive 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 (Doc. 52/76).

Divergent legislation on labelling, presentation and advertising constitutes a barrier to the free movement of goods within the Community. The present proposal concerns the harmonization of this legislation in as far as it affects foodstuffs for sale to the ultimate consumer and will help to establish the internal market. To ensure a certain flexibility the derogation contained in Article 4(2) of the proposal for a directive will, however, enable Member States to apply, in addition to the provisions set out in the directive national regulations on certain foodstuffs requiring further particulars to be given, if there are no specific Community provisions applicable to those foodstuffs. The Committee on Economic and Monetary Affairs has insufficient information to judge how far this derogation will lead to divergent national legislation. Such divergences, where they occur, will constitute a barrier to trade for the sectors of the food industry affected. Community provisions should therefore be drawn up for these sectors at the earliest opportunity.

I would ask you to consider this letter as the opinion for your committee, approved<sup>1</sup> unanimously<sup>2</sup>, on the proposal from the Commission to the Council for a directive 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 (Doc. 52/76).

Yours sincerely,

K. MITTERDORFER

Draftsman of the opinion

<sup>1</sup> This approval is subject to the answers provided with regard to Article 4 and the indication of EEC standards on 'small' packages which the Commission has promised to submit in writing to Mr Walkhoff, rapporteur of the Committee on the Environment, Public Health and Consumer Protection and to Mr Mitterdorfer, draftsman of the opinion of the Committee on Economic and Monetary Affairs

<sup>2</sup> Present: Mr Van der Hek, chairman; Mr Mitterdorfer, draftsman; Mr Achenbach, Mr Albertsen, Lord Ardwick, Mr Artzinger, Mr De Broglie, Mr Cifarelli, Mr Cousté, Mr Dykes, Mr Guldberg, Mr Lange, Mr Mitchell (deputizing for Lord Gordon Walker), Mr Normanton and Mr Nyborg

