

EUROPEAN PARLIAMENT

Working Documents

1976 - 1977

8 November 1976

DOCUMENT 376/76

SECOND REPORT

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

on the consumer and public health aspects of the manufacture and sale of fruit
jams, jellies and marmalades and chestnut purée

Rapporteur: Mr M. BRÉGÈRE

At its sitting of 18 December 1975, the European Parliament referred to the Committee on the Environment, Public Health and Consumer Protection a number of amendments to the text of the amended proposal from the Commission of the European Communities for a Council directive on the approximation of the laws of the Member States relating to fruit jams, jellies and marmalades, and chestnut purée.

The Committee on the Environment, Public Health and Consumer Protection drew up a first report.

At its meeting of 26 January 1976 it appointed Mr Liogier rapporteur. When Mr Liogier ceased to be a member of the committee, Mr Brégégère was appointed rapporteur on 23 March 1976.

At its meetings of 23 March and 27 April 1976 the committee considered the draft report and on 27 April 1976 unanimously adopted the motion for a resolution and the explanatory statement.

At its sitting of 14 May 1976, the European Parliament, acting in accordance with Rule 29(5) of the Rules of Procedure, referred the report on the consumer and public-health aspects of the manufacture and sale of fruit jams, jellies and marmalades and chestnut purée back to the Committee on the Environment, Public Health and Consumer Protection.

At its meeting of 27 September, the committee reconsidered Mr Brégégère's report and on 20 October 1976 adopted the motion for a resolution and the explanatory statement (2nd report by Mr Brégégère) unanimously, with one abstention.

Present: Lord Bethell, vice-chairman and acting chairman; Mr Brégégère, rapporteur, Mr Adams, Mr P. Bertrand, Miss Boothroyd, Mr Didier, Mr Evans, Lady Fisher of Rednal, Mrs Kruchow, Mr Martens, Mr Molloy, Mr Noè (deputizing for Mrs Cassanmagnago Cerretti), Mr Plebe and Mr Walkhoff.

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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

on the consumer and public-health aspects of the manufacture and sale of fruit janes, jellies and marmalades, and chestnut purée

The European Parliament,

- having regard to the amended 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 fruit janes, jellies and marmalades, and chestnut purée¹,
 - having regard to its resolution of 18 December 1975 on the Commission's proposals for the elimination of technical trade barriers, in particular for directives on the approximation of the laws of the Member States on taximeters, lifting and mechanical handling appliances and electrically operated lifts, and on fruit jams, jellies and marmalades, and chestnut purée²,
 - having regard to the second report of the Committee on the Environment, Public Health and Consumer Protection (Doc.376/76),
1. Emphasizes that the Commission's amended proposal for a directive should not be confined to the elimination of technical barriers to trade but should primarily be based on considerations of consumer policy and public health;
 2. Recalls in this connection the obligations entered into by both the Council and Commission in the preliminary programme of the European Economic Community for a consumer protection and information policy³ of 14 April 1975;

¹ OJ No. C 202, 4.9.1975, p.2

² OJ No. C 7, 12.1.1976, p.38

³ OJ No. C 92, 25.4.1975, p.1

3. Endorses on the whole the opinion drafted by Mr LIOGIER on behalf of the Committee on Public Health and the Environment (Doc. 343/75/Ann.);
4. Insists that manufacturers fully respect the provisions laid down in Annex IV of the Directive, which restrict the sulphur dioxide content of finished products to 10 mg/kg and 50 mg/kg;
5. Calls on the Commission, in the framework of the provision laid down in Article 13(2) of the amended proposal for a directive for reviewing, on the basis of information gained during the five-year transitional period, the possibility of adding preservatives to products having a content of dry soluble matter of less than 63%, to propose a regulation which takes full account of consumer interests;
6. Consequently calls upon the Commission, pursuant to Article 149, second paragraph, of the EEC Treaty, to submit to the Council the following amendments to its proposal for a directive of 25 July 1975 on fruit jams, etc.:
 - (a) Where products with a content of dry soluble matter of less than 63% are put on to the market consumers should be informed by means of an easily legible notice on the containers or labels that the products concerned should be stored in a cool place.
 - (b) The use of colouring matter should be quantitatively restricted. Moreover, in accordance with the proposal for a directive on the labelling of foodstuffs, all colouring matter added must be specified on containers or labels. Annex III(2) should be altered accordingly.
 - (c) Precise maximum quantities should be laid down in Annex III(2) for each additive authorized.
 - (d) Indication of the sulphur dioxide content (SO₂) should be made obligatory and the appropriate addition incorporated in Annex IV or elsewhere in the proposed directive.
 - (e) The obligation provided for in the directive to specify the additives used must not be whittled away by the application of escape clauses. Consequently, in Article 6(5), the words: 'relating to labelling in force in the Member State in which the product is to be consumed' should be replaced by 'laid down in the proposal for a directive on the labelling and presentation of foodstuffs for sale to the ultimate consumer'.

- (f) The provision concerning the specification of particulars in the national language or languages of the consumer must be made binding. Consequently, in the second paragraph of Article 8, the word 'may' should be replaced by the word 'must'.
- (g) Indication of the time-limit for consumption must be made obligatory. Consequently, the optional provision proposed by the Commission in Article 9 should be deleted and an obligatory provision added in Article 6.
- (h) The detailed rules concerning methods of sampling and analysis should be drawn up not later than the date of application of the directive. This makes an addition to Article 11 necessary.
- (i) The working procedure of the Standing Committee for Foodstuffs laid down in Article 12 should, by incorporating the usual changes, be brought into conformity with the stand already taken up by the European Parliament on the institutional aspect of this problem.
- (j) Products intended for export should be clearly indicated as such if they are to be exempt from Community regulations. The first part of Article 14 should therefore read as follows:
- 'This directive shall not apply to products which can be proven to be intended for export to countries outside the Community'.
- (k) The directive should be applied within one year of its notification. Article 15(1) should therefore read as follows:
- 'Member States shall, within one year following notification of this directive, make such amendments to their laws as may be necessary to comply with the provisions of this directive and ensure its application. They shall forthwith inform the Commission thereof.'
- (l) Member States must communicate to the Commission the text of all provisions of internal law which they intend to adopt in the field covered by this directive in good time for the Commission to express its opinion on them. Article 15(2) should be amended accordingly.
7. Urges the Council, when drawing up the final text of the directive, to take full account of these reservations and requests of the European Parliament, which are based on considerations of consumer policy and public health.
8. Instructs its chairman to forward this motion for a resolution and the committee's report to the Council and Commission of the European Communities.

EXPLANATORY STATEMENTI. Introductory remarks

1. The report drawn up by Mr MITTERDORFER, on behalf of the Committee on Economic and Monetary Affairs, on the Commission's proposals for the elimination of technical barriers to trade (Doc. 343/75) dealt, among other matters, with the Commission's amended proposal for a Council directive on the approximation of the laws of the Member States relating to fruit jams, jellies and marmalades, and chestnut purée (Doc. 235/75). In accordance with a decision of the European Parliament, the Committee on Public Health and the Environment drafted an opinion on this proposal, which it unanimously adopted on 20 November 1975 and immediately forwarded to the committee responsible. Since that committee took no account in its report of the precisely formulated proposals contained in the opinion forwarded to it, the Committee on Public Health and the Environment was obliged to table 16 amendments to the Mitterdorfer report concerning the text of the amended proposal. During its debate of 18 December 1975 in Strasbourg on Mr Mitterdorfer's report, Parliament decided by a narrow majority to refer these amendments (PE 43.019, etc.) to the Committee on Public Health and the Environment.

2. At its meeting of 26 January 1976, your committee accordingly decided to draw up a report on the consumer policy and public health aspects of the manufacture and sale of fruit jams, jellies and marmalade, and chestnut purée.

It goes without saying that this document - i.e. the present report - must be seen in relation to the Commission's amended proposal for a directive on fruit jams, etc., and that both the Commission and Council must take account of the requests it contains. Otherwise, no purpose will be served by submitting the motion for a resolution to Parliament for debate and adoption.

Here it must be pointed out that the European Parliament, in connection with its decision to refer the 16 amendments to your committee, did not approve the Commission's amended proposal for a directive on fruit jams, etc. (Doc. 235/75).

II. Considerations regarding consumer policy and public health

3. Once more the Commission bases its proposal, this time in amended form, specifically on Article 43 of the EEC Treaty, despite the fact that when this proposal was first put forward the Committee on Health Protection, in paragraph 3 of the opinion drawn up on its behalf by Mr LENZ¹, urged that Article 100 of the EEC Treaty also be taken as a legal basis.

The observations made by the Commission in the first three recitals, though correct in themselves, point unambiguously to Article 100 of the EEC Treaty and have nothing to do with the requirements of an efficient common market organization for fruit and sugar (Article 43 of the EEC Treaty).

The President of the European Parliament obviously takes the same view inasmuch as, by his decision of 9 September 1975, he referred the Commission's amended proposal, not - like the original proposal - to the Committee on Agriculture, which is responsible for matters relating to the common agricultural policy (Articles 38 - 47 of the EEC Treaty), but to the Committee on Economic and Monetary Affairs as the committee responsible.

The Committee on the Environment, Public Health and Consumer Protection initially insisted, therefore, that the text of the Commission's amended proposal should be expanded to include a reference to Article 100 of the EEC Treaty as the legal basis for the directive. The Commission, however, pointed out that Article 43 would be preferable, since the Council could then adopt the directive by a qualified majority instead of unanimously, which it would be required to do if Article 100 were chosen as the legal basis. In view of the fact that the legal basis in no way affects the content and scope of the directive, the committee accepts the Commission's viewpoint and no longer calls for a change to the preamble to the proposal for a directive.

4. Article 2(2) contains the qualification that Member States may restrict the use of the designations listed in Annex I to products with a content of soluble dry matter of 63% or more, as determined by refractometer². The purpose of this provision is undoubtedly to ensure a certain standard of quality.

In its Explanatory Memorandum (p. 8) the Commission also recognizes 'that in most Member States the terms 'jam', 'jelly' and 'marmalade' are used solely for products whose conservation is ensured exclusively by the manufacturing processes employed and by the use of sugar, to the exclusion of the use of any artificial preservatives'. It considers that artificial preservatives are not required for products with a soluble dry matter content of 63% or more, but are frequently necessary when this content is lower.

¹ Doc. 104/66, p.17

² Instrument for measuring the refractive index of rays.

By this facultative provision the Commission would make it possible for those Member States that allow the use of the designations contained in the directive for products with less than 63% soluble dry matter to permit the use of artificial preservatives for these products. In its Explanatory Memorandum, the Commission goes on to say that a subsequent examination will be made to ascertain whether and in what conditions the use of artificial preservatives could be extended to the Community as a whole 'in order to ensure free movement for all the products covered by the sector under review'.

Although the Committee on the Environment, Public Health and Consumer Protection originally intended to confine the designations prescribed in the directive to high-quality products only, it finally approved the text of the directive, which leaves Member States the option of permitting these designations also for products with a soluble dry matter content of less than 63%.

Since the latter products, however, require the use of chemical preservatives, the innocuousness of which is not proven, your committee insists that these chemical preservatives be subject to controls. It also points out that consumers must be informed that marmalades with a soluble dry matter content of less than 63% must be stored in a cool place, otherwise there is a danger of mould forming. The consumption of marmalade of which mould has formed is extremely injurious to health, since moulds produce carcinogenous substances.

5. According to Article 3, only raw materials corresponding to the definitions given in Annex II may be used in the manufacture of the products listed in the directive. Annex II defines the following raw materials: fruit, fruit pulp, fruit purée, fruit juice, aqueous extracts of fruit, and various kinds of sugar. In addition, it lists the treatments authorized, which include heating or chilling, freeze-drying, concentration and, in the case of apricots and apricot pulp, drying. Sulphur dioxide of the salts thereof may be added in the manufacture of jam, jelly, marmalade and marmalade jelly.

Your committee doubts whether there is any technological need at all for the use of these additives.

Finally, chestnuts for use in the manufacture of chestnut purée may be soaked for a short time in an aqueous solution of sulphur dioxide. Here again, your committee doubts the technological need for this procedure. At all events, it initially recommended replacing the vague expression 'a short time' by a definite maximum length of time in order to enable this provision to be applied uniformly and to avoid the possibility of harmful effects on the health of the consumer if chestnuts intended for this purpose were soaked for too long a time in an aqueous solution of sulphur dioxide.

On this point the representative of the Commission explained that the soaking represented a cleansing process and that the chestnuts only absorbed small traces of sulphur dioxide.

Since Annex IV point 1 of the proposal for a directive stipulates that the sulphur dioxide content of chestnut purée must not exceed 10 mg/kg your committee no longer insists on a precise maximum period being laid down for the soaking of chestnuts. It does however insist - as it has made clear in point 4 of the motion - that manufacturers should fully respect the directive's provisions restricting the sulphur dioxide content of finished products.

6. Article 4 states that the substances specified in Annex III may be added, in the manner prescribed therein, to the products covered by the directive. According to the Commission's proposal, the additives listed in Annex III(2) are all to be authorized in unlimited quantities. Your committee, on the other hand, takes the view that quantitative limits should be laid down for sodium tartrate, potassium tartrate and sodium and potassium bitartrate, since there is no apparent technological necessity for the addition of these substances.

Furthermore, your committee cannot agree to the addition of colouring matter in unlimited quantities to jams, jellies, marmalades and marmalade jellies. Even if it be assumed that colouring matter has no injurious effects upon the health¹, its authorization and use may deceive the consumer into thinking that the colours are the natural colours of the fruit processed. That the Commission itself does not regard colouring matter as exactly improving the quality of products may be seen from the fact that it does not allow their use in the manufacture of first-quality jam, first-quality jelly or chestnut purée.

The danger of fraud is all the greater insofar as no provision is made for making it obligatory to specify colouring matter used. This applies equally to the other additives listed in Annex III(2). On the other hand, your committee notes with satisfaction that, pursuant to Article 3(2) and Annex II of the proposal for a directive on the labelling of foodstuffs, the specification of colouring matters is obligatory. It therefore insists that

- the addition of colouring matter be made subject to quantitative restrictions,
- the specification of any colouring matter used be made obligatory.

¹ In this connection it is worth pointing out that colouring agents are included in the Commission's revised list of second-category pollutants to be studied as part of the Programme of Action on the Environment (Doc. 404/74).

7. Article 5 contains the general - and consequently very vague - provision that products, 'irrespective of the substance involved,...may not contain substances in quantities such as to endanger human health'. Here one may ask who decides, in each particular case, where a danger to human health arises. In the interests of health protection and also to avoid legal ambiguities arising from difficulties of interpretation, your committee insists upon the demand already raised in connection with Article 4 that the Commission lay down precise maximum limits for every additive authorized. It is by no means sufficient in this case to require the specification of additives, as is done in the proposal for a directive (outline directive) on the labelling of foodstuffs.

8. According to Article 5(2), products may not contain sulphur dioxide (SO₂) in amounts exceeding the limits fixed in Annex IV. In particular, the sulphur dioxide content must not exceed 10 mg/kg for first-quality jam, first-quality jelly and chestnut purée, and 50 mg/kg for all other products.

Your committee fears that the latter limit may have been set too high and that a danger to the consumer's health is not excluded. At all events, it calls for the compulsory indication of sulphur dioxide, where used, particularly in view of the fact that this is also laid down in the labelling directive!

9. According to Article 6, certain particulars, 'printed in indelible characters and in such a manner as to be clearly visible and easily legible', must be shown on containers or labels. Among other things, these particulars include, 'where required, any additives used, to be shown in the manner prescribed by the rules relating to labelling in force in the Member State in which the product is to be consumed'.

In principle, your committee is in agreement with the requirements laid down with regard to labelling of products. Nevertheless, it must be pointed out that there can be no question of approximating the laws of the Member States - to quote the title of the directive - if the use of additives is to be shown 'in the manner prescribed by the rules relating to labelling in force in the Member State of the consumer'. Such a provision would undoubtedly lead to the creation of trade barriers and at least involve the manufacturer in difficulties during the labelling process.

Generally speaking, your committee has always called for a basic obligation to specify all additives used in order to satisfy the consumer's legitimate demand for adequate information.

Consequently, your committee advocates that the specification of additives used in the products covered by this directive be made obligatory, quite apart

from the problems raised in paragraphs 6 to 8 of this explanatory statement. In this way, not only will the consumer's need for adequate information be met but also the laws of Member States will be harmonized without the continued existence of barriers to trade. Moreover, the specification of additives is - as already mentioned - a compulsory stipulation in the framework directive. It would therefore be appropriate to refer to the specification provisions of the framework directive in this directive.

Accordingly, in Article 6(5) the words: 'in the manner prescribed by the rules relating to labelling in force in the Member States' should be replaced by the words: 'in the manner laid down in the proposal for a directive on the labelling and presentation of foodstuffs for sale to the ultimate consumer'.

10. The first paragraph of Article 8 lays down, quite naturally, that Member States shall lay down no requirements more specific than those prescribed in Article 6 on the labelling of products.

The second paragraph of this article, however, provides for a derogation under which any Member State may prohibit the sale in its territory of products whose containers do not bear the particulars required in the national language or languages.

Your committee takes exception to the fact that the Commission is once more acting counter to the views of the European Parliament, which for decades has been urging that it be made compulsory for manufacturers to label their products in the national language(s) of the consumer. On innumerable occasions, your committee, when examining directives proposed by the Commission, has pointed out that the régime consistently put forward by the Commission, leaves it to the individual Member States to decide whether or not they attach importance to a clear and unambiguous system of labelling which is intelligible to the consumer. It is asking too much of the consumer to expect him to understand correctly information provided in what for him is a foreign language: where this is done, there is a danger of mistakes and misunderstandings which may well have serious consequences for the consumer.

For these reasons, the European Parliament has consistently urged that the proposed facultative provision be made binding, most recently in connection with its consideration of the proposal for an outline directive on the labelling of foodstuffs (see resolution of 9 July 1976). In the case in point, this means that in the second paragraph of Article 8 the word 'may' should be replaced by 'must'.

11. Article 9 contains further derogations from Article 6 in that it allows Member States to require the specification of certain additional data. The problem to what extent these facultative provisions may lead to the creation of trade barriers does not fall within your committee's terms of reference.

The question of authorizing Member States to require the specification of a date is, however, an exception. It is, in fact, in the consumer's interest that he should be informed of the date of manufacture of a product: where this is done, he can revise his stock accordingly.

Initially, therefore, your committee urged that, in line with more progressive practices already in existence in certain Member States, indication of the date of manufacture or of the latest date for consumption be made obligatory.

However, since the European Parliament, in its consideration of the outline directive on the labelling of foodstuffs, agreed with the compulsory specification of the date of minimum durability, your committee no longer insists on the indication of the date of manufacture or of the latest date for consumption and is prepared instead to accept the compulsory indication of the date of minimum durability.

The relevant facultative provision proposed by the Commission in Article 9 should therefore be deleted and the binding provision advocated by the European Parliament incorporated in Article 6. (See resolution, point 6(g)).

12. Article 11 lays down that methods of sampling and analysis to check the composition of products and their manufacturing specifications shall be determined in accordance with a procedure involving the Standing Committee for Foodstuffs set up in 1969.

Since this is a matter of technical implementing provisions, your committee is fundamentally in agreement with this provision in order that the procedure be kept as simple and as rapid as possible. Nevertheless, in accordance with its views expressed on similar occasions in the past, it urges the Commission to ensure that methods of sampling and analysis are fixed not later than the date on which the directive becomes applicable. The Commission has no fundamental objections to this request.

The following phrase should therefore be added in Article 11:

'Not later than the date on which this directive shall become applicable, detailed rules...(rest of text unchanged)'.

13. Article 12 lays down the procedure for the Standing Committee for Foodstuffs.

In conformity with the stand hitherto taken by the European Parliament on the institutional aspect of this problem, your committee advocates the usual procedural changes. This shall apply, at any event, until such time as the European Parliament has taken a final decision on the basis of a report by its Legal Affairs Committee.

14. Article 13 contains a derogation to the effect that this directive shall not affect national provisions by virtue of which preservatives may be added to the products it covers provided these products have a content of dry soluble matter of less than 63%. The article further provides that this derogation shall, within five years from the date of notification of this directive, be reviewed by the Commission, which shall, if appropriate, propose suitable amendments to the Council.

As the Commission's Explanatory Memorandum clearly indicates, the unmistakable aim of this provision is to bring products with a soluble dry matter content of less than 63% within the directive's field of application after a period of five years and to promote intra-Community trade in them. However, the innocuousness of the preservatives, which must of necessity be added to these products, is not proven. Your committee therefore invites the Commission to propose on the basis of the knowledge acquired in this five-year period provisions which will take the consumer's interests fully into consideration.

15. According to Article 14, this directive shall not apply:

- to products that are manifestly intended for export to countries outside the Community,
- pending the entry into force of common provisions on the matter, to dietary products.

In similar cases in the past, your committee has consistently urged that products intended for export be clearly labelled as such if they are to be exempt from Community regulations; otherwise the danger exists that these regulations will be evaded by the manufacture and storage of products that are only ostensibly intended for third countries. Your committee has therefore taken the view that strict measures of control are necessary. If, however, these measures are not to be unnecessarily impeded it is essential that products intended for export be clearly indicated as such. In this case your committee has taken as its basis the formula it agreed to in its consideration of the outline directive on the labelling of foodstuffs.

Accordingly, the first part of Article 14 should be amended as follows:

'This directive shall not apply to products which can be shown to be intended for export to countries outside the Community.'

16. Article 15(1) lays down the time-limits for the application of the directive as follows:

- Member States are within one year following notification of this directive, to make such amendments to their laws as may be necessary to comply with the provisions of this directive and shall forthwith inform the Commission thereof;
- Member States are to permit trade in products complying with the provisions laid down in this directive two years after notification;
- Member States are to prohibit trade in products not complying with the provisions laid down in this directive three years after notification.

In this connection, your committee takes the view that the preparatory work for this directive, which was begun as long ago as 1964, has taken far too long and that the least that can be done now is to accelerate its application, which has been held up for ten years. Moreover, it is by no means clear why this should take two or three years, quite apart from the fact that provision is made for this process to be staggered. It would be perfectly realistic and also legitimate vis-à-vis the manufacturers to apply the directive one year after its notification. This, with technology as it is today, would provide quite enough time for any adjustments that were necessary. The Commission's objection that a longer period would be needed to amend national legislations does nothing to alter this fact. On the contrary, the European Parliament has the ability and indeed the duty to put pressure on the national parliaments to speed up their legislative procedures.

Accordingly, Article 15(1) should be amended as follows:

'Member States shall, within one year following notification of this directive, make such amendments to their laws as may be necessary to comply with the provisions of this directive and ensure its application. They shall forthwith inform the Commission thereof.'

17. Objection may also be taken to Article 15(2) in that it runs counter to the earlier motion voted by the European Parliament.

Here the Commission contents itself with requiring that Member States shall communicate to it the text of the main provisions of internal law which they subsequently adopt in the field covered by this directive.

In agreement with the Legal Affairs Committee, the Committee on Public Health and the Environment has always insisted that

- the obligation to communicate provisions of internal law to the Commission extends to all such provisions; and that
- such measures should be communicated in sufficient time to allow the Commission to express its opinion and so prevent its being faced with a fait accompli.

The Commission itself, moreover, in a series of proposals to the Council - e.g. in its proposal of 26 August 1974 on the marketing and use of certain dangerous substances and preparations¹ - has accepted the version approved by Parliament.

In accordance with the attitude it has taken hitherto, your committee therefore calls for the following amendment to Article 15(2):

'Furthermore, Member States shall communicate to the Commission the text of all provisions of internal law which they intend to adopt in the field covered by this directive in good time for the Commission to express its opinion on them'.

18. At its meeting of 20 October 1976 the committee completed its consideration of the motion for a resolution. The results of the voting on the individual points of the motion are given below. Letters (a) to (e) of point 6 formed the subject of a single vote.

Voting:

- Preamble : unanimous
- Points 1 and 2 : unanimous
- Point 3 : unanimous, with one abstention
- Point 4 : unanimous
- Point 5 : unanimous, with one abstention
- Points 6 and 7 : unanimous
- Motion for a resolution as a whole : unanimous, with one abstention.

¹ OJ No. C 126, 17.10.1974, p. 32

