

European Communities

EUROPEAN PARLIAMENT

Working Documents

1973-1974

28 May 1973

DOCUMENT 54/73

Report

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drawn up on behalf of the Committee on Agriculture

on the proposal from the Commission of the European Communities to the Council (Doc. 238/71) for a directive on the ~~approximation~~ approximation of the laws of the Member States concerning fertilizers

Rapporteur: Miss A. LULLING



By letter of 26 January 1972 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 on the approximation of the laws of the Member States concerning fertilizers.

By letter of 3 February 1972 the President of the European Parliament referred this proposal to the Committee on Agriculture as the committee responsible and to the Legal Affairs Committee for its opinion.

The Committee on Agriculture appointed Mrs Orth rapporteur on 23 March 1973; she was replaced by Miss Lulling at the meeting of 3/4 May 1973.

The committee discussed this proposal at its meetings of 12/13 April 1973 and 3/4 May 1973. At its last meeting it unanimously adopted the motion for a resolution and explanatory statement.

The following were present: Mr Houdet, chairman; Mr Vetrone, vice-chairman; Miss Lulling, rapporteur; Mr Brugger, Mr Frehsee, Mr Früh, Mr Héger, Mr John Hill, Mr Hilliard, Mr Jakobsen, Mr Lefèbvre, Mr Ligios, Mr McDonald, Mr Martens, Lord St. Oswald and Mr Scott-Hopkins.

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A.

The Committee on Agriculture 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 concerning fertilizers

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council (Doc. COM(71) 1500 fin.);
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 238/71);
 - having regard to the report of the Committee on Agriculture and the opinion of the Legal Affairs Committee (Doc. 54/73);
 - believing that fertilizers constitute a key factor of agricultural production;
1. Welcomes this proposal for a directive as a first attempt, after lengthy preparation, to approximate some of the provisions laid down by law, regulation or administrative action in the Member States;
 2. Considers, however, that such approximation, which is essential for the establishment and functioning of the common agricultural market, must be supplemented by additional Community measures in this sector;
 3. Requests the Commission, therefore, to submit a work schedule and timetable indicating what measures must be taken:
 - to reach agreement on a uniform criterion for evaluating Thomas slag;
 - to approximate national regulations on dangerous materials, including explosives, in connection with ammonium nitrate; and finally,
 - to approximate provisions laid down by law, regulation or administrative action governing liquid fertilizers and secondary or trace nutrients;
 4. Urges that, before provisions laid down by law, regulation or administrative action for implementing this directive come into effect, Community provisions for establishing sampling procedures and methods of analysis must be adopted;
 5. Believes that the proposed partial liberalization of the fertilizer trade in the Community will only be fully effective, particularly in the interests of the agricultural consumer, if any infringements are detected through regular checks carried out by jointly established methods and suitably penalized;

6. Approves in principle the following proposal for a directive;
7. Urges the Commission, however, pursuant to Article 149(2) of the EEC Treaty, to embody in its proposal the amendments set out below;
8. Instructs its President to forward this resolution and the Committee's report to the Council and the Commission of the European Communities.

Proposal from the Commission of the European Communities
to the Council for a directive on the approximation of
the laws of the Member States concerning fertilizers

Preamble, recitals and Articles 1 to 3 unchanged

Article 4

The only markings permitted on the packages, labels and accompanying documents referred to in Article 3 shall be:

- the markings specified in Annex II;
- the optional data listed in Annex I;
- the firm's own mark, the trade mark of the product and the trade description of the product;
- the specific directions for the use, storage and handling of the fertilizer. The latter directions must not be misleading and must be clearly separated from the other data.

Article 4

The only markings permitted on the packages, labels and accompanying documents referred to in Article 3 shall be:

- the compulsory identification markings specified in Annex II (1);
- the optional data listed in Annex I;
- the firm's own mark, the trade mark of the product and the trade description of the product;
- the specific directions for the use, storage and handling of the fertilizer.

Articles 5 to 7 unchanged

Article 8

1. The Member States shall take all necessary measures to ensure that fertilizers placed on the market and marked "EEC-type fertilizers" are at least checked by random sampling, in the course of official market inspections, for the purpose of verifying their conformity to the provisions of this Directive and their compliance with the requirements mentioned in Annexes I and II.

Article 8

1. unchanged

¹For complete text see COM(71) 1500 final.

2. The conformity of a batch of fertilizer to the guaranteed contents and to the minimum and/or maximum contents laid down in Annex I must, during the official inspections referred to in paragraph 1 above, be established by taking account of the manufacturing tolerances specified in Annex III to this Directive.

Article 9

1. The amendments which are necessary in order to bring Annex I of this Directive into line with technical progress shall be adopted in accordance with the procedure laid down in Article 11.

2. The sampling method and the analysis techniques shall likewise be determined in accordance with the procedure laid down in Article 11.

2. Compliance with the provisions of this Directive and Annexes I and II concerning conformity to the type designation of fertilizers, the guaranteed nutrient contents and the guaranteed contents expressed as forms and solubilities of the nutrients concerned, may be established during the official inspections only by sampling methods and analytical techniques determined in accordance with the procedure laid down in Article 11 and taking into account the manufacturing tolerances listed in Annex III of this Directive.

Article 9

1. The amendments which are necessary in order to bring Annexes I and III of this Directive into line with technical progress shall be adopted in accordance with the procedure laid down in Article 11.

2. The sampling method and the analysis techniques shall likewise be determined in accordance with the procedure laid down in Article 11. They must come into effect within twelve months at the latest of the entry into force of this Directive.

Article 10 unchanged

Article 11

1. When recourse is had to the procedure defined in this article, the matter shall be laid before the Committee by its Chairman, either at the initiative of the latter or at the

Article 11

1. unchanged

request of a representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on this draft within a period of time which the Chairman may fix according to the urgency of the matter in hand. It shall act by a majority of twelve votes, the votes of the Member States being weighted as laid down in Article 148 (2) of the Treaty. The Chairman shall not vote.

3. (a) the Commission shall adopt the measures envisaged when they conform to the opinion of the Committee.

(b) When the measures envisaged do not conform to the opinion of the Committee or when no opinion is delivered, the Commission shall submit to the Council without delay, a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

(c) If, at the end of three months after the date on which the matter was laid before the Council, the latter has not acted, the Commission shall adopt the measures proposed.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on this draft within a period of time which the Chairman may fix according to the urgency of the matter in hand. It shall act by a majority of 41 out of 58 votes, the votes of the Member States being weighted as laid down in Article 148 (2) of the Treaty. The Chairman shall not vote.

3. The Commission shall adopt measures which shall be implemented forthwith. If, however, they do not conform to the opinion of the Committee, the Commission shall notify them without delay to the Council. In that event the Commission may suspend implementation of the measures it has adopted for up to one month after their notification.

In accordance with the procedure laid down in Article 43 (2) of the EEC Treaty the Council may take another decision within one month.

Articles 12 to 14 unchanged

EXPLANATORY STATEMENT

I. The legal basis

1. The Commission's proposal is based on Article 100 of the EEC Treaty which provides for directives to be issued by the Council for the approximation of national provisions laid down by law, regulation or administrative action. The Legal Affairs Committee, whose opinion was also sought, believes that this Article constitutes the only legal basis in this matter. Strictly speaking, it may be regretted that owing to the form of this provision the approximation of legislation has, as a rule, been seriously delayed, requiring as it does that Community law be transposed into national legislation. However, since the Treaty has chosen directives as a means of approximating legislation, there is no point in discussing the matter further.

Perhaps it might be pointed out only briefly that altering existing national laws in an attempt to reduce them to a common denominator is an extremely delicate and laborious task. Such laws are too closely interwoven with interests that have become firmly entrenched over the years. Moreover, throughout the period during which these laws were applied, there have grown up certain administrative and supervisory procedures - now long-established and often well-tried - that certainly do not make changes any easier. From this point of view, the choice of the directive may be regarded as realistic.

II. Scope of the directive

2. The scope of the directive can be considered from two angles :
- (a) In its formal aspect, the directive provides for the 'alternative arrangement' or optional solution.

The directive applies to a number of fertilizers which are named in a classified list and meet specific and verifiable requirements. Member States may not, on grounds of different national provisions, hinder trade in any of these fertilizers. The designation applied in such cases is 'EEC-type fertilizer'. It is not clear why the term 'EEC-type' is used here and the term 'EEC-standard' in the case of feedingstuffs. For the sake of clarity, it would be better if an identical term were used in dealing with the approximation of legislation so as to avoid giving the impression that the meaning varies with different products.

In practice, the optional solution means that the manufacturer can choose to offer a product which can be sold freely throughout the Community or, on the contrary, is allowed only on the home market in accordance with national regulations. In this way, different markets governed by different regulations exist side by side. Apart from the problems of supervision arising from this, both manufacturer and buyer come up against other difficulties. The scope of the regulations already existing is being widened and becoming less easy to grasp. On the other hand, emphatic assertions that the designation 'EEC-type' is not an indication of quality will not prevent the consumer from regarding it as such. In other words, fertilizers confined to the home market are in fact put at some disadvantage. This fear is justified, as can already be seen from the way in which the industry concerned is trying to cram as many products as possible into the classified list.

This problem could be solved by completely harmonizing national legislation on fertilizers. There are three obstacles to such a solution :

- There are a large number of fertilizers which are merely of regional - or at most of national - importance. Their inclusion in the classified list would bring no commercial advantage and would moreover obscure the overall picture of the products available.
- National regulations differ so widely from one another in the case of some fertilizers that far-reaching harmonization would amount to shelving the whole process of approximating legislation indefinitely.
- The free movement of highly concentrated ammonium nitrate envisaged in this directive is still not possible because of the disparities in national regulations on explosives.

(b) In actual fact the directive covers only part of the fertilizers produced in the Community.

The proposal lays down provisions for the most important straight and compound fertilizers in the Community; thus liquid fertilizers are excluded, as are secondary and trace nutrients, for which special regulations are planned. It would be interesting to ascertain what proportion of the Community's entire fertilizer production, in terms of quantity and value, these fertilizers represent. Moreover, a timetable ought to be drawn up for harmonizing further the relevant legal provisions.

III. Factual content of the directive

3. The purpose of approximating the laws of the Member States is to liberalize trade in the Community in the fertilizers mentioned. National provisions cannot, therefore, prevent or hinder trade in these fertilizers on grounds of composition, designation or packaging. This naturally means stiffer competition, national protectionist measures being gradually abolished and the markets of individual Member States being opened to supplies from the other Community countries. On the other hand, fertilizers which do not meet requirements may be placed at an economic disadvantage.

4. The system proposed by the Commission consists in:

- giving the fertilizers in question a type-designation ;
- specifying manufacturing tolerances;
- choosing a suitable identification marking;
- a jointly established supervisory procedure in the form of methods of sampling and analysis.

The classified lists - the result of many years' work in collaboration with teams of experts - seem to be generally accepted. They cannot, however, be regarded as definitive as producers might well insist on further additions. As stated earlier, the inclusion of a product on this list is seen as a mark of distinction which could also be of commercial advantage. If the lists are extended, care must be taken not to obscure the consumer's view of the range of products available.

There is a much greater divergence of opinion about the manufacturing tolerances specified in Annex III for the guaranteed nutrient content of the different fertilizers. These tolerances are far stricter in some respects than those allowed in many national regulations. There is a conflict here between the interests of consumer and manufacturer. The legislator must aim at ensuring that the consumer obtains a fertilizer whose nutrient content is actually that guaranteed. In the manufacture of fertilizers, however, certain deviations are difficult to rule out for technical reasons or because of the nature of the raw material. If tolerances were too close there would be a risk of increasing considerably the cost of manufacturing this essential component of agricultural production. It is to be hoped that these various economic effects will be carefully weighed up and that an appropriate solution will be found, above all for the sake of the agricultural consumer. It would appear desirable for the experts to carry out a thorough review of some of the tolerances specified, in collaboration with the Commission's departments.

For instance, in Annex III a tolerance of 0,7 is allowed as absolute value in percentage by weight in respect of the guaranteed nutrient contents in binary fertilizers. The question here, particularly as regards the manufacture of Thomas slag, is whether this tolerance is realistic or whether it should be reviewed and perhaps widened. However, your committee urges on principle avoiding any compromises that might make unreasonable economic demands on the parties concerned. Nor must they undermine the harmonization of laws and deprive it of its function.

5. Article 8 stipulates that official checks are to be carried out in Member States to see that 'EEC-type fertilizers' conform with the provisions of this directive. However, so long as these checks are carried out differently by the various national authorities there can be no guarantee that Community rules are complied with consistently in all Member States. This means (i) that regulations must be laid down governing the procedure for taking and analysing samples to be observed by all official supervisory bodies, and (ii) that this common procedure must come into force not later than the proposed directive.

Article 9(2) provides for these regulations to be issued by the Community. Although, however, a time-limit of 18 months is set within which Member States must take the necessary legal steps to comply with the directive, no deadline has been fixed for the adoption of procedure for sampling and analysis. Since, however, as already indicated, this directive will not become fully effective until there are Community provisions governing these procedures, Article 9(2) must be altered to the effect that these provisions shall be introduced within six months of the conversion of the proposed directive into national laws (within 18 months at the latest).

6. Article 9(1) stipulates that the classified lists are to be adapted in committee to technical progress. It is conceivable, however, that improved production methods and technological advances may necessitate changes in manufacturing tolerances. It is therefore suggested that Annex III be brought within the scope of the arrangement.

7. Article 10 of this directive provides for the setting up of a committee on fertilizers for the purpose of removing technical obstacles to trade. Article 11 defines the working methods of that committee, which will enable it to exert indirect influence over the decision to be taken at Community level. Indeed, the Commission can introduce the measures it is contemplating only if the committee votes in favour of them.

The value to the Commission of being able to consult a group of experts on the technical implications of a decision to be taken by it cannot be denied. It can also be assumed that the continued exchange of ideas and know-how in this committee can lead to balanced representation of the various interests in the Commission proposal as well as help to ensure that a permanent check is kept on whether the Community provisions are actually being applied in the Member States. However, as stated in countless earlier reports, the Parliament is very strongly opposed to the Commission's powers of decision being hindered by groups of experts devoid of democratic status. Moreover, if the decision is transferred to Council level in accordance with the procedure proposed, Parliament will not be consulted. It is quite incomprehensible that this procedure is still being applied and recommended despite the concern expressed by Parliament on numerous occasions¹ on political and constitutional grounds. Your committee proposes to Parliament that in this case, too, the relevant article should be amended.

8. Finally, there is the question of concentration in the fertilizer industry. This problem was brought up expressly in the Committee on Agriculture and examined more closely in the opinion of the Committee on Legal Affairs. Moreover, numerous written questions have in the past year raised this issue. Your committee would like to endorse the view of the Legal Affairs Committee that this trend towards concentration in the industry should be closely watched.

9. It was already pointed out in the introduction that the proposed directive has to be supplemented by further legal provisions in order to bring about more comprehensive approximation of legislation throughout the fertilizer sector. This recommendation should be acted upon without delay. The European Parliament therefore asks the Commission to draw up a work plan and timetable for the next steps to be taken in this harmonizing process. Reports are needed particularly on the steps being taken :

- to agree on a common criterion for evaluating Thomas slag;
- to approximate national provisions on dangerous substances, including explosives, with reference to ammonium nitrate;

¹ See, inter alia, Lulling Report (Doc.129/67) of 17.10.1967 and Resolution of 19.10.1967, OJ 268 of 6.11.1967, p.20; Brouwer Report (Doc. 164/68) of 26.11.1968; Dittrich Report (Doc. 44/71) of 7.6.1971, p.29 and 45 and Orth Report (Doc. 213/71) of 12.1.1972, pp.7 and 8.

- to approximate provisions laid down by law, regulation or administrative action relating to liquid fertilizers, and secondary and trace nutrients.

10. Bearing all these considerations in mind, your committee can recommend that Parliament approve the proposed directive subject to the amendments proposed by it.

Opinion of the Legal Affairs Committee

Draftsman of the opinion : Mr T. BROUWER

The Legal Affairs Committee appointed Mr Brouwer draftsman of the opinion on 21 February 1972.

The committee discussed the draft opinion at its meeting of 14 September and adopted it unanimously.

The following were present: Mr Bermani, vice-chairman; Mr Brouwer, draftsman of the opinion; Mr Broeksz, Mr Cousté (deputizing for Mr Ribière), Mr D'Angelosante, Mr Héger, Mr Hunault, Mr Meister, Mr Reischl, Mr Romeo and Mr Springorum.

A. PURPOSE AND BASIS OF THE PROPOSED DIRECTIVE

1. It has become clear that differences exist between the provisions laid down by law, regulation or administrative action in the Member States as regards the composition, nutrient evaluation and type-designation of numerous fertilizers.
2. These differences create obstacles to the free movement of the above-mentioned products between Member States.
3. The legal provisions in force in the individual countries are justified by the States' legitimate concern to protect the agricultural consumer.
4. The purpose of this directive is to eliminate the adverse effects of the differences in legislation within the Community by approximation of laws.
5. The legal basis of this proposal for a directive is Article 100 of the EEC Treaty.

The Legal Affairs Committee considers that that Article does in fact constitute the sole correct legal basis.

It is necessary to approximate the laws because of the barriers to the free movement of fertilizers created by the different legal provisions. The real aim of the proposal for a directive is, therefore, the creation of a common market in fertilizers.

6. Furthermore, the fertilizer sector was included in the third phase of the general programme for the removal of technical barriers to trade resulting from disparities between the national laws and administrative provisions of the Member States, approved by the Council resolution of 28 May 1969.¹

The Legal Affairs Committee wishes to point out again that implementation of this general programme is considerably behindhand. For instance, the Commission should have submitted proposals on products for which legal provisions should have been approximated in the third phase by 1 July 1970 at the latest; the Council should have taken a decision on this matter by 1 January 1971 at the latest.

The Commission representative expressed sympathy with the Legal Affairs Committee's concern about this delay. He said that it was by no means impossible that the period of 18 months specified in Article 18 of the proposed directive would still prove too short for some Member States to approximate their laws.

¹ OJ No. C 76, 17 June 1969

B. FACTUAL CONTENT OF THE PROPOSAL FOR A DIRECTIVE

7. Annex I of this directive gives a list of straight fertilizer types and compound fertilizer types together with a number of criteria regarding their content. This also defines the scope of the directive.

Annex II lays down provisions concerning identification, labelling and packaging.

8. According to Article 1, the directive applies to products which are placed on the market as fertilizers and designated 'EEC-type fertilizer'. Article 2 provides that the designation 'EEC-type fertilizer' may be used for fertilizers belonging to one of the two fertilizer types mentioned in Annex I and complying with the criteria laid down by the directive and the annexes thereto.

The directive does not prescribe that the fertilizer types mentioned in Annex I which are placed on the market must comply with these criteria.

9. Member States may not, however, for reasons of composition, identification, labelling or packaging, prohibit, restrict or hinder the marketing of fertilizers marked 'EEC-type fertilizer' which comply with the provisions of this directive and the annexes thereto (Article 7).

This must be regarded as the central provision of the directive.

10. It therefore emerges from the text of this directive that its aim is not complete approximation. This is confirmed by the explanatory memorandum which states that the directive provides for the 'solution allowing a choice'.

In this connection your committee would like to point out that the European Parliament supported complete harmonization when discussing several proposals for directives on the approximation of laws, i.e., that it advocated the complete replacement of national legal provisions by Community laws. Parliament in fact considers that two different legislations can only exist side by side during a transitional period which is provided to enable the industry in question to adapt to Community provisions without great difficulty.

In the opinion of the Commission representative, the optional solution must on principle be regarded as transitional. He also drew members' attention to the fact that some types of fertilizer have little commercial importance. It was not essential for provisions on these products to be approximated completely. But these fertilizers come under this directive.

11. According to Article 3, EEC-type fertilizers referred to in Article 1 of Annex II shall be provided with identification markings.

Article 4 limits the markings permitted on packages, labels and accompanying documents.

In the opinion of your committee, the wording of the first indent could be rendered more precise, as follows:

Article 4

The only markings permitted on the packages, labels and accompanying documents referred to in Article 3 shall be

- the compulsory identification markings specified in Annex II(1)¹

Sections 2 and 3 of Annex II only lay down the packaging and labelling requirements.

The Commission representative agreed to this amendment.

12. Article 8 stipulates that fertilizers to which this directive applies should be at least checked by random sampling, in the course of official market inspections, for the purpose of verifying their conformity to the provisions of this directive and their compliance with the requirements mentioned in Annexes I and II.

This implies that one and the same product may be subject to inspection in various Member States.

Moreover, the provision of Article 8 is a minimum requirement.

So it would not contradict the letter of the directive if fertilizers, although marked 'EEC-type fertilizers', were subjected to systematic inspection at the internal frontiers of the Community.

In this connection the Legal Affairs Committee refers back to the Council resolution of 28 May 1969 on the mutual recognition of controls².

¹ In the Dutch version the wording of the second and third indents could also be made more precise, namely:
- de facultatieve gegevens van bijlage I,
- het merkteken van de firma, het merk van het produkt en de handelsbenamingen.

² OJ No. C76, 17 June 1969, p.7

This resolution states that the Council considers that mutual recognition of controls to be carried out before goods are brought onto the market must be provided for in directives applying to a specific product if the provisions laid down by law, regulation or administrative action for bringing this product onto the market are being approximated or are already regarded as equivalent, on the basis of Community action.

In connection with this comment, the Commission representative pointed out to members that no Member State has provisions concerning preventive checks. Control is only exercised after the event, by random sampling. So it may easily happen that a product crosses internal Community frontiers before being inspected for the first time.

13. Articles 9 and 10 refer to possible amendments to the directive in order to bring it into line with technical progress. A committee is to be set up for this purpose, composed of representatives of the Member States, with a representative of the Commission as its chairman; he is responsible for delivering an opinion.

The amendment procedure, which is laid down in Article 11, includes the standard provision concerning the adaptation to technical progress of directives aimed at eliminating technical barriers to trade, which was adopted in the Council resolution of 28 May 1969¹.

14. According to the explanatory memorandum, the national provisions in force in certain Member States with regard to dangerous substances or explosives shall remain applicable. Annex I lists one such product (ammonium nitrate) which could in certain circumstances (high nitrogen content)² be included among these substances.

The committee notes that the directive itself does not mention this.

Directives on approximation have the implicit aim of removing trade barriers resulting from the special provisions of Article 36 of the EEC Treaty³. If Article 36 is to remain applicable in certain cases, this will have to be stated expressly.

¹ OJ No. C 76, 17 June 1969, p.8

² Annex I does not fix a maximum limit for this product.

³ 'The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.'

Another possibility is that the exclusion from this directive of ammonium nitrate with high nitrogen content is based on Article 223, paragraph 1(b) of the EEC Treaty and that explosives appear on the unpublished list of products drawn up in 1959 pursuant to paragraph 2¹ of that Article.

If that is the case your committee does not see any need to include a special provision in the directive. In any event Article 223 has a wider coverage than Article 36.

The Commission representative considers that the reasons given in Article 7 of the proposed directive provide sufficient guarantees to exclude dangerous substances and explosives from this directive.

15. The Legal Affairs Committee notes with satisfaction that a special directive is being prepared for these substances.

¹ Article 223

1. The provisions of this Treaty shall not preclude the application of the following rules:

(a) No Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) Any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

2. During the first year after the entry into force of this Treaty, the Council shall, acting unanimously, draw up a list of products to which the provisions of paragraph 1(b) shall apply.

3.

C. CONCENTRATIONS IN THE CHEMICAL INDUSTRY

16. In conclusion your committee wishes to point out that reports which occasionally appear in the press and elsewhere imply that concentrations - such as mergers between enterprises or cartel agreements - regularly occur in the sector of artificial fertilizers. In each case this raises the question whether such agreements are reconcilable with the rules of competition of the EEC Treaty¹.

At the request of your rapporteur, the Commission gave a brief survey of the measures it has taken in this field and of its current activity.

The picture is as follows:

Measures taken

- a) Negative test decisions for joint sales agencies (i.e., the Commission has no grounds to intervene pursuant to Article 85(1) of the EEC Treaty) concerning:
- the Belgian joint sales agency for nitrogenous fertilizers 'COBELAZ'; two decisions of 6 November 1968 (OJ No. L 276, 14 November 1968)
 - the French joint sales agency for nitrogenous fertilizers 'C.F.A'; decision of 6 November 1968 (OJ No. L 276, 14 November 1968)
 - the Italian joint sales agency for artificial fertilizers 'SEIFA'; decision of 30 June 1969 (OJ No. L 173, 15 July 1969)
 - the French joint sales agency for phosphatic fertilizers 'SUPEXIE'; decision of 23 December 1970 (OJ No. L 10, 13 January 1971)

¹ cf. also written questions by Mr VREDELING with the Commission's answer:

- No. 158/70 on competition in the artificial fertilizer industry (OJ No. C 133, 5 November 1970)
- No. 360/71 on the French potash trade monopoly (OJ No. C 7, 28 January 1972)
- No. 483/71 on mergers between nitrogen firms and artificial fertilizer factories (OJ No. C 23, 8 March 1972)
- No. 516/71 on concentration in the fertilizer industry (OJ No. C 32, 1 April 1972)
- No. 29/72 on the interpretation of Article 85 (1) of the EEC Treaty in the light of negative test decisions for joint sales agencies for artificial fertilizers (Bulletin 5/72, 14 April 1972 - PE 29 785)

and the following written questions by Mr VREDELING

- No. 13/72 on the French trade monopoly in potassic fertilizers (Bulletin 5/72, 14 April 1972 - PE 29 785)
- No. 93/72 on international agreements in the chemical industry (Bulletin 10/72, 5 May 1972 - PE 28.888).

These decisions were not taken until certain modifications had been made to the agreements in order to adapt them to the provisions of the EEC Treaty.

- b) Dissolution of the 'Association Belge du Superphosphate' 'BELGAPHOS' on 25 February 1970 after the Commission had notified it that certain provisions in its articles of association were incompatible with Article 85 of the EEC Treaty.

Measures currently being taken

- Examination of the merger of a number of Thomas slag producers;
- Examination of a Franco-German agreement on potassic fertilizers;
- Examination of applications for nitrogenous fertilizers by German and Dutch sales agencies;
- Supervision of the fertilizer industry in the Member States, and in particular of the sales agencies which have obtained a favourable decision.

The Legal Affairs Committee notes with satisfaction this activity by the Commission. It considers that these concentrations must be watched with the greatest care.

17. Without prejudice to the proposed amendment to Article 4, the Legal Affairs Committee approves this proposal for a directive.