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Working Documents

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DOCUMENT 150/73

Report

drawn up on behalf of the Committee on Public Health and the Environment

on the proposal from the Commission of the European Communities to the  
Council (Doc. 29/73) for a directive on the approximation of Member States'  
legislations on aerosols

Rapporteur: Sir Anthony C. ESMONDE

PE 33.576/fin.



By letter of 11 April 1973, the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver its opinion on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of Member States' legislations on aerosols.

On 23 May 1973 the President of the European Parliament referred this proposal to the Committee on Public Health and the Environment as the committee responsible and to the Legal Affairs Committee and the Committee on Economic and Monetary Affairs for their opinions.

The Committee on Public Health and the Environment appointed Sir Anthony ESMONDE rapporteur. It considered the proposal at its meetings of 19 June and 9 July 1973.

At its meeting of 9 July 1973 the committee adopted the draft report by 9 votes in favour with one abstention.

The following were present: Mr DELLA BRIOTTA, chairman; Mr JAHN and Mr SCOTT-HOPKINS, vice-chairmen; Sir Anthony ESMONDE, rapporteur; Mr CHRISTENSEN, Mr EISMA, Mr McELGUNN, Mr MÜLLER, Mr PREMOLI, Mr WALKHOFF.

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

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The Committee on Public Health and the Environment 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 Member States' legislations on aerosols

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council (Doc. COM(73)415 fin.),
  - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 29/73),
  - having regard to the report by the Committee on Public Health and the Environment and the opinion of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs (doc. 150/73),
1. Welcomes the Commission's initiative in undertaking harmonization of legislation on such a commonly used product as aerosols;
  2. Is unable, however, to accept the proposed 'alternative solution' in the interests of uniform safety conditions and consumer protection;
  3. Requests that the scope of this directive should also be extended to the contents of the aerosols;
  4. Considers the restriction of the directive to metal, glass and plastics an obstacle to improved conditions for the consumer which might be achieved by possible technical developments, especially as the working methods of the committee proposed by the Commission in Article 6 do not appear very flexible;
  5. Considers it essential to require the manufacturer to show exact details of the contents in a clear manner on labels and packages;
  6. Insists that the wording on labels and packages must be in the local language;
  7. Expresses its concern at the serious pollution of the environment caused by these products which can only be used once, and urges the Commission to initiate specific research into ways of disposing of the containers safely and without causing pollution.

8. Subject to the above **reservations** approves the Commission's proposal in principle, but urges the Commission to make the following amendments to its proposal, pursuant to Article 149, paragraph two, of the EEC Treaty;
9. Calls upon its appropriate committee to check carefully whether the Commission alters its proposal in accordance with the European Parliament's amendments and, if necessary, to report back to it;
10. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

Proposal from the Commission of the European  
Communities to the Council for a directive  
on the approximation of Member States' legis-  
lations on aerosols

Preamble unchanged

Recitals

Whereas, in certain Member States,  
aerosols are required by law to com-  
ply with certain technical specifi-  
cations, which specifications differ  
from one Member State to another and,  
by their disparity, represent barriers  
to trade within the European Economic  
Community;

Whereas these barriers to the estab-  
lishment and functioning of the common  
market can be removed if all the  
Member States adopt the same specifi-  
cations, either in addition to or  
in place of the specifications laid  
down in their present legislation,  
and whereas these specifications must  
relate in particular to the manufact-  
ure, filling and nominal capacity of  
aerosols;

Whereas at the present stage of tech-  
nical progress, the field of applic-  
ation of the Directive should be  
limited to aerosols with a container  
made of metal, glass or plastic;

Whereas the technical specifications  
listed in the Annex will need to be  
rapidly updated in line with tech-  
nical progress, and whereas, to fac-  
ilitate the implementation of the  
measures necessary for this purpose,  
a procedure should be worked out to  
obtain close cooperation between the  
Member States and the Commission in  
the Committee for the updating of the

Recitals

unchanged

Whereas these barriers to the estab-  
lishment and functioning of the common  
market can be removed if all the  
Member States adopt the same specifi-  
cations, (~~delete~~) in place of the  
specifications laid down in their  
present legislation, and whereas  
these specifications must relate in  
particular to the manufacture, filling  
and nominal capacity of aerosols;

Delete

unchanged

Directive to remove technical barriers to intra-Community trade in aerosols;

Whereas it may happen that aerosols placed on the market represent a safety risk even though they satisfy the requirements of this Directive and its Annex, and whereas a procedure should be devised to guard against this risk;

Articles 1 to 6 unchanged

Article 7

1. If recourse is had to the procedure defined in this Article, the matter shall be placed before the Committee by its Chairman, on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit proposals to the Committee on the measures to be taken. The Committee shall render its opinion within a period of time which may be established by the Chairman according to the urgency of the matter at issue.

The opinion shall be rendered by a majority of 41 votes, the votes of the Member States being assigned weighting coefficients as laid down in Article 148(2) of the Treaty. The chairman shall not take part in the vote.

3. (a) The Commission shall adopt the proposed measures if they receive the approval of the Committee;

(b) If the proposed measures do not meet the approval of the Committee, or if no opinion is expressed, the Commission shall without delay make a proposal to the Council on the

unchanged

1. unchanged

2. The representative of the Commission shall submit proposals to the Committee on the measures to be taken. The Committee shall render its opinion within a period of time of two months.

unchanged

3. unchanged



measures to be taken. The Council shall act by qualified majority.

(c) If, at the end of three months from the time the matter is put before the Council, the latter has not acted, the proposed measures shall be adopted by the Commission.

#### Article 8

1. Without prejudice to the provisions of the Directives relating to dangerous substances and preparations, each aerosol or, in the case of luxury products or small capacities, the individual exterior package thereof, must bear the following particulars in visible and indelible characters:

- (a) the name and address or trademark of the manufacturer of the aerosol or his authorized agent, or any other person marketing the aerosol;
- (b) the symbol '3' (mirror image of epsilon) certifying that the requirements of this Directive are satisfied;
- (c) coded information stating the filling batch;
- (d) the specifications referred to in 2.3, and where necessary 3.3.2 and 4.3.2, of the Annex;
- (e) the net contents at the time of filling, expressed in official metric quantities,

2. The Member States may make the marketing of aerosols on their territory subject to the use of their national language or languages for the wording on the label.

#### Article 9

The Member States shall take all the

#### Article 8

1. unchanged

(a) unchanged

(b) the symbol 'EUR' certifying that the requirements of this Directive are satisfied;

(c) unchanged

(d) unchanged

(e) unchanged

(f) precise details of the contents

2. The Member States shall make the marketing of aerosols (~~delete~~) subject to the use of the language(s) of the country in which they are marketed for the wording on the label or packaging.

#### Article 9

The Member States shall take all the

necessary measures to prevent the use of signs or phrases on aerosols which might create confusion with the '3' symbol.

Article 10

1. When a Member State establishes that an aerosol, although satisfying the requirements of this Directive, is likely to jeopardize human safety, it may, at its own request and according to the procedure laid down in Article 7, be provisionally authorized to prohibit the sale, marketing or use of this aerosol on its territory.

In this connection, it shall notify the other Member States and the Commission of the measures it intends to take and its reasons for taking them.

2. If, at the end of thirty days from the time the representative of the Commission proposes a measure to the Committee, no measure has been decided either by the Commission or by the Council, the applicant Member State may take the intended steps and apply them until such time as a decision has been taken under the procedure referred to in the preceding paragraph.

necessary measures to prevent the use of signs or phrases on aerosols which might create confusion with the 'EUR' symbol.

Article 10

1. When a Member State establishes that an aerosol, although satisfying the requirements of this Directive, is likely to jeopardize human safety, it may, at its own request and according to the procedure laid down in Article 7, be provisionally authorized to prohibit the sale, marketing or use of this aerosol on its territory.

In this connection, it shall notify the other Member States and the Commission immediately of the measures it intends to take and its reasons for taking them.

2. unchanged

Articles 11 and 12 unchanged

Annex unchanged

EXPLANATORY STATEMENT

1. The Commission has submitted this proposal because of differences in national legislations and in the allocation of powers in the Member States and in an endeavour to prevent further discrepancies between national laws. The present situation in the Community is an obstacle to

- a) adequate, uniform safety precautions
- b) consumer protection
- c) the free movement of goods

This proposal must be considered on the basis of these criteria.

2. The first point to note is that the alternative solution has been chosen, i.e. parallel national and Community legislation. The directive is therefore confined to cross-frontier movements of aerosols, since production for the national market may continue under national law.

The assertion that in this way national test markets could be retained for technically improved products, an important issue from the safety point of view, is not acceptable, since the disadvantages arising from this would be considerably greater:

- a) the result would be an obstacle to uniform safety precautions within the Community,
- b) transparency of the market would be reduced, against the interests of consumer protection, since not only would there be a choice between different products, but products of equivalent value could also be offered for sale with different markings, the significance of which could not be clearly understood without a more general explanation to the consumer,
- c) the continued existence of different national laws would enable large manufacturers to evade the Community directive completely by using their multinational production plants.

3) Furthermore, goods should, in the consumer's own interest, be labelled in the language or languages of the country of sale, since it is impossible with our present school system to assume that every consumer is familiar with foreign languages.

4. The Committee on Public Health and the Environment, in agreement with the opinion of the Legal Affairs Committee, declares itself in favour of the symbol 'EUR' instead of '3' since this sign would be uniformly applied.

5. In view of the growing problem of environmental pollution caused by goods which cannot be reprocessed, it must be emphasized that with 800 million aerosols in circulation in the Community, a fundamental review of the advantages and disadvantages of this packing method is urgently necessary.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman: Mr Helmut Karl ARTZINGER

The Committee on Economic and Monetary Affairs appointed Mr Artzinger draftsman for the opinion on 25 May 1973.

The draft opinion was discussed by the committee at its meeting of 15 June 1973 and adopted unanimously.

The following were present: Mr Lange, Chairman; Sir Brandon Rhys Williams, Vice-chairman; Mr Artzinger, draftsman of the opinion; Mr Antoniozzi, Mr Bersani, Mr Berthoin, Mr Burgbacher, Mr Flämig (deputizing for Mr Arndt), Mr Harmegnies, Mr Kater, Mr Mitterdorfer, Mr Normanton, Mr Notenboom (deputizing for Mr Starke), Lord Reay, Mr Springorum (deputizing for Mr Schwörer) and Mr Yeats.

## General remarks on the content of the proposal for a directive

This proposal for a directive was submitted to the Council by the Commission with a view to regulating the free movement of aerosols in the Community, pursuant to Article 100 of the Treaty.

The term 'aerosol' as used in the directive means any non-reusable container in metal, glass or plastic with an extraction device, including the liquid, paste or powder it contains, together with the compressed or liquefied gas or gas which is dissolved under pressure. The directive applies to containers with a capacity of more than 50 ml; the net capacity may not exceed certain maximum limits which depend on the nature of the container material. The criteria for determining these limits are to be explained to the committee by the representative of the Commission.

The aerosols covered by the directive will be marked with a symbol to show that they comply with its provisions and may be freely imported and distributed in the various Member States.

Apart from general provisions governing its entry into force, the directive also provides for the setting up of a committee which would adapt this directive, e.g. in the light of technical progress. This committee will fix its rules of procedure and consider measures to be taken by the Commission. The directive also contains specific provisions on the labelling of aerosols, and a clause enabling Member States to enter objections in cases where an aerosol is liable to endanger personal safety.

### Opinion

1. In view of the subject matter, this directive and its annex are of a highly technical nature. Provisions on the manufacture, packing, rated capacity and nature of metal, glass or plastic containers, are aimed at ensuring the free movement of a specific product in the Community by removing the technical barriers to trade resulting from differences between national legislations.

In addition, maximum possible protection of the consumer against explosions is to be guaranteed, in accordance with the latest state of technical progress.

2. The Committee on Economic and Monetary Affairs considers that it should have been primarily responsible for considering this proposal, as it has already requested in connexion with other proposals for directives on this subject. Despite this request it was only asked for its opinion. However the committee wishes to emphasize that the aim of this directive is to remove barriers to trade.

3. The 'alternative solution' adopted as a harmonization procedure, implying that the directive applies only to trade in aerosols between Member States, should assist the Council in reaching its decision. If national legislation continues to exist parallel to Community legal provisions, this would not, in the opinion of the Committee on Economic and Monetary Affairs, necessarily distort competition.

4. The Committee on Economic and Monetary Affairs therefore recommends that the committee concerned, in view of its special responsibility for the removal of technical trade barriers and the creation of free trade in the Community, should approve this proposal for a directive.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

(Letter of 3 July 1973 from the Chairman of the Legal Affairs Committee, Mr SCHUIJT, to the Chairman of the Committee on Public Health and the Environment, Mr DELLA BRIOTTA)

Dear Mr Chairman,

At its meeting of 29 June 1973 in Brussels, the Legal Affairs Committee discussed the proposal from the Commission of the European Communities to the Council for a directive on the approximation of Member States' legislations on aerosols (Doc. 29/73).

In the course of its discussion, the committee noted that the legal basis chosen for this proposed directive is Article 100 of the EEC Treaty. The committee made no objection to this choice.

On the other hand, it did express reservations about the choice of the 'optional' method of harmonization, which permits national regulations on the matter to exist side by side with Community regulations. The Legal Affairs Committee, in conformity with the position adopted by the European Parliament on previous occasions, takes the view that it would be preferable to adopt the method of 'total' harmonization, by which after an adequate transitional period, the Community regulations alone would remain in force. A true common market cannot be achieved if several different legal arrangements exist at the same time.

The Legal Affairs Committee therefore hopes that your committee, in the motion for a resolution it will be submitting to Parliament, will invite the Commission of the European Communities to examine the possibility of adopting the 'total' harmonization formula as soon as possible.

The Legal Affairs Committee also notes that several articles of the proposed directive, i.e. Articles 3, 4, 8 and 9, refer to the symbol '3', which is to appear on aerosols to certify that they conform to the provisions of the directive and its annex.



The committee feels that this symbol is not sufficiently clear and that it could be replaced by a more appropriate symbol such as 'EUR'.

Finally, the Legal Affairs Committee expressed its perplexity at the provisions of Article 10 of the directive. This article deals with the settlement of possible disputes regarding the safety of aerosols. According to this article, at least if literally interpreted, the committee to be set up to adapt the directive to technical progress, the formation of which is contemplated in Article 6, would be responsible for settling these disputes in accordance with the procedure laid down in Article 7.

The Legal Affairs Committee takes the view that a function of this kind cannot be entrusted to a technical committee. Since the procedure for settling disputes came in for a great deal of comment when similar directives were being examined in the past, the Commission of the European Communities should be urged to institute a uniform and appropriate procedure for future Council directives on the removal of technical obstacles to trade.

Subject to these observations, the Legal Affairs Committee<sup>1</sup> approved the proposal for a directive.

Yours sincerely,

(sgd) Willem J. SCHUIJT

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<sup>1</sup>The following were present:

Mr Schuijt, chairman; Mr Broeksz, Mr Brugger, Mr Corterier, Mr D'Angelosante, Mr Héger, Mr Lautenschlager, Mr Lucius, Mrs Nielsen, Mr Radoux (deputizing for Mr Ballardini), Mr Springorum, Mr Vermeylen and Sir Derek Walker-Smith.

