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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. 27/73) for a directive concerning the harmonization of the laws of the Member States with regard to coffee and tea extracts and their substitutes, including chicory and blends based on these extracts

Rapporteur: Mr A. PREMOLI

PE 33.386/fin.

By letter of 11 April 1973 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 43 of the EEC Treaty, to deliver its opinion on the proposal from the Commission of the European Communities to the Council for a directive concerning the harmonization of the laws of the Member States with regard to coffee and tea extracts and their substitutes, including chicory and blends based on these extracts.

By letter of 4 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 for its opinion.

On 15 May 1973 the Committee on Public Health and the Environment appointed Mr PREMOLI rapporteur. It considered this proposal at its meetings of 15 May and 9 July 1973.

At the meeting of 9 July 1973 the committee adopted the motion for a resolution and the accompanying explanatory statement by 13 votes in favour, with 1 against and 2 abstentions.

The following were present:

Mr Della Briotta, chairman; Mr Jahn and Mr Scott-Hopkins, vice-chairmen; Mr Premoli, rapporteur; Mr Christensen, Mr D'Angelosante, Mr Eisma, Sir Anthony Esmonde, Mr McElgunn, Mr Martens, Mr Müller, Mr Noé, Mr Springorum, Mr Vernaschi, Mr Walkhoff, Mrs Walz.

The opinion of the Legal Affairs Committee is attached to this report.

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A

The Committee on Public Health and the Environment 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 concerning the harmonization of the laws of the Member States with regard to coffee and tea extracts and their substitutes, including chicory and blends based on these extracts

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council (COM (73) 456/fin.)
 - having been consulted by the Council pursuant to Article 100 of the Treaty establishing the EEC (Doc. 27/73),
 - having regard to the report of the Committee on Public Health and the Environment and the opinion of the Legal Affairs Committee (Doc.139/73),
1. Welcomes this proposal from the Commission of the European Communities for a directive aimed at replacing through complete harmonization, the different legal provisions in force in the Member States by Community arrangements;
 2. Regrets, however, that the time-limit of 1 July 1970 for submission of the proposal by the Commission set by the Council in its resolution of 28 May 1969¹ establishing a five-stage programme for the elimination of technical obstacles to trade in foodstuffs has been exceeded by nearly three years;
 3. Appreciates the reasons adduced by the Commission to justify this delay, namely the need to take account in the proposals of legislation in the new Member States, particularly the United Kingdom, but maintains nevertheless that this work could have been done more speedily;
 4. Congratulates the Commission of the European Communities on having consulted, before preparing the directive, both the consumer and the producer organizations concerned, so that a satisfactory compromise between their respective requirements could be reached;

¹ See OJ No. C 76, 17.6.1969, p.7

5. Believes that in the interest of consumers and producers alike the designation 'coffee extract' or 'soluble coffee' should not be permitted for products obtained from less than 2.3 kg of unroasted coffee per kg of finished product at packing;
6. Invites, therefore, the Commission of the European Communities to modify its proposal accordingly, including these products in the category defined in the new chapter 6 of Annex I;
7. Urges the Commission to carry out strict checks on residues of decaffeinating solvents present in decaffeinated products so that they never exceed the maximum permissible content and constitute a hazard to the consumer's health;
8. Regrets that the Commission of the European Communities has not adopted the procedure repeatedly proposed by the Standing Committee on Foodstuffs, and requests therefore that the fundamental political considerations put forward by that committee be taken into account by the Commission in any future proposals on harmonization;
9. Requests the Commission to make the following amendments to its proposals, pursuant to Article 149, second paragraph of the Treaty establishing the EEC;
10. Requests its appropriate committee to check carefully whether the Commission of the European Communities incorporates in its proposal the amendments put forward by the European Parliament, and if necessary to report back to it;
11. Instructs its President to forward this resolution and the accompanying report to the Council and Commission of the European Communities.

Proposal for a directive of the Council concerning the harmonization of the laws of the Member States with regard to coffee and tea extracts and their substitutes, including chicory and blends based on these extracts¹

Preamble, recitals and Articles 1 to 6 unchanged

Article 7

The containers, packages or labels in or under which the products listed in Article 1 are marketed shall bear the following information in a clearly visible, fully legible and indelible form:

- (a) the designation allotted to such products pursuant to Article 6;
- (b) in the case of products listed in Annex 1, Chapter 1, paragraph 2(a) and obtained from a quantity of unroasted coffee of less than 2.3 kg per kg of finished product at packing, the legend 'manufactured from less than 2.3 kg of unroasted coffee per kg of extract';

This information shall immediately follow the designation provided for in paragraph (a) and be printed in characters not less than 4 mm high and in the same colour as that of the characters used for this designation;

- (c) in the case of products other than in solid or paste form, the dry matter content originating in the coffee or tea extracts shall be expressed as a percentage of the net weight;
- (d) in the case of products in solid or paste form and subject to the provisions under (i), the net

Article 7

The containers, packages or labels in or under which the products listed in Article 1 are marketed shall bear, in the national language or languages of the country in which they are marketed, the following information, in a clearly visible, fully legible and indelible form:

- (a) unchanged
- (b) deleted

(c) unchanged

(d) unchanged

¹ For full text see Doc. COM(73) 456 final

weight shall be expressed in grammes or kilogrammes and in the case of products in liquid form the net volume shall be expressed in litres or fractions thereof;

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|--|--|
| (e) if appropriate, in the case of the products listed in Annex 1, Chapters 2 and 5, the natural aromatizing substances used shall be stated; | (e) in the case of the products listed in Annex 1, Chapters 2 and 5, the natural aromatizing substances used shall be stated; |
| (f) in the case of the products listed in Annex 1, Chapter 5, the indication concerning the weight of coffee, tea or chicory extract, followed by details, in decreasing order of weight, of the raw materials used, other than water; | (f) unchanged |
| (g) in the case of the products listed in Annex 1, Chapter 1, paragraph 2 (b), the words 'roasted with sugar'; | (g) unchanged |
| (h) in the case of products listed in Annex 1, Chapter 3, paragraph 2 (a) the sugar content by weight; | (h) unchanged |
| (i) in the case of products sold in small dose packages, on the sale packaging, the total weight, the number of small dose packages contained and the number of cups as obtainable according to the directions; | (i) in the case of products sold in small dose packages, on the sale packaging, the total <u>net</u> weight, the number of small dose packages contained and the number of cups as obtainable according to the directions; |
| (j) the name, together with the address or registered office, of the manufacturer, warehousing concern or vendor, the person in question being established in the Community; | (j) unchanged |

(k) in the case of products imported from third countries, in addition to the information provided for in paragraphs (a) - (j), the country of origin.

(k) in the case of products imported from third countries and marketed in their original packaging, in addition to the information provided for in paragraphs (a) - (j), the country of origin.

Article 8 unchanged

Article 9

1. The Member States shall not, for reasons concerning the composition, manufacturing characteristics, storage and labelling, prohibit or impede the marketing of the products referred to in Article 1 if these products comply with the provisions of this Directive and its Annexes.

However, the Member States may require the information referred in Article 7 (a-j) to be expressed in their national languages.

2. The provisions of paragraph 1 shall not constitute an obstacle to the maintenance by the Member States of their national provisions relating to the protection of industrial and commercial property, particulars of the provenance and registered designations of origin.

Article 9

1. The Member States shall not, for reasons concerning the composition, manufacturing characteristics, storage and labelling, prohibit or impede the marketing of the products referred to in Article 1 if these products comply with the provisions of this Directive and its Annexes.

deleted

2. unchanged

Article 10 unchanged

Article 11

1. Where reference is made to the procedure defined in this Article, the Standing Committee on Foodstuffs, hereinafter called 'the Committee', shall be convened by its chairman, either on his own initiative, or on requisition by the representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft text of the measures

Article 11

1. unchanged

2. unchanged

to be taken. The Committee shall deliver its opinion on this draft within a period which the chairman may fix in relation to the urgency of the matter in question. It shall act by a majority of forty-one votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty.

The chairman shall not take part in the vote.

3. (a) The Commission shall draw up the measures envisaged when they comply with the Opinion of the Committee;
- (b) where the measures envisaged do not comply with the Opinion of the Committee, or in the absence of such an opinion, the Commission shall submit to the Council without delay a proposal concerning the measures to be taken. The Council shall act by a qualified majority;
- (c) if, on the expiry of three months after the date on which the matter was brought before the Council, the latter has not taken any action, the measure proposed shall be adopted by the Commission.

3. The Commission shall decide on measures to be put into effect immediately. However, if the measures do not conform to the Opinion of the Committee, the Commission shall notify them to the Council without delay. In this event the Commission may suspend implementation of the measures it has adopted for a period of one month from the date on which the Council was notified of them. The Council, acting by a qualified majority, may within one month take a different decision.

Articles 12 to 14 unchanged

ANNEX I

Chapter I: Coffee extracts

1. 'Coffee extract' is the product in any concentration, obtained exclusively by the aqueous extraction

Chapter I: Coffee extracts

1. unchanged

of roasted coffee - to the exclusion of any acid hydrolysis process - and containing only the soluble elements of coffee. The water used shall be recognized as potable. It may, if appropriate, have been softened.

2. A distinction is made between two types of coffee extracts, namely:

(a) 'coffee extract', 'soluble coffee' or 'instant coffee' mean coffee extracts the dry-matter content of which is equal to or exceeds 96% by weight.

These products may not comprise any element other than those originating in their extraction.

(b) 'Coffee extract paste' and 'liquid coffee extract' mean coffee extracts the dry-matter content of which does not exceed 96% by weight and is equal to or exceeds 12% if these products are sold for consumption, or 7% if they are sold as a raw material for industry.

These products may contain edible sugars in a proportion less than or equal to 8% by weight.

3. 'Caffeine-free coffee extract' or 'caffeine-free soluble coffee' mean exclusively coffee extracts the caffeine content by weight of which, calculated according to the dry matter of the extract under consideration, does not exceed 0.3%.

2. A distinction is made between two types of coffee extracts, namely:

(a) 'Coffee extract', 'soluble coffee' or 'instant coffee' mean coffee extracts the dry-matter content of which is equal to or exceeds 96% by weight.

These products may not comprise any element other than those originating in their extraction.

Products obtained from less than 2.3 kg of unroasted coffee per kg of finished product at packing shall not be included in this category.

(b) unchanged

3. unchanged

Chapters 2, 3, 4 and 5 unchanged

Chapter 6 (new)

Other beverages containing one or
more extracts covered by this
Directive

For the purposes of this Directive, 'other beverages containing one or more extracts covered by this Directive' mean foodstuffs intended for the preparation of beverages which contain one or more of such extracts but are not described in chapters 1 to 5 of Annex I.

Annex II: unchanged

EXPLANATORY STATEMENTI. The problem of the degree of extraction

1. As stated in the Motivation, the main problem with which the Directive is concerned is that of the degree of extraction, representing the quantity of unroasted coffee used for making one kilogram of extract.

The provisions dealing with this are contained in Article 7(b) and in Chapter 1 of the Annex.

In accordance with these provisions, two types of products may be sold throughout the territory of the Community:

- first, a product called 'soluble coffee' or 'coffee extract', corresponding to the traditional product;
- secondly, a product also called 'soluble coffee' or 'coffee extract' which must bear, in addition to such a designation, the inscription on its packaging, printed in characters in the same colour and not less than 4 mm high, 'manufactured from less than 2.3 kg of unroasted coffee per kg of extract'.

Both products must be obtained solely by aqueous extraction of roasted coffee and contain only the soluble constituents of coffee. Extraction by acid hydrolysis is expressly forbidden.

2. The Commission of the European Communities adduces the following reasons for the distinction between the two types of product. The taste of soluble coffee depends on several factors: the origin and variety of the coffee beans used (Arabica, Robusta), the degree of extraction, the degree of roasting, the extraction technique and the characteristics of the water used in the process. The Commission recognizes that although the **effects** of all these factors are not negligible, that of the degree of extraction is one of the most important, and has therefore decided to provide for its compulsory indication on the label.

But the obligation to indicate the degree of extraction in all cases is attended by two serious difficulties: in the first place, with certain varieties of coffee it is easier to reduce the degree of extraction; and in the second, producers of coffee extracts would be obliged to alter their labelling continually, to take account of all possible variations in the degree of extraction, or, in the case of blends, of the various degrees of extraction of the constituents. For this reason the Commission decided to divide the products into two groups only, according to whether their degree of extraction is higher or lower than a certain value.

3. In the opinion of the Committee on Public Health and the Environment the solution chosen by the Commission is certainly not the best, and could indeed be hazardous for both consumer and producer.

According to the EEC Commission, the impossibility of prohibiting the sale of extracts obtained from a quantity of unroasted coffee less than a given amount stems from the fact that the regulation of the degree of extraction is not dictated by public health considerations. The logic of this argument is obscure, since other equally valid reasons could serve perfectly well to justify the introduction of rules in this matter, in particular the need to safeguard the consumer's interests by providing him with a product of known quality and origin. Besides, while it is true that, as the Commission maintains, it cannot be asserted that the degree of extraction is a criterion of quality, this does not prove the contrary, i.e. it is not proven that the degree of extraction is not a criterion of quality as shown by the fact that the Commission itself stipulates that the labelling must indicate whether the product was obtained from less than 2.3 kg of green coffee, in order to warn the consumer.

4. These considerations apart, the European consumer would be forced to make a difficult choice between two products identical as to name and packaging but distinguished by widely different prices and the mysterious inscription 'manufactured from less than 2.3 kg of unroasted coffee per kg of extract'. It should be remembered that the size of this inscription, which should be in characters not less than four millimetres high, may be adequate when the name of the product is written in characters not much bigger than 4 mm, but will be altogether insufficient when the name is written, as is generally the case, in large lettering. It would be sensible if the inscription giving the degree of extraction were of a size proportionate to that of the name of the product.

To assume that the average consumer is capable of deciphering this inscription on the label is going a little too far. And even if he could understand it, he would be misled, because in buying a low-priced product called 'coffee extract' or 'soluble coffee' he would be entitled to assume that the product will have the normal characteristics. These, however, it will not possess, for having been manufactured from a tiny quantity of unroasted coffee beans, the coffee it will produce will be diluted and of inferior quality due to the inevitable presence of dregs of insoluble coffee and possibly colouring matter in the extract, even though this is forbidden by the definition of coffee extracts in chapter 1 of Annex I (product containing only the soluble elements of coffee).

We should not fall into the error committed when the Commission of the European Communities issued a proposal for the harmonization of legislation

on the labelling of mineral waters, when a low mineral content was accepted to the confusion of consumers henceforward forced to drink water that is 'mineral' only in name.

5. For the producer, too, the distinction envisaged by the Commission represents a risk, because the inferior but cheap product will tend to displace on the market the more expensive and better varieties, thus damaging the image of the whole class of manufacturers.

6. In the opinion of the Committee on Public Health and the Environment the arbitrary division of soluble coffees into two categories based on the degree of extraction should therefore be abolished. The legal designation 'soluble coffee' should be reserved solely for products manufactured from not less than 2.3 kg of coffee per kg of finished product. Below this limit the product should not be regarded as soluble coffee of the traditional type manufactured by physical processes that use water as the only extracting agent not derived from coffee.

If a manufacturer wishes to market a product for which the unroasted coffee/soluble coffee ratio is less than 2.3, he should not be allowed to call it 'soluble coffee'. Such a product should be included in the category of preparations which contain one or more of the extracts covered by the Directive but not described in chapters 1 to 5 of Annex I. These products should be grouped together in a ~~new chapter~~ 6.

II. Other problems arising from the proposal for a directive

7. Article 3(2) of the Proposal for a Directive, concerning the removal of caffeine from coffee and tea extracts and from blends of extracts of coffee and/or tea, stipulates that traces of solvents used in decaffeination should not exceed the limits laid down in an annexed table. The question arises whether it should not be made compulsory to state on the label, if not the exact quantity of solvent remaining in the product, then at least the information: 'with traces of ...' or 'containing residues of ...'.

This would, however, have the disadvantage of needlessly alarming the consumer because, since only traces are involved, no health hazard arises, while the display of the scientific name or the chemical formula of the solvent might deter the consumer from buying the product.

Much more important than such an indication would be the control of these decaffeinating solvent residues. As the representative of the Commission admitted, the maximum permissible content of these solvents, fixed at 10 ppm, is frequently exceeded. Only effective checks for compliance with this upper limit can safeguard the consumer's health. Effective methods of applying such checks out therefore to be studied.

8. The Committee on Public Health and the Environment thought it advisable that Article 7(e) should provide for compulsory indication of the natural aromatizing substances used in tea extracts and blends based on coffee and/or tea extracts, and not only, as the proposal envisages, for its indication 'if appropriate'.

9. It would be advisable for Article 7(i) to provide for an indication on the packaging that the weight in question is the total net weight, so as to prevent confusion.

10. Article 7(k) specifies that products imported from third countries should show their country of origin only when they are sold in their original packaging.

Since coffee and tea are primary products coming almost exclusively from third countries, confusion might arise in the consumer's mind between the country of provenance of the primary product and the country of its manufacture.

11. The Committee on Public Health and the Environment modified the beginning of chapter 7, making it obligatory for all the information featuring on the containers, packages or labels to be expressed in the national language or languages of the country in which they are marketed, as suggested by the Legal Affairs Committee.

This modification renders superfluous the second part of paragraph 1 of Article 9 which allows the Member States to require the various information to be expressed in the national languages.

Some doubt was expressed on the appropriateness of such an obligation since in an emergency, in which a State is forced to resort to immediate import of products to face a threatening shortage, the language rules might represent a needless obstacle. However, this objection was overruled because the Committee on Public Health and the Environment felt that the consumer's right to full information should come before any other consideration.

12. Under Article 11(3) the procedure for consultation of the Standing Committee on Foodstuffs was amended, the amendment being that always proposed by the Committee on Public Health and the Environment in such cases.

13. The Committee on Public Health and the Environment also considered the two other amendments suggested by the Legal Affairs Committee in its opinion, in addition to the one on the obligatory use of national languages, but after discussion concluded that they were not of such consequence as to warrant inclusion in the text of the Directive.

14. The motion for a resolution expresses the Committee's regret that the time-limit of 1 July 1970 set by the Council, in its resolution of 28 May 1969 concerning a five-stage programme for the elimination of technical obstacles to trade in foodstuffs, for the submission of the directives by the Commission has been exceeded by nearly three years. The Commission's explanation, that it was necessary to wait for the accession of the United Kingdom, an important consumer of coffee and tea extracts, does not sound too convincing.

15. The Committee on Public Health and the Environment expressed satisfaction that, before preparing the directive, the Commission had consulted both consumer and producer organizations. It was thus able to draw up a directive which on the whole represents a happy compromise between their respective requirements.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

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

Strasbourg, 3 July 1973

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 concerning the harmonization of the laws of the Member States with regard to coffee and tea extracts and their substitutes, including chicory and blends based on these extracts (Doc. 27/73).

The Legal Affairs Committee noted that in opting for Article 100 of the Treaty establishing the EEC, the Commission had chosen a sound legal basis; the differences between Member States' legislation on the products in question, are obstacles to intra-Community trade and thus have a direct effect on the establishment and operation of the Common Market.

It is clear from Article 2 of the proposed directive that the provisions it contains replace national regulations, which means that the directive follows the pattern of full harmonization. This is in line with the frequent requests made by the European Parliament.

The Legal Affairs Committee nevertheless considers it necessary to draw your Committee's attention to the following amendments which it feels should be made to the Commission's proposal:

- (a) As has already been proposed in the case of several directives referred to our two committees¹, a further recital should be incorporated in the preamble, placing the directive in its proper context, viz. the implementation of the programme for removing technical obstacles; this recital could be worded as follows:

¹ See opinion by Mr Hunault on cosmetic products, PE 32.160/fin.,
opinion by Mr Duval on bread, PE 32.703/fin.,
opinion by Mr Brewis on yeasts, PE 33.438/fin.

'Whereas coffee and tea extracts are included in the list for the fifth stage of the general programme of 28 May 1969 for the removal of technical obstacles to trade caused by differences between the provisions laid down by law, regulation or administrative action in Member States.'

- (b) As regards labelling, it would no doubt be desirable in the interests of optimum consumer information to make compulsory the use of the language(s) of the country in which the product is marketed; to this end it is proposed that the derogation provided for in the second paragraph of Article 9 (1) be deleted and that the introductory sentence of Article 7 be amended as follows:

'The containers, packages or labels in or under which the products listed in Article 1 are marketed shall bear, in the national language or languages of the country in which they are marketed, the following information in a clearly visible, fully legible and indelible form.'

- (c) It might be useful to consider the possible advantages of extending the use of the 'EUR' label provided for in the proposed directive on bread (Doc. 280/72), to all categories of products conforming to the requirements laid down in Community directives; if this were adopted in the present case, Article 7 (a) of the proposed directive might be worded as follows:

'The containers, packages or labels in or under which products listed in Article 1 are marketed shall bear :

- (a) the letters 'EUR' followed by the designation allotted to such products pursuant to Article 6'.

Subject to the above observations, the Legal Affairs Committee¹ approved the proposed directive submitted for its consideration.

The Legal Affairs Committee has instructed me to forward this opinion in the form of a letter to the Committee on Public Health and the Environment.

Yours faithfully,

Willem J. SCHUIJT

¹ The following were present: Mr Schuijt, Chairman; Mr Broeks, Mr Brugger, Mr Cortier, Mr D'Angelosante, Mr Hégat, Mr Lautenschlager, Mr Lucius, Mrs Nielson, Mr Radoux (deputizing for Mr Ballardini), Mr Springorum, Mr Vermeulen and Sir Derek Walker-Smith.

