Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption

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relating to cocoa and chocolate products intended for human consumption

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) Certain vertical Directives relating to foodstuffs should be simplified in order to take account only of the essential requirements to be met by the products they cover in order that those products may move freely within the internal market, in accordance with the conclusions of the European Council held in Edinburgh on 11 and 12 December 1992, confirmed by those of the European Council in Brussels on 10 and 11 December 1993.

(2) Council Directive 73/241/EEC of 24 July 1973 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption[(4)] was warranted by the fact that differences between national laws on several kinds of cocoa and chocolate products could hinder the free movement of this product, and thereby have a direct effect on the establishment and functioning of the common market.

(3) The aforesaid Directive was consequently designed to lay down definitions and common rules in respect of the composition, manufacturing specifications, packaging and labelling of cocoa and chocolate products so as to ensure their free movement within the Community.

(4) Those definitions and rules should be amended to take account of technological progress and changes in consumer tastes, and should be brought into line with general Community legislation on foodstuffs, in particular legislation on labelling, sweeteners and other authorised additives, flavourings, extraction solvents and methods of analysis.

(5) The addition to chocolate products of vegetable fats other than cocoa butter, up to a maximum of 5 %, is permitted in certain Member States.

(6) The addition of certain vegetable fats other than cocoa butter to chocolate products, up to a maximum of 5 %, should be permitted in all Member States; those vegetable fats

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should be cocoa butter equivalents and therefore be defined according to technical and scientific criteria.

(7) In order to guarantee the single nature of the internal market, all chocolate products covered by this Directive must be able to move within the Community under the sales names set out in the provisions of Annex I to this Directive.

(8) In pursuance of the general food-labelling rules set out in Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs[(5)], in particular a listing of ingredients in accordance with Article 6 thereof is compulsory; this Directive makes Directive 79/112/EEC applicable to cocoa and chocolate products in order to provide consumers with correct information.

(9) In the case of chocolate products to which vegetable fats other than cocoa butter have been added, consumers should be guaranteed correct, neutral and objective information in addition to the list of ingredients.

(10) On the other hand, Directive 79/112/EEC does not preclude the labelling of chocolate products to indicate that vegetable fats other than cocoa butter have not been added, provided the information is correct, neutral, objective, and does not mislead the consumer.

(11) Certain sales names which are reserved by this Directive are in fact used in composite sales names which are recognised in certain Member States to describe products which could not be confused with those defined in this Directive; such descriptions should therefore be maintained. However, the use of such names should comply with the provisions of Directive 79/112/EEC and, in particular, with Article 5 thereof.

(12) The development of the internal market since the adoption of Directive 73/241/EEC enables ‘plain chocolate’ to be treated on the same basis as ‘chocolate’.

(13) The derogation provided for in Directive 73/241/EEC allowing the United Kingdom and Ireland to authorise the use on their territory of the name ‘milk chocolate’ to designate ‘milk chocolate with high milk content’ should be maintained; however, the English name ‘milk chocolate with high milk content’ should be replaced with the name ‘family milk chocolate’.

(14) Pursuant to the principle of proportionality, this Directive restricts itself to what is necessary in order to achieve the objectives of the Treaty, in accordance with the third paragraph of Article 5 thereof.

(15) Cocoa, cocoa butter and a series of other vegetable fats used in the manufacture of chocolate are mainly produced in developing countries. It is in the interests of people living in developing countries that agreements of as long a duration as possible should be concluded. The Commission should therefore consider how the Community can support this in the case of cocoa butter and other vegetable fats (for example by promoting ‘fair trade’).

(16) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(6)].

(17) To avoid creating new barriers to free circulation, Member States should refrain from adopting, for the products in question, national provisions not provided for by this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive shall apply to the cocoa and chocolate products intended for human consumption, as defined in Annex I.

Article 2

1 The vegetable fats other than cocoa butter as defined in Annex II and listed therein may be added to those chocolate products defined in Annex I(A)(3), (4), (5), (6), (8) and (9). That addition may not exceed 5 % of the finished product, after deduction of the total weight of any other edible matter used in accordance with Annex I(B), without reducing the minimum content of cocoa butter or total dry cocoa solids.

2 Chocolate products which, pursuant to paragraph 1, contain vegetable fats other than cocoa butter may be marketed in all of the Member States, provided that their labelling, as provided for in Article 3, is supplemented by a conspicuous and clearly legible statement: ‘contains vegetable fats in addition to cocoa butter’. This statement shall be in the same field of vision as the list of ingredients, clearly separated from that list, in lettering at least as large and in bold with the sales name nearby; notwithstanding this requirement, the sales name may also appear elsewhere.

3 Any amendments to Annex II shall be made in accordance with the procedure laid down in Article 95 of the Treaty.

4 At the latest by 3 February 2006 the Commission shall, in accordance with Article 95 of the Treaty, submit, if necessary and taking into account the results of an appropriate study on this Directive's impact on the economies of those countries producing cocoa and vegetable fats other than cocoa butter, a proposal intended to amend the list in Annex II.

Article 3

Directive 79/112/EEC shall apply to the products defined in Annex I, subject to the following conditions:

1. The sales names listed in Annex I shall apply only to the products referred to therein and must be used in trade to designate them.

   However, those sales names may also be used additionally and in accordance with the provisions or customs applicable in the Member State in which the product is sold to the final consumer, to designate other products which cannot be confused with those defined in Annex I.

2. Where the products defined in Annex I(A)(3), (4), (5), (6), (7) and (10) are sold in assortments, the sales names may be replaced by ‘assorted chocolates’ or ‘assorted filled chocolates’ or similar names. In that case, there may be a single list of ingredients for all the products in the assortment.

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3. The labelling of the cocoa and chocolate products defined in Annex I(A)(2)(c), (2)(d), (3), (4), (5), (8) and (9) must indicate the total dry cocoa solids content by including the words: ‘cocoa solids:… % minimum’.

4. For the products referred to in Annex I(A)(2)(b) and (2)(d) (second part of the sentence), the labelling must indicate the cocoa butter content.

5. The sales names ‘chocolate’, ‘milk chocolate’ and ‘couverture chocolate’ specified in Annex I may be supplemented by information or descriptions relating to quality criteria provided that the products contain:

— in the case of chocolate, not less than 43 % total dry cocoa solids, including not less than 26 % cocoa butter,

— in the case of milk chocolate, not less than 30 % total dry cocoa solids and not less than 18 % dry milk solids obtained by partly or wholly dehydrating whole milk, semi- or full-skimmed milk, cream, or from partly or wholly dehydrated cream, butter or milk fat, including not less than 4,5 % milk fat,

— in the case of couverture chocolate, not less than 16 % of dry non-fat cocoa solids.

Article 4

For the products defined in Annex I, Member States shall not adopt national provisions not provided for by this Directive.

[*F1* *Article 5*

For the purposes of taking into account technical progress and developments in relevant international standards, the Commission shall be empowered to adopt delegated acts in accordance with Article 6 to amend Sections C and D of Annex I.**]**

Textual Amendments

F1 Substituted by Regulation (EU) No 1021/2013 of the European Parliament and of the Council of 9 October 2013 amending Directives 1999/4/EC and 2000/36/EC of the European Parliament and of the Council and Council Directives 2001/111/EC, 2001/113/EC and 2001/114/EC as regards the powers to be conferred on the Commission (Text with EEA relevance).

[*F1* *Article 6*

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 5 shall be conferred on the Commission for a period of five years from 18 November 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 5 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Article 5 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.**]**

Textual Amendments

F1 Substituted by Regulation (EU) No 1021/2013 of the European Parliament and of the Council of 9 October 2013 amending Directives 1999/4/EC and 2000/36/EC of the European Parliament and of the Council and Council Directives 2001/111/EC, 2001/113/EC and 2001/114/EC as regards the powers to be conferred on the Commission (Text with EEA relevance).

Article 7

Council Directive 73/241/EEC is hereby repealed with effect from 3 August 2003.

References to the repealed Directive shall be construed as references to this Directive.

Article 8

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 3 August 2003. They shall immediately inform the Commission thereof.

2 These measures shall be applied so as to:

— authorise the marketing of the products defined in Annex I if they conform to the definitions and rules laid down in this Directive, with effect from 3 August 2003,

— prohibit the marketing of products which fail to conform to this Directive, with effect from 3 August 2003.

However, the marketing of products failing to comply with this Directive but labelled before 3 August 2003 in accordance with Council Directive 73/241/EEC shall be permitted until stocks are exhausted.

3 When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 9

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 10

This Directive is addressed to the Member States.