



**COUNCIL OF
THE EUROPEAN UNION**

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REV 1

LIMITE

**DOCUMENT PARTIALLY
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MI 542
ENT 315
CONSOM 220
SAN 334
ECO 185
ENV 987
CHIMIE 82
CODEC 1798

NOTE

from: General Secretariat of the Council
to: Permanent Representatives Committee

No. Cion prop.: 6725/08 MI 71 ENT 40 CONSOM 25 SAN 37 ECO 27 ENV 109 CHIMIE 7
CODEC 240 + ADD 1 + ADD 2

Subject: Proposal for a Regulation of the European Parliament and of the Council on
cosmetic products (recast)
– Examination of the recasting issue

I. INTRODUCTION

1. The Commission submitted the above proposal on 5 February 2008. The Working Party on Technical Harmonisation (Cosmetics) has examined the proposal intensively during the French and Slovenian Presidencies.
2. The proposal converts the Cosmetics Directive and its 55 amendments into a Regulation. The aims of the Regulation are broadly supported by delegations in the Working Party.

3. The proposal uses the recasting technique, which requires legislators to decide on the parts shaded in grey, i.e. the parts which the Commission indicates as new, and to leave unchanged the parts not shaded in grey, i.e. the parts entirely taken over from the existing legislation which is being recast.
4. In the Working Party, delegations therefore concentrated mainly on the grey-shaded parts of the proposal and, in general, expressed no particular desire to amend the parts not shaded in grey, except to harmonise the proposal with the legislative acts adopted in the meantime (in particular the new approach package, REACH and CLP).

II. RECASTING

5. On 14 November 2008 the Consultative Working Party of the three Legal Services issued its opinion (15840/08) on the consistency of the proposal with the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹ (hereinafter referred to as "the IIA"), in accordance with point 9 of the IIA. **DELETED**
6. On 17 November 2008 the JURI Committee of the European Parliament delivered a unanimously favourable opinion on recasting, in accordance with Rule 80a of the European Parliament's Rules of Procedure (ref.: D(2008)69152). On 2 December 2008 the ENVI Committee of the European Parliament passed 57 amendments to the proposal (ref.: A6-0484/2008).

¹ OJ C 77, 28.3.2002, p. 1.

III. OUTLINE COMPROMISE

7. In response to requests by a significant number of delegations, the Presidency has placed the recasting issue on the Permanent Representatives Committee's agenda. The Presidency feels that a compromise solution ought to meet two requirements:
 - it should ensure that all the proceedings so far at the Council and with the European Parliament are not called in question;
 - it should ensure that no precedent which might be held against the Council in future is now created.
8. On that basis, the Presidency proposes that, when the act is adopted, Ministers be asked to approve a Council statement pointing out that the Council reserves the right not to accept the use of the recasting technique in similar cases future.
9. The Commission in turn has stated that it too might submit a statement on the issue.
10. Delegations are asked to indicate whether they can agree to the principle and the content of the attached draft Council statement.

DRAFT COUNCIL STATEMENT

"The Council would refer to the second paragraph of point 4 of the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts² (hereinafter referred to as "*the IIA of 28 November 2001*"):

"A new legal act shall not constitute a recast act if, with the exception of standardised provisions or wordings, it makes substantive amendments to all the provisions of the earlier act, which it replaces and repeals."

In view of Article 249 of the Treaty, the Council considers that, in principle and by definition, the use of the recasting technique for a legal act which consists of the conversion of the provisions of one or more Directives into a Regulation "*makes substantive amendments to all the provisions of the earlier act which it replaces and repeals*".

In the case in point, because of the advanced stage reached in negotiations, including those with the European Parliament, it does not appear possible to break off the discussions under way at the Council and the Parliament. However, this cannot under any circumstances be taken as a precedent.

The Council reserves the right in future to reject any proposal which does not comply with the IIA of 28 November 2001.

² OJ C 77, 28.3.2002, p. 1.