



**COUNCIL OF
THE EUROPEAN UNION**

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2008/0035 (COD)**

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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 recast issue

I. INTRODUCTION

1. The Commission submitted the above proposal on 5 February 2008. The Working Party on Technical Harmonisation (Cosmetics) studied the proposal intensively under the French and Slovenian Presidencies.
2. The proposal transforms the Cosmetics Directive and its 55 amendments into a Regulation. The aims of the Regulation were broadly supported by the 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 completely taken over from the recast of existing legislation.
4. In the Working Party, delegations concentrated 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. RECAST

5. On 14 November the Consultative Working Party consisting of the three Legal Services issued its opinion (15840/08), in accordance with point 9 of 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"), on the conformity of the proposal with the IIA.

DELETED

6. On 17 November the JURI Committee of the European Parliament delivered a unanimously favourable opinion on recasting in accordance with Rule 80 of the European Parliament's Rules of Procedure (ref:D(2008)69152). On 2 December the ENVI Committee of the European Parliament passed 57 amendments to the proposal (ref:A6-0484/2008). The Chairman of the ENVI Committee declared certain amendments inadmissible because they concern the parts not shaded in grey (in Article 7), in accordance with Rule 80a of the Parliament's Rules of Procedure.

¹ OJ C 77, 28.3.2002, p.1.

7. **DELETED**

III. OUTLINE COMPROMISE

8. **DELETED**

9. As for practical solutions, the Presidency and the General Secretariat have considered two approaches:

- a) propose drafting recitals 2 et 3 in such a way that they do not mention the recast. This would have a token effect and would be negotiable with the Parliament (see Annex A).
- b) propose a Council statement, for entry in the minutes for subsequent adoption, which would underline the Council's determination not to accept the use of the recasting technique in future similar cases (see Annex B).

10. When considering the other possible solutions, members of Coreper should take account of the fact that the Parliament has treated the dossier as a recast in accordance with its Rules of Procedure. Any solutions proposing to change the nature of the proposal might therefore make the negotiations with the European Parliament considerably more complicated.

11. The Permanent Representatives Committee is invited to consider these options as a guide for future action on this dossier. Coreper's choices include the possibility of proposing amendments to the text as indicated in Annex A and/or that of proposing to the Council that it add a statement in the Council minutes when adopting the proposal (draft in Annex B).
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**Extracts from the proposal for a Regulation of the European Parliament and of the Council
on cosmetic products 2008/0035 (COD) :**

- (1) Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products has been significantly amended on several occasions. Since further amendments are to be made, **in this particular case** it should be recast as one single text in the interests of clarity.

- (2) **This Regulation** [~~the recast~~] aims at simplifying procedures and streamlining terminology thereby reducing administrative burden and ambiguities. Moreover, **it** [~~the recast~~] strengthens certain elements of the regulatory framework for cosmetics, such as in-market control, with a view to ensuring a high level of protection of human health.

- (3) [~~A recast as a~~] The Regulation is the appropriate legal instrument as it imposes clear and detailed rules which do not give room for diverging transposition by Member States. Moreover, a Regulation ensures that legal requirements are implemented at the same time throughout the Community.

RECAST - DRAFT COUNCIL STATEMENT ON THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COSMETIC PRODUCTS (RECAST) APPEARING ON THE AGENDA UNDER ITEMS ... :

"The Council recalls the terms of the second subparagraph 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 transformation 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, in view of the specific nature of the text, it did not appear advisable to interrupt the current discussions in the Council and Parliament.

In future, the Council will refuse any proposal which does not respect the terms of the IIA of 28 November 2001.

² OJ C 77, 28.3.2002, p.1.