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REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Evaluation Report on the Implementation of Directive 94/11/EC Labelling of the materials used in the main components of footwear

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1. INTRODUCTION

1.1. General

Directive 94/11/EC of 23 March 1994 imposes obligations on the Member States regarding the implementation of procedures relating to labelling of the materials used in the main components of footwear for sale to the consumer.

Under Article 6(4) of Directive 94/11, the Commission must submit to the Council, three years after the Directive has been brought into application, an assessment report taking into consideration any difficulties which may have been encountered by operators when implementing the provisions of the Directive and present, should the need arise, appropriate proposals for review. The deadline for the implementation of the Directive was 23 March 1996.

This report examines the implementation of the Directive in the Member States in the light of all the observations and comments made by the Member States and the various operators (trade associations, consumers etc.).

It is based on two main sources of information: the data provided by the Member States in response to a letter from the Commission and a questionnaire sent to the trade associations in the footwear sector and consumer associations on the qualitative aspects of implementation at national level.

The European footwear industry was very cooperative but response from the consumer associations was low, apparently because of a lack of studies on consumer behaviour as regards labelling.

This report is intended to give an overall view of the implementation of the Directive, taking into account any difficulties encountered by economic operators. It does not examine whether the national measures adopted conform with the Directive.

1.2. Background

The process that led to the adoption of Community legislation on the labelling of the materials used in the main components of footwear (Directive 94/11/EC of 23 March 1994) involved Community-level discussions over a period of more than eight years. The Member States originally had different, privately-developed systems of labelling (voluntary labelling using symbols specified by the trade associations), and in some countries the government subsequently adopted legislation with a view to regulating the sector. The question of whether footwear had to meet labelling requirements, and, if so, what these requirements were, depended on the rules in force in the country of origin. This was thought likely to lead to higher costs and to hamper intra-Community trade. Several Member States and the sector itself advocated a harmonisation directive, which ultimately led to the adoption of Directive 94/11/EC.

The Commission considered that the differences in national legislation in this area could cause obstacles to trade that could not be overcome by applying Article 30 (or Article 28) *et seq.* of the Treaty establishing the European Community (free movement of goods) nor through mutual recognition of the existing legislation or voluntary harmonisation on the part

of the industry. Specific secondary legislation was needed over and above the provisions of the Treaty on free movement of goods.

2. IMPLEMENTATION OF DIRECTIVE 94/11/EC

Directive 94/11/EC of 23 March 1994 lays down essential requirements for the free movement of footwear. While adopting a set of requirements that must be included in all national implementation measures - particularly Articles 1 and 4 (labelling requirements) - it nevertheless leaves it to the Member States to decide whether the information required under the Directive needs to be accompanied by additional textual information (Article 5) and foresees that, in the case of non-conformity into the labelling requirements, appropriate measures must be taken as provided for in the national legislation.

All the Member States have finally notified the Commission of the steps taken to implement the Directive. However, since there were considerable delays in implementation, infringement procedures for failure to meet the implementation deadline had to be launched against Belgium, France, Ireland, Spain and Luxembourg. These have since been closed after the provisions in question were brought into line.

2.1. Scope

Given that the main aim of Directive 94/11 is to ensure better information and increased transparency for consumers in a smooth-running internal market, the first paragraph of Article 1(1) defines the field of application as *"footwear for sale to the consumer"*.

The Directive does not, however, cover second-hand, worn footwear, protective footwear covered by Directive 89/686/EEC on personal protective equipment, or footwear covered by Directive 76/769/EEC on restrictions on the marketing and use of certain dangerous substances and preparations, and toy footwear.

Annex II contains a non-exhaustive list of the products covered by the Directive. According to the last paragraph of this Annex, products covered by Chapter 64 of the Combined Nomenclature (CN) are, as a general rule, considered as falling within the scope of the Directive.

Most of the Member States have implemented Article 1(1), including Annex II, by incorporating it word for word into their legislation. Others have introduced new provisions modifying or amplifying their legislation.

The United Kingdom and Ireland, for example, have replaced item ix) in Annex II, "orthopaedic footwear", by a reference to orthopaedic footwear not covered by the 1994 regulation on medical appliances, which appears more appropriate, since even if the non-exhaustive list refers to orthopaedic footwear, such items are excluded from the field of application of the Combined Nomenclature (Chapter 64, Note 1(e) orthopaedic footwear or other orthopaedic appliances, or parts thereof (heading No 9021) (CN code) [1]. It would appear, therefore, that Directive 94/11 covers only orthopaedic footwear that has not been prescribed by a medical practitioner.

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[1] Commission Regulation (EC) No 2204/1999 of 12 October 1999, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

France however has removed any reference to Chapter 64 of the CN from Annex II and Germany, Italy and Luxembourg have not transposed the Annex at all.

In Netherlands, Annexe II is implemented by referring in article 1 of the national decree at the definition of “shoes” to products as meant article 1 first paragraph of the directive.

In general, the field of application appears to have been well covered by several Member States. However, where the Annex has not been fully transposed, there are doubts about the scope covered, in particular in relation to the specific case of orthopaedic footwear.

2.2. Definition of "footwear"

The second paragraph of Article 1(1) of Directive 94/11 defines *"footwear"* as *"all articles with applied soles designed to protect or cover the foot, including parts marketed separately as referred to in Annex I."*

This definition is recognised throughout the European Union, since all the Member States have adopted and accepted an identical definition.

Annex I, to which Article 1 refers, contains the definitions of the parts of the footwear to be identified (upper, lining and sock, outer sole) together with the corresponding pictograms or written indications. It also contains definitions of the materials (leather, coated leather, natural textile materials and synthetic or non-woven textile materials, other materials) and the corresponding symbols.

The Member States have transposed this annex either literally or by incorporating the definitions into national legislation. Luxembourg, the United Kingdom and Ireland are the only countries not to have adopted the term "full grain leather", which may be used in the optional additional textual information referred to in Article 5 of the Directive.

It should be stressed that the definition of "textiles" given in Annex I of Directive 94/11 is taken from Directive 71/307/EEC of 26 July 1971 on the approximation of textile names, taking into account all the modifications [2]. The uses of the "textile" pictogram, as provided for in Directive 94/11, does not seem to pose any problems.

However, according to Article 2(3) of Directive 96/74/EC on textile names, "warm linings" of footwear are to be treated in the same way as textile products and are to be subject to the same provisions. This means that the generic composition of insulating linings of footwear must always be shown, in addition to the requirements of Directive 94/11.

The European footwear industry thinks that it would be sufficient to use the pictogram for "textiles" provided for in Directive 94/11 on the labelling of footwear, possibly including additional information as provided for in Article 5 of the Directive. For this reason, and with a view to avoiding a proliferation of labels, the industry has offered to submit suitable proposals for amendments to the Commission in connection with Directive 96/74/CE.

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[2] Directive 71/307/EC was amended frequently and substantially. Finally consolidated as Directive 96/74/EC of 12 December, it was amended by Directive 97/37/EC of 19 June.

2.3. Labelling requirements – materials and components

According to Article 1(2)(i), the labelling must convey information relating to the three parts of the footwear as defined in Annex I, namely the upper, the lining and sock, and the outersole.

According to subparagraph (ii) of the same Article, the composition of the footwear must be indicated as specified in Article 4 on the basis either of pictograms or of written indications for specific materials, as stipulated in Annex I. Under subparagraph (iii), no account will be taken of accessories or reinforcements when determining the materials of the upper, and subparagraph (iv) stipulates that in the case of the outersole, classification must be based on the volume of the materials.

In virtually all the Member States, the wording of the legislation is almost identical to that of the Directive. In practice, however, there are differences in the way that Article 1(2) is applied, particularly as regards the use of the "lining and sock" pictogram. According to the definition in Annex I, *"these are the lining of the upper and the insole, constituting the inside of the footwear article"*. The use of a single pictogram representing the ensemble made up of the lining and sock has caused problems when, as with some kinds of footwear, there is no lining.

– Italy and Greece interpret Article 1(2) very broadly. Given that the aim of the Directive is to provide consumers with information on the materials used in the main components of footwear, these two countries follow the general principle that if there is no lining, the materials that are in direct contact with the foot must be identified, i.e. the inside of the upper.

– For manufacturers, Italy and Greece's interpretation is valid in practical terms for simple and clear labelling aimed at briefly informing consumers of the kind of material making up most of the inside of the article of footwear (irrespective of whether or not it is lined).

– The United Kingdom thinks that referring to the content of a lining and sock where there is no separate lining could be misleading for consumers as regards the "structure" of the article. In order to facilitate the interpretation according to which the aim of the Directive is to provide information on the materials used for the inside of items of footwear (in contact with the foot), the United Kingdom sent a letter dated 2 July 1999 to the Commission, proposing that the words "the lining and the sock" in Article 1(2)(i)(b) should be replaced by "the internal surface".

– France requires the absence of a lining to be mentioned explicitly (irrespective of whether or not the articles are made of leather). According to Article 1 of the Directive, the labelling must convey information relating to the three parts making up the footwear, and the Directive does not explicitly provide for a pictogram informing consumers that there is no lining. France therefore requires special labelling consisting either of the words *"non doublée"* [unlined] next to the pictogram or the words *"semelle de propreté"* [sock] in place of the pictogram, specifying its composition. It should be borne in mind that this requirement is not included in the text of the decree implementing the Directive, but is a guideline sent to manufacturers by the supervisory authority.

France has drawn attention to another aspect of the use of a single pictogram for articles in which the lining and sock are not made of the same material. Given that consumers cannot be certain which part of the ensemble made up of the lining and the sock is designated by the individual pictograms indicating the material used, France thinks that two different pictograms should be used to show the material of the lining and the sock separately, but has taken no steps in this direction.

Following a complaint by the European industry about France's implementation of Articles 3 and 5 of the Directive, i.e. the additional information required for unlined footwear, the Commission had to investigate whether or not the national measures were in line with the provisions of Directive 94/11, given that it must take action if national requirements hinder the smooth running of the internal market. The matter has not yet been settled.

According to the French authorities, the reason why the implementation of Article 1(2)(i) has caused a problem is that the text of the Directive is too vague. The Commission is examining the possibility of providing a clarification after consulting Member States experts and the industry.

With a view to ensuring the smooth running of the single market with no obstacles to the free movement of goods, given that practice differs from one Member State to another and in the light of the industry's complaint against France, a harmonised approach must be found and adhered to.

2.4. Labelling requirements– other information

Most of the Member States have transposed Article 4(1)-(4) unchanged, so that common rules on the labelling of footwear (material which constitutes at least 80%; visible labelling, securely attached and accessible on at least one of the articles; pictograms sufficiently large to make it easy to understand them; labelling by printing, sticking, embossing or using an attached label) have been adopted throughout the European Union.

In their implementation measures, all the Member States have ensured that consumers will be correctly informed of the meaning of the pictograms, and some state explicitly that a chart (Italy) or several charts in the case of shopping centres (Denmark) must be conspicuously displayed near the footwear (France, Belgium). Greece has provisions on footwear retailers and a specimen sign is included in Annex III to its regulation.

Ireland has raised the problem of the ease with which stick-on labels (Article 4(3)) can become detached, particularly when people are trying footwear on, which makes it difficult for retailers to check that the articles they sell are labelled as the Directive requires. The other Member States do not seem to have this problem.

2.5. Obligations of persons responsible

Most of the Member States have transposed Article 4(5) of Directive 94/11 word for word.

Throughout the European Union, the manufacturer, or his authorized agent established in the Community, is responsible for supplying the label and for the accuracy of the information contained therein. If neither the manufacturer nor his authorized agent is established in the Community, this obligation falls on the person responsible for first placing the footwear on the Community market. The retailer remains responsible for ensuring that the footwear sold by him bears the appropriate labelling prescribed by this Directive.

In Netherlands, transposition of Article 4(5) is only in the form of a reference included in the explanatory memorandum of the transposition act (*Warenwetbesluit etikettering schoeisel)* to Art 1, paragraph 1, of the Commodities Act (*Warenwet*).

2.6. Monitoring compliance

Under Article 2 of Directive 94/11/EC, Member States must ensure that footwear placed on the market in the Community meets the labelling requirements of the Directive. Moreover, where footwear not in conformity with the provisions is placed on the market, *"the competent Member State shall take appropriate action as specified in its national legislation"*.

This Article leaves the Member States considerable latitude in the choice of the most effective ways of keeping checks on items placed on the market. The Article merits more thorough examination since, because of the different traditions in the various Member States, there is a wide range of transposition methods that warrant study and discussion.

In this context, therefore, and in connection with monitoring transposition, the presence of two elements needs to be established: designated authorities responsible for checking compliance with the obligation to ensure that there are no articles on the market that are not in conformity with the provisions, and penalties to be applied if manufacturers fail to meet this obligation.

2.6.1 Competent authorities

In some Member States (Ireland, United Kingdom, Portugal and Italy) checking compliance with the labelling requirements for footwear is the task of competent national bodies explicitly designated in the transposition text.

In other countries, transposition of the obligation to designate the competent authority takes the form of a reference to a legal act that is general in scope [3]. In these cases, the reference is frequently unclear because it is not included in the actual text of the law and may refer the reader to several other pieces of legislation. This results in a lack of transparency as to the competent authority responsible.

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[3] France – Consumer Code *[Code de la Consommation*], particularly Article L-214-1, which guarantees fair trading
Belgium – Law of 14 July 1991 on commercial practice and consumer information and protection *[les pratiques du commerce et sur l'information et la protection du consommateur],* particularly Article 14
Austria - Federal Law of 1984 on unfair competition, amended by the Law of 1993
Denmark – Danish Marketing Practices Act
Finland- Law of 20 January 1978 on consumer protection, Ch 2, Art. 6
Luxembourg – Amended Law of 9 August 1971 on the implementation and sanctioning of Decisions and Directives and the sanctioning of Regulations of the European Communities on economic, technical, agricultural and social matters, forestry and transport *[loi modifiée du 9 août 1971 concernant l'exécution et la sanction des décisions et des directives ainsi que la sanction des règlements des Communautés européennes en matière économique, technique, agricole, forestière, sociale et en matière de transports]*
Netherlands – Directive 94/11/CE is implemented in the Commodities Act (Warenwet) by Decree on labelling shoes (Warenwetbesluit etikettering van shoeisel). The "Warenwet" is linked to the "Wet op de economische delicten" (Economic Offences Act). A violation of the Decree on labelling of shoes is considered as an economic offence as mentioned in the Economic Offences Act.
Germany – Law on Foodstuffs and Commodities *[Lebensmittel und Bedarfsgegenständegesetz]*
Spain – Law 26/1984 of 19.7.1984; Decree 1945/1983 of 22.6.1983 (sanctions)

According to the information available to the Commission, the following bodies are responsible for monitoring compliance with Directive 94/11:

– **Austria** – Local authorities under the Ministry of Economic Affairs

– **Belgium** – Economic Inspectorate [Administration de l'Inspection économique]

– **Denmark** – National Consumer Agency

– **Finland** – National Consumer Office, Consumer Ombudsman

– **France** – Directorate General for Competition, Consumer affairs and Combating Fraud [Direction générale de la Concurrence, de la Consommation et de la Répression des Fraudes]

– **Germany** – Ministries of Economic Affairs of the Bundesländer (federal states)

– **Greece** – Directorate of Technical Control (Ministry of Development)

– **Ireland** – Department of Consumer Affairs (Ministry for Enterprise and Employment)

– **Italy** – Ministry of Industry and Trade, via its provincial offices

– **Luxembourg** – Directorate General for Competition and Consumer Affairs (Ministry of Economic Affairs)

– **Netherlands** – Inspectorate for Health Protection (National Authority of the Commodities Act)

– **Portugal** – General Inspectorate for economic activities and regional delegations of the Ministry of Economic Affairs

– **United Kingdom** – Local authorities (Weights and Measures)

– **Spain** – Consumer Administrations of the Autonomous Communities, coordinated by the Sectoral Consumer Board

– **Sweden** – Consumer Agency

2.6.2. Sanctions

In Portugal, United Kingdom and Ireland, the *ad hoc* transposition measures include provisions dealing specifically with the penalties to be applied in the event of failure to comply with the labelling requirements.

In Portugal, offenders are liable to a fine of between ESC 25 000 and ESC 500 000, or even as much as ESC 2 million in the case of a legal person.

In Ireland, the fine may be as much as IEP 1 500 and in the **United Kingdom** as much as GBP 5 000.

In all the other Member States, the transposition refers to a legal act that is general in scope, which must be consulted. In these cases, the reference is frequently unclear because it is not

included in the actual text of the law and may refer the reader to several other pieces of legislation. This could result in a lack of transparency.

In France, for example, the penalties are those that ordinarily apply to labelling of industrial products or foodstuffs, i.e. a fine of up to FRF 250.000 and a maximum of 2 years in prison in the case of fraud, or twice this in the event of a repeated offence.

In Austria, offenders are liable to fines under the law on unfair competition of up to ATS 40 000 in the case of administrative proceedings.

In Belgium the various penalties are defined in Article 102 of the law on trade practices *[Loi sur les pratiques du commerce]* and fines can be between BEF 250 and BEF 10 000.

In Spain, the various penalties are defined in Law 26/1984 of 19 July, Decree 1945/1983 of 22 June and legislation of the Autonomous Communities concerning consumer affairs. Offenders are liable to fines of up 1.000.000 ESP in the case of serious infringements.

In Germany, an infringement of the obligation of correct labelling of footwear is an administrative offence and can be penalised with an administrative fine of up to 30.000 DM.

In Luxembourg, sanctions are those of the Community law for the implementation of decisions, directives and regulations and they vary between BEF 501 and BEF 1.000.000.

In Netherlands, if the Inspectorate notes an infringement of the Commodities Act (Warenwet) a written warning is provided to the trader. If after 3 months re-inspection reveals that the products are still violating the legislation, a report is drafted to the Public Prosecutor, which in most cases offers a settlement of the case with a fine. It should be noted that any violation constitutes an economic fraud and the penalties can be between 500 and 1.000.000 NLG. The highness of the fine may also depend on the profit made. The judicial courts are involved only if the person being imposed a sanction decides to dispute it.

In Sweden, Denmark and Finland, "the supervisory authority may give notification of the injunction or prohibition required to ensure compliance with the provisions." The injunction or prohibition may be combined with the imposition of a fine, if the injunction or prohibition is violated.

In Greece, the offenders are liable to fines which amount is decided by court.

In **Italy** the Community law adopted in 1994, to which reference is made in the preamble of the national decree is not in itself a transposition law but an authorisation law permitting swift transposition. The situation concerning sanctions is unclear.

The penalties applicable in the case of failure to comply with the provisions of Article 2 vary widely because of the differences in criminal law in the various Member States. However, harmonisation of sanctions is outside the scope of the Directive.

The Commission is not competent to define the type of sanctions or the authority responsible for ensuring compliance with the Directive, but all the appropriate measures should contribute toward the achievement of the same objective, i.e. effective consumer protection, together with respect for the unique nature of the internal market.

2.7. Prohibiting or impeding placing on the market

Under Article 3, Member States may not prohibit or impede the placing on the market of footwear which complies with the labelling requirements of Directive 94/11 by the application of unharmonised national provisions governing the labelling of certain types of footwear or of footwear in general.

It must be borne in mind, however, that obstacles may result indirectly from other laws outside the scope of the transposition of the Directive or national administrative practice.

At the time of writing, the Commission has not been informed of any direct obstacles in the national transposition measures or of any indirect obstacles in associated legislation, other than the complaint about the labelling France requires for unlined footwear.

2.8. Additional information

Under Article 5, *"additional textual information, affixed, should the need arise, to the labelling may accompany the information required under this Directive"*.

In France, the labelling of all footwear must, for purposes of checking and identification, show either *"the name, corporate name or trademark of the manufacturer"* or *"the name or corporate name of the seller, followed by a reference issued by the body responsible for combating fraud with a view to identifying the manufacturer or importer"*.

In Italy, footwear may be marked "sole manufactured in Italy" in order to specify that the country of origin is Italy.

However, under Article 3, Member States may not prohibit or impede the placing on the market of articles meeting the requirements of the Directive.

3. CONCLUSIONS

Six years after its publication, Directive 94/11/EC of 23 March has demonstrated its ability to provide an adequate level of consumer information and protection and to ensure the free movement of footwear throughout the European Union. Apart from the infringement procedures initially launched for failure to meet the implementation deadlines, the only problem during these years was a single complaint received by the Commission regarding non-compliance in connection with the labelling of unlined items of footwear.

In most of the Member States, the national transposition measures adhere almost word for word to the text of the Directive, and the Member States generally regard their national legislation as adequate for effective application of all the aspects of the Directive. Harmonisation of the legislation of the various Member States on a minimum common labelling system has enabled manufacturers to provide consumers with better information and increased transparency.

The objectives clearly expressed in 1994 in the regulatory text– i.e. to harmonise the rules governing footwear and permit free movement – can be considered as having been achieved. There appears therefore to be no justification for amending the Directive.