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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the application of Regulation (EU) No 1007/2011 on textile fibre names and related labelling and marking of the fibre composition of textile products

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1. INTRODUCTION

Article 23 of Regulation (EU) No 1007/2011 of 27 September 2011 on textile fibre names and related labelling and marking of fibre composition of textile products ('the Textile Regulation' or 'the Regulation')[1] requires the Commission to submit to the European Parliament and to the Council, by 8 November 2014, a report on the application of the Regulation, with an emphasis on requests for and adoption of new textile fibre names. This Article also requires the Commission to submit a legislative proposal if appropriate.

This report gives an overview of the application of the Textile Regulation in the Union between 8 May 2012 and the end of June 2014. It covers the requests for and adoption of new textile names, and other main application issues signalled to the Commission by Member States and relevant stakeholders. It also presents stakeholders' perceptions of the impact of the Regulation. Finally, it presents possible future developments.

The report has been established on the basis of consultations with experts from the Member States, industry and other stakeholders, in particular in the Commission's Expert Group on Textiles Names and Labelling ('the Textile Expert Group' or 'TEG').[2] It also takes account of information provided in response to questionnaires distributed among competent Member State authorities and other stakeholders.

2. OVERVIEW OF THE REGULATION

2.1. Objectives of the Textile Regulation and new elements

As from 8 May 2012, the Textile Regulation repealed and replaced the three 'Textile Directives': Directive 2008/121/EC on textile names, Directive 96/73/EC on certain methods for the quantitative analysis of binary textile fibre mixtures and Directive 73/44/EEC on the approximation of the laws of the Member States relating to the quantitative analysis of ternary fibre mixtures. Textile products that comply with Directive 2008/121/EC and were placed on the market before 8 May 2012 may continue to be made available on the market until the end of the transition period (9 November 2014).

The Regulation shares the general objectives of the previous Textile Directives, i.e. to eliminate potential obstacles to the proper functioning of the internal market and to provide consumers with adequate and relevant information. It also aims to introduce more flexibility so that the legislation can be adapted in line with the technological developments expected in the sector. In addition, it provided an opportunity to simplify and improve the regulatory framework for the development and uptake of new fibres, and to enhance the transparency of the process of adding new fibres to the list of fibre names.

The Regulation revised the main provisions of the Textile Directives in line with recent legislative standards to facilitate its direct applicability and ensure that citizens, economic operators and public authorities can easily identify their rights and obligations. Most

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[1] Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products (OJ L 272, 18.10.2011, p.1).

[2] More information on TEG meetings is available at: http://ec.europa.eu/enterprise/sectors/textiles/documents/index_en.htm.

provisions have remained unchanged in substance, but in some cases the wording or numbering of articles has been changed (see Annex IX to the Regulation).

However, the Regulation does introduce some important new elements:

- a general obligation to state the full fibre composition of textile products and clarification of the rules regarding labels and marks indicating fibre composition;
- minimum technical requirements for applications for new fibre names;
- a requirement to indicate the presence of non-textile parts of animal origin;
- clarification of the exemption for customised products made up by self-employed tailors; and
- empowerment of the Commission to adopt delegated acts amending the technical annexes to the Regulation.

2.2. Scope, subject matter and reporting provisions

The Textile Regulation applies to textile products[3] and products or textile components made up at least 80 % by weight of textile fibres.[4] It contains rules on:

– the labelling and marking of the fibre composition of textile products;

– the labelling or marking of textile products containing non-textile parts of animals; and

– the determination of the fibre composition of textile products by quantitative analysis of binary and ternary textile fibre mixtures.

The Regulation does not regulate other types of labelling, such as size or care labelling. However, Article 24 required the Commission to submit to the European Parliament and to the Council, by 30 September 2013, a report regarding possible new labelling requirements to be introduced at Union level with a view to providing consumers with accurate, relevant, intelligible and comparable information on the characteristics of textile products. In addition, Article 25 required the Commission to carry out a study to evaluate whether there is a causal link between allergic reactions and chemical substances or mixtures used in textile products.

Accordingly, on 25 September 2013, the Commission adopted a report[5] on possible new labelling requirements for textile products and on the study on allergenic substances in textile products. It concluded that the current labelling requirements for textile products are

[3] 'Textile product' is defined in Article 3(1)(a) of the Regulation as 'any raw, semi-worked, worked, semi-manufactured, manufactured, semi-made-up or made-up product which is exclusively composed of textile fibres, regardless of the mixing or assembly process employed'.

[4] Textiles incorporated in other products and forming an integral part thereof, where their composition is specified, are also to be treated as textile products (Article 2(2)(d)).

[5] *Report from the Commission to the European Parliament and the Council regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products*, COM(2013) 656 final, 25.9.2013.

adequate. As regards labelling requirements for allergenic substances used in textile manufacturing, the Commission considered further efforts in research and deployment of alternative and non-allergenic substances to be important and indicated possible action in this respect.

2.3. Delegated acts to amend certain annexes to the Regulation

Article 21 of the Regulation empowers the Commission to adopt delegated acts to amend Annexes II, IV, V, VI, VII, VIII and IX to take account of technical progress. Delegated acts may be also adopted to amend Annex I to include new textile fibre names in the list of textile fibre names. Delegated acts may be adopted, subject to the technical criteria and procedural rules in Article 22, for a period of five years from 7 November 2011.

Under Article 22, the Commission is to draw up a report on the delegation of power no later than nine months before the end of the period, i.e. by 7 February 2016. The delegation of power is tacitly extended for five years unless the European Parliament or the Council objects no later than three months before the end of the period. The Parliament or the Council may revoke the delegation of power at any time.

3. FUNCTIONING OF THE REGULATION

3.1. Approach and methodology of this report

In preparing this report, the Commission assessed the practical functioning of the Regulation and the achievement of its main objectives. It also sought to identify where it might be possible to improve the application of the Regulation.

A survey was organised and targeted consultations were conducted with experts from Member States, industry and retail associations, trade unions, consumer associations, European standardisation bodies and other stakeholders, especially via the TEG.

The Commission's survey to gather structured information from Member State authorities and stakeholders was conducted on the basis of two questionnaires that were published on its website and distributed via the Enterprise Europe Network and SME networks;[6] one was addressed to public authorities and the other to other interested parties. The responses were presented and discussed in the TEG.[7]

Full or partial responses to the first questionnaire were received from 27 Member States and Norway.[8] The second questionnaire attracted 29 responses from 15 different Member States (and one from Switzerland), including nine from companies and 14 from industry associations. The response level is considered positive given the very specific subject matter.

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[6] The questionnaires were agreed between the Member State experts and the Commission.

[7] A summary of the responses to the questionnaires is available at: http://ec.europa.eu/DocsRoom/documents/5710 and http://ec.europa.eu/DocsRoom/documents/5711.

[8] The Netherlands did not send a contribution.

It proved difficult to gather information on the costs incurred by competent authorities or operators in implementing the legal requirements, probably because these are difficult to quantify.

The main findings of the evaluation, which are based on the discussions with public authorities and stakeholders, and the information collected via the two questionnaires, including the Commission's final assessment, are set out below.

3.2. Adaptations to the new legal framework

3.2.1. Adaptation of national legislation

Since the Textile Regulation is directly applicable, its provisions do not need to be transposed. Nevertheless, Member States have to ensure that their national legal systems are in line with the new legislation, for example by repealing national measures transposing the previous Textile Directives.

According to the information provided, the Member States that sent contributions to this report have taken steps to ensure correct application of the Regulation. In general, this has involved repealing or amending existing national regulations, decrees and decisions, and/or adopting new legal acts. The changes have mainly been aimed at empowering competent authorities, including market surveillance authorities, and determining penalties for supplying misleading or insufficient information in response to the requirements of the Regulation. The majority of Member States completed the necessary adaptations on time, but some did so only after the entry into force of the Regulation (8 May 2012). At the time of writing, certain Member States were still in the process of adapting their national legislation or were intending to introduce amendments in the near future.

3.2.2. Dissemination of information about the Textile Regulation

Although the Regulation does not require information campaigns, measures were taken in the majority of Member States to inform relevant economic operators and stakeholders of its impact. Campaigns were organised either by public authorities or professional organisations, chambers of commerce and consumer organisations, often in cooperation with public authorities. Information was often cascaded from ministries to professional associations and then to their members. Information was disseminated through seminars and circulars, background materials, website information, articles in trade journals and national newspaper and radio interviews. Several stakeholders considered that additional action was needed to improve knowledge of the Regulation, especially among SMEs. No information campaign was organised at EU level.

The majority of Member State respondents observed an increase in the number of requests for information, essentially from businesses, following the adoption of the Regulation.[9] The provision that elicited by far the most questions was Article 12, which introduced a requirement to indicate non-textile parts of animal origin. Questions concerned not only new provisions, but also old ones, perhaps as a result of the information campaigns, of stakeholders (some not yet fully aware of the existing legislation) taking a renewed interest in

[9] A number of the enquiries concerned matters outside the scope of the Regulation, e.g. size or care labelling.

textile product labelling, or of some old provisions being worded and numbered differently and therefore appearing different. This may also reflect the presence of new entrants on the market, new product types or new business models and distribution/sales strategies, including online retailing with an e-commerce presence only.

It was also observed that every change of legislation triggers an increased number of enquiries, regardless of how many provisions are amended. The Commission and some Member States noted a falling-off in the number of requests for information several months after the Regulation became applicable.

3.3. Main identified impacts

The direct application of the Textile Regulation helped to ensure that businesses (producers, importers, retailers, etc.) are faced with harmonised and transparent requirements, and that consumers are properly informed and thus more confident in their decision-making. There was consensus among Member States and stakeholders that the direct applicability in all Member States also streamlined the often lengthy and cumbersome process of implementing Union legislation.

The majority of Member State authorities reported no major difficulties or specific problems, possibly because the Regulation had become applicable only recently. Other Member States and stakeholders conveyed a number of concerns, some of which related to unchanged provisions.

The requirement to indicate non-textile parts of animal origin (Article 12) and the requirement to label or mark textile products in the languages of the Member States in which the products are marketed (Article 16(3)) were cited by some Member States and many stakeholders as causing most problems (confusion, unnecessary complexity and cost).

Under Article 12, the presence of non-textile parts of animal origin in textile products must be indicated by including the phrase ‘Contains non-textile parts of animal origin’ on the labelling or marking of the products concerned. Both the Commission and the relevant authorities in Member States received several enquiries from businesses asking for clarification as to whether even very small parts of animal origin, such as (pieces of) bone, pearl or horn, have to be indicated (they do).

Article 16(3) requires the labelling or marking to be provided in the official language(s) of the Member State on the territory of which the product is made available to the consumer, unless that country provides otherwise. A number of stakeholders claimed that this increased costs, but views varied as to the extent: some claimed that the costs were substantial, while others considered them rather limited.

Difficulties were also reported as regards the application or understanding of other provisions, such as: Article 14(2), which allows economic operators within the supply chain to replace labels or markings by accompanying commercial documents; the reference to Annex VII in Article 19 (items not to be taken into account for determining the fibre composition); the ‘exceptions’ under Annex V (products for which labelling or marking is not mandatory); and the special provisions for certain textile products in Annex IV.

While some new provisions, in particular Articles 12 and 16(3), were seen as ambiguous, burdensome and costly to stakeholders, they were also recognised as those which did most to ensure that more information was conveyed to consumers. It is also legitimate to ensure that consumers are informed in their own languages. Also, businesses are free to provide any additional information they consider useful, provided it is not misleading for consumers.

3.4. Market surveillance activities

Market surveillance of textiles is based on the same principles as that in all other product areas. The Textile Regulation involves no market surveillance mechanisms over and above the general mechanisms applicable in Member States. For the most efficient use of staff, equipment, transport and testing resources, the authorities work on the basis of annual inspection programmes, notified to the Commission, which take into account previous experiences and findings, products notified frequently through the RAPEX system[10] and consumer complaints. The programmes prioritise consumer product groups with frequently encountered risks to the health and safety of consumers, often on the basis of information received from consumers, enterprises and other sources. Priorities may change from year to year or whenever new problem areas emerge. In addition, where required (e.g. in emergency situations), Member State authorities carry out controls and tests that are not necessarily covered in their programming.

Only a few countries[11] included textiles explicitly in their national market surveillance programmes. In general, even if referring explicitly to textile products, market surveillance controls cover compatibility checks outside the scope of the Regulation, e.g. safety issues, such as the length of laces, buttons and the release of small parts that may cause choking.

Apart from general market surveillance authorities, other bodies exist which aim to protect companies and consumers from unfair competition and misleading advertising.[12] Such bodies can be contacted directly by anyone suspecting such practices.

There is no single approach to the different types of inspection in relation to the Textile Regulation, as the weight given by Member States to each type of inspection varies to some extent. The results of the survey among national authorities showed that regular periodic inspections and ad hoc controls are the most common forms of inspection in the majority of Member States. Direct contacts with manufacturers and other economic operators are less important.

The survey highlighted two kinds of problem reported by market surveillance authorities as regards application of the Regulation; these concerned:

- non-compliance by businesses, namely: the use of textile fibre names not listed in Annex I; the non-indication of fibre composition in the official language of the country

[10] The RAPEX system was set up on the basis of General Product Safety Directive (GPSD) for consumer harmonised and non-harmonised products and extended to all harmonised products under Regulation (EU) No 765/2008. All RAPEX notifications are published weekly on the internet by the Commission services at: http://ec.europa.eu/consumers/safety/rapex/index_en.htm.

[11] Seven Member States (Bulgaria, France, Croatia, Latvia, Lithuania, Portugal and Romania) and Norway.

[12] e.g. Germany's *Wettbewerbszentrale*, an independent and non-commercial observatory body.

in which the product is marketed; the incorrect indication of fibre composition on a label or marking; and no label or marking at all; and

- means and tools: national authorities' market surveillance and testing activities affected by limited availability of resources, both human and financial, resulting in a reduced number of samples that can be tested.

Although there are no statistics at Union level on the compliance of textile products with the Regulation, it seems generally that no severe problems were registered by market surveillance or customs authorities, possibly because they do not always consider textile fibre composition to be a high-risk priority. However, it appears that the level of compliance is not always satisfactory.[13] Also, in the absence of sufficient checks and controls on the fibre composition of textile products, there is a risk of consumers buying products labelled as containing expensive fibres (e.g. cashmere, silk) which are actually made of less expensive fibres. The Commission therefore encourages Member States to increase their participation in joint enforcement action which allows national authorities to share resources, expertise and results while ensuring a coordinated and harmonised approach to enforcement. The Commission has the possibility to co-finance such joint action, also in the field of textile fibre composition.[14]

3.4.1. Penalties for infringements of the Textile Regulation

Member States have provided for a wide range of penalties, including administrative and judicial, for infringements of the Textile Regulation. The toughest administrative penalty seems to be the withdrawal of the non-compliant product from the market, but this is apparently used only in exceptional cases. The level of penalties varies considerably across Member States and some stakeholders suggested that a harmonised European system should be introduced under the Regulation. (In its Communication *A vision for the internal market*[15], the Commission signalled its intention to consider a legislative proposal involving a harmonised approach to economic penalties in the internal market for industrial products).

According to Commission surveys, the level of knowledge and information on penalties is rather limited among stakeholders. In the opinion of some, the penalties are not severe enough as fines do not act as deterrents.

3.5. Guidance by the Commission

To complement the Regulation, the Commission has drawn up a list of frequently asked questions (FAQs) to provide businesses with answers to questions raised by its application. The list is updated regularly and made publicly available on the Commission's website.[16] The answers do not, however, interpret the provisions of the Regulation, since binding

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[13] In one Member State, about 35 % of tested products had incorrect fibre content and around 33 % of tested products had incorrect labelling.

[14] More information at: www.prosafe.org.

[15] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee *A vision for the internal market for industrial products* (COM(2014) 25 final, 22 January 2014).

[16] http://ec.europa.eu/enterprise/sectors/textiles/files/regulation-1007-2011-faq_en.pdf.

interpretation of EU legislation is the exclusive competence of the Court of Justice of the Union.

Following the experience with the FAQs and consultations with stakeholders and Member States, a common view has emerged that the list of FAQs could be replaced or complemented by a more structured and comprehensive guidance document giving an overview of the main issues relating to the understanding of the Regulation. It would not, however, interpret the provisions of the Regulation since, as stated above, binding interpretation of EU legislation is the exclusive competence of the Court of Justice of the Union. The document could be discussed and elaborated with the assistance of the TEG.

The TEG plays an important role in the application of the Regulation. It took up the tasks of the previous working group, with the exception of those relating to transposition, which no longer applies with the (directly applicable) Regulation. The TEG discusses and exchanges views on the application of the Regulation, gathering information to better understand difficulties and come up with a common interpretation of its provisions. It is composed of Member State representatives and interested stakeholders' experts attend the meetings as observers when appropriate.

3.6. Standardisation

Article 19 of the Regulation requires the checks for determining the fibre composition of textile products to be carried out in accordance with the methods for the quantitative analysis of binary and ternary textile fibre mixtures set out in Annex VIII, or with harmonised standards. As regards the possible use of the latter, the Commission is considering submitting a standardisation request to the European Committee for Standardisation (CEN). Tentatively, this request may include:

- the screening of quantification methods (of Annex VIII and EN ISO standards);
- identifying differences in requirements and possible remedial action; and
- developing harmonised standards for the analysis of textile products composed of binary and ternary fibre mixtures.

Several Member States have pointed out that there is no single established method for the identification of fibres. There are diverging views about the advantages and disadvantages of optical, chemical and infra-red fibre identification methods.

4. NEW TEXTILE FIBRE NAMES

4.1. Provisions of the Regulation

Adding a new fibre to the annexes to the previous Textile Directives necessitated a lengthy procedure, between the initial application for a new fibre and its legal adoption at European level,[17] requiring EU Member States subsequently to adapt their national laws. This resulted in administrative burden for public authorities, losses of revenue for enterprises and delays in

[17] The new fibre names were added through a comitology procedure under the previous system.

bringing the new fibre to market, notably for the enterprise which developed it. Such delays were perceived as a constraint with negative impacts on innovation.

Under the Textile Regulation, new fibre names may be added through delegated acts of the Commission, which are directly applicable and do not require any implementation procedure by Member States.

Under Article 5 of the Regulation, only the textile fibre names listed in Annex I are to be used for the description of fibre composition on the labels and marking of textile products. Annex I currently sets out two groups of fibre names: Table 1 includes natural fibres (items 1 to 18), such as wool, silk, cotton and linen; while Table 2 includes man-made fibres (items 19 to 49),[18] such as viscose, nylon, polyester and elastane. A description is given alongside each fibre name.

The Textile Regulation also introduced a new provision (Article 6) whereby any manufacturer or person acting on a manufacturer's behalf may apply to the Commission for a new textile fibre name to be added to Annex I. The application has to include a technical file[19] containing, at least:

- information on the proposed name and definition of the textile fibre;
- identification and quantification methods;
- certain fibre parameters and properties; and
- production process and relevance to consumers.

The applicant has to provide the Commission services with representative samples of the new fibre, both pure and in the relevant textile fibre mixtures, for the purpose of the fibre validation and quantification analysis.

4.2. New fibre names

Three requests for the adoption of new fibre names are taken into account for the purpose of this report. Two were submitted before the Textile Regulation entered into force, but the assessment of the respective technical files was completed when the Regulation was already applicable. However, the level of information provided in those dossiers was considered sufficient to allow for a decision in comparison to the requirements set by the Regulation.

The first request concerned 'polypropylene/polyamide bicomponent' and was submitted to the Commission in 2005 under the old Textile Directives. The name was added to the list in Annex I under the newly adopted Textile Regulation in accordance with Commission Delegated Regulation (EU) No 286/2012;[20]

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[18] Following the first delegated act under the Regulation.

[19] The minimum requirements regarding the technical file to be included in the application are indicated in Annex II to the Regulation.

[20] Commission Delegated Regulation (EU) No 286/2012 of 27 January 2012 amending, in order to include a new textile fibre name, Annex I and, for the purposes of their adaptation to technical progress, Annexes VIII

The second request, for the generic name ‘triexta’ (a type of polyester fibre), was submitted to the Commission in early 2011. After examining the technical file in cooperation with the TEG, the Commission considered the application to be receivable. An in-depth technical analysis was then carried out in order to validate the proposed definition, check the fibre’s properties and verify the parameters on the basis of which it could be distinguished from other fibres. The results of the analytical work were presented to and discussed with Member State and stakeholders’ experts, and are publicly available.[21] This type of fibre, commonly identified in commercial and technical documents as PTT (polytrimethylene terephthalate), was first patented in the 1940s and has been made commercially available as polyester. Furthermore, its chemical characteristics do not differ radically from those of other polyester fibres and it may therefore be designated as polyester. After the final assessment, at the end of May 2014, the Commission informed the applicant that ‘triexta’ fibre would not be added to the list in Annex I to the Regulation.

The third request, for the generic name ‘polyacrylate’, was received by the Commission in January 2014, i.e. after adoption of the Regulation. After examination of the technical file, the application was considered receivable. The procedure is ongoing and a final decision has yet to be taken and is expected next year.

4.3. Processing of applications for new fibre names

None of the above requests for the adoption of new fibre names underwent the whole assessment procedure provided for under the Textile Regulation, i.e. from initial application to legal adoption at European level.

They do not, therefore, provide a basis for evaluating fully the effectiveness and efficiency of the Regulation in simplifying and accelerating the procedure for amending Annex I to include new fibre names. It is, however, to be expected that the use of a Commission Regulation, rather than Directives and a comitology procedure, substantially accelerated the process of adding a new fibre name to the list in Annex I.

As regards applications made since 2011, the information submitted fulfilled the minimum requirements of Annex II and in addition the applicants were asked to present the fibre characteristics at a meeting of the TEG and, where appropriate, to provide additional information to the Commission services.

Despite limited experience of the new process for applications and adopting new fibre names, the Commission considers that, for the time being, both the procedures and the criteria are balanced and relevant. However, while respecting the existing regulatory framework, there is some scope for practical improvement, notably enabling wider stakeholder consultation.

5. CONCLUSIONS AND OUTLOOK

and IX to Regulation (EU) No 1007/2011 of the European Parliament and of the Council on textile fibre names and related labelling and marking of the fibre composition of textile products (OJ L 95, 31.3.2012, p. 1).

[21] The study is available at: https://ec.europa.eu/jrc/sites/default/files/ptt_final_report_revision_1_v_14_03_05.pdf.

The period provided for by the Regulation for carrying out an evaluation of its application was limited (2012-14) and insufficient for detecting all the strengths and weaknesses of the legislation for the time being.

The general outcome of the survey and consultations with Member States' and other stakeholders' experts seem to show that the Regulation has been functioning well since it entered into force. It provides for appropriate measures to achieve its objectives, namely the proper functioning of the internal market, giving accurate information to consumers, introducing more flexibility to adapt the legislation to technological changes, and simplifying the regulatory framework. Moving from three Directives to one Regulation has led to less red tape and more certainty for businesses and consumers. Practical and compliance-related issues which still raise questions among practitioners can be clarified in various ways, in particular by issuing technical guidance. The new provisions may have led to increased costs for businesses, but it could be considered that these have been offset by better information to consumers.

Therefore, despite the practical challenges involved in applying certain provisions in the current regulatory framework, no major gaps, inconsistencies or administrative burden have been detected that would require amendment of the Regulation.

In view of the above and in order to improve the existing regulatory framework, the Commission concludes that the following could be envisaged:

- issuing a guidance document, based on the current FAQs, to clarify various aspects of the Textile Regulation;
- examining practical possibilities for improving the process for dealing with applications for new fibre names; and
- considering a request for standardisation work from the relevant European standardisation organisations, notably CEN.

In addition, the Commission will carry out further and ongoing monitoring of the Regulation with the assistance of Member States and relevant stakeholders. Furthermore, Member States will be encouraged to consider additional checking and controlling of textile products under their market surveillance national programmes.