

**Practical implementation of Article 6(1)(c) of the Cosmetics Directive (76/768/EEC)<sup>1</sup>: LABELLING OF PRODUCT DURABILITY: “PERIOD OF TIME AFTER OPENING”**

**Under article 6(1)(c) of the Cosmetics Directive (76/768/EEC)** it is foreseen:

*“(....) Indication of the date of durability shall not be mandatory for cosmetic products with a minimum durability of more than 30 months. For such products, there shall be an indication of the period of time after opening for which the product can be used without any harm to the consumer. This information shall be indicated by the symbol given in Annex VIIIa followed by the period (in months and/or years)”.*

Further to the adoption of the Directive 2003/15/EC which has modified the Cosmetics Directive (76/768/EEC), it seems appropriate to ensure a uniform implementation of this requirement in order to allow a smooth functioning of the internal market. To this purpose, the Commission set up a sub-working group composed of representatives of Member States and stakeholders.

The sub-working group presented its conclusions to the working group on cosmetic products [19 April 2004]. This group is chaired by the Commission and is composed of representatives of all Member States, EFTA, BEUC, the European Organisation of Consumers, COLIPA, European Federation of Cosmetic Products, EFfCI, European Federation for Cosmetic Ingredients, EFFA, European Flavour and Fragrances Association and Unitis, European Organisation of Cosmetic Ingredients Industries and Services. A general consensus was reached on these conclusions.

The comments expressed in this Communication **are not legally binding**, since only the Court of Justice can give an authoritative interpretation of Community law.

As quoted above, according to article 6(1)(c) the indication of the date of durability is not mandatory for cosmetic products with the minimum durability of more than 30 months.

However there shall be **an indication of the period of time after opening** for which the product can be used **without any harm to the consumer**. It is this new provision that is the object of comments below.

**When the mention of the period of time after opening has to be made available**

By requiring the labelling of a period after opening, the Article 6(1)(c) of the Cosmetics Directive (76/768/EEC), aims to provide useful information to consumers.<sup>2</sup>

---

<sup>1</sup> As last modified by European Parliament and Council Directive 2003/15/EC.OJ L 66, 11.03.2003, p.26.

<sup>2</sup> Recital (14) of Directive 2003/15/EC reads as follow: “*In order to improve the information provided to consumers, cosmetic products should bear more precise indications concerning their durability for use.*”

It can be assumed from article 6(1)(c) that the period after opening must be labelled when **after its opening the deterioration of the product may lead to harm to the consumer.**

**A product can be seen as being harmful to the consumer when, in accordance with Article 2 of the Cosmetics Directive, it can cause damage to human health.**

The deterioration may be linked to:

- the deleterious effect of micro-organisms and/or
- physico-chemical degradation

that would lead to :

- o harm to the consumer or
- o the decrease of efficacy when the modification of the efficacy can affect the safety of the product according to human health (e.g. U.V protection of sun products)

A variety of **relevant methods** may be used to support the period indicated on a product, including those used during product development, since there is no officially sanctioned methodology that could be used.

**Examples** of sources of information for assessing a product's PaO may include:

- microbiological challenge tests
- stability data
- analytical data (e.g. preservative analysis)
- type of packaging
- experience with similar formulations and products
- consumer habits and practices.

**For the purpose of Article 6(1)(c), the opening of the product** may be considered as occurring when the consumer opens the product for use for the first time. Anyway, in the case of products sensitive to deterioration by micro-organisms, the person responsible for placing the product on the Community market should consider **measures to avoid the opening of the product before it reaches the final consumer.**

The mention of the period after opening seems not to be relevant when there is:

- a. – **no physical opening** of the product as is the case for products presented in containers where there is no possibility of contact between the product in the container and the external environment (e.g. *sealed* pressurised containers),
- b. – **no period after opening** as is the case for single-use products, which are designed to be used only once.
- c. – **no risk of harm to the consumer**, as there is no risk of deterioration that could lead to, in accordance with Article 2 of the Cosmetics Directive, damage to human health.

### **What information needs to be labelled**

The “period after opening” is indicated by the open-jar symbol adopted by the Commission on 5 September 2003<sup>3</sup>. The period of time is expressed in months and/or in years, inside or alongside the symbol. The choice of the position of this number should be made in order that it is easily legible as required by article 6.1 of Cosmetics Directive.

Without prejudice to Article 7 (2), if the period of time is in months, it may be indicated by a number followed by the full word “month” or, for example by the abbreviation “M”, the letter “M” standing for “Menses” (i.e. months in Latin). The “period after opening” needs to be printed on primary and secondary packaging (i.e. the container and its carton if any).

### **How the information should be explained to the consumer**

It seems appropriate that steps are taken to ensure that **consumer fully understands** the meaning of the new open-jar symbol and the accompanying abbreviation (“M”) that could appear on cosmetic products.

**According to** industry and Member States, they intend to disseminate this information (e.g. brochures) to consumers through consumer associations, distributors and retailers’ information on public authorities’ websites etc....

---

<sup>3</sup> Commission Directive 2003/80/EC, OJ L 224 of 06.09.2003, p. 27.