



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DIRECTIVE amending Directive 76/768/EEC, concerning cosmetic products, for the purpose of adapting Annex III thereto to technical progress

COUNCIL DIRECTIVE 2011/.../EU

of

**amending Directive 76/768/EEC, concerning cosmetic products,
for the purpose of adapting Annex III thereto to technical progress**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products¹, and in particular Article 8(2) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 262, 27.9.1976, p. 169.

Whereas:

- (1) The use of hydrogen peroxide is already subject to restrictions and conditions laid down in Annex III, Part 1 to Directive 76/768/EEC.
- (2) The Scientific Committee on Consumer Products, which has been replaced by the Scientific Committee on Consumer Safety (hereinafter SCCS) pursuant to Commission Decision 2008/721/EC of 5 August 2008 setting up an advisory structure of Scientific Committees and experts in the field of consumer safety, public health and the environment and repealing Decision 2004/210/EC¹, has confirmed that a maximum concentration of 0,1 % of hydrogen peroxide present in oral products or released from other compounds or mixtures in those products is safe. It should therefore be possible to continue to use hydrogen peroxide in that concentration in oral products, including tooth whitening or bleaching products.
- (3) The SCCS considers that the use of tooth whitening or bleaching products containing more than 0,1 % and up to 6 % of hydrogen peroxide present or released from other compounds or mixtures in these products may be safe if the following conditions are satisfied: an appropriate clinical examination is carried out in order to ensure there are no risk factors or any other oral pathology of concern and that exposure to these products is limited so as to ensure that the products are used only as intended in terms of frequency and duration of application. These conditions should be fulfilled in order to avoid reasonably foreseeable misuse.

¹ OJ L 241, 10.9.2008, p. 21.

- (4) Those products should therefore be regulated in a way that ensures that they are not directly available to the consumer. For each cycle of use of those products, the first use should be limited to dental practitioners, as defined under Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications¹ or under their direct supervision if an equivalent level of safety is ensured. Dental practitioners should then provide access to those products for the rest of the cycle of use.
- (5) An appropriate labelling regarding the concentration in hydrogen peroxide of the tooth whitening or bleaching products containing more than 0,1 % of this substance should be provided for in order to ensure the appropriate use of these products. For this purpose, the exact concentration in percentage of hydrogen peroxide present or released from other compounds and mixtures in those products should be clearly indicated on the label.
- (6) Directive 76/768/EEC should therefore be amended accordingly.
- (7) The Standing Committee on Cosmetic Products has not delivered an opinion within the time-limit laid down by its Chairman,

HAS ADOPTED THIS DIRECTIVE:

¹ OJ L 255, 30.9.2005, p. 22.

Article 1

Annex III to Directive 76/768/EEC is amended in accordance with the Annex to this Directive.

Article 2

1. Before ...* Member States shall adopt and publish the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these provisions from ...**.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

* OJ: 12 months after the publication of this directive.

** OJ: 12 months + 1 day after the publication of this directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
		(c) Nail hardening mixtures	(c) 2 % of H ₂ O ₂ , present or released		
		(d) Oral products, including mouth rinse, tooth paste and tooth whitening or bleaching products	(d) ≤ 0,1 % of H ₂ O ₂ , present or released		

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
		(e) tooth whitening or bleaching products	(e) $>0,1 \% \leq 6 \%$ of H ₂ O ₂ , present or released	(e) To be only sold to dental practitioners. For each cycle of use, 1 st use by dental practitioners as defined under Directive 2005/36/EC* or under their direct supervision if an equivalent level of safety is ensured. Afterwards to be provided to the consumer to complete the cycle of use. Not to be used on a person under 18 years of age.	(e) Concentration of H ₂ O ₂ present or released indicated in percentage. Not to be used on a person under 18 years of age. To be only sold to dental practitioners. For each cycle of use, the first use to be only done by dental practitioners or under their direct supervision if an equivalent level of safety is ensured. Afterwards to be provided to the consumer to complete the cycle of use.

* OJ L 255, 30.9.2005, p. 22."