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## 1. Preamble

Cosmetic products contribute towards the wellbeing of consumers, and everyday life can no longer be imagined without them. During the past years, consumers have increasingly turned to natural cosmetics or nature-orientated cosmetics. However, natural cosmetics, nature-orientated cosmetics and conventional cosmetics cannot always be clearly differentiated from one another. Depending on their intended use, many products include more or less natural ingredients. Not all cosmetic products can be made from natural substances alone, such as certain sunscreens and decorative cosmetics or also certain hair dyes. As a matter of principle, all cosmetic products are subject to the comprehensive conditions imposed by the EU cosmetics legislation, and every product must undergo a detailed safety assessment.

As far as certified natural cosmetics are concerned, consumers can orient themselves today towards the different seals. The criteria of NATRUE and COSMOS, for instance, are transparently accessible on the internet. Here, the consumer finds answers to his questions, e.g. whether in accordingly certified natural cosmetics exclusively natural ingredients may be used or whether certain amounts of synthetic substances may be processed as well.

Today consumers expect transparency on all levels: regardless of whether ingredients, processing, packaging or sales are concerned. All these topics are gaining in relevance for the buying decision and hence mark the expectations of customers concerning a product. Consumers sometimes feel puzzled, more particularly, for products which refer to natural ingredients in their advertising but do not have any natural cosmetics seal.

After a thorough discussion about the topic within the framework of DIALOG KOSMETIK [1], all participants agreed that it would make sense to elaborate guidance which can first support manufacturers in positioning themselves authentically with their products on the market. The working group of representatives from public authorities, industry and consumer associations has now elaborated this guidance which is to contribute to a better structuring of the product diversity on the market. This means of course that there will also be more

clarity for consumers who can orient themselves better when making purchases. This document is to be constantly amended and adjusted to the current developments on the market – with the goal of creating the best possible transparency for everybody.

## 2. Objective and Status

- This guidance is primarily addressed to manufacturers, distributors, the retail trade, and public authorities.
- The document is supposed to be an up-to-date practice-oriented guidance in support of an authentic communication with the avoidance of greenwashing\* concerning the different interpretations of natural cosmetics.
- The focus is on the not clearly positioned intermediary group of “nature-orientated” brands/products.\*\*
- The terms organic and natural cosmetics are sufficiently clearly defined in the publicly accessible guidelines of the established standards.

\* We define greenwashing as “the use of visual elements and textual statements which are suitable – on their own or in aggregate – to simulate to the average knowledgeable consumer a certified or comparable natural cosmetic quality”; cf Chapter 4.

\*\* We define “nature-orientated cosmetics” as conventional cosmetics with certain increased shares of organic, natural or derived natural substances.

## 3. Legal Foundations

### General legal framework

Conventional, nature-orientated and natural and/or organic cosmetics are equally cosmetic products within the meaning of the **EC Cosmetic Products Regulation** (Regulation [EU] No. 1223/2009) [2] and must meet the provisions of this Regulation in all cases. Binding provisions apply, amongst other things, to the composition of the products, i.e. the ingredients which may be used, the safety for the user, the information (mandatory labelling elements as well as claims) for the consumer as well as the making available of a product information file including a safety report for inspection by the competent market surveillance.

A complementary **“Claims Regulation”** (Regulation [EU] No. 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products) [3] states in more detail that the claims on cosmetic products must always be

- truthful
- supported by evidence
- honest and
- fair.

Depending on the target group, the consumer is to be provided with understandable information about the product that enables him to take a decision for or against purchasing. This Regulation is supplemented by a so-called **“Technical document on cosmetic claims”** [4]. This document was prepared by a working group including representatives from the member states. It is not legally binding and deliberately does not include any positions of the EU Commission. However, Annex I to this compilation of interpretations of the prohibition to make misleading claims includes concrete examples which illustrate the criteria laid down for claims on cosmetic products in an intelligible manner.

### Definition of organic and natural cosmetics

Natural cosmetics or organic cosmetics are defined within the framework of this document primarily as cosmetic products which meet the applicable conditions imposed by the guidelines on natural and organic cosmetics which are relevant in Germany (e.g. NATRUE [5], COSMOS [6] and others) and have been verified on the basis of these guidelines by an accredited certification body. These products may be advertised with the additional designation “natural cosmetics”, “organic cosmetics” or with an equivalent claim, in line with the conditions imposed by the respective publisher of the seal. Organic cosmetics are basically also natural cosmetics; it is, however, necessary to meet additional requirements concerning the origin of the raw materials from controlled organic production. There is currently no legally binding definition for the term organic and/or natural cosmetics.

Based on the expectations of consumers concerning “genuine” natural cosmetics, certain fundamental requirements can be derived which must be met by natural cosmetic products to allow an informed purchasing decision for consumers. These requirements are derived from the private natural cosmetics standards which have been established in Europe for many years and are already perceived by the consumers as trustworthy guidance.

According to the established natural cosmetics standards, only natural substances recovered by physical methods may, as a matter of principle, be used for organic and natural cosmetic products. Moreover, a very limited list of nature-identical preservatives is generally allowed for preservation purposes. The use of nature-identical inorganic pigments, for instance, for decorative natural cosmetics or as UV filters, is, as a rule, like-

wise allowed. Whether mineral particles in their nano form are admitted for natural cosmetics is differently regulated in the various standards. For the production of natural cosmetics, it is, moreover, possible to use chemically modified raw materials which must, however, be made to the largest possible extent from natural substances. As a rule, certain types of reaction or intermediate stages such as ethoxylations or quaternary ammonium compounds, are excluded and/or there is a positive list of permitted processes such as hydrolysis, hydrogenation, and esterification. Bioengineering processes are likewise admissible. Some standards define explicit ceilings for the content of chemically modified raw materials.

The following 11 points, which are proposed, represent the smallest common denominator of the established natural cosmetic standards and the consumer expectations and should, therefore, be met by all products which create the impression of being natural cosmetics:

The following is excluded:

1. The use of NOT completely biodegradable surfactants (according to Regulation (EC) No. 648/2004).
2. The use of ingredients which according to Regulation (EC) No. 1829/2003 must be labelled as genetically modified organisms. This applies, by analogy, to ingredients which do not come within the sphere of application of this Regulation.
3. The use of ingredients recovered from dead vertebrates.
4. The treatment of vegetable and animal ingredients or the finished product with ionising radiation.
5. The use of halogenated as well as aromatic solvents.
6. The use of raw materials on a mineral oil basis such as polymers, except for Item 11.

The following are expressly admitted:

7. Natural ingredients (NATRUE: “natural”; COSMOS: “physically processed agro-ingredients”), recovered with physical and biotechnological methods of vegetable, inorganic-mineral or animal origin.
8. Derived natural ingredients (NATRUE: “derived natural”; COSMOS: “chemically processed agro-ingredients”) as reaction products of natural substances.
9. The use of minerals, for instance for decorative natural cosmetics or as UV filters.
10. Exclusively natural aromatic substances according to ISO 9235 (“Aromatic natural raw materials – Vocabulary”).
11. A very limited amount of nature-identical preservatives, which may also be produced from mineral oil, to secure a sufficient product safety (positive list according to the respective natural cosmetics standard).

In products designated as “natural cosmetics” without certification, a claim relating to “naturalness” by analogy to a certified natural cosmetic quality only makes sense and is truthful if the basic requirements which are defined in the relevant natural cosmetics standards in Europe, are met.

## Reference to ISO 16128

The two-part standard ISO 16128 [7] is an internationally co-ordinated technical guideline. It includes definitions for the subdivision of the raw materials into e.g. “natural” and “of natural origin” and it is, for instance, defined how the organic share of a product can be calculated. However, the ISO guideline does not provide any information as to when a product may be claimed to be an “organic cosmetic product” and when it is a “natural cosmetic product”. The ISO standard is, therefore, not comparable to the established natural cosmetics seals. It may, however, serve as guidance for concrete claims in accordance with the common criteria of the Regulation (EU) No. 655/2013.

## Austrian Food Code – Code Chapter 33-1. “Natural Cosmetics”

This Code chapter [8] is to provide the basis for the production and marketing of natural cosmetics in Austria to ensure fair competition through transparency, control and traceability and protect consumers against misleading information.

## Decisions of German case law for orientation purposes

- According to a decision by the Higher Regional Court (OLG) Hamm [9] in 2012, the designation of **“organic oil”** for a cosmetic product gives consumers the impression that this cosmetic product is at least predominantly, i.e. 50% + X, composed of natural/vegetable ingredients. The court held that the designation is misleading if the cosmetic product includes as prevailing ingredients paraffinum liquidum (paraffin oil) of chemical-industrial origin as well as triisononoin, cetearyl ethylhexanoate and isopropyl myristate. The court assumed, however, that the consumer expects that there may be a certain share of chemical substances in a cosmetic product, even if it carries the syllable “organic” in its name.
- The designation of a cosmetics series by using the terms **“pure & natural”** was considered to be misleading in a judgement of the Regional Court (LG) Hamburg [10] of 2012, if it is also produced by using chemical additives. In this case the court assumed that consumers expect, given the green design elements on the packaging with representations of plants, that the products designated as **“pure & natural”** are made from purely natural ingredients (unadulterated). According to the court, the claim **“pure & natural”** creates in this case even a higher expectation than in the event of a product claimed to be a “natural cosmetic product”. Even an interrupter with the statement “95 % of natural origin” was considered here as insufficient to eliminate this misconception.

## 4. Guidance on “nature-orientated” claims of cosmetic products

**1. As a matter of principle, it should always be striven for a presentation and communication of the brand, the composition and performance of the product which are as authentic as possible to allow consumers an informed purchasing decision.**

2. In the event of so-called “nature-orientated” cosmetics a misleading **overall impression** can be created through the presentation of the product, its designation as well as claims on the product and in the advertising communication. Visual elements and textual statements which – alone or in aggregate – are suited to give an average informed consumer the illusion of a (certified) natural cosmetic quality or any other misconception of the properties of the product and the ingredients included therein, should, therefore, be avoided.

**3. The following information can help to position a product successfully and authentically with natural and/or nature-based ingredients on the market, without any alignment with natural cosmetics in a narrower sense:**

- Product designations, illustrations or individual (invent-ed) seals with a strong reference to “nature” and/or naturalness and/or certain plants (parts) should always be used in a considered manner.
- Packaging design with prominent illustrations of plants, parts of plants and/or fruits may support a perception of the product as natural cosmetic product<sup>1</sup>. In this case an altogether transparent presentation of the actual properties and/or the real benefit of the highlighted component(s) needs to be given special consideration.
- Product claims relating to the naturalness of the overall formulation or individual ingredients must in each individual case be critically checked. In this case the decisions from German case law [9,10] referred to in Chapter 3 can serve as guidance.
- Especially for products with mainly conventional main ingredients and/or a conventional main active principle it must be taken into consideration that an excessive highlighting of natural and/or derived natural secondary ingredients can trigger a corresponding misconception concerning the naturalness of the overall product on the level of the consumer.
- A qualitative and possibly also quantitative highlighting of plant ingredients or their organic quality can, as a matter of principle, be made in different ways. In particular if these substances are only included in low shares in the product, care should be taken to achieve a balanced and transparent overall presentation of the composition of the respective product.
- When highlighting the overall share of ingredients of “natural origin” (in %), an explanation of the water share for products with a typically high water content is helpful to avoid possible misconceptions.
- Any “green claims” should not be associated with the assumption that the product is “better or safer, because it is natural”. More particularly, claims such as “free from ...” should not assume that a product is “better”, safer or more natural because of the mere absence of certain ingredients than a comparable product containing the substances concerned.
- General environmental claims and claims referring to sustainability and ethics such as

<sup>1</sup> It can, however, – just as a corresponding “with ...” claim – basically also trigger the expectation that the highlighted ingredients are contained as active ingredient(s) and the product has an effect possibly associated with it by the consumer. Depending on the individual case, such illustrations may also be understood as a mere reference to the fragrance of the product or support in the interplay with other corresponding information the assumption of natural properties of the product or individual ingredients.

- “ethical”, “ecological” and/or sustainable raw material recovery and/or production
  - Nature conservation (biodiversity, endangered species)
- should be supplemented by more detailed explanations and/or concretised accordingly – e.g. by referring to more detailed information on the website of the producer to avoid any incorrect conceptions of the consumers.

## References

- [1] <https://www.dialog-kosmetik.de/>
- [2] Regulation (EC) No. 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products; <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R1223>.
- [3] Regulation (EU) No. 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0655>.
- [4] Technical document on cosmetic claims; <https://ec.europa.eu/docsroom/documents/24847>.
- [5] <https://www.natrue.org/>
- [6] <https://cosmos-standard.org/>
- [7] ISO 16128-1:2016-02 – Guidelines on technical definitions and criteria for natural and organic cosmetic ingredients and products – Part 1: Definitions for ingredients; ISO 16128-2:2017 – Guidelines on technical definitions and criteria for natural and organic cosmetic ingredients – Part 2: Criteria for ingredients and products.
- [8] Austrian Food Code – Code chapter 33-1. “Naturkosmetik”; <https://www.verbrauchergesundheit.gv.at/lebensmittel/buch/codex/kapitel.html>.
- [9] Higher Regional Court – OLG Hamm, judgement of 27.03.2012, File ref.: I-4 U 193/11.
- [10] Regional Court – LG Hamburg, judgement of 21.12.2012, File ref.: 312 O 96/12.

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