

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 429 final

Brussels, 23 November 1992

Proposal for a

COUNCIL DECISION

concerning the institution of a Community system for the  
exchange of information in respect of certain products  
which may jeopardize consumers' health or safety

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(presented by the Commission)

SUMMARY

The objective of the proposal is to anticipate the implementation of the exchange of information provisions of Article 7 of Directive 92/59/EEC on general product safety by instituting a Community system for the exchange of information relating to consumer products which do not comply with the relevant Community or national regulations, may jeopardize consumers' health and safety (though without presenting a serious and immediate risk) and which are not yet covered by an existing equivalent procedure.

EXPLANATORY MEMORANDUM

1. The internal market, scheduled for completion by 31 December 1992, comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty.

The abolition of controls at internal frontiers in no way implies the removal of all possibilities for the national authorities to carry out controls on their territory in connection with their task of monitoring the market, but leads to a greater need for measures allowing Member States and the Commission to exchange information on products which may jeopardize consumers' health and safety and which are not yet covered by an existing equivalent procedure at Community level.

2. In any event such measures must be instituted on the basis of Directive 92/59/EEC on general product safety<sup>(1)</sup> which enters into force on 29 June 1994, in accordance with which the Member States are obliged to establish appropriate infrastructures enabling them to comply with the general safety requirement, viz. the requirement that only safe products may be placed on the Community market.

Moreover, the measures must be designed in such a way as to form a natural and logical part of the future mechanisms provided for in Directive 92/59/EEC, and thus constitute simply an advance use of the procedure for notification and exchange of information set out in Article 7 of this Directive, in connection with the removal of technical controls at internal frontiers as of 1 January 1993.

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(1) OJ No L 228, 11.8.1992, p. 24.

3. The recommended solution is based mainly on the Community system for the rapid exchange of information which has been operating since 1984 and which is a good example of a procedure aimed at informing the Member States about dangerous products that have been identified in the market.

This system was devised as a means of alerting the authorities of the Member States and the Commission through the provision of information on products presenting a serious and immediate risk in respect of which urgent measures have been taken. Whenever a Member State decides to take urgent steps (legislative or administrative) to prevent, restrict or attach particular conditions to the marketing or use of the product in question, the contact point in the Member State concerned immediately informs the Commission. The Commission in turn immediately passes the information on to the contact points in the other Member States.

4. Having regard to its characteristics and its operation, the structure of the current rapid exchange system is proposed as a model for the new system. However, the proposed system contains a number of adaptations to the existing model in order to take into account the different requirements of a system of information relating to non-conforming products which may jeopardize the health and safety of consumers, but which do not belong to the category of products presenting a serious and immediate risk and which are not yet covered by other Community instruments involving equivalent information procedures.

5. In addition, it should be specified that this proposal is part of a set of measures - already referred to by the Commission in its Communication of 17 June 1992 (SEC(92) 1085 final) on the abolition of border controls on goods, capital and services - aimed at

defining a coherent and effective framework for detecting and coping with dangerous products or products presenting a risk to health or safety. This more general framework comprises:

- the Community system for the rapid exchange of information on products presenting a serious and immediate danger for the health and safety of consumers (Decision 89/45/EEC);
- the current proposal, which supplements the preceding Decision in that it recommends a system for the exchange of information on products which may jeopardize consumers' health and safety without, however, presenting a serious and immediate risk and which are not yet covered by other Community instruments involving existing equivalent procedures;
- a Commission Recommendation inviting the Member States to create the necessary infrastructures for identifying dangerous products at their external frontiers;
- the more general mechanisms for managing common external frontiers including, in particular, Directives relating to veterinary and plant health monitoring and a proposal for a Regulation currently being prepared to provide the customs authorities with the common legal basis so that they can ensure the intervention of the authorities responsible for monitoring the market in regard to product safety.

Taking the above into account, Community intervention under this Decision is thus limited to what is strictly necessary for establishing a system for the exchange of information which does no more than anticipate the measures to be taken under Article 7 of Directive 92/59/EEC.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,  
and in particular Article 235 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Whereas, in the context of the internal market and to maintain its ability  
to function, Member States and the Commission should be informed of  
measures restricting or prohibiting the marketing or use of certain  
products;

Whereas, to this end, current Community legislation provides for  
notification procedures in the event of risks arising from products which  
conform with the applicable rules, along with a procedure for the rapid  
exchange of information in respect of consumer products presenting a  
serious and immediate risk; whereas, on the other hand, there is no  
procedure, except in the foodstuffs sector, whereby Member States can  
receive information on products marketed in a Member State which do not  
conform with Community or national legislation and which present a certain  
risk for consumers' health or safety, although they give rise to no serious  
and immediate risk;

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(1) OJ No C

(2) OJ No C

Whereas Council Directive 92/59/EEC of 29 June 1992 on general product safety<sup>(3)</sup> is intended to introduce, as soon as it comes into force on 29 June 1994, a notification procedure applicable to products which are not covered by an equivalent procedure under specific Community legislation;

Whereas abolition of controls at the internal frontiers makes it necessary to anticipate certain measures to be taken pursuant to Article 7 of Directive 92/59/EEC, to ensure that the Member States and the Commission will have at their disposal, as of 1 January 1993, a procedure for the exchange of information on the products in question;

Whereas this procedure applies to any consumer product which does not conform with the applicable rules and which may jeopardize the health or safety of consumers (though without presenting a serious and immediate risk), and in respect of which a Member State has decided to take restrictive measures, in so far as the product concerned is not covered by an equivalent Community notification procedure;

Whereas, by Council Decision 89/45/EEC<sup>(4)</sup>, as amended by Decision 90/352/EEC<sup>(5)</sup>, a warning system has been set up, providing for a procedure for the rapid exchange of information between the Member States and the Commission applicable to consumer products presenting a serious and immediate risk; whereas, for reasons of effectiveness, an information system using the infrastructure set up under the aforementioned Decision, suitably amended in the light of the objective laid down, should be instituted;

Whereas, in the context of this procedure, it is necessary to provide for the use of a standard format setting out clearly the information to be supplied;

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(3) OJ No L 228, 11.8.1992, p. 24.

(4) OJ No L 17, 21.1.1989, p. 51.

(5) OJ No L 173, 6.7.1990, p. 49.

Whereas whenever it is established, in the context of the functioning of the internal market, that consumer products, because of their non-conformity with the rules that apply to them, risk jeopardizing consumers' health or safety, adequate information should be provided at Community level in order to ensure that appropriate steps are taken; whereas this Decision constitutes a measure to accompany the removal of technical controls at internal frontiers; whereas the provisions of this Decision, which correspond to other existing procedures and are based on those provided for in Article 7 of Directive 92/59/EEC, are necessary to ensure adequate exchange of information; whereas they are limited to what is strictly necessary in this respect;

Whereas for the action in question the Treaty makes no provision for powers other than those under Article 235,

HAS ADOPTED THIS DECISION:

#### Article 1

1. Any Member State which decides to adopt measures to prevent, restrict or attach particular conditions to the marketing or use on its territory of a product or product batch because it does not conform with the relevant Community or national rules and may jeopardize the health or safety of consumers when used in normal and foreseeable conditions, shall inform the Commission thereof. Whenever possible, the producer, distributor or importer of the product or product batch shall first be consulted.

The first subparagraph shall not apply if the measures relate to an event, the effect of which is local and in any case limited to the territory of the Member State concerned.

2. The information relating to the product or product batch referred to in paragraph 1 shall be drawn up in accordance with the format set out in Annex 1 and shall be forwarded to the Commission in accordance with the procedure described in Annex 2.



3. On receipt of the information, the Commission shall verify its conformity with the terms of this Decision and shall forward it to the competent authorities of the other Member States.

#### Article 2

This Decision shall apply to all products intended for use by consumers, except:

- (a) products intended exclusively for professional use;
- (b) products which under other Community instruments are the subject of equivalent procedures.

#### Article 3

Each Member State shall indicate to the Commission one or more national authorities designated to forward or receive the information referred to in Article 1. On receipt of this indication, the Commission shall forward it to the competent authorities of the other Member States.

#### Article 4

In justified cases, and if the competent authority of the Member States supplying information under this Decision so requests, the information shall be treated as confidential.

#### Article 5

This Decision shall apply until 29 June 1994.

Article 6

This Decision is addressed to the Member States.

Done at Brussels,

For the Council  
The President

Annex 1

COMMUNITY SYSTEM FOR THE EXCHANGE OF INFORMATION

APPLICATION OF DECISION 92/.../EEC

1. Notifying Member State  
(name and address of person to contact for further information)

2. Date of notification

3. Product category

4. Description of product  
packaging (1)(2)  
and labelling

Name of product:

Brand name:

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(1) Include sufficient details to identify the product clearly (in particular: materials, colours, dimensions)

(2): Give model number(s) and other markings

5. Information concerning the manufacturer

Name:
Address:

6. Information concerning the importer

Name:
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7. Information concerning the distributor

Name:
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8. Country of origin:

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9. Where was the product found?

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9a. At (tick appropriate box)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
retailer	wholesaler	other

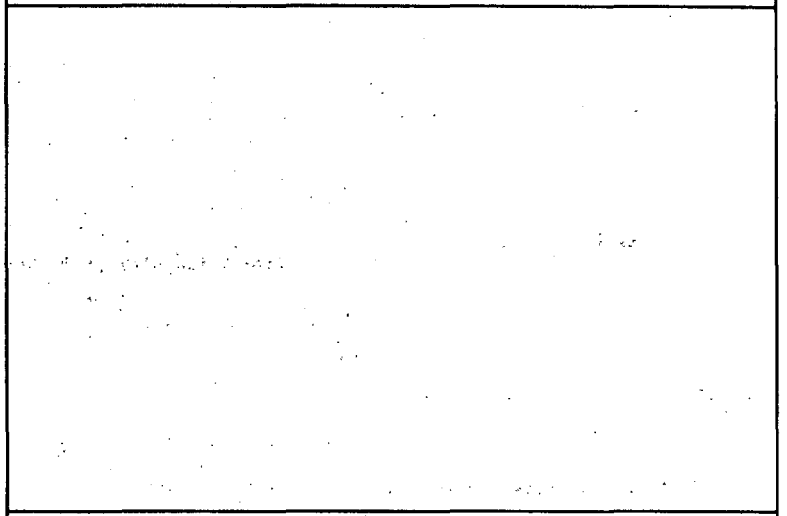
10. Nature of risk  
Specify the risk and any requirements with which the product does not conform including, where appropriate, details and results of tests carried out on the product and any accidents which have occurred.

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11. Details of measures taken  
(Including scope and effective date)

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12. Additional information  
(especially if the  
products are sold in  
other Member States)





Annex 2

**Transmission procedure**

Member States' notifications in respect of products falling within the scope of Article 1 of this Decision are to be forwarded, by fax or telex, to the following address:

**COMMISSION OF THE EUROPEAN COMMUNITIES**

Consumer Policy Service

Unit 3 - General product and services safety

200, Rue de la Loi

B-1049 Brussels

Fax: (32) 2 296.43.23

Telex: COMEU B 21877

ISSN 0254-1475

COM(92) 429 final

# DOCUMENTS

**EN**

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**Catalogue number : CB-CO-92-447-EN-C**

**ISBN 92-77-48114-5**

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**Office for Official Publications of the European Communities**

**L-2985 Luxembourg**