

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 267 final - SYN 192

Brussels, 15 June 1992

Re-examined proposal for a

COUNCIL DIRECTIVE

on general product safety

(presented by the Commission pursuant to Article 149.2(d)
of the EEC treaty)

Explanatory memorandum

The European Parliament completed the second reading of the proposed Directive on General Product Safety on the 8 - 10 June 1992.

Following the adoption by the European Parliament of the Recommendation from the Committee on the Environment, Public Health and Consumer Protection, the Commission has re-examined the proposal on the basis of which the Council adopted its Common Position on 23 December 1991, by taking into account the seven amendments proposed by the European Parliament.

Four of Parliament's Amendments are included in the text of the re-examined proposal : namely Nos. 2, 4, 6 and 7. Three amendments have been rejected, namely Nos. 1, 3, and 5.

Of the Amendments which have been included in the text, Amendment No. 2 seeks to link the notion of "minimum risk" with the definition of safe product in Article 2 rather than to group together all the assessment criteria in Article 4 as in the Common Position. Consequently, the corresponding provision in Article 4(2) of the Common Position is superfluous and can be deleted as provided for by Amendment N° 4. In this way, one of the assessment criteria is now closely linked with the definition of safe product to which it refers. The Commission can accept this visual regroupment of one of the assessment criteria in Article 2 rather than in Article 4.

Amendment N° 6 provides that the Commission shall submit a report on the implementation of the Directive to the European Parliament and the Council every two years from the date of its adoption. In this way, the Amendment clarifies the text of Article 15 of the Common Position, which, in its initial drafting, did not explicitly provide for a starting point in time.

Amendment No. 7 adds to paragraph 14 of the Detailed Procedures, which are annexed to the Directive, that the Commission shall review these arrangements annually in order to ensure the full effectiveness of the information exchange network, to examine the need for improvements and to take account of the developments in communication technology between Enforcement Authorities in the Member States.

The Commission accepts this Amendment which explicitly provides for an annual update.

As to the other Amendments which have been rejected, Amendments Nos. 1 and 3 emphasising that the vertical directives, or in their absence, specific national law, would apply only if all the aspects of safety are covered therein, do not take account of the proper operation of the principle of complementarity as set out in Article 1 of the text of the Common Position.

Amendment No. 5 proposes that Member States shall prohibit the export to countries outside the Community of unsafe products which have been withdrawn or banned from sale from the market in the Community.

This Amendment has been rejected not only because of the fact that the Common Position does not provide for the proper legal basis but mainly because of the fact that the text of the Common Position deals exclusively with the placing of products on the Community market. Moreover, many practical problems can be foreseen in the implementation of such a measure of external commercial policy.

Re-examined proposal for a Council Directive

on General Product Safety

Common position of the Council

Re-examined proposal

Recitals and Article 1 unchanged.

Article 2

(b) "Safe product" shall mean any product which, under normal or reasonable foreseeable conditions of use, including duration, does not present any risk or only the minimum risks compatible with the product's use, considered as acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:

- the characteristics of the product, including its composition, packaging, instructions for assembly and maintenance;

- the effect on other products, where it is reasonably foreseeable that it will be used with other products;

(b) "Safe product" shall mean any product which, under normal or reasonably foreseeable conditions of use, including duration, does not present any risk or only the minimum risks compatible with the product's, considered as acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular :

(i) the characteristics of the product, including its composition, packaging instructions for assembly and maintenance;

(ii) the effect on other products where it is reasonably foreseeable that it will be used with other products;

- the presentation of the product, the labelling, any instructions for its use and disposal and any other indication or information provided by the producer;

- the categories of consumers at serious risk when using the product, in particular children.

(iii) presentation of the product, the labelling, any instructions for its use and disposal and any other indication or information provided by the producer;

(iv) the categories of consumers at serious risk when using the product, in particular children.

The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be "unsafe" or "dangerous".

The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be "unsafe" or "dangerous"

(c) "Dangerous product" shall mean any product which does not meet the definition of "safe product" according to point (b) hereof.

- In the absence of more specific rules, minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of person's shall be defined according to the state of scientific and technological knowledge and the code of conduct in force in the sector concerned, with particular reference to European or national safety standards, the information or warnings supplied with the product, accident and injury data, and the degree of safety that consumers and users in general can reasonably expect.

(c) "Dangerous product" shall mean any product which does not conform with criteria set out in point (b) hereof.

Article 3

unchanged

Article 4

1. Where there are no specific Community provisions governing the safety of the products in question, a product shall be deemed safe when it conforms to the specific rules of national law of the Member State in whose territory the product is in circulation, such rules being drawn up in conformity with the Treaty, and in particular Articles 30 and 36 thereof, and laying down the health and safety requirements which the product must satisfy in order to be marketed.

2. In the absence of specific rules as referred to in paragraph 1, the conformity of a product to the general safety requirement shall be assessed having regard to voluntary national standards giving effect to a European standard or, where they exist, to Community technical specifications or, failing these, to standards drawn up in the Member State in which the product is in circulation, or to the codes of good practice in respect of health and safety in the sector concerned or to the state of the art and technology and to the safety which consumers may reasonably expect.

1. Where there are no specific Community provisions governing the safety of the products in question, a product shall be deemed safe when it conforms to the specific rules of national law of the Member State in whose territory the product is in circulation, such rules being drawn up in conformity with the Treaty, and in particular Articles 30 and 36 thereof, and laying down the health and safety requirements which the product must satisfy in order to be marketed.

2. Conformity of a product with the provisions mentioned in paragraph 1 hereof or Article 2 (b) shall not bar the competent authorities of the Member States from taking appropriate measures to impose restrictions on its being placed on the market or to require its withdrawal from the market where there is evidence that, despite such conformity it is dangerous to the health and safety of consumers.

3. Conformity of a product with the provisions mentioned in paragraphs 1 or 2 shall not bar the competent authorities of the Member States from taking appropriate measures to impose restrictions on its being placed on the market or to require its withdrawal from the market where there is evidence that, despite such conformity, it is dangerous to the health and safety of consumers.

Articles 5 to 14
unchanged

Article 15

Every two years the Commission shall submit a report on the implementation of this Directive to the European Parliament and the Council.

Every two years from the date of adoption the Commission shall submit a report on the implementation of this Directive to the European Parliament and the Council.

Articles 16 to 19

Unchanged

ANNEX - DETAILED PROCEDURES FOR THE APPLICATION
OF THE COMMUNITY SYSTEM FOR THE RAPID EXCHANGE OF INFORMATION
PROVIDED FOR IN ARTICLE 8 OF COUNCIL DIRECTIVE .../.../EEC
ON GENERAL PRODUCT SAFETY

Paragraphs one to thirteen
unchanged.

Annex, paragraph 14

14. At present there are two networks of contact points : the food products network and the non-food products network. The list of contact points and officials responsible for the networks with telephone, telex and fax numbers and addresses is confidential and distributed to the members of the network only. This list enables contact to be established with the Commission and between Member States in order to facilitate clarification of points of detail. When such contacts between Member States give rise to new information of general interest, the Member State which initiated the bilateral contact shall inform the Commission. Only information received or confirmed through contact points in Member States may be considered as received through the Rapid Exchange of Information procedure.

14. At present there are two networks of contact points : the food products network and the non-food products network. The list of contact points and officials responsible for the networks with telephone, telex and fax numbers and addresses is confidential and distributed to the members of the network only. This list enables contact to be established with the Commission and between Member States in order to facilitate clarification of points of detail. When such contacts between Member States give rise to new information of general interest, the Member State which initiated the bilateral contact shall inform the Commission. Only information received or confirmed through contact points in Member States may be considered as received through the Rapid Exchange of Information procedure. These arrangements shall be subject to an annual review by the Commission of the effectiveness of the network, the need for improvements, and developments in communication technology between enforcement authorities.

Amendments of the European Parliament Rejected by the Commission

Amendment No. 1

Article 1 (2), second paragraph

In particular, where the essential requirements contained in a Community law cover all the aspects of safety of the products involved, the provisions of Articles 2 to 4 of this Directive shall not, in any event, apply to those products.

Amendment No. 3

Article 4 (1)

1. Where there are no specific Community provisions governing the safety of the products in question, a product shall be deemed safe when it conforms to the specific rules which cover all safety aspects of national law of the Member State in whose territory the product is in circulation, such rules being drawn up in conformity with the Treaty, and in particular Articles 30 and 36 thereof, and laying down the health and safety requirements which the product must satisfy in order to be marketed.

Amendment No. 5

Article 6 (1) (i) (new)

- (i) Member States shall prohibit the export to countries outside the Community of unsafe products which have been withdrawn or banned from sale in the Community market.