

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 725 final

Brussels, 6th December 1979

PROPOSAL FOR COUNCIL DECISION
INTRODUCING A COMMUNITY SYSTEM FOR THE RAPID
EXCHANGE OF INFORMATION ON DANGERS
ARISING FROM THE USE OF CONSUMER PRODUCTS

(presented by the Commission to the Council)

COM(79) 725 final

EXPLANATORY MEMORANDUM

I. Aim of the proposal

- I.1. The preliminary programme of the European Economic Community for a consumer protection and information policy (Resolution of 14 April 1975 ; O.J. No C 92/1 of 25 April 1975) states that one of the objectives of Community policy is effective protection against hazards to consumer health and safety.
- I.2. In recent years it has emerged that consumer products could endanger the health and safety of users in a way that requires the adoption by a Member State of appropriate measures as a matter of urgency.
- I.3. If such products are marketed in one or more other Member States of the Community, provision should be made for informing the other Member States and the Commission promptly of such measures so that they in their turn can rapidly take the necessary decisions, and where applicable, the Commission can adopt the appropriate measures subject to the rules of the common market.

1.4. The proposal aims to set up a system for the rapid exchange of information on this type of hazard ; by means of such a system, and through the institution of some simple administrative machinery which could easily be integrated into existing structures, any Member State, noting an acute and immediate danger arising from the use of a given product, marketed in one or more other Member States of the Community, would immediately inform the other Member States and the Commission. Such action would enable the necessary measures to be taken promptly at various appropriate levels.

1.5. Procedures for the exchange of information in the event of a danger arising are laid down in certain Community provisions : this proposal is not at all intended to duplicate these provisions but to supplement them, where necessary.

2. Information systems on dangers arising from the use of consumer products

2.1. At international level, various steps have been taken to exchange information between countries on dangers arising from the use of consumer products. Only those of the OECD and the Community are dealt with here.

2.2. In the OECD framework, a system of informal notification concerning regulations relating to the safety of consumer products and any unsuspected risks inherent therein enables Member States to exchange information on legislation adopted in the relevant area.

2.3. At the level of the European Economic Community, the Commission recently put forward a proposal for a Council Decision introducing a Community system of information on accidents in which products are involved, outside the spheres of occupational activities and road traffic (COM(78)403 final). Through the gradual accumulation of data on accidents the system would eventually lead to increased general awareness of risks and promote the development of a policy as regards products safety (Directives, standards, consumer information, etc.).

- 2.4. Neither the OECD notification system nor the information system proposed by the Commission overlap with the system for the rapid exchange of information set out in this proposal.

The OECD system, which concerns the notification of rules and regulations, is not aimed at the urgent adoption of safety measures following the detection of an acute danger for consumers. Before notification, the danger must first be recorded and analysed and a regulatory text formulated and adopted, with the result that there is a considerable time-lag between the detection of the danger and its notification. In addition, the OECD procedure does not cover rules and regulations relating to food products, pharmaceutical products and vehicles.

- 2.5. Lastly, notification in the context of the OECD system relates to a hazard specific to a class of product as a whole (for example, all clothes treated with TRIS), whereas notification under the system set out in the present proposal for a Decision may concern only one batch of a given product (for example, a batch of products damaged as a result of deficient storage or transport conditions).

- 2.6. Moreover, it should be noted that implementation of the Community system for the rapid exchange of information would in no way diminish the advantages of the OECD system ; the latter system provides a means of obtaining extremely useful information regarding the safety of products from all the OECD Member States and it would certainly be useful, when a suitable opportunity arises, to examine the conditions under which certain links could be established between the OECD and the Community systems. Lastly, consideration could be given to the communication of information to other third countries such as the developing countries or to other international organization once some experience has been acquired in operating the Community system.

- 2.7. The Community system of information on accidents proposed by the Commission in Document COM(78)403 does not in general aim at the adoption of measures as a matter of urgency ; as conceived in the proposal, information compiled by the Member States on accidents is

collected by the Member States and is periodically forwarded in batches to the Commission. The statistical analysis of this data has little value until a great many cases have been recorded, which takes a certain amount of time.

3. Community legislation and its links with the proposed system

3.1. Although the Community has issued an appreciable number of Directives relating to a broad range of consumer products, there are still many that have not yet been covered by any form of Community legislation. The latter would be covered by the proposed system and make it possible to exchange information on any immediate dangers that could arise.

3.2. Where a product is covered by a Community Directive, the aspects concerning its safety may be governed by various provisions, varying according to the nature of the product and, most often, by a safeguard clause. It should be noted however that such a clause frequently refers to a generic feature of the product. In many cases, however, if recourse were made to the proposed system, it would be applied to products normally in conformity with current safety standards under existing legislation, a batch of which has come into the market with a defect that escaped detection at production or distribution level and is likely to damage the user's health or safety. In such cases, the safeguard provisions in the directive would not be applicable. On the other hand notification under the proposed system would be required. Thus it is clear that notification under the safeguard clause and notification under the proposed system would not overlap but would supplement each other. It would therefore be up to the Member State concerned to form an opinion on the most appropriate method of notification without prejudice, however, to current legal provisions.

4. The Community system for the rapid exchange of information on dangers arising from the use of consumer products

4.1. The information exchange systems and existing Directives with the

exception of certain cases of products covered by regulations intended to protect health, are not intended to - and do not generally - facilitate the adoption of urgent measures to protect consumer health and safety, particularly when batches of defective products come onto the market.

4.2. It is clear, however, that dangerous situations can arise which call for the rapid adoption of measures, for example :

- the marketing of food products leading to cases of food poisoning ;
- the marketing of consumer durables (such as household appliances, motor vehicles, etc.) certain batches of which suffer from manufacturing defects which make them less safe ;
- the marketing of products containing a toxic substance, the effects of which appear in certain circumstances (e.g. decorative light fittings) ;
- the discovery by researchers in one Member State of the dangerous nature of a product hitherto regarded as harmless.

4.3. Experience has shown that dissemination of information of this type at Community level is not always satisfactory and should be improved. This is the aim of this proposal for a Council Decision introducing a system for the rapid exchange of information on dangerous products.

4.4. The system would come into effect when :

- a consumer product presents an immediate and acute danger to the public,
- the product is marketed in one or more Community countries.

Without prejudice to the specific procedures which may be applicable to certain products, subject to Community provisions, it is the Member State concerned which, within the framework of its usual administrative structures issues the notification ; the immediate and acute nature of

the danger would imply that at national level the competent authorities of the Member State would be informed thereof, and there would certainly be no need to make any radical changes in the existing organization by creating new administrative machinery.

When the Member State decides to notify, it should be done forthwith while providing maximum information on the product concerned and the nature of the danger. Although it is desirable that the system operate in as open a manner as possible, it is accepted that in certain duly substantiated cases and with the object of improving the quality of the information exchange, the Member State which initiates a notification may indicate that the content of the information forwarded must be kept confidential. Then, when it appears beyond doubt that the distribution of the defective product covers only a few Member States, the notification can be limited to these Member States and to the Commission.

4.5. Through this system, the Member States and the Commission, if rapidly informed of the appearance on the market of products presenting an immediate and acute danger for consumers, will be in a position to take effective action at national and Community level for example and depending on the case :

- by, if appropriate, rapidly giving the public objective information on the nature of the product in question and the risks involved ;
- by adopting appropriate measures with respect to the production and sale of the product (e.g. withdrawal from the market, recall of the product, export control, etc.) ;
- by rapidly establishing concertation on measures that could be taken at Community level ;
- by introducing where necessary, appropriate measures (legislation, standards, etc.) to obviate similar risks.

PROPOSAL for COUNCIL DECISION

introducing a Community system for the rapid exchange
of information on dangers arising from the use of
consumer products

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal of the Commission.

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas, pursuant to the preliminary programme of the European Community
for a consumer protection and information policy ⁽¹⁾, products offered to
consumers must be such that when used in normal and foreseeable conditions
they present no risk to health and safety ; whereas, where such a danger
exists, suitable measures should be introduced for informing consumers
thereof, improving the conditions of use of the products, or withdrawing
them from the market by quick and simple procedures,

Whereas, in cases where it is noted that consumer products marketed in
several Member States of the Community may endanger the health and safety
of users in such a way that the rapid implementation of appropriate measures
is called for, means should exist for the rapid exchange at Community level
of information concerning such products and to this end an organized system
should be established ;

(1) O.J. No C 92 of 25.4.1975, p. 1

Whereas an information system of this type would appear necessary to achieve one of the Community's objectives as regards the protection and information of consumers, and whereas the Treaty makes no provisions for such powers;

Whereas when certain products are subject to specific Community provisions, this exchange of information must be carried out within the framework of the application of such provisions;

Whereas there is a very wide variety of consumer goods and of uses to which they can be put, both privately or communally; whereas only a non-exhaustive list of the product categories concerned can be given; whereas it is necessary to exclude their use for professional purposes which, moreover, does not really meet the objects of the preliminary programme for a consumer protection and information policy.

HAS ADOPTED THIS DECISION :

Article 1

- Any Member State noting that on its territory a consumer product or a batch of this product, used in normal and foreseeable conditions, marketed in one or more Member States of the Community, presents an immediate and acute risk to the health or safety of users shall immediately inform the other Member States likely to be affected, as well as the Commission, without prejudice to Community provisions relating to specific products.
- To facilitate the adoption of a decision by the other Member States and, if applicable, the adoption of appropriate measures by the Commission, the information forwarded shall contain all relevant data concerning the type of product involved, its characteristics, the nature and gravity of the risks noted and details of the measures taken or to be taken by the Member State concerned.
- At the request of the Member State concerned, the content of the information notified may be treated as confidential.

Article 2

For the purposes of this decision, consumer products means all articles such as :

- food products for human consumption ;
- household appliances, including those for "do-it-yourself", gardening, games or sports ;
- pharmaceutical products, cosmetics, chemicals, textiles and toys ;
- motor vehicles, bicycles, motor cycles or other machines used for transport.

However all products intended for professional use are excluded from the field of application of this Decision.

Article 3

Member States shall notify to the Commission without delay the measures they have taken or those which they intend to take following receipt of the information referred to in Article 1.

Article 4

Each Member State shall designate one or more national authorities to forward or receive the information referred to in Articles 1 and 3.

Article 5

The Member States shall put into effect the necessary measures to comply with this Decision within six months from the date of its notification and shall inform the Commission thereof without delay.

Article 6

This Decision is addressed to the Member States.