COUNCIL DIRECTIVE 92/59/EEC

of 29 June 1992

on general product safetey

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is important to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas some Member States have adopted horizontal legislation on product safety, imposing, in particular, a general obligation on economic operators to market only safe products; whereas those legislations differ in the level of protection afforded to persons; whereas such disparities and the absence of horizontal legislation in other Member States are liable to create barriers to trade and distortions of competition within the internal market;

Whereas it is very difficult to adopt Community legislation for every product which exists or may be developed; whereas there is a need for a broadly-based, legislative framework of a horizontal nature to deal with those products, and also to cover lacunae in existing or forthcoming specific legislation, in particular with a view to ensuring a high level of protection of safety and health of persons, as required by Article 100 a (3) of the Treaty;

Whereas it is therefore necessary to establish on a Community level a general safety requirement for any product placed on the market that is intended for consumers or likely to be used by consumers; whereas certain second-hand goods should nevertheless be excluded by their nature;

Whereas production equipment, capital goods and other products used exclusively in the context of a trade or business are not covered by this Directive;

Whereas, in the absence of more specific safety provisions, within the framework of Community regulations, covering the products concerned, the provisions of this Directive are to apply;

Whereas when there are specific rules of Cummunity law, of the total harmonization type, and in particular rules adopted on the basis of the new approach, which lay down obligations regarding product safety, further obligations should not be imposed on economic operators as regards the placing on the market of products covered by such rules;

Whereas, when the provisions of specific Community regulations cover only certain aspects of safety or categories of risks in respect of the product concerned, the obligations of economic operators in respect of such aspects are determined solely by those provisions;

Whereas it is appropriate to supplement the duty to observe the general safety requirement by an obligation on economic operators to supply consumers with relevant information and adopt measures commensurate with the characteristics of the products, enabling them to be informed of the risks that these products might present;

Whereas in the absence of specific regulations, criteria should be defined whereby product safety can be assessed;

Whereas Member States must establish authorities responsible for monitoring product safety and with powers to take the appropriate measures;

Whereas it is necessary in particular for the appropriate measures to include the power for Member States to organize, immediately and efficiently, the withdrawal of dangerous products already placed on the market;

Whereas it is necessary for the preservation of the unity of the market to inform the Commission of any measure restricting the placing on the market of a product or requiring its withdrawal from the market except for those relating to an event which is local in effect and in any case

(1) OJ No C 156, 27. 6. 1990, p. 8.
(2) OJ No C 96, 17. 4. 1990, p. 283 and Decision of 11 June 1992 (not yet published in the Official Journal).
(3) OJ No C 75, 26. 3. 1990, p. 1.

limited to the territory of the Member State concerned; whereas such measures can be taken only in compliance with the provisions of the Treaty, and in particular Articles 30 to 36;

Whereas this Directive applies without prejudice to the notification procedures in Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (1) and in Commission Decision 88/383/EEC of 24 February 1988 providing for the improvement of information on safety, hygiene and health at work (2);

Whereas effective supervision of product safety requires the setting-up at national and Community levels of a system of rapid exchange of information in emergency situations in respect of the safety of a product and whereas the procedure laid down by Council Decision 89/45/EEC of 21 December 1988 on a Community system for the rapid exchange of information on dangers arising from the use of consumer products (3) should therefore be incorporated into this Directive and the above Decision should be repealed; whereas it is also advisable for this Directive to take over the detailed procedures adopted under the above Decision and to give the Commission, assisted by a committee, power to adapt them;

Whereas, moreover, equivalent notification procedures already exist for pharmaceuticals, which come under Directives 75/319/EEC (4) and 81/851/EEC (5), concerning animal diseases referred to in Directive 82/894/EEC (6), for products of animal origin covered by Directive 89/662/EEC (7), and in the form of the system for the rapid exchange of information in radiological emergencies under Decision 87/600/Euratom (8);

Whereas it is primarily for Member States, in compliance with the Treaty and in particular with Articles 30 to 36 thereof, to take appropriate measures with regard to dangerous products located within their territory;

Whereas in such a situation the decision taken on a particular product could differ from one Member State to another; whereas such a difference may entail unacceptable disparities in consumer protection and constitute a barrier to intra-Community trade;

Whereas it may be necessary to cope with serious product-safety problems which affect or could affect, in the immediate future, all or a large part of the Community and which, in view of the nature of the safety problem posed by the product cannot be dealt with effectively in a manner commensurate with the urgency of the problem under the procedures laid down in the specific rules of Community law applicable to the products or category of products in question;

Whereas it is therefore necessary to provide for an adequate mechanism allowing, in the last resort, for the adoption of measures applicable throughout the Community, in the form of a decision addressed to the Member States, in order to cope with emergency situations as mentioned above; whereas such a decision is not of direct application to economic operators and must be incorporated into a national instrument; whereas measures adopted under such a procedure can be no more than interim measures that have to be taken by the Commission assisted by a committee of representatives of the Member States; whereas, for reasons of cooperation with the Member States, it is appropriate to provide for a regulatory committee according to procedure III (b) of Decision 87/373/EEC (9);

Whereas this Directive does not affect victims' rights within the meaning of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (10);

Whereas it is necessary that Member States provide for appropriate means of redress before the competent courts in respect of measures taken by the competent authorities which restrict the placing on the market of a product or require its withdrawal;

Whereas it is appropriate to consider, in the light of experience, possible adaptation of this Directive, particularly as regards extension of its scope and provisions on emergency situations and intervention at Community level;

Whereas, in addition, the adoption of measures concerning imported products with a view to preventing risks to the safety and health of persons must comply with the Community's international obligations,

(1) OJ No L 109, 26. 4. 1983, p. 8
(2) OJ No L 183, 14. 7. 1988, p. 34.
(3) OJ No L 17, 21. 1. 1989, p. 51.
(4) OJ No L 147, 9. 6. 1975, p. 13.
(5) OJ No L 317, 6. 11. 1981, p. 1.
(6) OJ No L 378, 31. 12. 1982, p. 58.
(7) OJ No L 395, 30. 12. 1989, p. 13.
(8) OJ No L 371, 30. 12. 1987, p. 76.
(9) OJ No L 197, 18. 7. 1987, p. 33.
(10) OJ No L 210, 7. 8. 1985, p. 29.

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Objective — Scope — Definitions

Article 1

1. The purpose of the provisions of this Directive is to ensure that products placed on the market are safe.

2. The provisions of this Directive shall apply in so far as there are no specific provisions in rules of Community law governing the safety of the products concerned.

In particular, where specific rules of Community law contain provisions imposing safety requirements on the products which they govern, the provisions of Articles 2 to 4 of this Directive shall not, in any event, apply to those products.

Where specific rules of Community law contain provisions governing only certain aspects of product safety or categories of risks for the products concerned, those are the provisions which shall apply to the products concerned with regard to the relevant safety aspects or risks.

Article 2

For the purposes of this Directive:

(a) *product* shall mean any product intended for consumers or likely to be used by consumers, supplied whether for consideration or not in the course of a commercial activity and whether new, used or reconditioned.

However, this Directive shall not apply to second-hand products supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier clearly informs the person to whom he supplies the product to that effect;

(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 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,

— 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.

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 defintion of 'safe product' according to point (b) hereof;

(d) *producer* shall mean:

— the manufacturer of the product, when he is established in the Community, and any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other dinstinctive mark, or the person who reconditions the product,

— the manufacturer's representative, when the manufacturer is not established in the Community or, if there is no representative established in the Community, the importer of the product,

— other professionals in the supply chain, insofar as their activities may affect the safety properties of a product placed on the market.

(e) *distributor* shall mean any professional in the supply chain whose activity does not affect the safety properties of a product.

TITLE II

General safety requirement

Article 3

1. Producers shall be obliged to place only safe products on the market.

2. Within the limits of their respective activities, producers shall:

— provide consumers with the relevant information to enable them to assess the risks inherent in a product

throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and to take precautions against those risks.

Provision of such warnings does not, however, exempt any person from compliance with the other requirements laid down in this Directive,

— adopt measures commensurate with the characteristics of the products which they supply, to enable them to be informed of risks which these products might present and to take appropriate action including, if necessary, withdrawing the product in question from the market to avoid these risks.

The above measures shall for example include, whenever appropriate, marking of the products or product batches in such a way that they can be identified, sample testing of marketed products, investigating complaints made and keeping distributors informed of such monitoring.

3. Distributors shall be required to act with due care in order to help to ensure compliance with the general safety requirement, in particular by not supplying products which they know or should have presumed, on the basis of the information in their possession and as professionals, do not comply with this requirement. In particular, within the limits of their respective activities, they shall participate in monitoring the safety of products placed on the market, especially by passing on information on product risks and cooperating in the action taken to avoid these risks.

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.

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.

TITLE III

Obligations and powers of the Member States

Article 5

Member States shall adopt the necessary laws, regulations and administrative provisions to make producers and distributors comply with their obligations under this Directive in such a way that products placed on the market are safe.

In particular, Member States shall establish or nominate authorities to monitor the compliance of products with the obligation to place only safe products on the market and arrange for such authorities to have the necessary powers to take the appropriate measures incumbent upon them under this Directive, including the possibility of imposing suitable penalties in the event of failure to comply with the obligations deriving from this Directive. They shall notify the Commission of the said authorities; the Commission shall pass on the information to the other Member States.

Article 6

1. For the purposes of Article 5, Member States shall have the necessary powers, acting in accordance with the degree or risk and in conformity with the Treaty, and in particular Articles 30 and 36 thereof, to adopt appropriate measures with a view, *inter alia,* to:

(a) organizing appropriate checks on the safety properties of products, even after their being placed on the market as being safe, on an adequate scale, up to the final stage of use or consumption;

(b) requiring all necessary information from the parties concerned;

(c) taking samples of a product or a product line and subjecting them to safety checks;

(d) subjecting product marketing to prior conditions designed to ensure product safety and requiring that