COUNCIL DIRECTIVE

of 25 June 1987

on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers

(87/357/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas in serveral Member States legal provisions or regulations are in force concerning certain products which, appearing to be other than they are, endanger the safety or health of consumers; whereas, however, these provisions differ in content, scope and field of application; whereas, in particular, these provisions concern in certain Member States all products which resemble foodstuffs while not being such whilst in other Member States they concern products likely to be confused with foodstuffs, especially confectionery;

Whereas this situation creates significant barriers to the free movement of goods and unequal competitive conditions within the Community without ensuring effective protection for consumers, especially children;

Whereas these obstacles to the establishment and operation of the common market must be eliminated and adequate protection ensured for consumers in accordance with the Council resolutions of 14 April 1975 and 19 May 1981 respectively on the first (3) and second programmes (4) of the European Economic Community for a consumer protection and information policy and the Council resolution of 23 June 1986 on a new impetus for consumer protection policy (5);

Whereas the health and safety of consumers should enjoy an equivalent level of protection in the different Member States;

Whereas to that end it is necessary to prohibit the marketing, import and both the production and the export of products which, since they can be confused with foodstuffs, jeopardize the health or safety of consumers;

Whereas provision should be made for controls to be carried out by the competent authorities of the Member States;

Whereas, in accordance with the principles embodied in the Council resolutions on consumer protection, dangerous products must be withdrawn from the market;

Whereas provision should be made for the possibility of discussing and examining the measures taken by the Member States to ban such products or withdraw them from the market, so as to ensure uniform application throughout the Community of the principles embodied in this Directive; whereas such examination and discussion can be conducted within the Advisory Committee set up under Decision 84/133/EEC (6);

Whereas, given the possible need to widen the scope to cover dangerous imitations of foodstuffs and to evaluate and review the procedures laid down in this Directive, provision should be made for the Council, two years after the implementation of the Directive and acting on a Commission report on experience gained, to decide on the possible adjustment of the provisions of the Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive applies to the products, defined in paragraph 2 below, which, appearing to be other than they are, endanger the health or safety of consumers.

2. The products referred to in paragraph 1 above are those which, although not foodstuffs, possess a form, odour, colour, appearance, packaging, labelling, volume or size, such that it is likely that consumers, especially children, will confuse them with foodstuffs and in consequence place them in their mouths, or suck or ingest them, which might be dangerous and cause, for example, suffocation, poisoning, or the perforation or obstruction of the digestive tract.

(1) OJ No C 156, 15. 6. 1987.
(2) OJ No C 150, 9. 6. 1987, p. 1.
(3) OJ No C 92, 25. 4. 1975, p. 1.
(4) OJ No C 133, 3. 6. 1981, p. 1.
(5) OJ No C 167, 5. 7. 1986, p. 1.
(6) OJ No L 70, 13. 3. 1984, p. 16.