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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
C(2005)

Draft

COMMISSION DECISION

of [...]

requiring Member States to take measures to ensure that only disposable lighters which are child-resistant are put on the market

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety¹, and in particular Article 13 thereof,

Whereas:

- (1) Pursuant to Directive 2001/95, producers are obliged to place only safe products on the market;
- (2) According to Article 13 of Directive 2001/95/EC, if the Commission becomes aware that certain products present a serious risk to the health and safety of consumers, it may, under certain substantive and procedural conditions, adopt a decision requiring Member States to take temporary measures aimed in particular to restrict or make subject to particular conditions the placing on the market of products, to ban their marketing and introduce the accompanying measures required to ensure the ban is complied with, or to require their withdrawal or recall from the market;
- (3) Such a decision is contingent upon the facts that Member States differ significantly on the approach adopted or to be adopted to deal with the risk; that the risk cannot, in view of the nature of the safety issue, be dealt with in a manner compatible with the degree of urgency of the case under other procedures laid down by the specific Community legislation applicable to the products concerned; and that the risk can be eliminated effectively only by adopting appropriate interim measures applicable at Community level, in order to ensure a consistent and high level of protection of the health and safety of consumers and the proper functioning of the internal market;
- (4) Lighters are inherently hazardous products since they produce a flame or heat and since they contain flammable liquid or gas. In particular, disposable lighters pose a serious risk involving children as under normal and reasonably foreseeable conditions of use they involve a significant probability of being used or misused by children playing with them, which may result in injuries and fires or even deaths. Taking

¹ OJ L 11, 15.1.2002, p. 4.

account of the nature of the products in question, the very high number of items placed on the market and the foreseeable conditions of use, the seriousness of the risk posed by disposable lighters to child safety should be assessed in relation to their possible use in play by children;

- (5) The serious risks posed by disposable lighters are also confirmed by the available data on fires in the EU related to children playing with lighters. A report published by the United Kingdom Department of Trade and Industry in February 1997 entitled “European research – accidents caused by children under 5 playing with cigarette lighters and matches” estimated a total of 1220 fires, 260 injuries and 19 deaths per year in the EU for 1997. A report produced in 2000 by the Austrian “Sicher Leben” Institute on European Home and Leisure Accident Surveillance System (EHLASS) data and product safety, estimates that the subgroup which covers lighters, namely category G “Domestic appliances and equipment”, was responsible for 2% of all product-related accidents in Europe in 1998, i.e. approximately 10 000 accidents per year. From such data the annual number of fires related to children playing with lighters can be estimated to more than 2 000, resulting in at least 20 deaths, hundreds of injuries and substantial damage to property;
- (6) The overwhelming proportion of lighters sold in the EU are disposable. Such lighters are used in large numbers and are likely to be accessible to children even though they are not intended for them. In the absence of technical devices to prevent the operation of such lighters by children, misuse of disposable lighters by a child when playing may result in a fire involving loss of life, serious injuries and significant damage to property. Reports published by the US Consumer Product Safety Commission show that more than 95% of the lighters involved in accidents were disposable lighters and only less than 5% were non-disposable;
- (7) It has emerged from prior consultation of the Member States in the Committee established by Article 15 of Directive 2001/95/EC that a consensus exists among Member States on the seriousness of the risk created by disposable lighters. However, the Member States could not agree on the approach to be adopted to establish and enforce a child resistance requirement for disposable lighters;
- (8) There are two technical standards for lighters: the European and International Standard EN ISO 9994:2002 “Lighters - Safety Specifications”, which relates to the quality, reliability and safety of the lighters combined with appropriate manufacturing test procedures, but which does not include child resistance specifications to prevent the risk of misuse by children playing with lighters, and the European standard EN 13869:2002 “Lighters - Child-resistance for lighters - Safety requirements and test methods”, which relates to the prevention of the risk of child misuse;
- (9) The references of EN ISO 9994:2002 were published by the Commission in the Official Journal² in accordance with the procedure laid down in Article 4 of Directive 2001/95/EC giving presumption of conformity with the general safety requirement of Directive 2001/95/EC for the risks covered by this standard, which do not include the specific risk to child safety in case of child misuse. In order to deal with the risk of child misuse, some Member States consider that the Commission should also publish

² OJ C 100, 24.4.2004, p. 20.

in the OJ the references of EN 13869:2002. Other Member States consider that EN 13869:2002 should first be substantially revised;

- (10) In the absence of Community measures some Member States are expected to adopt different national measures on child safety of lighters. The introduction of divergent national measures on child resistance of disposable lighters would inevitably result in an uneven level of protection and intra-Community barriers to trade in disposable lighters;
- (11) The US Consumer Product Safety Commission's 1993 proposal for a US Regulation for lighters estimated that, per year, disposable lighters caused 97% of the 5 900 fires, 1 150 injuries and 170 deaths in the United States. The US child resistance requirement was introduced in 1994. In 2002 a US study on the effectiveness of the US requirement reported a 40% reduction in fires and a 50% reduction in injuries and deaths. The experience of countries where the child resistance requirement exists shows that it reduces substantially the number of deaths and injuries and the amount of damage due to misuse of lighters by children;
- (12) Other categories of products such as dangerous chemical substances for domestic use are provided with child-proof fastenings on their packaging. These technical devices have demonstrably improved child safety by preventing access to the dangerous contents of the packaging and consequently reducing accidents;
- (13) In order to prevent the risk of misuse of disposable lighters by children and to ensure a consistently high level of consumer health and safety protection throughout the EU, it is therefore necessary to adopt a temporary decision in order to rapidly make the placing on the market of such lighters subject to the condition that they be designed and manufactured in such a way as to be child-resistant. This temporary decision is intended to prevent further deaths and damage pending a permanent solution which should be based on an international consensus and address child safety issues for all different types of lighters;
- (14) There is no specific Community legislation applicable to lighters and the risk cannot be dealt with effectively under other procedures laid down in specific rules of Community law, taking into account the nature of the safety problem posed by the product, and in a manner compatible with the degree of urgency of the case so as to prevent further deaths and injuries as soon as procedurally and technically possible. Therefore, it is necessary to resort to the mechanism provided for in Article 13 of Directive 2001/95/EC;
- (15) In order to facilitate international trade in these products, the scope of this decision should be aligned with the current practices in the non-EU countries where child resistance requirements have applied to disposable lighters for several years;
- (16) Available data show that disposable lighters are more likely to be involved in accidents than non-disposable lighters, which include higher-priced refillable lighters and luxury lighters. This is consistent with the fact that disposable lighters are sold in much larger numbers than non-disposable ones, often in multi-packs, and that consumers are likely to treat them as throwaway items and to leave them in household locations accessible to young children. Moreover, some luxury lighters have ignition mechanisms and caps which make them less easily ignited by young children;

- (17) The design and technology for producing child-resistant disposable lighters is well developed and proven, and already widely used by many producers. On the other hand, further design and technical development is needed in order to adapt non-disposable lighters to child resistance requirements. Therefore, in light of both the lower probability of accident associated with non-disposable lighters and the need for further technical development to be able to produce child-resistant non-disposable lighters, it is proportionate to apply this temporary decision, which is of a rapid intervention character, to disposable lighters only, while monitoring the safety of non-disposable lighters and developing child resistance design and technology for them, with a view to appropriate measures for all lighters in the longer term, based on international consensus;
- (18) Low-cost lighters intended to be refilled should be considered to be like disposable lighters not intended to be refilled, because they can be expected to be similarly perceived and treated by consumers. They are likely to be accessible to children and pose a risk comparable to that of lighters not intended to be refilled. Therefore, in order to achieve its protection objectives and to ensure that like products posing the same risks are treated in the same way, this decision should also apply to such low-cost lighters. Refillable lighters with an ex-factory unit price below 2 Euro will be considered to be ‘low-cost lighters’. This threshold is equivalent to the price threshold adopted in some non-EU countries to define the scope for the applicability of child resistance requirements;
- (19) Disposable lighters that resemble by any means to another object commonly recognised as appealing to or intended for use by children, or has entertaining audio, lighting or animated effects, usually called “novelty lighters” should also be covered by the child resistance requirement of this Decision because of the risk of misuse by children;
- (20) In order to facilitate the application by producers of the child resistance requirement for disposable lighters, it is appropriate to make reference to the relevant specifications of the European standard EN 13869:2002, so that lighters complying with the corresponding specifications of the national standards which transpose that European standard are presumed to conform to the child resistance requirement of this decision. With the same aim, disposable lighters complying with other international standards or national rules or standards or other technical specifications ensuring an equivalent level of child resistance will be also be presumed to conform to the child resistance requirement of this decision;
- (21) The consistent and effective enforcement of the child resistance requirement established by this decision requires the submission by the producer to the competent authorities on their request of test reports delivered by test bodies accredited by the accreditation bodies which are members of international accreditation organizations or otherwise recognised by the authorities to that end or delivered by testing bodies recognised for executing this type of test by the authorities of the countries where equivalent safety requirements are applied;
- (22) As established in Article 5(2) of Directive 2001/95/EC distributors including retailers should help, in proportion to their respective responsibilities, in ensuring compliance of the disposable lighters that they supply with the child resistance requirement established by this decision. In particular they should cooperate with the competent

authorities by providing them on request with the documentation needed to trace the producer of the disposable lighter;

- (23) The shortest possible transition periods should be allowed for the application by producers of the measures established by this decision, consistent with the need to take into account their technical and economic constraints. Transitional periods are also required by the Member States to ensure that the measures are efficiently applied given the high volume of lighters marketed annually in the EU and the multiple distribution channels used for such marketing;
- (24) The Commission will monitor and assess the manner in which this interim measure is applied and the results obtained, in particular in relation to the definition of its scope and to the system of proof and verification of conformity, as well as the need to adapt or modify the threshold of 2 Euro and will decide whether adjustments are required;
- (25) Article 13(3) of Directive 2001/95/EC prohibits the export from the Community of the dangerous products which have been the subject of a decision. A transition period should also be allowed for the application of this ban;
- (26) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 15 of Directive 2001/95/EC,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of this Decision

- 'lighter' shall mean a manually operated flame-producing device employing a petrochemical derivative as fuel, normally used for deliberately igniting in particular cigarettes, cigars and pipes, and which may foreseeably be used to ignite materials such as paper, wicks, candles and lanterns;

- 'disposable lighters' shall mean all lighters with an integral supply of fuel and not intended to be refuelled regardless of their price, and lighters intended to be refuelled, either by transferring fuel from an external container or by inserting a new prefilled fuel reservoir, with a customs valuation or ex-factory unit price of less than 2 Euro;

- 'child-resistant lighter' shall mean a disposable lighter designed and manufactured in such a way that it cannot, under normal or reasonably foreseeable conditions of use, be operated by children younger than 51 months of age because of the force needed to operate it or because of its design or protection of its ignition mechanism or the complexity or sequence of operations needed for the ignition. This definition includes in particular disposable lighters which conform to national standards transposing European Standard EN 13869:2002, as far as the specifications other than those in paragraphs 3.1, 3.2, 3.4, 4.2, 5.2.3 of EN 13869:2002 are concerned, or to other international standards or national rules or standards or other technical specifications ensuring an equivalent level of child resistance;

- 'model of disposable lighter' shall mean lighters from the same producer that do not differ in design or other characteristics in any manner that may affect child resistance;

- 'child resistance test' shall mean a systematic test of child resistance of a given model of disposable lighters, on a sample of the disposable lighters considered, in particular tests made in accordance with EN 13869:2002 or with the testing requirements of other international standards or national rules or standards or other technical specifications ensuring an equivalent level of child resistance, with written records of the procedure used;

- 'producer' shall have the meaning as defined in Article 2(e) of Directive 2001/95/EC.

Article 2

Member States shall ensure that only disposable lighters which are child-resistant are placed on the market as of [six months from the date of notification of this Decision] and supplied to consumers as of [ten months from the date of notification of this Decision].

The prohibition referred to in Article 13(3) of Directive 2001/95/EC shall apply as of [ten months from the date of notification of this Decision].

Article 3

- (1) As of [six months from the date of notification of this Decision], the Member States shall require producers, as a condition for placing disposable lighters on the market:
 - (a) to keep and provide on request to the competent authorities designated by them to that aim a test report for each model of disposable lighters with samples of the lighters of the tested model, certifying the child resistance of the model of disposable lighters placed on the market;
 - (b) to certify to the competent authorities mentioned above that all disposable lighters in each of the batches placed on the market conform to the model tested;
 - (c) to maintain at the disposal of the competent authorities the production records necessary to show that the production of the disposable lighters conforms to the model tested;
 - (d) to keep and provide on request a new test report to the competent authorities if any changes are made to a model of disposable lighter that may adversely affect the ability of the model to meet the requirements of this Decision before the changed disposable lighters are placed on the market.
- (2) As of [six months from the date of notification of this Decision] the Member States shall require distributors, including retailers, to keep and provide to the authorities on request the documentation necessary for tracing the producer of the disposable lighters that they supply.

Article 4

Test reports referred to in Article 3 shall be released by either:

- (1) testing bodies accredited, as fulfilling the requirements established by EN ISO/IEC 17025:2000 “General requirements for the competence of testing and calibration laboratories” or by other international standards or national rules or standards or other technical specifications ensuring an equivalent level of technical competence, by a member of the International Laboratory Accreditation Cooperation (ILAC) for executing child resistance tests, or otherwise recognised to that end by the competent authority of a Member State; or
- (2) testing bodies recognised for executing child resistance tests by the competent authority of one of the countries where child resistance requirements equivalent to those established by this Decision are applied to disposable lighters.

For information purposes, a list of accredited or recognised bodies as well as of the international standards or national rules or standards or other technical specifications ensuring an equivalent level of child resistance will be established and updated by the Commission.

Test reports referred to in Article 3 shall be accompanied by references of the accreditation or recognition of the testing body.

Article 5

Member States shall take the necessary measures to comply with this Decision [within two months from the date of notification of this Decision] and publish those measures. They shall forthwith inform the Commission thereof.

Article 6

This Decision shall be applicable until [one year from the date of notification of this Decision].

On the basis of a the experience acquired and progress made in view of a permanent measure, the Commission shall decide whether to prolong for additional periods the validity of this Decision, and whether the Decision, in particular the definition of disposable lighters in Article 1 and the provisions of Articles 3 and 4, should be amended.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, [...]

For the Commission
Markos Kyprianou
Member of the Commission