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COMMISSION DECISION

of 11 May 2006

requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters

(notified under documents number C(2006) 1887 and number C(2006) 1887 COR)

(Text with EEA relevance)

(This text annuls and replaces the text published in Official Journal L 197 of 19 July 2006, p. 9)

(2006/502/EC)

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(2006/502/EC)

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 safety ([1]), 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 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 such products, to ban their marketing and introduce the accompanying measures required to ensure that 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 concerned; 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 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 products which are inherently hazardous since they produce a flame or heat and since they contain a flammable fuel. They pose a serious risk when being misused by children, which may result in fires, injuries or even deaths. Taking account of the inherently hazardous nature of lighters, the very high number of items placed on the market and the foreseeable conditions of use, the seriousness of the risk posed by lighters to children's safety should be dealt with in relation to their possible use in play by children.

(5) The serious risk posed by lighters is confirmed by the available data and information 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 five playing with cigarette lighters and matches'

([1]) OJ L 11, 15.1.2002, p. 4.

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estimated a total of about 1 200 fires, 260 injuries and 20 deaths per year in the EU for 1997. More recent information confirms that a significant number of serious accidents, including deaths, are still caused in the EU by children playing with non-resistant lighters.

(6) Legislation establishing child-resistance requirements for lighters equivalent to those set out in this Decision exist in Australia, Canada, New Zealand and the United States of America (US). Before setting up the legislation, a survey was launched in the US. The US Consumer Product Safety Commission's 1993 proposal for a Regulation for lighters estimated that, per year, lighters used by children caused more than 5 000 fires, 1 150 injuries and 170 deaths in the US.

(7) The US child-resistance requirement was introduced in 1994. In 2002 a US study on the effectiveness of the requirement reported a 60 % reduction in fires, injuries and deaths.

(8) Consultation of the Member States in the Committee established by Article 15 of Directive 2001/95/EC has established that Member States differ significantly on the approach to deal with the risk posed by non-child-resistant lighters.

(9) Two technical standards relate to the safety of lighters: the European and International Standard EN ISO 9994:2002 'Lighters — Safety Specification', which establishes specifications on quality, reliability and safety of the lighters combined with appropriate manufacturing test procedures, but which does not include child-resistance specifications, and the European standard EN 13869:2002 'Lighters — Child-resistance for lighters — Safety requirements and test methods', which establishes child-resistance specifications.

(10) The references of EN ISO 9994:2002 were published by the Commission in the *Official Journal of the European Union* [1] 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. In order to deal with child-resistance, some Member States considered that the Commission should publish in the Official Journal also the references of EN 13869:2002. However, other Member States considered that EN 13869:2002 should first be substantially revised.

(11) In the absence of Community measures on child-resistance of lighters and on the prohibition of novelty lighters some Member States may adopt divergent national measures. The introduction of such measures would inevitably result in an uneven level of protection and in intra-Community barriers to trade in lighters.

(12) There is no specific Community legislation applicable to lighters. 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 concerned, and in a manner compatible with the degree of urgency of the case. It is therefore necessary to resort to a Decision according to Article 13 of Directive 2001/95/EC.

(13) In view of the serious risk from lighters and in order to ensure a consistent high level of consumer health and safety protection throughout the EU as well as to avoid barriers to trade, a temporary Decision in accordance with Article 13 of Directive 2001/95/EC should be adopted. Such Decision should rapidly make the placing on the market of lighters subject to the condition that they be child-resistant. Such Decision should

[1] OJ C 100, 24.4.2004, p. 20.

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prevent further damages and deaths, pending a permanent solution which should be based on an international consensus.

(14) The child-resistance requirement of this Decision should cover disposable lighters, because such lighters pose a particularly high degree of risk of child misuse. A US study of 1987, 'Harwood's study', demonstrated that on average 96 % of the accidents caused by children playing with lighters were due to disposable lighters. Very few accidents involved lighters other than disposable ones, namely the so-called luxury and semi-luxury lighters which are designed, manufactured and placed on the market such as to ensure a continual expected safe use over a long period of time, and which are covered by a written guarantee and benefit from an after-sales service for replacement or repair of their parts over their life time, and which are characterised by a sophisticated design using expensive material, a luxury image and a low degree of substitutability with other lighters, and a distribution in outlets in accordance with the prestige and luxury image of the brand. These results are consistent with the fact that people are likely to pay more attention to higher value lighters intended to be used for a long time period.

(15) All lighters that resemble by any means to another object commonly recognised as appealing to or intended for use by children should be banned. This includes, but is not limited to, lighters the shape of which resembles cartoon characters, toys, guns, watches, telephones, musical instruments, vehicles, human body or parts of the human body, animals, food or beverages, or that play musical notes, or have flashing lights or moving objects or other entertaining features, usually called 'novelty lighters', which pose a high risk of misuse by children.

(16) In order to facilitate the application of the child-resistance requirement by producers of 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, lighters complying with the relevant rules of the non-EU countries where child-resistance requirements equivalent to those established by this Decision are in force should also be presumed to conform to the child-resistance requirement of this Decision.

(17) The consistent and effective enforcement of the child-resistance requirement established by this Decision requires the submission by producers to the competent authorities at their request of test reports on child-resistance delivered by testing bodies accredited by the accreditation bodies which are members of international accreditation organisations 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 safety requirements equivalent to those established by this Decision are applied. Lighter producers should provide on request without delay to the competent authorities established under Article 6 of the Directive 2001/95/EC all the documents needed. If the producer is unable to provide such documentation within the delay established by the competent authority, the lighters should be withdrawn from the market.

(18) According to Article 5(2) of Directive 2001/95/EC distributors should help to ensure compliance of the lighters 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 the documentation needed to trace the origin of the lighters.

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(19) 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 prevent further accidents while taking into account technical constraints and ensuring proportionality. Transitional periods are also required for 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. Therefore, the obligation for producers to place only child-resistant lighters on the market should apply 10 months from the date of notification of this Decision while the obligation to supply only child-resistant lighters to consumers should apply one year after the entry into force of the ban on placing on the market of such lighters. Therefore, the latter obligation will be established when revising this Decision, one year after its adoption.

(20) 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. However, taking into account the structure of the market for lighters as regards the number of producers worldwide, the volume of exports and imports and the globalisation of markets, an export ban would not improve the safety of consumers located in Third Countries which do not apply child-resistance requirements, since the exports from the EU would be replaced by non-child resistant lighters from non-EU countries. The application of article 13(3) should therefore be suspended until an international standard on child resistance is adopted. This should be without prejudice to the application of measures in third countries where child-resistance requirements are in force.

(21) 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:

1. ‘lighter’ shall mean a manually operated flame-producing device employing a 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, manufactured with an integral supply of fuel, whether intended to be refuelled or not.

   Without prejudice to the prohibition of the placing on the market of novelty lighters established in Article 2(2) of this Decision, this definition shall not apply to refillable lighters for which producers provide on request to the competent authorities the necessary documentation substantiating that the lighters are designed, manufactured and placed on the market such as to ensure a continual expected safe use over a lifetime of at least five years, subject to repair, and which fulfill in particular all of the following requirements:

   — a written guarantee from the producer of at least two years for each lighter, in accordance with Directive 1999/44/EC of the European Parliament and of the Council ([1]),

   — the practical possibility to be repaired and safely refilled over the entire lifetime, including in particular a repairable ignition mechanism,

([1]) OJ L 171, 7.7.1999, p. 12.

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— Parts that are not consumable, but are likely to wear out or fail in continual use after the guarantee period, are accessible for replacement or repair by an authorised or specialised after-sales service centre based in the European Union;

2. ‘novelty lighter’ shall mean any lighter as defined in specification 3.2 of European Standard EN 13869:2002;

3. ‘child-resistant lighter’ shall mean a 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, for instance, the force needed to operate it or because of its design or the protection of its ignition mechanism, or the complexity or sequence of operations needed for the ignition.

Shall be presumed to be child-resistant:

(a) lighters which conform to national standards transposing European Standard EN 13869:2002, as far as the specifications other than those in paragraphs 3.1, 3.4 and 5.2.3 of the Standard are concerned,

(b) lighters which conform to the relevant rules of the non-EU countries where child-resistance requirements equivalent to those established by this Decision are in force;

4. ‘model of 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;

5. ‘child-resistance test’ shall mean a systematic test of child-resistance of a given model of lighter, on a sample of the lighters considered, in particular tests made in accordance with national standards transposing European Standard EN 13869:2002, as far as the specifications other than those in paragraphs 3.1, 3.4 and 5.2.3 of the Standard are concerned, or in accordance with the testing requirements of the relevant rules of non-EU countries where child-resistance requirements equivalent to those established by this Decision are in force;

6. ‘producer’ shall have the meaning as defined in Article 2(e) of Directive 2001/95/EC;

7. ‘distributor’ shall have the meaning as defined in Article 2(f) of Directive 2001/95/EC.

Article 2

1. Member States shall ensure that only lighters which are child-resistant are placed on the market as of 10 months from the date of notification of this Decision.

2. As of the same date referred to in paragraph 1 above, Member States shall prohibit the placing on the market of novelty lighters.

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3. Member States shall ensure that only lighters which are child-resistant are supplied to consumers as of 11 March 2008.

4. Member States shall prohibit the supply of novelty lighters to consumers as of 11 March 2008.

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Article 3

1. As of 10 months from the date of notification of this Decision, Member States shall require the following from producers, as a condition for placing lighters on the market:

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(a) to keep and provide on request without delay to the competent authorities established under Article 6 of the Directive 2001/95/EC, a report of a child-resistance test for each model of lighters with samples of the lighters of the tested model, certifying the child-resistance of the model of lighters placed on the market;

(b) to attest on request to the competent authorities that all lighters in each of the batches placed on the market conform to the model tested and provide on request to the authorities the documentation on the testing and control programme supporting such an attestation;

(c) to continuously monitor conformity of the lighters produced with the technical solutions adopted to ensure child-resistance, using appropriate testing methods and to maintain at the disposal of the competent authorities the production records necessary to show that all lighters produced conform to the model tested;

(d) to keep and provide on request without delay to the competent authorities a new report of a child-resistance test if any changes are made to a model of lighter that may adversely affect the ability of the model to meet the requirements of this Decision.

2. As of 10 months from the date of notification of this Decision, Member States shall require distributors to keep and provide without delay to the competent authorities on request the documentation necessary to identify any person from whom they have been supplied with the lighters they place on the market, in order to ensure traceability of the producer of the lighters throughout the supply chain.

3. Lighters for which producers and distributors do not provide the documentation mentioned in paragraphs 1 and 2 above within the deadline fixed by the competent authorities, shall be withdrawn from the market.

Article 4

1. Reports of a child-resistance test referred to in Article 3 shall include in particular:

(a) the name, address and principal place of business of the manufacturer wherever he is located, and of the importer if the lighters are imported;

(b) a complete description of the lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistance devices, design, technical solutions and other features that make the lighter child-resistant in accordance with the definitions and requirements of this Decision. In particular this will include a detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the lighter, including the manufacturer's tolerances for each such feature;

(c) a detailed description of the tests and of the results obtained, the dates of the tests, the location where the tests have been performed, the identity of the organisation that conducted the tests and details of the qualification and competence of such organisation to conduct the tests concerned;

(d) the identification of the place where the lighters are or have been manufactured;

(e) the location where the documentation required by this Decision is kept;

(f) references of the accreditation or recognition of the testing body.

2. Reports of a child-resistance test referred to in Article 3 shall be established by either:

(a) testing bodies accredited as fulfilling the requirements established by EN ISO/IEC 17025:2005 'General requirements for the

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competence of testing and calibration laboratories', by a member of the International Laboratory Accreditation Cooperation (ILAC) for executing child-resistance tests on lighters or otherwise recognised to that end by the competent authority of a Member State;

(b) testing bodies whose reports of a child-resistance test are accepted by one of the countries where child-resistance requirements equivalent to those established by this Decision are applied.

For information purposes, a list of the bodies referred to in paragraphs (a) and (b) above will be published and updated as necessary by the Commission.

Article 5

The prohibition referred to in Article 13(3) of Directive 2001/95/EC shall not apply.

Article 6

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

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2. This Decision shall apply until 11 May 2008.

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3. On the basis of 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, whether the Decision, in particular Articles 1(1), 1(3) and 4, should be amended and whether the suspension in Article 5 should be lifted. In particular, for Article 1(3), the Commission shall decide whether other international standards or national rules or standards or other technical specifications, in particular specifications concerning alternative methods or criteria to establish child-resistance of lighters, may be recognised as being equivalent to the child-resistance requirement established by this Decision. The decisions referred to in this paragraph shall be taken in accordance with Article 15(2) of Directive 2001/95/EC.

4. Within the framework of activities referred to in Article 10 of Directive 2001/95/EC on general product safety the Commission will, in advance of the deadline for the implementation of this Decision by the Member States, establish guidelines with the aim of facilitating the practical application of the Decision.

Article 7

This Decision is addressed to the Member States.