

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(86) 499 final

Brussels, 29 September 1986

Proposal for a COUNCIL DIRECTIVE

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

(submitted to the Council by the Commission)

COM(86) 499 final

EXPLANATORY MEMORANDUM

1. An ever-increasing number of consumer products are being marketed which resemble other products and are therefore put to the wrong use, endangering the health and safety of consumers. The products in question are either imitations of foodstuffs, such as erasers which imitate sweets, cosmetic products sold in containers imitating bottles of beer, champagne or soft drinks, soaps which look like sweets, or imitations of other consumer products, such as erasers resembling toothbrushes or tubes of lipstick, alcoholic drinks sold in containers resembling electric light bulbs, etc.

The gravity of the situation has been acknowledged by representatives of consumers, manufacturers, distributors and the Member States, particularly on the Advisory Committee on the rapid exchange of information on dangers arising from the use of consumer products set up by Council Decision 84/133/EEC of 2 March 1984.

2. National measures have already been taken to prohibit or regulate some of these imitations. However, the scope of these measures varies and some Member States have as yet taken none at all pending the adoption of regulations at Community level. This situation gives rise to barriers to trade and presents serious risks to the safety of consumers, for accidents and deaths have already been reported. The existing or proposed national measures are as follows:

France: A decree has been drawn up implementing the law of 21 July 1983 on consumer safety with regard to erasers which could be confused with foodstuffs.

This draft decree prohibits the manufacture, exporting, importing, possession with a view to sale and distribution of erasers which through their appearance, form and odour resemble foodstuffs and could easily be ingested. Provision is made for the withdrawal and destruction of these erasers. The decree also provides for fines to be imposed on persons failing to comply with these provisions.

United Kingdom:

The 1985 Regulations (No. 99) on imitations of foodstuffs, which have been fully in effect since 1 August 1985, prohibit the marketing of regulated products which resemble foodstuffs,

smell like foodstuffs and which ,overall or in separate parts, are below a certain size.

Belgium: The Royal Decree of 7 August 1984 on the marketing of toys and everyday goods for children,¹ which is due to enter into force on 1 September 1986, lays down that "toys and everyday goods for children may not contain flavourings or other products, nor be sold in a form which may give the impression that they are foodstuffs". Under this Royal Decree, it is illegal to market the products referred to above.

Netherlands

A decree on toys lays down that toys which appear to be foodstuffs or beverages must conform to the provisions relating to foodstuffs and beverages , particularly as regards colourants.

Ireland: An Order of 1 December 1983 from the Ministry of Industry and Energy on non-foodstuffs resembling foodstuffs makes it illegal to manufacture and sell any non-foodstuffs for the use of children which looks, tastes or smells like sweets, fruits or other foodstuffs.

Greece: The Decision of the Minister for Health of 10 January 1984 prohibiting the free movement of erasers² prohibits the distribution, possession, sale, importing and exporting of erasers having the shape, colour or smell of foodstuffs. Provision is made for the destruction of such erasers.

Italy: The Order (Ordinanza) of the Ministry of Health of 5 July 1985³ prohibits the importing, manufacture, distribution and marketing of:

- erasers imitating foodstuffs of whatever type, shape or size they may be;
- scented erasers;

¹Moniteur belge, 8.11.1984.

²Government Gazette B' 38/25-1-1984.

³Gazzetta Ufficiale della Repubblica Italiana No 160, 9.7.1985.

- erasers resembling objects whose form (toothbrushes, cigarettes, lipstick, chewing gum, etc.) could encourage children to place them in their mouths, suck, chew or ingest them, whether wholly or in part;

-erasers whose largest dimension is less than 32 mm.

Provision is also made for withdrawing these erasers from the market.

Spain: Royal Decree 2330/85 of 6 November 1985¹ on safety standards for toys, products for children and novelties prohibits the marketing and manufacture of products which have the odour and/or form of foodstuffs or flowers.

3. The aim of this proposal for a Directive is to remedy the situation described above. It may be summarized as follows:

Article 1 - The scope is sufficiently broad to take account of the fact that the market in dangerous imitations is a constantly changing and diverse one and to cover all existing or new products which might endanger the health or safety of consumers. Guidelines are, however, set out concerning the types of products involved, their characteristics and the risks they present.

Article 2 - In addition to the ban on the marketing of the products referred to in Article 1, there is express provision for prohibiting the manufacture, importing and exporting of such products and for controls.

¹Official Gazette, 16 December 1985.

- Article 3 - The competent national authorities are required to withdraw dangerous imitations from the market.
- Article 4 - Provision is made for an information procedure and a procedure for assessment by the Commission, assisted by an Advisory Committee, of the appropriateness of the measures taken.
- Article 5 - The competent national authorities must be notified to the Commission.
- Article 6 - Provision is made for the setting up of an Advisory Committee to assist the Commission in its assessment of the appropriateness of measures taken to ban dangerous imitations and withdraw them from the market.
- Article 7 - The date by which the measures necessary to comply with the Directive must be adopted and published is

COMMISSION

Proposal for a Council Directive 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

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(Submitted by the Commission to the Council on 8 October 1986)

(86/C 272/10)

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,

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

Whereas, in several Member States, legal provisions 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 cases all products which resemble foodstuffs while not being such and in other cases 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, within the common market;

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 ⁽¹⁾ and 19 May 1981 ⁽²⁾, respectively, on the first and second programmes of the European Economic Community for a consumer protection and information

policy and the Council Resolution of 23 June 1986 ⁽³⁾ on a new impetus for consumer protection policy;

Whereas to this end the manufacture, importing, marketing and exporting of products appearing to be other than they are and thus endangering the health and safety of consumers must be governed by uniform rules applicable in all the Member States;

Whereas the health and safety of consumers cannot be made subject to differing levels of protection in the respective Member States;

Whereas, because of the diversity and mobility of the market in products which imitate other products, the field of application of this Directive must be sufficiently broad to cover all new or existing products which prejudice the health or safety of consumers; whereas guidelines regarding the types of product concerned, their characteristics and the dangers they represent may be given;

Whereas, in addition to banning the marketing of these products, it is necessary, in view of the danger they present, to provide specifically for a ban on their manufacture, import and export, and for checks 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 a procedure for examining the measures taken by the Member States to ban such products or withdraw them from the market should be set up to ensure uniform application throughout the Community of the principles embodied in this Directive; whereas to this end it is appropriate to set up an advisory committee to assist the Commission,

⁽¹⁾ OJ No C 92, 25. 4. 1975, p. 1.

⁽²⁾ OJ No C 133, 3. 6. 1981, p. 1.

⁽³⁾ OJ No C 167, 5. 7. 1986, p. 1.

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive applies to consumer products which, appearing to be other than they are, endanger the health or safety of consumers. These products are, in particular:

- (a) those which, although not being foodstuffs, possess a form, odour, colour, appearance and/or packaging and/or labelling, volume or size, in themselves or in certain of their parts, such that it is likely that certain categories of consumers, especially children, will confuse them with foodstuffs, and in consequence place them in their mouths, or suck or ingest them, and that such action may entail dangers such as suffocation, poisoning, or the perforation or obstruction of the digestive tract;
- (b) consumer products which imitate others, with the exception of the imitation foodstuffs referred to under (a), the probable erroneous utilization of which may entail mechanical, chemical or electrical dangers, or involve a risk of fire such as to endanger the health or safety of consumers.

Article 2

Member States shall take all the measures necessary to prohibit the manufacture, import and marketing on their territory of the products referred to in Article 1 and the export of such products therefrom. They shall, in particular, ensure that checks are carried out on products on the market to ascertain that those falling within the scope of this Directive are not being marketed.

Article 3

Member States shall take all necessary measures to ensure that their competent authorities withdraw, or cause to be withdrawn, from their markets any product covered by this Directive.

Article 4

1. Member States shall inform the Commission of the specific measures referred to in Articles 2 and 3 and provide an adequate description of the product in question. They shall give the reasons for their decision. The Commission shall forward this information to the advisory committee referred to in Article 6 for an opinion, convene an urgent meeting of the committee and set the time limit within which the opinion must be issued.

2. When the Commission, after consulting the committee, concludes that the measures notified under paragraph 1 are justified, it shall immediately forward to the Member States a decision obliging them to take

measures forthwith pursuant to the first sentence of Article 2 and to Article 3. The Commission shall keep up to date annual lists of products which have been the subject of a Commission decision and make them available to the competent national authorities.

3. When the Commission, after consulting the committee, concludes that the measures notified under paragraph 1 are not justified, it shall immediately forward to the Member State in question a decision aimed at the immediate abrogation of these measures. The other Member States shall be informed immediately of this decision.

4. If the measures referred to in Articles 2 and 3 must be notified under Council Decision 84/133/EEC of 2 March 1984 introducing a Community system for a rapid exchange of information on dangers arising from the use of consumer products⁽¹⁾, the first two sentences of paragraph 1 shall not apply.

Upon receiving information provided pursuant to Decision 84/133/EEC, the Commission, in addition to the obligations devolving upon it under that Decision, shall follow the procedure set out in paragraphs 1, 2 and 3.

Article 5

Member States shall designate the competent authorities referred to in Article 4 (2) and notify the Commission thereof.

Article 6

1. An advisory committee shall be set up to assist the Commission; it shall be composed of two representatives per Member State and shall be chaired by a representative of the committee.

2. The committee shall examine the information transmitted to it by the Commission pursuant to Article 4 (1). It may also examine any question relating to the implementation and management of the Directive which is raised by its chairman, either on his own initiative or at the request of a representative of a Member State.

3. In requesting the Committee's opinion, the Commission may set the time limit within which the opinion must be given. The committee's discussions shall not be followed by a vote. However, each member of the committee may demand that his opinion be recorded in the minutes.

4. The committee secretariat shall be provided by the Commission.

⁽¹⁾ OJ No L 70, 13. 3. 1984, p. 16.

Article 7

1. Member States shall take the measures necessary to comply with this Directive by 1 July 1987 at the latest. They shall immediately inform the Commission thereof.

2. Member States shall forward to the Commission the text of all provisions of national law which they adopt in the field covered by this Directive.

Article 8

This Directive is addressed to the Member States.
