

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION RECOMMENDATION

of 27 November 1992

calling upon Member States to set up the infrastructures needed to identify dangerous products at the external frontiers

(92/579/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 155, second indent thereof,

Whereas the Member States must, by 29 June 1994, the scheduled implementation date of Council Directive 92/59/EEC of 29 June 1992 on general product safety<sup>(1)</sup>, have adopted the laws, regulations and administrative provisions to comply with the abovementioned Directive; whereas one of the main elements of the Directive is a coherent set of procedures at both national and Community level to ensure compliance with the general safety obligation, i.e. the obligation on producers to place only safe products on the market;

Whereas the definition of 'producer' in point (d) of Article 2 of Directive 92/59/EEC also covers the importer of the product; whereas the obligation on producers to place only safe products on the market applies equally to the activities of importers seeking the release for free circulation of consumer products from non-member countries;

Whereas this Directive makes provision for the adoption at Community level of emergency measures as a last resort where Member States differ on the emergency measures to be taken, and if the existing Community

procedures prove inadequate to deal with emergency situations created by dangerous products;

Whereas this procedure provides for a Community decision laying down temporary measures in respect of a specific product; whereas Member States are then responsible for taking the appropriate measures nationally to ensure its implementation in their own territory; whereas national measures of this nature are also required if the emergency situation can be dealt with the Member States themselves without formal involvement by the Community, provided that all equivalent measures are taken to eliminate the risk and protect the health and safety of consumers and the smooth functioning of the single market;

Whereas, where the abovementioned national provisions involve banning certain products from the market and in view of the applicability of Directive 92/59/EEC in the case of release for free circulation, compliance with these provisions will be ensured by the national authorities responsible for supervising the market, including the customs authority responsible for authorizing the release for free circulation of products of non-Community origin;

Whereas, in the period prior to implementation of Directive 92/59/EEC, in order to ensure a high level of consumer protection, not only within their own territory but also at the external frontiers, it is appropriate to invite the Member States to provide, as of now, for administrative infrastructures enabling products deemed dangerous to be identified;

<sup>(1)</sup> OJ No L 228, 11. 8. 1992, p. 24.

Whereas 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 <sup>(1)</sup>, as amended by Decision 90/352/EEC <sup>(2)</sup>, provides for an effective and coherent infrastructure to allow exchange of information between the Member States and the Commission; whereas the procedure is initiated where a Member State decides to take urgent steps to prevent, restrict or attach particular conditions to the marketing or use on its territory of a product because of the serious and immediate risk which that product presents for the health or safety of consumers;

Whereas this information procedure has been designed to alert other Member States to the serious and immediate risk presented by certain consumer products on the market which have been identified by a specific Member State, to enable them to take the appropriate steps to ensure consumer protection in their own territory;

Whereas this system of market supervision can also be used by Member States in order to identify the products deemed to present a serious and immediate risk, notably during the import formalities for release for free circulation of such products of non-Community origin; whereas in these conditions the decision by a Member State to ban or restrict the marketing of a specific product may equally apply to products identical to the notified dangerous products of non-Community origin which have been declared for release for free circulation;

Whereas the procedures advocated in this recommendation are not such as to prejudice the practical verification and analysis methods used by the national authorities to establish whether a product is genuinely dangerous;

Whereas, pursuant to Decision 89/45/EEC, the Member States have the infrastructures needed to check the extent to which a notified product presents a serious and immediate risk; whereas, for the system to be effective, the Member States are invited to inform their customs authorities of the results of such checks in order to allow identification of the product concerned on the basis of the customs declaration presented as part of the formalities for release for free circulation;

Whereas in so far as such products are identified by the customs authority, it is recommended that clearance for their release onto the market be suspended in order to enable the competent authorities to carry out the checks needed;

Whereas, even if the notified product is not available on the national market, it is suggested that Member States

give the competent authorities the opportunity to take the measures referred to above with regard to the product on the basis of information notified in the context of the rapid exchange system and, where appropriate, on the basis of examination of a sample supplied to the competent authority; whereas, in the event of measures being taken in respect of a dangerous product, it is desirable that the customs authorities have this information at their disposal in order to ensure proper surveillance of external frontiers; whereas, in these conditions, supplementary checks as described above may be undertaken where the notified product has been declared for release for free circulation;

Whereas if, as a result of such checks, the product concerned is found to present a genuine serious and immediate risk for consumer health or safety, Member States are invited to prohibit its release for free circulation on the basis of the abovementioned national measure;

Whereas, pending implementation of Directive 92/59/EEC, Member States are invited to implement this recommendation to ensure a high level of consumer protection, through effective surveillance of the external frontiers to protect against products presenting a serious and immediate risk;

Whereas, to assess the effectiveness of the procedures advocated in this recommendation, in so far as the Member States have acted upon it, it is desirable that the Commission should, after consultation with the Member States, notify the European Parliament and Council;

Whereas this recommendation by its very nature is without prejudice to the application of the equivalent Community notification procedures,

HEREBY FORMULATES THIS RECOMMENDATION :

#### I

For the purposes of this recommendation :

1. 'rapid information exchange system' means the Community system for the rapid exchange of information on dangers arising from the use of consumer products established by Decision 89/45/EEC;
2. 'contact point' means the competent national authority designated by each Member State to communicate or receive :

<sup>(1)</sup> OJ No L 17, 21. 1. 1989, p. 51.

<sup>(2)</sup> OJ No L 173, 6. 7. 1990, p. 49.

- notification in respect of a decision by a Member State to take urgent steps to prevent, restrict or attach particular conditions to the marketing or use on its territory of a product or a product batch, because of the serious and immediate risk which that product or product batch presents for the health or safety of consumers when used in normal and foreseeable conditions,
  - information received by the Commission and subsequently communicated to the Member States,
  - particulars of market checks carried out and, where relevant, steps taken following receipt of initial notification ;
3. 'products' means all products intended for consumers as defined in Article 3 of Decision 89/45/EEC,
  4. 'customs authorities' means the authorities empowered, *inter alia*, to apply the customs regulations.

## II

1. Any Member State which decides to take urgent steps to prevent, restrict or attach particular conditions to the marketing or use on its territory of a product because of the serious and immediate risk which that product presents for the health or safety of consumers is invited to inform both its own national customs authorities and the Commission thereof, in accordance with Article 1 of Decision 89/45/EEC.
2. In the case of application of paragraph 1, and to facilitate identification of the product concerned, it is desirable that the information should include, by way of guidance, along with the elements specified in Article 1 (2) of Decision 89/45/EEC, a reference to the combined nomenclature code.

## III

Member States are invited to make provision for the possibility that :

1. on receipt of notification through the rapid information exchange system, the contact point, where appropriate through the intermediary of an authority competent in the domain, may take the steps necessary to check whether the products concerned present a serious and immediate risk ;
2. where a sample of the product is needed for this assessment, the contact point may transmit an appropriate application to the Commission, which shall then inform the contract point of the Member State issuing the notification. In so far as this contact point decides to approve the application, a sample of the product in

question may be provided to the requesting contact point. If an application to this effect is made by the contact point issuing the notification, the sample should be returned.

## IV

1. Member States are invited to make provision for the possibility of the contact point informing the customs authorities of its country and the Commission, in accordance with Article 3 of Decision 89/45/EEC, where the contact point deems the product notified by another Member State to present a genuine serious and immediate risk to consumer health or safety and, consequently, the Member State concerned decides to take urgent steps to prevent, restrict or attach particular conditions to the possible marketing or use on its territory of this product. In this case, paragraph 2 of point II shall apply.
2. Paragraph 1 may also apply where the notified product has been assessed, following verification, as dangerous within the meaning of paragraph 1, but has not been found on the national territory in the Member State concerned.

## V

Member States are invited to make provision for the possibility that :

1. immediately upon receipt of the information issued in accordance with points II and IV, the customs authorities may take the appropriate steps to ensure that the product concerned can be identified if application is made for its release for free circulation ;
2. where a product identical to the product notified is declared for release for free circulation, the customs authorities may directly inform the contact point and suspend, where appropriate, their decision to clear the product ;
3. the contact point, where appropriate through the intermediary of an authority competent in the domain, may take appropriate steps to check the characteristics of the product declared for release for free circulation, paid particular attention to safety, to establish whether it is identical to the product in respect of which notification has been received and the national measures referred to in point IV have been taken ;
4. where the checks referred to in 3 confirm that the product concerned presents a serious and immediate risk for consumer health or safety, the contact point may inform the customs authority which may decide to withhold authorization. In such cases those authorities are invited to attach one of the following markings to the commercial invoice accompanying the product :

- «Producto peligroso — No autorizado su despacho a libre práctica  
Recomendación 92/579/CEE»
  - «Farligt produkt — Ikke godkendt til fri omsætning  
Henstilling 92/579/EØF»
  - «Gefährliches Produkt — Abfertigung zum freien Verkehr nicht gestattet  
Empfehlung 92/579/EWG»
  - «Επικίνδυνο προϊόν — Δεν επιτρέπεται η θέση σε ελεύθερη κυκλοφορία  
Σύσταση 92/579/ΕΟΚ»
  - «Dangerous product — Release for free circulation not authorized  
Recommendation 92/579/EEC»
  - «Produit dangereux — Mise en libre pratique non autorisée  
Recommandation 92/579/CEE»
  - «Prodotto pericoloso — Immissione in libera pratica non autorizzata  
Raccomandazione 92/579/CEE»
  - «Gevaarlijk produkt — het in het vrije verkeer brengen ervan niet toegestaan  
Aanbeveling 92/579/EEG»
  - «Produto perigoso — Colocação em livre prática não autorizada  
Recomendação 92/579/CEE»;
5. if the product concerned is subsequently declared for entry other than for free circulation, the marking specified in 4 may also be attached to the document relating to the customs procedure in question or the one used in free zones or free warehouses.

## VI

Member States are invited to make provision for the possibility of the contact point notifying the Commission of cases of application of point V, quoting, where appropriate, the reference number of the initial notification. The Commission shall inform the other Member States.

## VII

If the Member States decide to act on one or several of the provisions in this recommendation, they are invited to inform the Commission accordingly.

## VIII

1. Within one year of publication of this recommendation, the Commission shall proceed to consult with the Member States to evaluate any action which the Member States have taken on the basis of the Recommendation.
2. Following consultation, the Commission shall submit a report to the European Parliament and the Council in respect of the application of this recommendation.

## IX

This recommendation is addressed to the Member States.

Done at Brussels, 27 November 1992.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*