

COMMISSION IMPLEMENTING DECISION

of 6 April 2011

on the temporary prohibition of the placing on the market in Germany of the detergent POR-ÇÖZ

(notified under document C(2011) 2290)

(2011/225/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents ⁽¹⁾, and in particular Article 15 and 12(2) thereof,

Having regard to Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁽²⁾, and in particular Article 5 thereof,

Whereas:

(1) On 29 October 2010, the German Federal Environment Agency notified the Commission and the other Member States of their temporary prohibition for the placing on the German market of the cleaning product POR-ÇÖZ with a nitric acid content of 20 % or more, based on risks of corrosion and dangerous fumes resulting from the ingredient nitric acid ⁽³⁾.

(2) The German authorities additionally notified the temporary prohibition of POR-ÇÖZ to the Commission via RAPEX ⁽⁴⁾ under Article 12 of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety ⁽⁵⁾. As an additional risk it was mentioned that the POR-ÇÖZ containers did not have sufficiently child-proof caps.

(3) POR-ÇÖZ is manufactured in Turkey by the registered company Levent Kimya and imported into Germany by the company Karakus Handels GmbH with its registered seat in D-58638 Iserlohn.

⁽¹⁾ OJ L 104, 8.4.2004, p. 1.

⁽²⁾ OJ L 55, 28.2.2011, p. 13.

⁽³⁾ Decision of the German Environment Authority (Umweltbundesamt) of 25 October 2010 (Allgemeinverfügung zum vorläufigen Verbot des Inverkehrbringens des Reinigungsmittels Por Cöz nach § 14(2) des Wasch- und Reinigungsmittelgesetzes und § 8(4) des Geräte- und Produktsicherheitsgesetzes, Bundesanzeiger Ausgabe Nr. 164 vom 28. Oktober 2010).

⁽⁴⁾ RAPEX Notification No 1760/10.

⁽⁵⁾ OJ L 11, 15.1.2002, p. 4.

(4) POR-ÇÖZ contains 20-30 % nitric acid in aqueous solution. Nitric acid is classified as corrosive to the skin, category 1, under Regulation (EC) No 1272/2008 of the European Parliament and of the Council ⁽⁶⁾ concerning classification, labelling and packaging of substances and mixtures.

(5) POR-ÇÖZ is marketed as a limescale and rust remover to the general public. It is a mixture intended for cleaning purposes and is therefore a detergent according to Article 2 of the Regulation.

(6) Based on the presentation of facts in the German RAPEX notification, the product POR-ÇÖZ is not fitted with appropriate child-resistant fastenings. Consequently, it does not comply with Article 11(1) of Regulation (EC) No 648/2004 in combination with Article 9, paragraph 1.3 and Annex IV, Part A of Directive 1999/45/EC of the European Parliament and of the Council ⁽⁷⁾ relating to the classification, packaging and labelling of dangerous preparations and does not fall under Article 15(1) of Regulation (EC) No 648/2004 which is applicable only to products that are 'complying with the requirement of this Regulation'.

(7) A clarification of the facts was made orally by Germany at the meeting of the Detergents Working Group on 14 December 2010. Germany explained that there had been two products under the brand name POR-ÇÖZ on the German market. The product referred to in the notification to the Commission of 29 October 2010, which was imported by Karakus Handels GmbH, was correctly labelled and fitted with appropriate child-resistant fastening. The second POR-ÇÖZ product by the same manufacturer was imported illegally via unknown channels. It was labelled in Turkish language and was not fitted with sufficiently child-proof fastenings.

(8) By letter of 22 December 2010, Germany confirmed that the product to which Germany had referred in its notification of 29 October 2010 (manufactured by Levent Kimya and imported into Germany by the company Karakus Handels GmbH) was complying with the Detergents Regulation, notably with its labelling and packaging requirements by having a German-language label and by being fitted with child-proof fastening. The RAPEX Notification No 1760/10 has been modified with a revised notification submitted to the Commission on 16 December 2010, which stated that

⁽⁶⁾ OJ L 353, 31.12.2008, p. 1.

⁽⁷⁾ OJ L 200, 30.7.1999, p. 1.

the grounds for prohibition were not non-compliance with legal requirements but the product's high risks for human health.

- (9) Based on these facts, Article 15 of Regulation (EC) No 648/2004 is applicable, as the product POR-ÇÖZ referred to in the German notification is a detergent complying with the requirements of that Regulation.
- (10) Germany has provided justifiable grounds for believing that the product POR-ÇÖZ constitutes a risk to safety or health of humans. Germany reported that one case of child injury is attributed to the use of POR-ÇÖZ in Germany. Furthermore, between 1999 and 2010, German poison centres registered 134 cases of severe injuries to health related to the use in households of lime and rust removers containing nitric acid. In Belgium (the only other Member State where a Turkish-labelled version of POR-ÇÖZ had been found on the market) anti-poison centres have recorded three cases of severe respiratory problems resulting from the professional use of limescale removers containing 30 % nitric acid. Based on an assessment of the risks to health from the use of cleaning products with a nitric acid content of 20-30 %, on 28 September 2010, the German Federal Institute for Risk Assessment recommended that cleaning products containing more than 20 % nitric acid should not be placed on the market for supply to the general public ⁽¹⁾.

- (11) The Commission has consulted the Member States both via questionnaires sent out on 15 November 2010 and in a meeting of the Detergents Working Group Meeting on 14 December 2010. The measures provided for in this Decision are in accordance with their opinion as expressed in the Committee opinion of 14 March 2011,

HAS ADOPTED THIS DECISION:

Article 1

The Federal Republic of Germany may maintain its temporary prohibition on the placing on the market of the cleaning product POR-ÇÖZ with a nitric acid content of 20 % or more for 1 year from the date of adoption this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 6 April 2011.

For the Commission

Antonio TAJANI

Vice-President

⁽¹⁾ BfR Opinion No 041/2010, 6.9.2010.