



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
C(2007)

Informal consultation draft of 14 December 2007

COMMISSION DECISION

of

requiring Member States to ensure that magnetic toys placed or made available on the market contain a warning about the health and safety risks they pose

(notified under document number [])

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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/EC producers are obliged to place only safe products on the market.
- (2) According to Article 13 of Directive 2001/95/EC, if the European 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 specific conditions the placing or making available on the market of such products.
- (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 product 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.

¹ OJ L 11, 15.1.2002, p. 4.

- (4) A serious risk has recently emerged with magnets in toys. Even though magnets have been used in toys for a long time, over the last few years they have become increasingly powerful and therefore can detach more easily if fixed with the same techniques as those employed in the past. Moreover, given their increased strength, loose magnets or magnetic parts used in toys are posing a higher risk of serious accidents than in the past.
- (5) This serious risk has been established by a number of accidents that have been reported worldwide in the course of 2006 and 2007 where children had swallowed magnets detached from toys or small parts of toys containing magnets. When more than one magnet is swallowed, the magnets can attract each other and cause intestinal perforation, infection or blockage, which can be fatal. Inhalation of these magnets has also generated serious injuries and aspiration into the lungs requires immediate surgery.
- (6) Besides one fatal accident reported in the United States, several occurrences of children swallowing at least two magnets or a magnet and a metal object, and requiring major surgery, have been reported worldwide since 2006. Children between 10 months and 12 years of age have been involved in these incidents.
- (7) In 2006 and 2007, several toy producers have launched major recalls of magnetic toys. In particular, over 18 million magnetic toys were recalled globally during the summer of 2007, and a significant part of these toys were in the European market. As a result of the accidents and the recent recalls, many producers have realised the risk and modified the design of the toys concerned, encapsulating or collaring the magnets in the parts containing them.
- (8) Some countries already adopted measures to deal with the risk. In particular, the United States Consumer Product Safety Commission (CPSC) released, on 19 April 2007, a warning to parents concerning the health and safety risks posed by magnetic toys. The CPSC has also participated in the revision of ASTM F963-2007 'Standard Consumer Safety Specification for Toys' created under the auspices of international standardisation body ASTM International to deal with magnets in toys. In Europe, France and Germany have informed the Commission of national measures.
- (9) In its resolution of 26 September 2007, the European Parliament urged the Commission to use its powers to take restrictive measures, including bans, if consumer goods placed on the Community market are found to be unsafe.²

² See <http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0412&language=EN>.

- (10) Safety of toys is covered by Council Directive 88/378/EEC³ of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys, as amended by Council Directive 93/68/EEC⁴ of 22 July 1993. The Directive lays down the essential safety requirements that toys must meet to ensure the safety objectives of the Directive. In addition, the Directive provides that in order to facilitate the proof of conformity with the essential safety requirements, European standards concerning the design and composition of toys should be drawn up by the standardisation bodies. Nevertheless, currently the risk posed by magnets is not dealt with under Directive 88/378/EEC.
- (11) The European Committee for Standardisation (CEN) issued European standard EN 71-1:2005 "Safety of toys – Part I: mechanical and physical properties" which is a consolidated version of harmonised standard EN 71-1:1998 and its 11 amendments. Toys complying with the standard are considered to be in conformity with the essential requirements of Directive 88/378/EEC, as far as the specific requirements covered by the standard are concerned. The standard does not currently contain technical requirements for magnetic toys and therefore the risk posed by these products is not assessed.
- (12) In order to address the specific risks of magnetic toys, on 25 May 2007, the Commission mandated⁵ CEN to revise within 24 months the European standard EN 71-1:2005. Pending the drawing up and entry into force of the revised standard, it is necessary to address immediately the risks posed by magnetic toys to minimise further accidents to children caused by these toys through improving the knowledge of the risks.
- (13) 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 magnetic toys. In the absence of Community rules, some Member States have adopted or are about to adopt divergent national measures to manage the risk posed by magnetic toys. The introduction of such national measures will inevitably result in an uneven level of protection and in intra-Community barriers to trade in magnetic toys. Several Member States have called for a Community measure.

³ OJ L 187/1, 18.7.1998, p. 1.

⁴ OJ L 220, 30.8.1993, p. 1.

⁵ Standardisation mandate to CEN of 25 May 2007 to draw up standard for magnetic toy (M/410).

- (14) There is Community legislation about small parts in toys meant for small children⁶, but this legislation does not specifically and sufficiently deal with risks from magnetic toys to children who are over three years of age. In view of the nature of the hazard, the risk posed by magnetic toys cannot be dealt with effectively under other procedures laid down in specific rules of Community law in a manner compatible with the degree of urgency of the case. It is therefore necessary to resort to a temporary Decision according to Article 13 of Directive 2001/95/EC until the revised European standard EN 71-1:2005 provides a permanent and comprehensive solution to the identified problem. The targeted measure introduced by this Decision is offering only a partial, temporary, short-term solution. The Commission has already clearly recognised the need for constructional requirements to deal adequately with the risks posed by magnetic toys when issuing the standardisation mandate to CEN to revise EN 71-1:2005.
- (15) In view of the serious risk from magnetic toys and in order to ensure a consistent and 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 and making available on the market of magnetic toys subject to the condition that they are marked with an adequate warning on the risks linked to the presence of magnets or magnetic components of ingestible shape and size that are accessible to children. Such Decision should contribute to the prevention of further deaths and injuries.
- (16) In light of the accident and hazard data and the pending permanent measure in the form of the revision of standard EN 71-1:2005, the scope of this Decision is magnetic toys. The term 'toys' has the meaning assigned to it by Directive 88/378/EEC and the definition 'magnetic toys' shall in this context mean toys that contain or consist of magnet(s) or magnetic component(s) that are of ingestible shape and size and are accessible to children.
- (17) This Decision is without prejudice to Articles 3(4) and 6 to 8 of Directive 2001/95/EC and thus does not bar Member States from taking appropriate measures where there is evidence that, despite the conformity with the requirements in this Decision and other criteria designed to ensure the general safety requirement, a magnetic toy is dangerous. Member States must carry out market surveillance and enforcement activities to prevent risks posed by unsafe products to the health and safety of consumers.

⁶ In accordance with Directive 88/378/EEC, toys, and their component parts, and any detachable parts of toys which are clearly intended for use by children under 36 months must be of such dimensions as to prevent their being swallowed and/or inhaled. This means that toys intended for children under 36 months must not contain any element liable to be swallowed or inhaled, whether magnets or not.

- (18) On the basis of the progress made with the revision of the European standard EN 71-1:2005 and the completeness and adequacy of the revised standard to address fully the risks posed by magnetic toys, the Commission shall decide whether to extend for additional periods the validity of this Decision and whether the Decision should be amended. In particular, the Commission shall decide whether to introduce constructional requirements to complement the warning required in this Decision.
- (19) A short transition period is necessary both in the interest of the Member States who must ensure that the Decision will be efficiently applied as well as the producers and distributors of magnetic toys who shall be subject to the obligation to place and make available on the market only magnetic toys that bear the appropriate warning. In this case, the shortest possible transition period should be allowed, consistent with the need to prevent further accidents and to ensure proportionality, taking into account that the measure consists of a marking only and does not require changes to the product design itself. Therefore, the measure should start to apply two months from the date of publication of this Decision in the *Official Journal of the European Communities*.
- (20) 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) “magnetic toy” shall mean a toy that contains or consists of magnet(s) or magnetic component(s) that are of ingestible shape and size and are accessible to children;
- (2) “making available on the market” shall mean any supply of a product for distribution, consumption or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge, including the first making available of a product on the Community market;
- (3) “placing on the market” shall mean the first making available of a product on the Community market;
- (4) “recall” shall have the meaning as defined in Article 2(g) of Directive 2001/95/EC;
- (5) “withdrawal” shall have the meaning as defined in Article 2(h) of Directive 2001/95/EC.

Article 2

1. Member States shall ensure that magnetic toys which are placed or made available on the Community market contain the following warning:

“Warning! This product contains magnets or magnetic components. Magnets sticking together inside the human body can cause serious injury. Seek immediate medical help if magnets are swallowed or inhaled.”

or an equivalent easily understandable wording that clearly conveys the same warning.

2. The warning shall appear in a clearly visible, legible and indelible manner on the packaging or otherwise attached to the magnetic toy in such a way as to be visible to the consumer at the point of purchase.
3. The warning must appear in the official language of the Member State in which the product is placed or made available on the market.
4. Member States shall ensure that all magnetic toys which are placed or made available on the Community market contain the warning as of two months from the date of publication of this Decision in the *Official Journal of the European Communities*.

Article 3

As of two months from the date of publication of this Decision in the *Official Journal of the European Communities*, Member States shall ensure that magnetic toys which do not contain the required warning are prohibited from being placed or made available on the market. Member States shall ensure that magnetic toys which do not contain the required warning and are placed or made available on the market after the two month period mentioned in Article 2(4) are recalled and withdrawn from the market. Member States shall inform the Commission of the measures taken without delay in accordance with Article 12 of Directive 2001/95/EC.

Article 4

1. Member States shall take the necessary measures to comply with this Decision, publish those measures and forthwith inform the Commission thereof.
2. This Decision shall be applicable until twelve months from the date of publication of this Decision in the *Official Journal of the European Communities*.
3. On the basis of the progress made in view of the revision of EN 71-1:2005 and the completeness and adequacy of the revised standard to address fully the hazards of magnetic toys, the Commission shall decide whether to extend for additional periods the validity of this Decision and whether the Decision should be amended. The decision referred to in this paragraph shall be taken in accordance with Article 15(2) of Directive 2001/95/EC.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, [...] 2008

For the Commission
Meglana KUNEVA
Member of the Commission