Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (Text with EEA relevance)

CHAPTER IV

Specific obligations and powers of the Member States

Article 6

1 Member States shall ensure that producers and distributors comply with their obligations under this Directive in such a way that products placed on the market are safe.

2 Member States shall establish or nominate authorities competent to monitor the compliance of products with the general safety requirements and arrange for such authorities to have and use the necessary powers to take the appropriate measures incumbent upon them under this Directive.

3 Member States shall define the tasks, powers, organisation and cooperation arrangements of the competent authorities. They shall keep the Commission informed, and the Commission shall pass on such information to the other Member States.

Article 7

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 15 January 2004 and shall also notify it, without delay, of any amendment affecting them.

Article 8

1 For the purposes of this Directive, and in particular of Article 6 thereof, the competent authorities of the Member States shall be entitled to take, *inter alia*, the measures in (a) and in (b) to (f) below, where appropriate:

a for any product:

(i) to organise, even after its being placed on the market as being safe, appropriate checks on its safety properties, on an adequate scale, up to the final stage of use or consumption;

(ii) to require all necessary information from the parties concerned;

(iii) to take samples of products and subject them to safety checks;

b for any product that could pose risks in certain conditions:

(i) to require that it be marked with suitable, clearly worded and easily comprehensible warnings, in the official languages of the Member State in which the product is marketed, on the risks it may present;

(ii) to make its marketing subject to prior conditions so as to make it safe;

c for any product that could pose risks for certain persons:

to order that they be given warning of the risk in good time and in an appropriate form, including the publication of special warnings;

d for any product that could be dangerous:

for the period needed for the various safety evaluations, checks and controls, temporarily to ban its supply, the offer to supply it or its display;

e for any dangerous product:

to ban its marketing and introduce the accompanying measures required to ensure the ban is complied with;

f for any dangerous product already on the market:

(i) to order or organise its actual and immediate withdrawal, and alert consumers to the risks it presents;

(ii) to order or coordinate or, if appropriate, to organise together with producers and distributors its recall from consumers and its destruction in suitable conditions.

2 When the competent authorities of the Member States take measures such as those provided for in paragraph 1, in particular those referred to in (d) to (f), they shall act in accordance with the Treaty, and in particular Articles 28 and 30 thereof, in such a way as to implement the measures in a manner proportional to the seriousness of the risk, and taking due account of the precautionary principle.

In this context, they shall encourage and promote voluntary action by producers and distributors, in accordance with the obligations incumbent on them under this Directive, and in particular Chapter III thereof, including where applicable by the development of codes of good practice.

If necessary, they shall organise or order the measures provided for in paragraph 1(f) if the action undertaken by the producers and distributors in fulfilment of their obligations is unsatisfactory or insufficient. Recall shall take place as a last resort. It may be effected within the framework of codes of good practice on the matter in the Member State concerned, where such codes exist.

[[F1]3 In the case of products posing a serious risk, the competent authorities shall with due dispatch take the appropriate measures referred to in paragraph 1(b) to (f). The existence of a serious risk shall be determined by the Member States, assessing each individual case on its merits and taking into account the guidelines referred to in point 8 of Annex II.**]**

4 The measures to be taken by the competent authorities under this Article shall be addressed, as appropriate, to:

a the producer;

b within the limits of their respective activities, distributors and in particular the party responsible for the first stage of distribution on the national market;

c any other person, where necessary, with a view to cooperation in action taken to avoid risks arising from a product.

Textual Amendments

F1 Substituted by Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (Text with EEA relevance).

Article 9

1 In order to ensure effective market surveillance, aimed at guaranteeing a high level of consumer health and safety protection, which entails cooperation between their competent authorities, Member States shall ensure that approaches employing appropriate means and procedures are put in place, which may include in particular:

a establishment, periodical updating and implementation of sectoral surveillance programmes by categories of products or risks and the monitoring of surveillance activities, findings and results;

b follow-up and updating of scientific and technical knowledge concerning the safety of products;

c periodical review and assessment of the functioning of the control activities and their effectiveness and, if necessary, revision of the surveillance approach and organisation put in place.

2 Member States shall ensure that consumers and other interested parties are given an opportunity to submit complaints to the competent authorities on product safety and on surveillance and control activities and that these complaints are followed up as appropriate. Member States shall actively inform consumers and other interested parties of the procedures established to that end.

Article 10

1 The Commission shall promote and take part in the operation in a European network of the authorities of the Member States competent for product safety, in particular in the form of administrative cooperation.

2 This network operation shall develop in a coordinated manner with the other existing Community procedures, particularly RAPEX. Its objective shall be, in particular, to facilitate:

a the exchange of information on risk assessment, dangerous products, test methods and results, recent scientific developments as well as other aspects relevant for control activities;

b the establishment and execution of joint surveillance and testing projects;

c the exchange of expertise and best practices and cooperation in training activities;

d improved cooperation at Community level with regard to the tracing, withdrawal and recall of dangerous products.