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REPORT FOR CONGRESS

OCTOBER 2007

Directorate of Legal Research
LL File No. 2008-00126

EUROPEAN UNION:

REGULATION OF LEAD IN CONSUMER PRODUCTS, LABELING REQUIREMENTS

Member States are responsible for legislation regarding unsafe products, but several EU directives address lead in toys, electrical and electronic equipment, and batteries.

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Executive Summary

There is no general ban on lead at the European Union level. A number of EU directives pertain to the use of lead in various products, including toys, electrical and electronic equipment and batteries. EU Member States are required to comply with such directives. Moreover, they are required to exchange information and send notifications through the RAPEX system in case unsafe products are marketed in EU territory.

Introduction

Protection of human health, the environment, and the safety of consumers are high on the legislative and policy agenda of the European Union. Directive 2001/95/EC on General Product Safety imposes a general requirement on manufacturers, distributors, etc. to market only safe products. Member States are primarily responsible for adopting appropriate measures regarding unsafe products within their territories. To reach this objective, Member States are required to establish authorities in charge of market surveillance. The Directive provides for exchange of information between the Member States and the sending of notifications through the Rapid Information System (RAPEX) in case of products that pose a serious risk to health and safety of consumers.¹

It appears that there is no general, comprehensive ban on lead at the EU level, but a number of directives prohibit or limit its use in various products used by consumers.

Toys

With regard to toys, Directive 88/378/EEC Concerning the Safety of Toys² specifies that toys must be designed and constructed in such a manner that they do not present health risks or risk of physical injuries through contact with the skin, etc. In particular, bioavailability resulting from the use of toys must not exceed the 0.7 mg for lead. Toys that meet the health and safety requirements carry the EC mark consisting of the symbol "CE." The same Directive contains clauses for recall if a product poses a threat to children less than fourteen years of age. It also states that toys must be accompanied by clearly legible warnings to reduce risks in their use. Furthermore, toys having chemical properties must comply with EU legislation relating to the prohibition, restriction of use, or labeling of certain dangerous substances and preparations. Such rules are contained in Directive 88/379/EC on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Relating to the Classification, Packaging and Labeling of Dangerous Preparations.³

On September 26, 2007, due to the recent alarm raised by the importation of unsafe toys originating in China, the European Parliament adopted a joint resolution on the safety of products, especially toys. The Parliament urged the European Commission and the Member States to ensure that consumer goods entering the European Union market must comply with existing health and safety

¹ RAPEX is the rapid alert system at the EU level for all dangerous consumer products, except food, pharmaceuticals, and medical devices, available at http://ec.europa.eu/consumers/dyna/rapex/rapex_archives_en.cfm (last visited Oct. 17, 2007).

² 1988 O.J. (L 187) 1.

³ 1988 O.J. (L 187) 14.

standards; otherwise such products must be banned from entering. It also asked the Commission to finalize the planned revision of the 88/378 Directive at the end of 2007.⁴

Electrical and Electronic Equipment

Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment,⁵ otherwise known as the RoHS directive, became effective on July 1, 2006. It specifies the maximum content of certain hazardous substances in products produced or marketed in the European Union. Member States must ensure that new electrical and electronic equipment put on the market does not contain lead, mercury, and other substances. There are certain applications of lead which are exempted from this rule. These are:

- Lead in glass of cathode ray tubes, electronic components, and fluorescent tubes;
- Lead as an alloying element in steel containing up to 0.35 % lead by weight, aluminum containing up to 0.4 % lead by weight, and as a copper alloy containing up to 4% lead by weight;
- Lead in solders of the high melting temperature type; lead solders for servers, storage, and storage array systems (exemption granted until 2010); lead in solders for network infrastructure equipment for signaling, transmission, and network management for telecommunication; and lead in electronic ceramic parts.

Batteries

Directive 2006/66/EC on Batteries and Accumulators and Waste Batteries and Accumulators⁶ contains requirements on labeling. Batteries, accumulators⁷, and button cells that contain more than 0.0004% lead must be marked with the chemical symbol Pb. The symbol indicating the heavy metal content must be printed visibly, legibly, and indelibly beneath the symbol indicating “separate collection” (a crossed-out wheeled bin) and must cover an area of at least one-quarter the size of that symbol.

The same Directive also establishes treatment and recycling rules for waste batteries and accumulators. By 2009, Member States are required to remove all fluids and acids and to store batteries in sites with impermeable surfaces or in suitable containers. Members must achieve a recycling rate of 65% by average weight of lead-acid batteries and accumulators, including recycling of the lead content to the highest degree that is possible.

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October 2007

⁴ Press Release, European Parliament, MEPs Demand that Toys Meet EU Standards (Sept. 26, 2007), *available at* http://www.europar.europa.eu/news/expert/infopress_page/063-10648-267-09-39-911.

⁵ 2003 O.J. (L 037) 19.

⁶ 2006 O.J. (L 266) 1.

⁷ According to article 3 of the Directive 2006/66/EC a ‘battery’ or ‘accumulator’ means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or consisting of one or more secondary battery cells (rechargeable).