

Non-paper

Comments of the Commission services on some of the issues raised at the mini hearing on the proposal for a Directive on pyrotechnic articles, Internal Market and Consumer Protection Committee (IMCO), 21 March 2006

Issues raised by the European fireworks association (EUFIAS):

“The current proposal will bring a free inner market only for fireworks of Category 1, except they will still be subject to transport regulations. Category 1 fireworks will be a very limited group of about 5 article groups. It seems an enormous waste of time and energy to implement a Directive that will bring a partially free inner market for such a small group of articles only.”

In Article 6.2, the Commission proposal foresees the possibility for Member States to restrict the use and/or the sale to the general public of category 2 and 3 fireworks. This possibility has been foreseen since many Member States have different rules regarding the sales and use of the more dangerous categories of consumer fireworks (e.g. complete ban in Ireland or sales only shortly before New Year’s Eve in the Netherlands, Germany etc).

The following categories will fully fall under the free circulation clause of the proposed Directive:

- category 1 and 4 fireworks
- other pyrotechnic articles (including automotive pyrotechnic articles such as airbags etc.)

Moreover, not all Member States will impose bans on category 2 and 3 fireworks. Those who accept fireworks or groups of fireworks of these categories also have to accept CE marked fireworks which have been certified by notified bodies of other Member States.

One also needs to take into account that by value the group of other pyrotechnic articles including automotive pyrotechnic articles is much more important than fireworks, and that most of the remaining European production of fireworks concerns category 4 for which Member States will not be able to impose national bans or restrictions.

Finally, it should be noted that the current CEN standards defining category 1 fireworks need to be revised in order to include only those fireworks which pose a very small risk during use.

“The Standards and categorisation for fireworks, to be developed, should be clear and agreed upon before the Directive is adopted. It is absolutely essential Member States accept and adopt the Standards and categorisation developed under this Directive. If not, the situation for the free inner market will stay exactly the same as it is now.”

Following the principles of the new approach, the Commission can only give a mandate to CEN to develop new harmonised standards or to revise existing European standards into harmonised standards once there is a sufficiently stable legal base (= agreement between Council and Parliament) for the mandate.

“Since there is no consensus whatsoever on the Standards and categorisation of fireworks among Member States it is very likely they will ban articles in these categories and thus will effectively block the free inner market. Within the CEN the Members States have been not able to reach -unanimous- agreement on harmonized Standards for all categories of fireworks, even after ten years of discussion.”

The coming into force of the Community Directive will provide a stronger incentive for industry and Member States to agree on harmonised standards. National standards and deviations will have to be withdrawn once the harmonised standards have been adopted. Moreover, CE marked pyrotechnic articles approved by notified bodies in other Member States can not be discriminated against.

“Setting minimum age limits for sales will not ensure the protection of consumers.”

Where statistics on fireworks accidents are available, e.g. in the UK, the figures show that a disproportionately high number of children are being hurt by fireworks. In the UK, 50% of all accidents concerned under 17 year olds, with more than 30% of all injured being children under 13 years of age.

Age group of injured	2004		2003		2002	
	Count	%	Count	%	Count	%
1. Over 20 years	516	44.5%	482	42.4%	380	37.4%
2. 18-20	79	6.8%	66	5.8%	54	5.3%
3. 13-17	197	17.0%	220	19.4%	230	22.6%
4. Under 13	368	31.7%	368	32.4%	353	34.7%
	1160		1136		1017	

Source: http://www.dti.gov.uk/homesafetynetwork/fw_stats.htm

By setting minimum age limits, the Commission aims at reducing these figures throughout Europe.

In their comments on the impact assessment, the European Fireworks Association (EUFIAS) estimates that more than 100,000 articles will have to be tested or re-tested, resulting in massively increased costs.

Already now, fireworks are tested against European and national standards and labelled accordingly. It is current practice of testing bodies like the Health and Safety Laboratory in the UK or BAM in Germany to take a family approach, i.e. pyrotechnic articles of a similar nature are being grouped together so that for example minor changes in the chemical composition will not result in each sub-type to be tested separately. This will not change under the proposed Directive. Moreover, existing approvals will continue to be valid for 12 years after the entry into force of the Directive or until their expiry, whatever comes earlier.

CLEPA Concerns

Certification only once (definition of article and of placing on the market to be made more clear)

The following definition proposed by CLEPA could be considered as improving the clarity of the text:

Article 2.2 – Definition

‘Placing on the market’ means the first making available on the Community market of an individual product ~~intended for end-use~~, with a view to distribution and/or use, whether in return of payment or free of charge.

Article 2.4 – Definition

‘Automotive pyrotechnic article’ means **the components of an automotive safety device which contain pyrotechnic substances and are** used to activate safety devices or other devices in ~~motor~~ vehicles.

Safeguard clauses: any actions by Member States or Commission must be duly justified, with time limits.

The text proposed by the Commission is the standard foreseen for New Approach Directives. Time limits are however problematic, since the timing also depends on the reactions from the Member States.

Labelling requirements (kind/amount of information on a label, languages)

Reduced labelling requirements for pyrotechnic articles used in the automotive sector can be envisaged, since these articles are generally safe and handled by professional users only.

Jorge MORGADO – DECO (Consumer organisation), Portugal

Consumers should have rapid access to compensation if fireworks do not comply with the Directive and importers or manufacturers should take on civil liability insurance.

This request refers to an issue that mainly the individual Member States should deal with in their national legislation. However, in Annex III the Directive does prescribe that notified bodies shall insure themselves if they are not covered by the responsible Member State.

The Directive should foresee a better system for market surveillance

Market surveillance is indeed a very important issue especially in the area of fireworks, and the Commission services would be willing to consider proposals for its improvement.

No self certification in the context of fireworks.

The Commission proposal does not support module A for pyrotechnic articles

The minimum age for category 1 and 2 should be the same (16 years), not 12 years for category 1 as foreseen in the Commission proposal.

The Commission would like to point out that a number of Member States currently have no age limit at all for category 1 fireworks and that category 1 will only contain fireworks with a very low hazard.

Increase the labelling requirements, including an expiry date.

The Commission services would like to point out that the space on many pyrotechnic articles is limited. We would, however, be willing to consider an expiry date.

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