

COMMISSION DECISION

of 28 May 2009

amending, for the purpose of adapting to technical progress, Annex I to Council Directive 76/769/EEC as regards restrictions on the marketing and use of lamp oils and grill lighter fluids*(notified under document number C(2009) 4020)***(Text with EEA relevance)**

(2009/424/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the restrictions on the marketing and use of dangerous substances and preparations ⁽¹⁾, and in particular Article 2a thereof,

Whereas:

(1) Since 1 July 2000 Directive 76/769/EEC restricts the sale to consumers of coloured and scented oils presenting an aspiration hazard for use in decorative lamps and labelled with the risk phrase R65.

(2) Although Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽²⁾ and Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations ⁽³⁾ provide that containers of grill lighter fluids and lamp oils, labelled with R65, have to be fitted with child-resistant fastening, accidents still occur as containers are either not closed properly, or the substance has been transferred from large original containers to smaller containers without child-resistant fastenings.

(3) According to data provided by national authorities, it has become apparent that the unscented and uncoloured lamp oils and grill lighter fluids, labelled R65, pose a risk to human health, and specifically to the health of young children, when ingested, causing breathing disturbances and disorders of the respiratory tract.

(4) It is therefore necessary to strengthen current provisions on lamp oils used in decorative lamps and to ensure that substances and mixtures sold as grill lighter fluids intended for supply to the general public are appropriately labelled.

(5) In order to minimise accidental ingestion by small children, packaging requirements should be introduced to make lamp oils and grill lighter fluids less likely to attract or arouse the curiosity of children and to avoid that these products are mistaken for drinks. The size of the container should also be limited to minimise accidents linked to the transfer from original containers to smaller containers without child-resistant fastenings or appropriate labelling.

(6) A European Standard for the design of safe decorative lamps was adopted in September 2002 in order to minimise the possibility of small children having access to the oils used in decorative oil lamps (EN 14059). This standard provides a presumption of conformity to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety ⁽⁴⁾. Consumer protection has to be strengthened by requiring compliance with this standard.

(7) The restrictions on marketing and use laid down by this Decision take into account the current state of knowledge regarding safer alternatives. Member States should periodically report to the Commission on development of alternatives in order to facilitate a review by the European Chemicals Agency. The Agency should assess, on the basis of the effectiveness of the proposed measures to protect child safety, whether it is necessary to adopt additional measures and ban the use of grill lighter fluids and fuel for decorative lamps. For this purpose, the Agency will take into account the requirements of Annex XV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) ⁽⁵⁾.

(8) Directive 2008/112/EC of the European Parliament and of the Council of 16 December 2008 amending Council

⁽¹⁾ OJ L 262, 27.9.1976, p. 201.

⁽²⁾ OJ 196, 16.8.1967, p. 1.

⁽³⁾ OJ L 200, 30.7.1999, p. 1.

⁽⁴⁾ OJ L 11, 15.1.2002, p. 4.

⁽⁵⁾ OJ L 396, 30.12.2006, p. 1; corrected by OJ L 136, 29.5.2007, p. 3.

Directives 76/768/EEC, 88/378/EEC, 1999/13/EC and Directives 2000/53/EC, 2002/96/EC and 2004/42/EC of the European Parliament and of the Council in order to adapt them to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures ⁽¹⁾, imposes obligations on manufacturers of dangerous substances placed on the Community market by 1 December 2010. To facilitate implementation of the additional labelling and packaging provisions included in this Decision, the same date should be imposed on those placing lamp oils and grill lighters on the Community market. In addition, the new risk phrase (H304) required by Directive 2008/112/EC should be used.

- (9) Regulation (EC) No 1907/2006 repeals and replaces Directive 76/769/EEC with effect from 1 June 2009. Annex XVII to that Regulation replaces Annex I to Directive 76/769/EEC. Any amendment to the restrictions adopted under Directive 76/769/EEC should therefore be incorporated in Annex XVII to Regulation (EC) No 1907/2006.
- (10) Directive 76/769/EEC should therefore be amended accordingly.

- (11) The measures provided for in this Decision are in accordance with the opinion of the Committee on the adaptation to technical progress of the Directives for the elimination of technical barriers to trade in dangerous substances and preparations,

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Directive 76/769/EEC is amended in accordance with the text of the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 May 2009.

For the Commission
Günter VERHEUGEN
Vice-President

⁽¹⁾ OJ L 345, 23.12.2008, p. 68.

ANNEX

Point 3 of Annex I to Directive 76/769/EEC is replaced by the following:

<p>‘3. Liquid substances or mixtures, which are regarded as dangerous according to the definitions in Council Directive 67/548/EEC (*) and Directive 1999/45/EC of the European Parliament and of the Council (**).</p>	<ol style="list-style-type: none"> 1. Shall not be used in: <ul style="list-style-type: none"> — ornamental articles intended to produce light or colour effects by means of different phases, for example in ornamental lamps and ashtrays, — tricks and jokes, — games for one or more participants, or any article intended to be used as such, even with ornamental aspects. 2. Articles not complying with paragraph 1 shall not be placed on the market. 3. Shall not be placed on the market if they contain a colouring agent, unless required for fiscal reasons, or perfume, or both, if they: <ul style="list-style-type: none"> — can be used as fuel in decorative oil lamps for supply to the general public, and, — present an aspiration hazard and are labelled with R65 or H304. 4. Decorative oil lamps for supply to the general public shall not be placed on the market unless they conform to the European Standard on Decorative oil lamps (EN 14059) adopted by the European Committee for Standardisation (CEN). 5. Without prejudice to the implementation of other Community provisions relating to the classification, packaging and labelling of dangerous substances and mixtures, suppliers shall ensure, before the placing on the market, that the following requirements are met: <ol style="list-style-type: none"> (a) lamp oils, labelled with R65 or H304, intended for supply to the general public are visibly, legibly and indelibly marked as follows: <p>“Keep lamps filled with this liquid out of the reach of children”; and, by 1 December 2010, “Just a sip of lamp oil — or even sucking the wick of lamps — may lead to life-threatening lung damage”;</p> (b) grill lighter fluids, labelled with R65 or H304, intended for supply to the general public are legibly and indelibly marked by 1 December 2010 as follows: “Just a sip of grill lighter may lead to life-threatening lung damage”; (c) lamp oils and grill lighters, labelled with R65 or H304, intended for supply to the general public are packaged in black opaque containers not exceeding 1 litre by 1 December 2010. 6. No later than 1 June 2014, the Commission shall request the European Chemicals Agency to prepare a dossier, in accordance with Article 69 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council (***) (REACH), with a view to ban, if appropriate, grill lighter fluids and fuel for decorative lamps, labelled R65 or H304, intended for supply to the general public. 7. Natural or legal persons placing on the market for the first time lamp oils and grill lighter fluids, labelled with R65 or H304, shall by 1 December 2011, and annually thereafter, provide data on alternatives to lamp oils and grill lighter fluids labelled R65 or H304 to the competent authority in the Member State concerned. Member States shall make those data available to the Commission.
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(*) OJ 196, 16.8.1967, p. 1.

(**) OJ L 200, 30.7.1999, p. 1.

(***) OJ L 396, 30.12.2006, p. 1; corrected by OJ L 136, 29.5.2007, p. 3.’