



The European Consumers' Organisation



European Consumer Voice in Standardisation

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Commission Decision to make lighters child-resistant and ban novelty lighters

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Summary

The aim of the **Commission Decision 2006/502/EC**¹ is to eliminate novelty lighters and require child-resistant features for disposable lighters. Whilst these principal aims are to be applauded, several of its provisions are insufficient and will not ensure that the large majority of the products put on the market will be indeed child-resistant. These problematic provisions are mainly related to the criteria for exemptions of child-resistance (refillable or luxury lighters), the determination of child-resistant features and the recognition of test results. In the context of the revision of the Decision, we will discuss these criteria and make some suggestions for improvement. In particular, we propose to use a monetary threshold (the so-called 2 Euro limit in the standard EN 13869:2002²) in combination with the strengthened criteria for refillable lighters.

In parallel to the revision of the Commission Decision, a **revision of the European standard EN 13869:2002**, which establishes child-resistance specifications using a child panel test, is under discussion. In our views, this revision raises concern as no convincing alternative to the child panel test is currently available. This test is a well established method to test child resistant mechanisms, e.g. in the European standard for child resistant closures for non-pharmaceutical products. The reopening of the standardisation process may endanger achievements of the past. We support the child panel test in EN 13869 until a technical solution is found and proven to be effective, reliable and enforceable. Any research carried out to identify suitable mechanical tests should be discussed at the political level before any revision of EN 13869 is initiated.

For ANEC and BEUC, it seems that the only reasonable **long term solution** is to expand child-resistance requirements to all lighters.

¹ Commission Decision of 11 May 2006 requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters

² Standard EN 13869:2002 'Lighters - Child-resistance for lighters - Safety requirements and test methods'

Comments on Commission Decision 2006/502/EC

Exemption for specific refillable lighters

The Commission Decision exempts specific refillable lighters from being child-resistant. Article 1 lists the criteria which must be fulfilled to obtain such exemption. According to the Guidelines for the application of the Commission Decision, these criteria are considered as equivalent to the monetary threshold, so-called '2 Euro limit', used e.g. in the US regulation to distinguish disposable lighters from refillable ones. However, we have some doubts whether the two provisions are equivalent and whether the European criteria are enforceable in practice.

Life expectancy of 5 years

The producer shall "provide on request to the competent authorities the necessary documentation substantiating that the lighters are designed, manufactured and placed on the market such as to ensure a continual expected safe use over a lifetime of at least five years, subject to repair [...]". It is not substantiated which test results are to be provided and which criteria are to be applied to consider this provision fulfilled. This will lead to discussions with importers. The authorities will have to argue against claims of industry and it will be difficult to prove that a lighter will not work for 5 years. In addition, different Member States may interpret this provision differently. Hence, a clear set of criteria would have to be defined and approved.

Written guarantee

Producers need also to provide a written guarantee of at least two years for each lighter, in accordance with Directive 1999/44/EC³. This Directive defines a guarantee as "any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising". What the guarantee statement contains is left to the seller, i.e. it could be anything and does not necessarily imply that the product will be functional for a certain period of time. In other words, the provision makes only sense if linked to a content, e.g. that the lighters will be fully functional for a period of 2 years.

³ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees

Safe refills

To obtain an exemption, the lighter must also have the “practical possibility to be repaired and safely refilled over the entire lifetime, including in particular repairable ignition mechanism”. This criterion is easy to fulfil also for cheap disposable lighters. One can easily build in a refill nozzle or use a replaceable spark wheel or flint without increasing the price significantly. Refillable disposable lighters are already available on the market⁴. Even though replaceable spark wheel or flints are exceptional today, the market will evolve very quickly. We therefore believe that criteria for “safe” refills should be set up in the revised Commission Decision.

After-sales service centre

“Parts that are not consumable, but are likely to wear out or fail in continual use after the guarantee period, are accessible for replacement or repair by an authorised or specialised after-sales service centre based in the European Union”. Non-consumable parts, such as piezo electric ignition mechanisms, may easily work for several years without repair. Moreover, an after-sales service centre in the EU could simply be a web site allowing a consumer to send back the non-functional lighter to the producer which will subsequently replace it by a new one. The cost of such after-sales service would be low. As a consequence, the lighters will still be sold at low price without having to be child-resistant therefore posing a risk for children. Finally, most consumers will not even know that the after-sales service is available. Consequently, this provision needs to be further clarified in the revised Decision.

Conclusion on the criteria for exemption

The current provisions to obtain an exemption can be easily undermined. Even if these provisions were strengthened as above (inclusion of criteria for 5 years life expectancy, better wording on guarantees, etc.), the principal dilemma remains: lighters which are in compliance with the exemption rules can be produced at a very low price, at least at a much lower price than a Dunhill or Zippo lighter. As a result, there would still be cheap non-child resistant lighters on the EU market. The equation “refillable + durable/repairable = luxury” is not always true. But the equation “refillable + repairable = safe” does not work either. The basic assumption is that cheap lighters are carelessly left behind – and this would apply also to many lighters exempted from the child-resistance requirement. We therefore believe that the monetary threshold i.e. the 2 Euro limit has its clear justification, as an additional criteria, in the revised Decision. It is indeed the best verifiable criterion and should be used in combination with the strengthened criteria for refilling as outlined above. It should be stated that, in any case, a lighter below the monetary threshold should be regarded as

⁴ e.g. <http://www.polycity.com/en/index.html>

disposable. In our view, the only long-term alternative will be to apply the child-resistance requirement to all lighters on the market.

Other flaws and open issues of the Decision

Supply of non-conforming lighters to consumers

It is envisaged that non child-resistant lighters must not be sold to consumers after a transitional period of 1 year following the ban. This is technically feasible and must be incorporated in the revised decision.

Recognition of test bodies

The competent authorities have the possibility to recognise test bodies other than those accredited by a member of the International Laboratory Accreditation Cooperation (ILAC). However, there are no criteria for that and the Member States will apply their own rules running the risk of inconsistency. European criteria should be defined. Amongst them, there could be a request to the test body to provide evidence for several years of experience in using child panel testing in the field of child-resistant packaging (to be further detailed).

Equivalent child-resistance requirements

According to Article 1 of the Decision, lighters need to conform to either the European Standard EN 13869:2002 or to equivalent rules applicable in non-EU countries. It is unclear what the term "equivalent" means in this context. Article 6 provides that "In particular, for Article 1(3), the Commission shall decide whether other international standards or national rules or standards or other technical specifications, in particular specifications concerning alternative methods or criteria to establish child-resistance of lighters, may be recognised as being equivalent to the child-resistance requirement established by this Decision". We fear that rules which have been shown to work in practice, e.g. in the US, will be replaced by other procedures without any evidence of equivalence. To date, no concepts or results of research have given confidence that any standardisation work to this end will be fruitful. The results of any research work should show that alternative technical solutions are effective, reliable and enforceable, and should be discussed at political level before any mandate is given to CEN.

Experience in the field of child-resistant packaging shows that, despite many efforts, no mechanical testing alternatives can replace child panel tests yet. Existing mechanical tests are seen as a quality control instrument in addition to child panel tests, but not as a substitute. For some products, such as container for chemicals used in chemistry sets or decorative oil lamps, alternative solutions have been used. However, they are design restrictive and therefore not applicable to lighters. The only mechanical barrier option which has been suggested for lighters was to use a minimum force for piezo electric lighters. However, the force is likely to fall in the range of 40N and makes a lighter very difficult to operate. Hence, it is rather unrealistic that suitable solutions will be found. A dilution of the testing rules could put into question the Decision itself.

Conclusion

We believe that the Commission Decision should be reviewed with utmost care in order not to eliminate the whole concept of child-resistance. The provisions for exemption must be strengthened to ensure that the majority of lighters on the EU market will be child-resistant.

However, the only long term solution is for all lighters to be child-resistant. This will guarantee that European children can benefit from the same level of safety than in other countries e.g. in the US.

END

