

Prepared by:

Kazimierz Kubiak - Entrepreneurship and Economic Development Research Institute  
in co – operation with:  
Lucjan Szuster - Instytut Barwników i Produktów Organicznych  
Bogusław Woźniak - Instytut Przemysłu Skórzanego  
Stanisław Pruś - Stowarzyszenie Polskich Chemików Kolorystów  
Wojciech Kupś - Instytut Włókiennictwa

## **Assessment Of Obligatory Tools In The Area Of Safety**

### **TCL - Textile – Clothing – Leather**

**performed upon the commission of Entrepreneurship and Development Research Institute (*Instytutu Badań nad Przedsiębiorczością i Rozwojem Ekonomicznym EEDRI*) in order to support “Petition in favour of certified quality of textile, clothing and leather products TCL”**

The diverse requirements made for textile products both within the territory of Poland and in particular European Union member countries hinder appropriate evaluation of the effectiveness of legal systems which are binding in European Union member countries. The Law of the European Union constitutes a separate legal system and it enjoys superior status in comparison with national legal norms.

Decree is a legal act which resembles a statute in the system of national law. It is binding both on the level of the Union and in each of the member countries.

Decisions, similarly to individual administrative decisions, pertain to those parties to which they have been directed.

The most characteristic act for the European Legal System is a directive. It is addressed to the member countries and it determines the task, which a given country should complete by a deadline indicated in the directive. The member country is obliged to transfer the resolutions of the directive into the national legal system using a legislative form of choice (statute, decree). The aim of such action is to create uniformity of different legal systems in order to enable an unconstrained flow of persons, services and goods; in other words to enable

the existence of a common market based on national regulations and standards. Therefore, if there exists a directive which embraces some precisely defined issues, e.g.: general directive 76/768 EEC, which renders a list of substances permitted to be used in cosmetics, then the solutions included in it are binding for the member countries of the European Union. Therefore, those countries should adapt their legislation to the hereby directive.

However, in some extraordinary cases, in spite of the existence of common regulations determining the norms applying to particular products, a member country which believes it to be necessary to employ more restrictive regulations, justified e.g. by health issues, has the right to apply to the European Commission for their approval (based on article 100 a line 4 of the Treaty).

The Commission will approve the presented regulations when they ascertain that they do not constitute measures of arbitrary discrimination or hidden trade restrictions.

In other words, if there exists a European Union directive to which defines standards which some particular products should adhere, it is binding for all the member countries.

In the absence of common regulations, in spite of the unconstrained flow of goods and services, in accordance with article 36 of the Treaty each of the member countries (in compliance with their own regulations and standards) has the right to establish bans or limitations concerning the import of goods, if it is justified by public safety issues or health and human life protection. The same regulation applies to the measures which are aimed at restraining some goods from turnover, e.g. testing and controlling imported goods from the point of view of their compliance with the national standards.

### **1. Directive Concerning General Safety Of Products And Its Consequences**

Being aware that “legislations vary from country to country as far as the degree of protection of people and safety of products are concerned” as well as that “it is more than difficult to establish common legislation for each existing product or a product which can be used”, the European Union considered it necessary to determine general principles of the safety of goods which are sold in the member countries. Therefore, on 29 July 1992 directive 92/59 EEC – a.k.a. directive concerning general safety of products – was issued. Its adaptation to the Polish legal system occurred via approving a statute of 21 January 2000 concerning general safety of products (O. J. No 15 entry 179).

The above-mentioned directive was altered by directive 2001/95/EC, which was introduced into the Polish legal system via a statute concerning general safety of products (O. J. 2003, 229, entry 2275.).

The aim of the directive is to ensure that only safe products enter the European market. Safe products are understood as products, which “under normal conditions of use do not present any risks or the risk is reduced to the minimum”. Simultaneously, it is declared that a product, which does not comply with those requirements, is not a safe product. The resolutions of the hereby directive are employed when there are no particular resolutions within the common regulations, which regulate the issue of safety of a given product. Then, to be considered safe the product must comply with the specific regulations of the member country on whose territory it is sold. Hence, it can be said that as long as there are no regulations acclaimed on the level of the Union, member countries of the Union have the right and obligation to introduce their own norms aimed at the protection of the product’s users’ health and safety as well as the protection of health and safety of the institutions controlling the use of the product.

The above described solution was implemented in the case of a Polish act regarding textile goods. Article 8 of the hereby statute obliges the Government to issue a decree concerning the safety and marking system of textile goods. The valid decree was ratified on 6 April 2004 (O. J. 2004, no 81, entry 743). Appendixes 8-11 to the hereby decree determine the content of particular chemical substances in textile goods (formaldehyde, a particular kind of Azo dyes, some antipyrenes, etc). Summing up, it can be said that based on the statute concerning general safety of products, requirements regarding the safety of textile goods have been introduced in Poland. According to the same statute, Poland has joined RAPEX system (Rapid Alert System for non-Consumer Product), however the Polish statute does not utilise this name.

## **2. Directive Concerning Chemical Substances And Preparations And Its Consequences**

Another issue that has some reverberations for textile goods is represented by a group of problems connected with the turnover of chemical substances within the territory of the European Union. Disregarding the details as well as the history of ratifying several directives and statutes which were aimed at regulating the aforesaid turnover, it must be reminded that the basis is to be found in the directive 67/548/EEC and its 44 amendments. The current

Polish equivalent of this directive is the statute of 11 January 2001 “Concerning Chemical Substances And Preparations”, which has already been changed eleven times. According to Article 1 “the statute defines conditions, injunctions and restrictions of production which enters turnover as well as of the use of substances and preparations in order to provide protection against detrimental effect (...) onto human health (...)”.

Moreover, according to article 4 point 3 “the Minister responsible for health issues (...) shall provide the list of dangerous substances”. The updated list of dangerous substances was published in O. J. 2005, no 201, entry 1674.

Chemical substance is included in the list it requires special markings, a particular manner of handling as well as particular safety measures, etc. It does not imply, though, that these substances cannot be used.

On the other hand, article 31, point 1 of the Statute states that in the case when groundless risk of using a dangerous substance is found, then the Minister of Economy can formulate a ban concerning the production or the turnover of such a substance, which as a matter of fact implies a ban on its use. The current decree of the Minister of Economy was published in O. J. 2006, no 239, entry 1731. Thus the directive 76/769/EEC (a.k.a. Limitation Directive) was implemented in Poland. The aforesaid directive enumerates substances whose use is banned or whose content in products is restrictively limited, e.g. 20 ppm. The Appendix to the directive lists such substances as metals and their compounds (nickel, cadmium, lead, mercury, arsenic and their compounds), chlorophenols (pentachlorophenol), poly- and perchlorinated biphenols or PCB and PCT, asbestos and antipyrines (TRI 2,3 – di-bromopropylphosphate) –TEPA, tri-azirydynylo, phosphines – TRIS oxide, polybrominated-biphenols PBB, Azo dyes derivatives of cancerogenic amines. The list of the substances is a subject of constant analysis and revision.

Limitation Directive directly affects TCL sector, as it demands that marketed products not include among others:

- a) particular Azo dyes (dyes)
- b) Phthalates in products for children (plasticizers)
- c) derivatives of nonylphenol (emulators)
- d) derivatives of cadmium (pigments)
- e) nickel (fittings and adornments) in accessories to textile and leather products.

The list of such bans is expanding. Summing up, it must be observed that whereas within the European Union the directive concerning general safety of products does not result in decrees pertaining to textile products in all countries, the Limitation Directive is commonly binding. It must also be expected that it will be included into the realm of REACH.

The office of the Central Trade Inspectorate (*Główny Inspektorat Inspekcji Handlowej*) is responsible for monitoring of compliance. It must be taken into consideration, however, that the increase in exchange of goods as well as a considerable shift of production means of textile products outside the borders of Europe contribute to the escalation of problems related to enforcement of the appropriate of regulations. This team postulates that the effectiveness as well as the scope of conducted controls is insufficient. The fact that most importers are not aware of the regulations and fail to consistently demand from foreign suppliers evidence of compliance is equally alarming.

### **3. CE Marking And Ecological Marks**

CE marking is an obligatory marking in the case of a certain group of products. It indicates that the product complies with the so-called “balanced” norms. In the case of TCL products, it pertains to personal safety products (such as workers clothes and shoes) and toys if they happen to contain textile elements. Requirements pertaining to CE marking are the same for all European Union member countries. Unlike CE marking, ecological marks are voluntary. The manufacturer or the company introducing the product into the market can be in possession of such marking or not. There are dozens of ecological marks, characteristic of particular countries or geographical regions. In the area of TCL products the most recognisable ecological mark in Europe is Óko-Tex – a German-Austrian mark. Ecological Marks are granted by certifying bodies on the basis of product research or research and audit.

Ecological marking can include in its scope either research of a new product (Óko-Tex) or research both of the product and the production process (e.g. European mark Eco-Label).

Possessing an ecological mark guarantees a product’s compliance with the requirements of a given mark. In the area of TCL the most substantial differences between the requirements described in points 2 and 3 (statutory requirements) and ecological marks apply to all chemicals utilised in the whole cycle of product’s life – pesticides, allergen dyes, tinorganic compounds, heavy metals, etc. It can be assumed that a product in possession of an ecological mark is a safe product from the point of view of current knowledge.

#### 4. Bodies And Laboratories

In the area governed by the statute concerning general safety, Office of Competition and Consumer Protection (*UOKIK*) as well as reporting to it Trade Inspectorates (*Inspekcje Handlowe*) constitute the regulatory bodies. In case of introducing a product into the territory of a country, customs services have the right to verify the product. In some cases of personal safety products – CE marking – Labour Inspectorate (*Inspekcja Pracy*) can order verification of a product's quality. As the Minister of Health is responsible for the statute concerning chemical substances and preparations, the control can be carried out by the Chemical Substance Bureau, or (in the case of consumer market) Health Inspectorate (*Inspekcja Sanitarna*).

Both Trade Inspectorate and Health Inspectorate have at their disposal laboratories in possession of appropriate accreditation.

An accredited laboratory is defined as a laboratory which works according to ISO 17025 norm and tests products according to the statute concerning the system of compliance evaluation. The realm of tested features and products is included in the so-called “ scope of accreditation”.

Such laboratories can be present both as a part the official regulatory bodies as well as in research units of universities and other research and development entities.

The accreditation is granted by the Polish Accreditation Centre. Certifying bodies issue their certificates on the basis of research provided by accredited laboratories. Some certifying bodies are in possession of the so-called Notification which provides a confirmation of their competence for the area of the European Union.

It is an important task to initiate on a large scale actions aimed at building consumer awareness . Marks and certificates which inform about threats for consumers' health and safety are also an important factor. Unfortunately, the existing marks such as Blue Angel, Óko –Tex and Eco–Label inform only that the mark can have a diverse range of meanings. The assessment team postulates that introduction of uniform requirements concerning marks binding for the turnover of goods within the European Union be introduced.

It is also an important task to train manufacturers, importers, government employees and customs officers, in the area of national and European requirements concerning textile products.

For several years research and development units have been conducting research as well as undertaking actions aimed at promoting safe textiles. Within the territory of Łódź and Łódź voivodeship there are strong research and development bodies which work for the purpose of ensuring that only safe textile products and protective clothing enter the market. The Institute of Textile Materials' Engineering (*Instytut Inżynierii Materiałów Włókienniczych*) (currently Textile Institute) and its Research Institute of Textile Materials' Engineering established the Laboratory of Research of Textile Products' Ecology, is the only place in Poland that conducts a whole range of tests concerning the safety of textile products. The aforesaid laboratory is also the only laboratory in Poland that participates in research for the International Association for Research and Development of Textile Products' Ecology Óko –Tex.

The Institute of Dyes and Organic Products in Zgierz is considerably involved in this area. The Institute has a laboratory in Łódź, which provides services to textile companies both in Łódź and in others parts the country. The Institute's quarterly newsletter publishes not only research papers but also practical information as well as aimed at textile and clothing companies.

The Personal Protection Company (*Zakład Ochron Osobistych*) from Łódź which operates within the Central Institute for Labour Protection (*Centralny Instytut Ochrony Pracy*) plays a similar role. The company evaluates protective and special clothing, gloves and shoes.

Leather Industry Institute (*Instytut Przemysłu Skórzanego*) is in possession of "Ecological Product" mark which is granted on the basis of Technological Criteria KT-11/05 (based on Eco-Label) of the Certification Centre. The mark has been granted for their shoes and materials used for their production. Similarly, accredited laboratories of Leather Industry Institute are prepared to conduct ecological research of leather industry products. It ought to be pointed out that only in the year 2006 over 18 million pairs of shoes with leather cover, 59 million pairs of shoes made of synthetic substances and 29 million pairs of textile shoes were introduced into Polish market from Asiatic countries.

The means at the disposal of research units are not sufficient to provide intensive and effective activities for the purpose of promoting safe textile products.

## **Conclusions**

Currently, there operates a legal system in Poland which enables to regulate the market in the area of TCL. In the opinion of the team preparing the hereby assessment, the Polish system is coherent with the European system and if anything more strict as obligatory requirements included in the decree concerning the safety of textile products are not commonly followed in the European Union.

Theoretically, there exists a regulatory and supervisory system – Trade Inspectorates, Health and Epidemiological Stations, etc. There are also competent laboratories which are capable of conducting research of marketed goods in the area of TCL. Therefore, it might seem that the “legal-control” area exists, although it undoubtedly requires subsidising and modernisation. A following question arises is the following: where does the problem lie? Are the requirements concerning the safety of TCL products not restrictive enough? If so, it is part of medical services’ activities and then it can be solved by stricter legislation on the European level. Practically, the solution lies in converting voluntary requirement of eco-bans into obligatory requirements. However, if this solution is applied, we end up with the same situation with the only difference that the requirements are more restrictive.

It is our Team’s opinion that the problem lies in the fact that there is little awareness and knowledge both in the case of consumers and, more importantly, in the case of importers introducing TCL products into the market. Official regulatory activities such as those carried out by Trade Inspectorate are conducted after the product has entered the market. Lack of compliance with requirements may incur severe financial consequences for the introducing party. However, it does not change the fact that a product comprising toxic ingredients is already within the territory of Poland. Controls should be carried out before the product enters the market. Moreover, they should be conducted by the introducing party itself under conditions which guarantee confidentiality of test results. The introducing party, nevertheless, must be informed about the necessity of carrying out certain tests, their scope, as well as the place where they can be performed, etc. Therefore, there should be established a TCL Research and Information Centre, where everyone could obtain full information concerning product requirements in different countries belonging to the European Union as well as

information regarding possibilities of carrying out the necessary research. There is an urgent need to clearly specify within the European Union:

- number and quality of binding marks;
- the information which the mark should include;
- the obligation of comparability of marks binding in European countries;
- utilisation of the same marks in product turnover Marking with national marks could be accepted only within the product's country of origin
- Refusal to accept products which do not comply with European Union requirements via creating a uniform system of control for markings binding within European Union member countries.

Chairmen of Team

Kazimierz Kubiak