KBL AG
The Beauty & Health Company

KBL AG - The Beauty & Health Company · Ringstraße 24-26 · 56307 Dernbach

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Ringstraße 24-26
56307 Dernbach, Germany

fon+ 49 (0) 26 89.94 26-0
fax+ 49 (0) 26 89.94 26-66
eMail info@kbl.de
net www.kbl.de

WEEE-Reg.-Nr. DE18678349

USt-ID-Nr. DE811460356

Dernbach, April 12, 2017

Observations by KBL AG, Germany on the notification of the French decree relating to the conditions for making tanning equipment available to the public and amending Decree No 2013-1261 of 27 December 2013 on the sale and public availability of certain tanning devices which use ultraviolet radiation

KBL AG a leading manufacturer of indoor tanning equipment in Europe, takes note of the notification and hereby submits its comments to it. KBL - over the it´s association European Sunlight Association - has always engaged with EU policy-makers to define and implement common operating standards in sunbed services across Europe, ensuring the highest possible level of safety. We deem it important to highlight some serious legal problems and issues created by the decree. In particular, we think that the decree comprises provisions that do not improve the safety of sunbeds, while imposing a disproportionate burden on manufacturers and studios. Furthermore, several elements create barriers to trade.

1. The amendments to article 17 of decree 2013-1261 do not ensure compliance nor increase safety. As required by the amendments, tanning devices would be subject to inspections by an accredited inspection body after every change of the ultra-violet emitters. However, based on experience, random controls are a much more efficient way to ensure compliance of sunbeds with French and EU law and safeguard consumers' safety. Furthermore, placing the burden of requesting such inspection on the tanning devices' owner means relying too much on his/her goodwill. As an example of successful and effective check policy, in 2016, the Netherlands' Food and Consumer Product Safety Authority (NVWA) carried out a rigorous evaluation of the compliance of tanning studios with existing EU legislation through a series of inspections. These inspections followed random checks carried out between 2008

and 2014. The first inspections showed that 86% of sunbed studios were compliant, and 14% were not. Following the first inspection, most of the studios in which sunbeds were found to exceed the UV radiation limit took note and adjusted their sunbeds to the allowed UV radiation value. The others adjusted the sunbeds' UV-radiation only after being imposed a penalty. Subsequent checks found this policy to be effective as all inspected studios were found compliant with the rules.

2. Provisions regulating the safe replacement of emitters already exist. The product standard EN60335-2-27 – adopted by the EU with the active collaboration of ESA – provides clear instructions and measures in order to replace safely the emitters. In fact, the lamps bear a marking (X-Y-Code) indicating their UV output and spectral distribution. Furthermore, tanning devices bear a label indicating the range of X- and Y-codes for the lamps to be used so that the sunbed remains safe for users. This clearly shows that adopting unilateral measures without consulting with the relevant stakeholders appears at best redundant, at worst counterproductive.
3. Not only is the effectiveness of the abovementioned provision questionable, but its implementation would also be extremely difficult and expensive. Article 17 would prove to be extremely burdensome and would damage the industry. A requested inspection may take place after several weeks only, preventing tanning devices' owners from using their equipment in the meantime – this might cause significant economic losses, especially to smaller studios using a small number of sunbeds. In turn, this reduction in activity could have negative repercussions on employment. Furthermore, each control costs on average 200 € - which would be an unsustainable cost to pay should the controls happen at the frequency envisaged by the amended article which, in operational terms, could be every 6 months for each sunbed. Moreover, emitters sometimes fail unexpectedly, just like any lamp in a household can fail. They need to be replaced immediately to ensure the equipment works normally. To wait for an inspection is not acceptable for someone whose living depends on this equipment.
4. Article 7 is simply incompatible with European law. Mandating the inspections of tanning devices by an accredited body before they are made available to the public for the first time, to certify the compliance with the requirements of point I of article 7 of the decree, goes against applicable legislation. Sunbeds are legal products covered by the Declaration of Conformity (DoC) of the manufacturer, and as such should be allowed to be placed on the market without additional prior inspection or certification. Such double testing is not necessary to ensure that the product is legal and safe.
5. Article 11 sets a barrier to trade. As it sets an additional UVB/UVA ratio requirement on the ultraviolet radiation emitted by the tanning devices, all manufacturers would be forced to create a specific French version of their tanning devices. This is a clear trade barrier limiting

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the freedom of movement of goods and an obstacle to the single European market for sunbeds.

6. Article 12 sets another barrier to trade. Article 12 gives the power to the French Ministers for Health and Consumer Affairs to specify the content of the written material providing information to the customer. If the above mentioned information were different from the existing safety standard (European Standard EN60335-2-27), the manufacturer of the tanning device would need to create a specific manual with user instructions for the tanning beds delivered to France. Once again, this provision prevents the free movement of goods and constitutes a trade barrier.
7. Article 8 also sets a barrier to trade. The amendment to Article 8 sets new requirements on goggles intended to protect the eyes from artificial UV radiation, while such requirements are already set in the above mentioned standard EN60335-2-27. The manufacturer and the operator would then need to create a specific French version of the goggles. In conclusion, we would like to highlight that KBL AG together with ESA and its members stand for harmonized solutions at EU level. This is why we regret that the European standard EN 60335-2-27 limiting UV radiation to 0.3W/m2 and the new European Standard on training and service provision (EN16489) have not been taken into account in the elaboration of the decree. These standards have been created through a process of close collaboration between the EU, the national Market surveillance authorities, ESA, and CENELEC, and they already provide for the necessary measures to ensure the safety of consumers and regulate the industry. In particular, the training and service provision standard addresses a number of the points raised in the French decree (such as the information to users and the training of sunbed operators) and could easily be implemented across Europe – thus avoiding any of the abovementioned concerns.

We hope that the European Commission will take account of the arguments we set out in this letter.

Best regards,
KBL AG

Christina Lorenz
-business manager-