



6.5.2019

NOTICE TO MEMBERS

Subject: Petition No 0924/2018 by Paul Villain (French), on behalf of Association des Brûlés de France, on accidents caused by lack of market surveillance in the EU

1. Summary of petition

The petitioner calls for an immediate action at EU level to stop faulty products, such as non-compliant lighters, to enter the EU market and threaten consumer safety. He states that faulty lighters are the most common cause of burns among children and adults and that the vast majority of accidents are not the result of improper use, but rather of lighter malfunctioning. The petitioner points out that many unsafe lighters enter the EU market through major ports where controls are insufficient and are then disseminated over Europe, rarely subject to any controls. He argues that the responsible market surveillance authorities are often underfunded, bureaucratic and constrained by national boundaries and therefore do not live up to their duty to check compliance and apply sanctions where necessary. The petitioner also highlights that an infringement procedure has been started against the Netherlands in 2010 on this issue, but that it is stagnant and no improvement has been achieved so far.

2. Admissibility

Declared admissible on 18 December 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 6 May 2019

The Commission's observations

On market surveillance

Member State market surveillance authorities have in the past carried out two coordinated enforcement activities (known as “Joint Actions”) on lighters. The last Joint Action (2010-2012) fostered a lot of activity by the 13 participating countries: 8,600 inspections were carried out at retailers, wholesalers, importers and manufacturers and 74 lighters were tested at an accredited laboratory. According to the final report of that Joint Action, 71% of the lighters inspected were considered to be safe, whereas 29% failed to meet the legal requirements. As regards the 74 lighters subject to laboratory testing, 55% did not receive remarks, 26% showed critical or major non-compliances and 19% showed minor non-compliances.

These percentages were considerably lower than those calculated in the previous Joint Action (2007-2009). Although the results of the two joint actions were not directly comparable, it was considered that these joint market surveillance efforts had indeed improved the situation.

In 2013 and 2015, the Commission consulted Member States’ market surveillance authorities about the situation regarding lighters and their risks: the Member State authorities considered that lighters on their respective markets did not pose a major risk and thus did not require increased attention.

More recently - following complaints filed on 24 October 2018 alleging lack of market surveillance by the French and German authorities – the Commission has asked the relevant authorities of these two countries for their views on the data presented in the APCO and Calyxis studies, attached to the petition. The feedback received shows that these authorities do not share the views expressed in the above-mentioned studies. According to the study submitted by the French authorities, the latest statistics in particular on the cause of accidents registered in hospitals show a misuse of lighters, mostly by adolescents and young male adults.

In March 2019 the Commission raised again with Member States - within the Consumer Safety Network (CSN) – the issue of whether a joint market surveillance action on lighters should be taken into consideration, but no Member States considered such action necessary.

On the infringement case against the Netherlands

In 2010, the Commission received a complaint alleging lack of market surveillance by the Dutch authorities in respect of non-compliant and possibly dangerous lighters. According to the complaint, most of the non-compliant lighters originate from China and Vietnam. As the port of Rotterdam is the main entry point for these lighters, the complainant chose the Netherlands as the source of their complaint, arguing that even the authorities considered the “best in the class” did not do enough to keep consumers safe.

Following the complaint and the studies presented to the Commission (in particular a study

dating from October 2013 (the Calyxis study)¹), the Commission addressed a letter of formal notice to the Netherlands in 2012 and an additional letter of formal notice in 2014. In the letters of formal notice, the Commission expressed doubts regarding the Member State's compliance with its obligations under the General Product Safety Directive (GPSD)²: in particular as regards its obligations to carry out effective market surveillance, to ensure that producers and distributors only place safe products on the market and to ensure that lighters posing a serious risk are notified through the Rapid Alert System for dangerous non-food products (RAPEX)³.

In November 2014, the Netherlands provided detailed information regarding the controls carried out by the Dutch authorities in respect of lighters. It explained the organisation and priority-setting of national market surveillance activities and provided concrete data regarding market surveillance activities in respect of lighters (including sampling, testing, risk assessment) and exchanged information with the Commission and other Member States regarding the outcome of their controls. The Netherlands also provided information on accidents and injuries relating to lighters, in particular data extracted from the Dutch injury information system (LIS) and reports in national and regional newspapers regarding accidents related to the use of lighters. These statistics show different results than the study submitted by the complainant.

Since 2010, based on the documents submitted to the Commission by the Dutch authorities, there does not seem to be evidence to indicate that the number of unsafe lighters on the Dutch market, or the risk to the health and safety of consumers in the Netherlands due to unsafe lighters, is significant. However, in view of the new complaints mentioned above, the Commission has asked further information on possible issues in France, Germany and Netherlands.

On Member State obligations on market surveillance

According to Article 6.1 GPSD, Member States shall ensure that producers and distributors comply with their obligations under this Directive in such a way that products placed on the market are safe. To that purpose, Member States nominate authorities competent to monitor the compliance of the products with the GPSD obligations. Such authorities have to perform their duties taking measures in a manner proportional to the seriousness of the risk (Article 8.2 GPSD).

1. For example, a study in September 2014, carried out by the Veiligheid NL (Dutch Institute for Consumer Safety) using various sources - in particular objective information from the Dutch Injury Information System - shows that the number of accidents related to unsafe lighters is significantly lower than suggested by the Calyxis study. The reported number of treated injuries caused by lighters, whether unsafe or misused, varies between 40 and 80 per year in the Netherlands, whereas the Calyxis study concludes that there are an estimated 40,000 to 60,000 accidents with lighters, causing a minimum of 350 to 3,000 serious injuries per year in the Netherlands.

2 Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (Text with EEA relevance), *OJ L 11, 15.1.2002, p. 4-17*.

3 https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.listNotifications&lng=en

According to Article 8.3 GPSD, the seriousness of the risk shall be determined by the authorities of the Member State assessing each individual case on its merits and taking into account the guidelines for the management of RAPEX.

To ensure the effective surveillance, Article 9 GPSD provides that Member States will put in place appropriate means and procedures which aim to ensure a high level of consumer protection by:

- establishing periodical updating and implementation of sectoral surveillance programmes by categories of products or risks and the monitoring of surveillance activities, findings and results;
- follow-up and updating of scientific and technical knowledge concerning the safety of products;
- periodical review and assessment of the functioning of the control activities and their effectiveness and, if necessary, revision of the surveillance approach and organisation.

On the link between Member State obligations and the producer obligations according to GPSD

Whereas, as explained above, Member States have to ensure that producers and distributors comply with their obligations under the GPSD in such a way that products placed on the market are safe, the primary responsibility to ensure the safety of the product lays with the producer.

According to Article 3.1 GPSD, producers are obliged to place only safe products on the market. A product shall be deemed safe when, in the absence of specific EU provisions governing the safety of the product (harmonised legislation), it conforms to the specific rules of national law (rules which have to be in conformity with Articles 34 and 36 TFEU) laying down the health and safety requirements which the product must satisfy.

In case no EU provision or national legislation exists, the product is presumed safe when it conforms to voluntary national standards transposing European referenced standards. Article 4 GPSD explains how a standard can be referenced.

It must be taken into consideration that even if a product is compliant with the EU or national provisions or it conforms to the standards, the Member State can always take the appropriate measures to impose restrictions on the product being placed on the market or to require its

withdrawal from the market or recall where there is evidence that, despite such conformity, the product is dangerous (Article 3.4 GPSD).

Member State authorities perform market surveillance on a risk-based approach and, on different occasions, Member States experts expressed a low level of safety concerns, including accidents, related to lighters on the EU market.

Conclusion

The Commission is in contact with the Dutch, German and French authorities to obtain additional information to determine whether any shortcomings can be identified in market surveillance activities.