DRAFT REPORT

on the Revision of the General Product Safety Directive and Market Surveillance
(2010/2085(INI))

Committee on the Internal Market and Consumer Protection

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION


The European Parliament,


– having regard to the Roadmap "Alignment to the New Legislative Framework (Decision 768/2008)", DG Enterprise and Industry, 15 April 2010,


– having regard to the briefing paper commissioned by IMCO Committee on Market Surveillance in the Member States, published October 2009,

– having regard to the briefing paper commissioned by IMCO Committee on the Revision of General Product Safety Directive (GPSD) and Market Surveillance, published September 2010,

– having regard to the workshop on the Revision of the General Product Safety Directive and Market Surveillance held on 30 September 2010,


– having regard to the joint ANEC/ORGALIME position paper “Call for an effective Pan-European market surveillance system”, April 2009,

– having regard to the EU-US-China trilateral Summit held in Shanghai 25-26 October 2010,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on International Trade and the Committee on Industry, Research and Energy (A7-0000/2010),

A. whereas it is essential to ensure that all products placed on the EU market are safe so as to guarantee high level of consumer protection,

B. whereas the New Legislative Framework (hereinafter - NLF) was adopted in July 2008 and Regulation (EC) No 765/2008 on market surveillance was applicable as of 1 January 2010,

C. whereas the General Product Safety Directive 2001/95/EC (hereinafter - GPSD) which establishes at Community level general safety requirements for consumer products has to be reviewed and brought into conformity with NLF, in particular the Regulation on market surveillance,

D. whereas the product safety and market surveillance legislative framework consists of three layers of legal acts (GPSD, NLF and sector specific harmonisation directives), which leads to uncertainties and confusion in the internal market,

E. whereas the level of market surveillance differs considerably among Member States and a number of them fail to designate necessary resources for the efficient market surveillance and interpret "products posing serious risk" differently,
F. whereas cooperation among market surveillance authorities and joint market surveillance actions are essential and should therefore be strengthened further and resources delegated hereto,

G. whereas Regulations brings the advantages of clarity, predictability and effectiveness compared with Directives as also stated in the Monti Report,

**Market Surveillance**

**Introduction**

1. Believes that the current legislative framework for market surveillance has to be enforced in an effective manner and be further coordinated;

2. Proposes to the Commission to establish a common European framework for market surveillance;

3. Calls on Member States to designate adequate financial and human resources to market surveillance activities; calls on the Commission to put pressure on, assist and encourage the Member States to increase the resources for market surveillance; emphasizes that failing market surveillance systems undermine the citizen’s trust in the internal market;

4. Stresses that the economic and financial crisis must not be used as an excuse for not designating necessary resources to market surveillance;

5. Emphasizes the necessity to share best practices among the Member States; calls for joint cooperation, pooling the know-how and sharing the best practices among market surveillance authorities; reminds of the importance of cooperation between customs and market surveillance authorities at the external borders to carry out appropriate checks of products entering the Community;

6. Suggests establishing offices for education on product safety e.g. included in the Product Contact Points, that can facilitate training and transfer information across industries;

7. Urges the Commission to establish a public Consumer Product safety Information Database, including a platform for complaints which will raise awareness of dangerous products across the borders in the internal market; calls for the establishment of a accident statistical system wherefrom mandatory annual reports will be published, coordinated and funded by the European Commission, where Member States shall report products that have caused accidents within their territory;

**The revision of GPSD**

**Alignment of GPSD and NLF - a new General Product Safety and Market Surveillance Regulation**

8. Supports the review of the GPSD and calls for an alignment of the definitions of the GPSD with the Regulation on Market Surveillance in regards to definitions and in regards to the obligations for economic operators;

9. Calls for alignment between traceability requirements in GPSD and the NLF so as to guarantee the coherent traceability system;
10. Stresses the importance of uniform definitions and assessments in Member States of products posing serious risk in order to unify the safety level throughout the Union and the traceability system;

11. Urges the Commission to establish one market surveillance system by proposing e.g. "A General Product Safety and Market Surveillance Regulation" including the Regulation on market surveillance and the revised GPSD in one updated legislative proposal which covers both harmonised and non-harmonised products;

**Additional specific changes to the GPSD**

12. Insists that a common definition of “child-appealing product” should be included in the current revision of the GPSD and in sector specific legislation on harmonised products; welcomes the work of an ad-hoc working group on child appealing appliances; Calls for more transparency throughout that process and wishes to be more informed on the progress achieved so far;

13. Finds it problematic that products operated by service providers are not covered by the current GPSD, i.e. that general safety requirements apply when the product is handled by consumer on the premises of the service provider, but not if the same product is operated by the service provider; stresses the need to rectify this legal loophole;

14. Calls for the simplification of the European product safety legislation and encourages the provisions on the Food-Imitating Products to be included in the revised proposal;

15. In order to ensure the safety of the widest scope of particularly vulnerable consumers calls on introducing a reference to "people with disabilities" (along with the references to "children" and "elderly" that are already present);

16. Calls on the Commission to include an obligation for manufacturers to do a risk analysis in their design phase; urges that if any risks are identified they should be documented with the product when it is marketed;

**Emergency Community measures**

17. Is concerned about the temporary character of emergency measures as this leads to legal uncertainties; stresses the need for a more effective regulatory framework, allowing quick interventions and reliable long-term solutions, without delegating political decisions to the standardisation bodies. The GPSD should allow for the establishment of product specific rules without limitations, either in terms of content or the period of applicability;

**Traceability**

18. Stresses that products posing serious risk must be permanently withdrawn or recalled from the market as quickly as possible and traceability through out the supply chain must be ensured;

19. Insists on effective enforcement of the identification procedures that are already in place; encourages the Commission to make assessments and evaluations on the use of new technologies, e.g. Radio Frequency Identification (RFID), technology tags and nano-printed intelligent packaging, however considers that the usage of those technologies should not endanger the privacy, security and safety of the consumer;

***RAPEX***
20. Acknowledges that RAPEX is a useful and efficient tool to disseminate information among the Member States about the measures taken with regard to dangerous products (products posing serious risk) but the tool can be further improved;

21. Calls on Commission to allow product safety professionals, consumer organisations and national authorities to have access to all relevant information;

22. Welcomes the new RAPEX guidelines which contribute to the improvement of operation of RAPEX; Invites the Commission to streamline the new risk assessment method with those in place for harmonised consumer products to assist market surveillance authorities in their work;

23. Is particularly concerned that each year there is an increase of RAPEX notifications relating to products of Chinese origin, which is more than half of the RAPEX notifications, and where it appears that it is not possible to identify the manufacturers of those products in 20 per cent of cases; therefore calls on enhanced efforts to be made internationally and welcomes EU-China-US cooperation on product traceability strategies; welcomes any support, training, seminars organised by EU and Chinese authorities to improve product safety;

*Online selling and customs*

24. Is concerned about the difficulties faced by market surveillance authorities when taking action against dangerous products (products posing serious risk) sold on-line;

25. Welcomes the Commission's project C2013 in the area of product safety which will produce guidelines for custom controls in the EU, urges it to deliver concrete tools for customs authorities to tackle challenges of adequate controls on imported products, calls for further enhanced co-operation between enforcement authorities;

26. Calls on the Commission and Member States Authorities to ensure proper training of officers so products presenting a risk can be further detected; urges for better cooperation between customs and market surveillance authorities before products are released on the market;

*Standardisation*

27. Stresses the need for the market surveillance authorities to fully participate in the process of standard development, as this is a suitable mean to ensure that the voluntary application of standards will increase consumer safety;

28. Urges for improvement of the currently applicable procedures for establishing the European standards so as to guarantee the timely reaction to new or emerging risks in a more efficient manner; emphasises, however, that new or amended procedures should also include be subject to the Parliament's scrutiny; stresses that Parliament should also be entitled to scrutinise the procedures of take over/application of international, non-European and other standards;

29. Calls for standardisation to be limited to providing the technical means through which compliance with a political decision is achieved or evaluated. Political issues which have a direct impact on the protection of welfare of consumers should be dealt with at the political level and not delegated to the standardisation bodies;

30. Calls for the introduction of a safeguard procedure which would allow Member States to express a formal objection to a standard (such as Article 14 of the Toy Safety Directive
2009/48/EC). The use of a safeguard procedure should be possible even before a standard is cited in the OJEU;

31. Calls for the Commission to take further steps as soon as possible, so the necessary revisions can be enhanced, which will be crucial to consumer safety;

32. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.
EXPLANATORY STATEMENT

Introduction

A well functioning single market would also mean safe products and consumer confidence. Aiming at a free circulation and a still broader variety of products on the market, we should not loose focus on the safety for the consumer.

A general look on the area of product safety shows that during the last decade, we have seen progress when it comes to product safety in the EU. Governments as well as enterprises take responsibility to ensure more safe products, and due to legislation at the EU level, there has been a common approach to product requirements, which have improved the general safety of products within the internal market.

Although progress is seen, there is still room for improvement which needs to be addressed, while in this field this could jeopardize the safety of the consumer or sometimes even be fatal.

Every year fatal accidents happens when i.e. children uses products that are either designed or used in an unsafe way. One of the latest examples concerns curtains, where children have been strangled in the cords, which are designed to pull the curtain up and down. "In the structure of the current legislation products of this type cannot be stopped and changed rapidly even though it falls under the GPSD. To change the product a standard is required and the process for drawing up a standard is too time consuming with the legislation that exists at present. Therefore these curtains fully legal and consumers can buy them in many stores across Europe.

The Rapporteur's wish is to stress the importance of a revision of the current European legislation on product safety, so products that are unsafe can be located and stopped.

The European General Product Safety Directive 2001/95/EC (GPSD) which regulates the general safety requirements for products was adopted almost 10 years ago and needs to be revised.

The revision of the GPSD is also necessary to bring it in conformity with The New Legislative Framework (NLF) adopted in July 2008, in order to avoid compromising the goal of achieving a coherent internal market for harmonised as well as non-harmonised products and to ensure a comprehensive protection of consumer interests.

In their current scope the NLF and the GPSD partly overlap. There is a need to examine how to make sure that there is coherence between harmonised and non-harmonised goods, to ensure optimal consumer protection as well as full transparency for the producers. It is therefore important to ensure that the two overlapping layers of diverging market surveillance rules applying to harmonised goods depending on if they are consumer products or not, do not continue. Furthermore both NLF and GPSD contain horizontal provisions that apply, according to the principle of "lex specialis" in addition to sector specific harmonisation directives. The relevant legislative framework is then given by all three elements: NLF, GPSD.
and sector harmonisation directives. This complexity needs to be revised and resolved.

Market surveillance is closely related to product safety, as it is an essential element in ensuring that the products comply with the requirements established in the relevant Community harmonisation legislation and that they do not endanger any aspect of public interest. Apparently market surveillance is a challenging activity for a number of Members States, as it appears that they fail to designate necessary resources for the efficient market surveillance. This is a most worrying trend that undermines the effort to obtain better product safety.

**Rapporteur’s key issues**

*Revision of the GPSD and alignment with the NLF*

The Rapporteur stressesthe need for a revision of the General Product Safety Directive in order to up-date the general rules on safety requirements for products and align the legislation with the NLF. The Rapporteur acknowledges the legislative differences between the GPSD and the NFL while noting that there are areas the two legislations do not cover and areas where they overlap. This calls for an alignment so no doubts arise for the relevant market surveillance authorities.

*Strengthening of market surveillance*

The need for strengthening of market surveillance is also addressed by the Rapporteur who calls for more and better enforcement of current regulations. Further exchanges of knowledge and experience between Member States are needed, so best practices for market surveillance are spread across the EU. This will lead to a market where consumers can feel safe and make it more clearly to companies which rules apply across Europe. Members States are therefore urged to locate enough resources to carry out the necessary market surveillance.

In order to unify the level of safety through out the Union and strengthen the market surveillance, the introduction of one e.g. "General Product Safety and Market Surveillance Regulation" which include harmonised and non-harmonised products in a single legislative act, in order to ensure safe products on the market, is also one of the main visions of the Rapporteur.

*Traceability*

Of specific changes to the GPSD, the Rapporteur proposes concrete steps to be made in terms of traceability. When unsafe products are found somewhere in Europe, it is important that relevant authorities have the ability to stop the products and make the companies recall or withdraw the products from the European market. This will create more confidence among consumers when it comes to buying products on the European market. Besides this a Consumer Product Safety Information Database is suggested created so the European consumers and companies can share information and experience about unsafe products and do statistics on the types of products which cause most accidents.

The Rapporteur welcomes new initiatives and technologies to trace products. This will enable authorities, companies and consumers to locate products that have turned out to be unsafe after they have entered the European market. At the same time the Rapporteur stresses that traceability may not violate the privacy of individuals. In the line of cooperation concerning
traceability the Rapporteur suggests more access to the information in the RAPEX system for safety professionals, consumer organisations, and national authorities in combination with the more general information sharing suggested in the Database mentioned above.

**Vulnerable consumers must be addressed**
The Rapporteur also suggests focusing on the most vulnerable consumers on the single market i.e. children, elderly and people with disabilities. The European Community has a special responsibility towards these groups - also when it comes to product safety.

**Child appealing products**
Within the focus on strengthening both product safety requirements and market surveillance, the Rapporteur wants to emphasize the protection of children. Products for children and child appealing products are two of the main focuses of the Rapporteur.

**Increased focus on product safety at an early stages**
To minimise the risk of placing unsafe products on the market the Rapporteur suggests an obligation for manufacturers to do a risk analysis in their design phase. This will ensure an increased focus on product safety in the early stages of product development and prevent many of the tragic accidents of today. It is the Rapporteur's vision that the revised GPSD will move the producers away from only reacting and doing damage control when accidents happen towards more early thoughtfulness and awareness of pitfalls, to the benefit of producers and consumers alike.

The Rapporteur also proposes establishing an education office on safe products in connection to the Product Contact Point in the Member States in line with what is being established in the United States. The office shall facilitate training and education of manufacturers, authorities, consumers etc. on product safety.

**Product safety in a global perspective**
Globalisation is also an aspect drawn into the report. In the more globalised world where more and more products originate from abroad - especially China - international cooperation on product safety issues are welcomed by the Rapporteur. The EU and its trading partners in cooperation would be able to put an effective focus on the safety of products and product traceability before the products ends up at the European market.

**On-line trade**
Focus is also put on products sold online. More and more products are traded on the Internet and moved across the European borders. To strengthen consumer confidence and make the Internet market more transparent and available for companies, common rules for safety of products sold online is the Rapporteur's ambition.

**Standardization – involvement of producers**
Finally in line with the sharing of best practices market surveillance authorities should actively participate in the process of standard drafting, as this is a suitable means to ensure that the enforcement of the standards is feasible when it is been carried out in Member States.