

BACKGROUND INFORMATION, DETAILS and PROCEDURAL REMARKS on Market Surveillance of Products

Commission proposal

The Commission published the Product Safety and Market Surveillance package on 13 February 2013. The package consists of legislative and non-legislative measures. The new Market Surveillance Regulation (MSR) simplifies the Union market surveillance framework by presenting it in one legislative instrument, by resolving incoherences and eliminating overlaps. The proposal does not distinguish between consumer and non-consumer products or between harmonised and non-harmonised products. Also, the procedures for notification by Member States of information about products presenting a risk and corrective measures have been streamlined. The provisions of the current GPSD dealing with market surveillance, including RAPEX, are not part of the proposed CPSR, but will instead be integrated into the new MSR.

Draft report

In Rapporteur's opinion, ensuring that only safe products are circulating within the internal market is not only in the interest of consumers, but also is beneficial for trustworthy economic operators. The Rapporteur also believes that challenges of limited resources granted to market surveillance necessitates exploring innovative market-based solutions. The Rapporteur welcomes the improvements to current information exchange systems as well as the establishment of the European Market Surveillance Forum and wishes to further strengthen their role. Finally, the Rapporteur stresses the importance of deterrent penalties for breach of relevant Union legislation and proposes to introduce EU-wide, harmonised administrative penalties.

In the context of preparations of the IMCO draft reports on Consumer Product Safety and Market Surveillance the hearing entitled "*Safe Products and a Fair Market: Challenges and Opportunities*" was held on 29 May 2013. The main discussion focused on the marking of country of origin, the risk-based approach, the sharing of responsibility along the supply chain and alignment to the NLF Package. Moreover, the issues of better enforcement and lack of resources at national level, relation to the Free Trade Agreement with the US, external auditing, compliancy versus safety, better cooperation between market surveillance authorities, sharing of resources and alternative funding for market surveillance have also been tackled.

Subsequently a workshop on Product Safety and Market Surveillance was organised on 11 July 2013 to continue the examination of specific issues giving the IMCO Committee an opportunity to acquire independent technical expertise from academics and practitioners with technical knowledge on selected aspects of the legislative package.

Amendments

327 amendments have been tabled to the draft report. The following amendments could be highlighted: introduction of new definitions ("*non-compliant product*", "*product presenting a regulatory risk*", "*product presenting safety risk*"), providing for detailed obligations of concrete economic operators, supporting Rapporteur's original proposal for general risk assessment methodology and guidelines of its application, limitation of RAPEX only for the products presenting serious risk, setting up of the Pan-European Injuries Database, deleting provisions on Union reference laboratories, limitation of the level of penalties (maximum 10% of the turnover).

Compromise Amendments

12 (possibly several more) **Compromise Amendments** will be presented and discussed at the meeting. They concern in particular the following issues: (1) ensuring that all supply channels are covered, including distance selling, (2) penalties (harmonisation of penalties at Union level and publication thereof, introduction of the element of "*intent*"), (3) definitions (differentiation between "*non-compliant product*" and "*product presenting a risk*"), (4) definition of Union harmonisation legislation, (5) clarification of market surveillance obligations, including reporting, of the Member States, (6) effectiveness of checks performed by market surveillance authorities, (7) precautionary principle, (8) checks on premises of economic operators, (9) general obligations of economic operators.

Adoption in IMCO

On 17 October 2013 the draft report on the Market Surveillance of Products was adopted in IMCO Committee with 32 votes in favour, 4 against and 2 abstentions. In total **136 amendments** have been adopted, including all 15 compromise amendments. The Members agreed to harmonise penalties for infringements of the proposed Regulation to at least offset the economic advantage sought through the infringement as well as to encourage the allocation of revenues collected from such penalties to market surveillance activities. The Committee also called on the Commission to establish a Pan-European Injuries Database. A clear distinction with regard to non-compliant products and products

presenting a risk as well as a call on the market surveillance authorities to carry out sample checks on sufficient numbers of products has been established in the final report.

Trialogues

On 5 November 2013 the IMCO Committee has unanimously (35 votes in favour) approved the mandate to enter trilogue negotiations on Consumer Product Safety (Rapporteur Mrs Schaldemose) and Market Surveillance (Rapporteur Mrs Pietikäinen).

The Lithuanian Presidency requested a mandate from COREPER on 15 November 2013, but was rejected over disagreements between Member States concerning Article 7 of the Consumer Product Safety Regulation. Lithuanian Presidency has subsequently presented a Progress report to the Competitiveness Council on 2 December 2013. The Greek Presidency's request for a mandate on 15 January and 22 January was also rejected on the same grounds and another attempt was foreseen for 31 January, however it was discarded in the eve.

Plenary

The European Parliament adopted its position at first reading on 15 April 2014 (the debate and vote were held on the same day). Market Surveillance report was adopted by 573 +, 18 -, 52 abstentions.