



REVISION OF THE GENERAL PRODUCT SAFETY DIRECTIVE:

KEY ISSUES FROM A CONSUMER PERSPECTIVE

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Summary

ANEC and BEUC welcome the revision of the General Product Safety Directive (GPSD), not only as an opportunity to review its safety requirements for consumer products, but also to introduce more effective and quicker actions in the case of risk to consumers' health and safety. This document outlines the major issues we believe should be taken into account in the revised GPSD.

In particular, we urge the Commission to:

1. Establish a more effective regulatory framework, allowing quick market 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. The legislator should also be able to use an alternative to standardisation.

2. Provide for an opportunity to apply higher conformity assessment modules than industry self declaration

We call for introduction of a provision that allows conformity assessment procedures involving third parties to be established for products which may pose significant risks to consumer health and safety.

3. Ensure that a comprehensive European legal framework for the safety of consumer products and services is in place. To this end there is a need for strengthening the GPSD and taking actions at the European level to ensure the safety of consumer services is legally addressed.

4. Ensure a more effective market surveillance system through:

- the strengthening of the European framework for market surveillance
- improved product traceability
- wider access to information about dangerous products
- the establishment of an EU-funded accident statistical system
- the creation of a European complaints handling and reporting point
- the creation of collective redress mechanisms

5. Ensure the safety of child-appealing products through the GPSD by:

- including a legal definition for child-appealing products
- introducing specific safety requirements for child-appealing products
- maintaining the prohibition of dangerous food-imitating products

6. Make specific reference to people with disabilities under categories of consumers at risk

Introduction

The General Product Safety Directive¹ (GPSD) has proved to be a landmark of European consumer protection policy in many ways. It is intended to ensure a high level of product safety for those consumer products not covered by specific sector legislation (as are toys and household electrical appliances for example).

The European Commission's Report to the European Parliament and Council of January 2009², on the implementation of the GPSD, identified elements that could improve the GPSD. In addition, the New Legislative Framework, adopted in 2008, put forward new provisions regarding the marketing of products with which the GPSD, like other product safety legislation, ought to be aligned. The European Commission therefore announced a revision of the GPSD by 2010. In support of this revision, a formal public consultation - to which ANEC and BEUC will contribute - will be launched later in 2010. With this first paper, our organisations intend to provide food for thought to the Commission at an early stage in the revision process.

1. Establish a more effective regulatory framework, allowing quick market interventions and reliable long-term solutions, without delegating political decisions to the standardisation bodies

∨ Our concerns:

The major shortcoming of the current GPSD is that it almost entirely relies on the European Standardisation Organisations (ESOs) to provide detailed safety requirements for specific products. Moreover, although it allows regulators to adopt product specific requirements in the form of implementing measures in emergency situations, the adoption process remains extremely slow and the validity of the measures is always time limited.

This situation is unacceptable for the following reasons:

- a) The GPSD requires that a standard be drawn up as follows:
 - the Commission adopts through Comitology a Decision which specifies the safety requirements that the future European standard should reflect;
 - based on this Decision, the Commission issues a mandate to the European Standards Organisations to develop a standard that satisfies the specific safety requirements;

¹ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety.

² COM(2008) 905 final: Report from the Commission to the European Parliament and to the Council on the implementation of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety.

- once the standard is adopted and made publicly available, the Commission publishes its reference in the Official Journal (OJEU) unless the standard is deemed not to comply with the general safety requirements.

Our main concern with regard to this procedure is that the initial Commission Decision, determining the safety requirements which the standard must meet, is not legally-binding. As the ESOs are not obliged to accept a Commission mandate and the use of standards is always voluntary, there is no guarantee that the standard will be developed and even if it is, there is no certainty it will reflect what the mandate requires. However, it is true that if a standard is developed but does not meet the safety requirements of the Decision, the Commission, through Comitology, can decide not to publish (or to withdraw) its reference in the OJEU.

This means that, in any of the situations described above (i.e. in the absence of a standard or until its reference is cited in the OJEU), products that do not meet the safety requirements of the Decision can legally circulate or enter the market thereby putting consumers' health and safety at risk. This 'status quo' can last for many years (up to 5 years and more) before a satisfactory safety measure becomes operational.

- b) Temporary "emergency" measures, based on Article 13 of the GPSD, may be adopted by the Commission, but this instrument has not been used to any great extent.

The temporary nature of Article 13 emergency measures can cause confusion and uncertainty among economic operators and consumers because they may not be prolonged at the end of their validity period, even when no solution to the risk has been found.

In addition, (multiple) prolongations in the past (lighters, phthalates) have led to an expenditure of resource that could have been avoided if emergency measures with permanent validity had been adopted.

- c) Political issues should be dealt with at the political level and not delegated to the standardisation bodies.

We believe it essential that political decisions which have a direct impact on the protection or welfare of consumers are taken at Community level. An example is the establishment of content limit values for hazardous chemicals in consumer products. The role of standardisation should be limited to providing the *technical means* through which compliance with the political decision is achieved or evaluated. The General Guidelines, which constitute the common understanding between the EU/EFTA and the ESOs confirm that "European standards provide technical solutions for presumption of conformity with legal requirements"³ and moreover recognise the

³ General Guidelines for the Cooperation between CEN, CENELEC and ETSI and the European Commission and European Free Trade Association (28 March 2003): see section 3.

“distinct responsibilities and competencies”⁴ of the EU/EFTA and ESOs in the standardisation process.

Given the shortcomings of some European standards, we also believe the Commission should consider introducing an option to standards as a means of supporting the GPSD. For instance, ANEC found that seven of nine European standards, proposed by DG SANCO in 2005 to be cited in the OJEU in support of the GPSD, did not offer sufficient levels of safety. In 2009, ANEC rejected most of the standards proposed by DG SANCO to be cited in the OJEU. Both examples arose from the unbalanced influence of industry in the development of standards to support legislation or the wider public interest.

- d) A further shortcoming is the lack 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.

➤ Our proposals:

ANEC and BEUC propose that the legislative “framework for the setting of ecodesign requirements for energy-related products (ERP)” (2009/125/EC) be used as a model in the field of product safety. This directive foresees the adoption of “implementing measures” for specific product categories using a regulatory committee procedure complemented by a “consultation forum” involving all stakeholders. The implementing measures are based on research projects funded by the Commission. The Commission also makes funding available to ensure the effective involvement of consumers and environmental NGOs in the implementation process.

As in the ERP ecodesign process, we believe the GPSD should allow for the establishment of product specific rules without limitation, either in terms of content or period of applicability. It could then be decided case-by-case which level of detail should be defined in the implementing measure and which aspects left to the standards bodies.

Such a mechanism would make the procedure to specify product specific rules as the basis for mandates superfluous. The adopted requirements would have a legal status *per se* and so form a framework for the adoption of mandates. The implementing measures could be adopted for a definite or indefinite time. Emergency measures would not be needed because of the legal status of the implementing measure, except for products covered by vertical product safety regulations (e.g. the Toy Safety Directive) which do not provide for the use of emergency measures. An alternative would be to allow the use of emergency measures in all directives.

We propose the requirements for formal objection to a harmonised standard, detailed in the New Legislative Framework⁵, are incorporated into the revision of the GPSD.

⁴ Ibid: see section 4.

European standards should be established by the ESOs under mandates set by the Commission but assisted by the regulatory committees.

Regarding the interests represented in the standards development process, the participation of societal interests can be hampered by many factors such as lack of resources, insufficient expertise and ineffective coordination. These factors were detailed in the Access to Standardisation study of March 2009⁶ for DG ENTR. Hence it is vital for public financial support to be continued in order to enable the participation of societal stakeholders directly at European level. ANEC welcomes the recommendation of the EXPRESS panel⁷ for public funding to be continued to ANEC (ECOS, ETUI-REHS and NORMAPME) in the years to 2020 and beyond. The revised GPSD could not be successful without the effective participation of consumers in the standardisation process.

2. Provide for an opportunity to apply higher conformity assessment modules than industry self declaration

∨ Our concerns:

A common framework for the marketing of products was approved jointly by the European Parliament and Council in 2008 (Decision 768/2008/EC).

It describes the modules for the conformity assessment procedures that are to be used in Community legislation. Essentially, the European modular system “provides for a menu of modules, enabling the legislator to choose a procedure from the least to the most stringent, in proportion to the level of risk involved and the level of safety required”.

The following criteria apply (Article 4):

- “(a) whether the module concerned is appropriate to the type of product;
- (b) the nature of the risks entailed by the product and the extent to which conformity assessment corresponds to the type and degree of risk;
- (c) where third-party involvement is mandatory, the need for the manufacturer to have a choice between quality assurance and product certification modules set out in Annex II;
- (d) the need to avoid imposing modules which would be too burdensome in relation to the risks covered by the legislation concerned”.

Unlike the more recent Decision, the GPSD does not provide a possibility to choose an appropriate conformity assessment level depending on the risks a product may pose.

⁵ Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, Annex I - Article R9.

⁶ http://ec.europa.eu/enterprise/policies/european-standards/files/standards_policy/access_to_standardisation/doc/access_to_standardisation_study_eim_en.pdf.

⁷ Report of the Expert Panel for the Review of the European Standardization System: “Standardization for a competitive and innovative Europe: a vision for 2020”, February 2010.

This is a major shortcoming bearing in mind that the GPSD applies to all consumer products not covered by specific directives, even those that could pose significant risks. If the Supplier's Declaration of Conformity (module A) is considered the default level, higher levels seem to be warranted in certain cases.

↗ Our proposals:

ANEC and BEUC call for the introduction of a provision which allows the use of conformity assessment procedures involving third parties for certain products. The selection of a module higher than A should be linked to criteria should be established using a committee procedure.

3. Need for a comprehensive framework for consumer safety, both for products and services: strengthening the GPSD while developing a horizontal legal framework for the safety of consumer services

↘ Our concerns:

Today, there is a loophole in European legislation as the safety of consumer services is not covered by any European legislative acts. Only products used in the context of service provision are covered by the GPSD, provided that they are directly operated by consumers.

The lack of an overarching legal framework for service safety and quality is of fundamental concern to consumers and consumer organisations. Although the European Directive on services in the Internal Market⁸ recently entered into force, it aims only at improving the access to services across Member States, through the removal of administrative and legal barriers to trade for business. It does not address the safety aspects of services and provides only voluntary measures to ensure quality of services (through the promotion of standards). Moreover, it does not cover some of the most relevant consumer services, including healthcare and financial services.

Regarding the GPSD, it is true that Article 2 states that the Directive also applies to products used or likely to be used by consumers in the context of providing a service. However, this provision is vague and questions remain on whether it really covers any product that consumers use, or come into contact with, in the context of the provision of a service. The Legal Service of the European Commission itself interprets this article so that products that are used in the context of a service are covered by the GPSD only if they are operated by the consumers. In other words, a product involved in the provision of a service, but operated by the service provider, is not covered by European safety legislation. In order to cope with this legal loophole at EU level, most Member States interpret the GPSD as covering all products used in the context of a service regardless of who operates them and consider that their national

⁸ Directive 2006/123/EC.

implementing measures, incorporating the GPSD provisions into national law⁹, cover all products regardless of the context in which they are used.

Fairground equipment, responsible for a high number of serious accidents, is a good example of a product for which the safety aspects are not covered by any European Directive or legislation. Turning to the GPSD, it does not cover the safety aspects of the installation, operation and maintenance of such equipment or the competences of the personnel, for instance. The same can be said in the case of waterslides.

All these concerns raise questions and highlight the need to address the legal gaps which exist in respect of the safety of services.

↗ Our proposals:

ANEC and BEUC ask for a **comprehensive European legal framework for the safety of consumer products and services**. We therefore welcome the recent Commission announcement to propose the various legal options that could be used to address the safety of services. We will follow developments in this area and communicate a detailed position on the safety of services to the Commission in due time.

4. A more effective market surveillance system

4.1. Through strengthening the European framework for market surveillance

↘ Our concerns:

Even the most stringent legislation and standards become worthless if they are not applied or enforced. Within the Internal Market, market enforcement authorities have the responsibility to protect consumers' health and safety. Unfortunately, most market surveillance activities are undertaken by Member States exclusively and individually at the national level. This leads to inconsistencies and, above all, sees insufficient resources available to police the many products on the market. As a result, the consumer expectation for safe products is not always met.

In December 2009, a European Commission-led market survey relating to the safety of decorative Christmas lights¹⁰ showed 30% of lights present a direct risk of fire and electric shock. These recent findings provide further evidence that market surveillance activities in the EU need to be improved and better resourced. They also show market surveillance activities are more effective when undertaken jointly by several Member States.

⁹ For instance the French Consumer Code goes beyond the GPSD as it covers the safety of products and services (see Art L. 221-1 to L. 221-11).

¹⁰ Tests were carried out in Germany, Hungary, the Netherlands, Slovenia and Slovakia on nearly 200 sets of light strings in all price categories. More information can be found at: http://ec.europa.eu/news/environment/091224_en.htm

Although Regulation 765/2008¹¹ became the first European instrument to set certain requirements for market surveillance by the Member States, we note with the utmost concern that a study¹² conducted for the IMCO Committee of the Parliament, published in October 2009, concluded most Member States will not commit more resources to market surveillance, either because they think their national systems already meet the requirements of the Regulation or because they do not have the financial resources available.

➤ Our proposals:

European legislation is effective only if its enforcement is ensured. Sadly, the legislators tend not to consider market surveillance when discussing new laws. As ANEC stressed in a position paper,¹³ issued with Orgalime (the European Engineering Industries Association) in April 2009, there is an urgent need for establishing a European framework for market surveillance in order to ensure the availability of sufficient resources and a coherent approach to market surveillance activities across all 27 Member States. This call has found support from actors across the economic spectrum – such as all those present at the Swedish Presidency Conference on Safe Products of 11 September 2009 - and we believe there is a strong expectation from the market for an initiative to be undertaken in the lifetime of the new Commission.

The revision of the GPSD gives an opportunity to introduce more demanding requirements on market surveillance activities of Member States (such as the need to check a minimum number of products of a certain kind agreed at the European level). However, this would only be useful if the lack of resources of market surveillance authorities is addressed. Hence, a pan-European debate on increasing the financing of market surveillance activities (e.g. through a tax on products) should be initiated.

4.2. Through better product traceability

↳ Our concerns:

It is crucial for consumers that the withdrawal of unsafe products from the market, or the recall of products that hold potential risks to health and safety, is done as quickly as possible. We are convinced more could be done to allow improved identification and tracing of unsafe or defective products on the market.

➤ Our proposals:

We believe it necessary for measures to be taken in order to allow the rapid and easy identification of unsafe or defective products, In this context, we call for the

¹¹ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

¹² "Market surveillance in the Member States", study by Committee on Internal Market and Consumer Protection of the European Parliament, October 2009.

¹³ Joint ANEC/ORGALIME position paper "Call for an effective pan-European market surveillance system", April 2009.

incorporation of the requirements regarding manufacturers' obligations from the Decision on a common framework for the marketing of products¹⁴, and in particular the following:

"- Manufacturers shall ensure that their products bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the product does not allow it, that the required information is provided on the packaging or in a document accompanying the product.

- Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the product or, where that is not possible, on its packaging or in a document accompanying the product. The address must indicate a single point at which the manufacturer can be contacted."

We also consider the application of track-and-trace technologies, and product authentication technologies, would be beneficial to consumer safety. If such a system is considered during the revision of the GPSD, any technology used should:

- ensure consumer safety;
- be reliable and applicable;
- improve tracing mechanisms to allow identification and safe recall;
- safeguard consumer privacy;
- not hinder competition and the environment;
- have no major impact on the final price of products.

The use of new technologies such as Radio Frequency Identification (RFID) technology tags and nano-printed intelligent packaging could aid traceability. However, from a consumer perspective, we ask for a full assessment of the advantages and disadvantages of each technology. The adverse effects RFID potentially holds for consumer privacy (tracking and profiling of consumers and consumer discrimination), security (ID theft) and health (EMF emissions) should be of concern.

4.3. Through a wider access to information about dangerous products

∨ Our concerns:

Past experience has shown that, when a dangerous product is notified by a Member State to the Commission, the authorities and the Commission do not systematically inform consumers or consumer groups unless an action (e.g. a recall) is taken. An exception to this is the information and statistics related to the Low Voltage Directive safeguard clause notifications. These are regularly sent by the Commission and the LVD-Administrative Co-operation Group to consumer organisations. The same failure of communication has been shown to happen when national authorities detect a dangerous product and negotiate an agreement with the producer either to remove the product from sale or to modify it. In the latter case, from time to time, the

¹⁴ See Annex I, Article R2 Obligations of manufacturers.

authorities do not notify even other Member States of the voluntary agreement with the producer.

➤ Our proposals:

The success of any recall is dependent upon the communication of information to consumers. Hence we call for the early and widest possible dissemination of information relating to dangerous products. The results of a notification should be made publicly available in order to protect consumers' health and safety and to increase consumers' confidence in the Internal Market.

RAPEX could be used as the basis for dissemination of information but should be improved in order to provide more detailed information and be made more consumer-friendly. For instance, the column that appears on the right-hand side of the RAPEX overview, indicating the other Member States in which the products have been notified and restriction measures taken, should be filled in systematically. This column provides valuable information at a glance.

Furthermore, consumer organisations should receive information beyond that made publicly available. For example, ANEC would want to be informed about the standards with which dangerous or unsafe products may comply.

Finally, requirements related to the content of recall notices should be defined so as to avoid recall notices being perceived by consumers as advertisements for the products notified.

4.4. Through the establishment of an EU funded accident statistic system

↳ Our concerns:

The recent report 'Injuries in the European Union - Statistics Summary 2005-2007'¹⁵ reveals around 7 million people are admitted to hospital each year, with 35 million more treated as hospital outpatients, as a result of an accident or a violence-related injury. Injury data can be obtained from a wide range of sources. Sadly, most injury databases in the EU are fragmented, limited in their size and scope or incomplete. This makes it almost impossible to compile reliable statistics or reach conclusions.

Even the so-called European Injury Data Base (IDB) cannot be considered as a reliable and representative database. Currently, only 13 Member States are known to collect injury data through hospitals which themselves do not always collect information in a regular and consistent manner. In addition, it is very difficult to gain access to the IDB or receive detailed information.

¹⁵

[http://www.childsafetyeurope.org/csi/eurosafe2006.nsf/0/2DD3B414D49544AEC1257686004E6EBC/\\$file/2009-IDB-Report.pdf](http://www.childsafetyeurope.org/csi/eurosafe2006.nsf/0/2DD3B414D49544AEC1257686004E6EBC/$file/2009-IDB-Report.pdf)

Accident and injury data is critical in the setting of priorities, the development of policy and the determination of preventive actions. Data is also needed to evaluate the effectiveness of preventive measures. For instance, reliable and consistent accident and injury data would give a clear indication as to whether the number of injuries and accidents involving a certain consumer product has decreased following the introduction of a new/revised regulation or standard. If no change is observed, regulators could require a review of the legislation or standard related to the product(s) in question.

Last but not least, the efficiency of the legal framework of the New Approach and the GPSD depends on the ability of the Commission and Member States to identify and recognise problems associated with unsafe consumer products. Such problems can be identified only through a regular surveillance of home and leisure accident data.

↗ Our proposals:

We urge the creation of an EU-funded accident statistical system, under the co-ordination of the European Commission. Member States should be required to contribute to the establishment of the database and its regular updating. This system could be the IDB system providing that it is improved and adequately funded by the European Union. Relevant stakeholders - such as consumer organisations - should have access to the database.

4.5. Through the creation of an EU complaints handling and reporting point

↘ Our concerns:

There is no system at EU level which allows consumers to register problems they identify with the safety of products. Consumers themselves are often the first to spot such problems. Unfortunately, they often don't know where or how to address or report problems.

In most Member States, consumers have the possibility to report safety problems, incidents or accidents with products to the authorities. However, this information is not gathered or coordinated at EU level, with the exception of the notification of dangerous products that pose a serious risk, which are reported by the national authorities under the EU RAPEX system.

In 2008, the Commission carried out a public consultation seeking stakeholder views on developing a harmonised methodology for classifying and reporting consumer complaints across the European Union and EEA¹⁶. This consultation highlighted that "in many Member States, public authorities and other third party organisations, such as consumer organisations and regulatory bodies, collect data on consumer complaints and use them as an indicator of market malfunctioning and subsequent policy action. Some countries collect data on consumer complaints and use them as an information and analytical tool before launching market investigations and taking

¹⁶ Public consultation on a draft harmonised methodology for classifying and reporting consumer complaints and enquiries, http://ec.europa.eu/consumers/strategy/complaints_en.htm.

policy action. However, the existing data are not suitable to facilitate benchmarking markets and making cross-country comparisons at a European level. The data are not available in a comparable form and regular periodicity. The classification methodologies used by third-party bodies are not fundamentally different since the goods and services available across Europe are largely the same. The public consultation has attracted a strong response from a wide group of stakeholders with the majority being in favour of developing a harmonised methodology for classifying and reporting consumer complaints addressed to third-parties around the EU and the EEA, under a voluntary system".

↗ Our proposals:

We call on the Commission to establish a system under the GPSD through which national consumer complaints reported to Member State authorities are gathered at a single, pan-European report point. In addition, consumers should have the right to notify unsafe or non-compliant products directly to the European report point.

A complaints handling and report point for the registration of unsafe children's items (the 'OKA report point') was set up in December 2005 in the Flanders region of Belgium. This is an initiative of the Flemish governmental agency "Kind en Gezin" (Child and Family) in cooperation with three partners, one of whom is ANEC¹⁷. The philosophy is that parents, foster families, crèches and carers can use the report point (accessible via the Kind en Gezin's website) to report products intended for children between 0 to 3 years of age which have been found to be unsafe or have been involved in accidents or near-accidents. During the First International Workshop on "Accident/Injury data collection for non-food product and service risk assessment", organized by DG SANCO in February 2006¹⁸, this Flemish project was found to be very simple, to incur very limited costs, and was envisaged as concrete outcome of the workshop as "it constitutes a good pilot for further projects". We strongly support this report point as model for a European report point.

A supporting European database would enable the timely identification of safety problems or risks and permit national authorities (and economic operators) to take corrective actions more quickly. This pan-European report point and database would have to be complementary to the RAPEX system in order to ensure coherence. We do not believe the complaints and data collected necessarily have to be publicly available.

4.6 Through the creation of collective redress mechanisms

↘ Our concerns:

¹⁷Joint initiative established in cooperation with ANEC, FOD Economy and OIVO/CRIOC.

¹⁸ First international workshop on accident and injury data collection for non-food product and service risk assessment, Brussels, 20-21 February 2006, http://ec.europa.eu/consumers/cons_safe/conclusions_200206.pdf

According to Article 16 of the GPSD, when a product poses a risk to health and safety, the public should be given access to information on the product's identification, the nature of the risk and the measures taken. It is well-known that compensation mechanisms increase consumer's confidence and render the economic operators even more consumer-focused. Consumers should be able to seek redress through the most appropriate channel, including collectively. Given that the mass production of consumer goods can lead to the distribution of unsafe products on a large scale, significant number of consumers may be affected. Considering the cost and complexity of individual litigation, we believe that consumers suffering from damages due to the same defective/harmful product should be able to gather their claims against the producer in a joint action.

↗ Our proposals:

Collective redress mechanisms should be put in place in all Member States to ensure fair compensation of victims notably in product liability cases.

In this context, we ask for the General Product Safety Directive to require that information about the redress mechanisms offered, such as reimbursement and/or compensation, should be provided to the public at the same time as other information.

5. Ensure the safety of child-appealing products

5.1. The importance of developing a harmonised definition

↘ Our concerns:

There is currently a lack of a harmonised definition of what makes a product appealing to children. In general, the child-appealing characteristics of products include shape, size, texture, colour and decorative elements (eyes and feet, for instance). Other characteristics that can also play a role are sound, smell, movement and function (e.g. a lighting function).

Unfortunately, there is still no harmonised definition agreed in EU legislation. A legal definition of a child-appealing product can so far be found only in the case of lighters.

↗ Our proposals:

We ask for **a common definition of child-appealing products to be introduced in the GPSD.**

The Commission Decision on child-resistant lighters states a "*child-appealing lighter*" shall mean a lighter whose design resembles by any means to another object commonly recognised as appealing to, or intended for use by children younger than 51 months of age." This definition could serve as a basis for the definition to be introduced in the GPSD.

In addition, we ask for the same definition to be introduced in other relevant Directives, like the Low Voltage Directive, the R&TTE Directive, the Cosmetics Directive, etc. If the same definition is not applied in other EU legislation, there could be the risk of having different/no definitions for other ranges of products not falling under the GPSD.

5.2. Need for specific safety requirements

∨ Our concerns:

A toaster shaped like a cartoon character, a shampoo bottle resembling a doll, a scented candle that looks like a strawberry, a cigarette lighter resembling a toy car that blinks.

More and more products are shaped or decorated in a way that makes them appealing to children. The lack of specific safety requirements in product legislation for such child-appealing products undoubtedly raises concern, particularly as children are among the most vulnerable of all consumers.

There are only two instances where special (though unsatisfactory) attention has been paid to child-appealing products in the EU. Firstly, Member States saw a steady increase in the number of child-appealing domestic appliances on the market during the last decade. These appliances are covered by the Low Voltage Directive¹⁹ as are all domestic electrical appliances; but there are no provisions addressing the risks related to child-appealing characteristics. The Commission guidelines for the application of the LVD only make reference to a Commission opinion²⁰ related to child-appealing appliances. In order to clarify how the potential risks to children from child-appealing appliances can be addressed in both a precautionary and coherent manner, the market surveillance authorities in the Member States developed a Recommendation on Child-Appealing Household Appliances²¹. Unfortunately, the Commission opinion and the ADCO Recommendation simply advise economic operators to evaluate the risks of such products on a case-by-case basis in order to ensure an acceptable level of risk. There is no indication as to what is to be considered a child-appealing domestic appliance, nor how to evaluate the risks it may pose to children. Secondly, a Commission Decision²² addresses the potential risks posed by child-appealing lighters. This Decision bans lighters from being placed on the market if they resemble objects that are considered especially appealing to children (e.g. toys, mobile phones, food, cars) and which present a high risk of misuse ('novelty lighters').

¹⁹ Directive 2006/95/EC of 12 December 2006 relating to electrical equipment designed for use within certain voltage limits (also called LVD).

²⁰ Commission opinion of 3 May 2002 within the framework of Council Directive 73/23/EEC relating to electrical equipment designed for use within certain voltage limits - Portable child-appealing luminaires.

²¹ Recommendation of the Low Voltage Directive Administrative Cooperation Working Group (LVD ADCO) regarding Child-Appealing Household Appliances, November 2008.

²² Commission Decision of 23 April 2008 on specific child safety requirements to be met by European standards for lighters pursuant to Directive 2001/95/EC.

➤ Our proposals:

Although we accept that not all products with child-appealing characteristics pose potential risks to children, we consider specific legal requirements ought to be developed to ensure that these products are indeed safe for children. In particular, we consider **the GPSD should explicitly require that, whenever a product features child-appealing characteristics, the product must be safe for children** under all conditions of use and foreseeable misuse.

If deemed necessary for the protection of children's health and safety, a complete ban should be imposed on certain types of products, determined by a committee procedure. Such a ban should apply to dangerous chemical products (or their packaging) that are appealing to children²³. With regard to the latter, upon the request of DG SANCO, the Scientific Committee on Consumer Safety (SCCS) is currently assessing the potential risks related to these products. To support this work, our members submitted examples of products that can be found on the EU market, along with information about related potential risks²⁴. We call for the Commission to take measures against these dangerous products that reflect the SCCS opinion as soon as it is published.

5.3. The case of dangerous food-imitating products

↳ Our concerns:

Products that imitate foodstuffs but are not edible - such as soap resembling a strawberry or an oil lamp containing liquid that looks like lemonade²⁵ - are especially appealing to children whose health and safety may be put at risk as a result. The marketing of such products is prohibited in the EU by the European Food-Imitating Products Directive²⁶ but many illegal food-imitating products can still be found on sale.

In order to simplify European legislation, the Commission intends to include the provisions of the Food-Imitating Products Directive into the revised GPSD.

²³ Dangerous chemical substances can be child appealing either because of their shape or colour, or because of the shape or colour of their packaging. Such products include for instance cosmetic products, household products and air fresheners that have – or which packaging has – the shape of cartoon figures or resemble foodstuffs in their colours, shape, smell, etc.

²⁴ More information at:

http://ec.europa.eu/health/ph_risk/committees/04_sccs/sccs_call_info_01_en.htm

²⁵ Examples of food-imitating products against which Member States have taken measures can be found at: http://ec.europa.eu/consumers/safety/prod_legis/index_en.htm

²⁶ Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers.

➤ Our demands:

In principle, **we agree for the provisions of the Food-Imitating Products Directive to be included in the GPSD provided that the prohibition of these products is maintained.** This should take the form of an implementing measure. In addition, we stress the need for market surveillance and control to be intensified in the future as we are concerned about the number of illegal products that can still be found on the EU market.

6. Make specific reference to people with disabilities under categories of consumers at risk

↳ Our concerns:

Recital 8 of the GPSD states that: *“The safety of products should be assessed taking into account all the relevant aspects, in particular the categories of consumers which can be particularly vulnerable to the risks posed by the products under consideration, in particular children and the elderly”*. This is also reflected in Article 2 (b) (iv) of the Directive.

For several years now, ANEC in particular²⁷ has been lobbying to enhance the safety and usability of products for older people and people with disabilities. We consider that mainstream products should be designed in such a way that as many people as possible can use them in a safe way, regardless of the age or ability of the user. If mainstream products do not meet the safety needs of all consumers, it means that many cannot be used by a significant and increasing part of the population, particularly taking into account current demographic trends in Europe.

In addition, the UN Convention on the Rights of People with Disabilities²⁸ was signed by all Member States and ratified by the EU in November 2009. The entry into force of the Lisbon Treaty and the Charter of Fundamental Rights of the European Union²⁹, have strengthened the rights of people with disabilities.

↳ Our proposals:

We ask for the GPSD to make specific reference to “people with disabilities” under Article 2 (b) (iv).

END.

²⁷ One of ANEC main priorities is Design for All i.e. designing mainstream products and services so as many people as possible can use them whatever their age and ability. This is to respect the basic consumer right to have access to products and services.

²⁸ <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

²⁹ http://www.europarl.europa.eu/charter/pdf/text_en.pdf