CONSULTATION ON THE GENERAL

PRODUCT SAFETY LEGISLATIVE INITIATIVE:

Replies from ANEC and BEUC

Contact:
Tania Vandenberghe (ANEC) – tva@anec.eu
Sylvia Maurer (BEUC) – sma@beuc.eu

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ANEC - European Association for the Co-ordination of Consumer Representation in Standardisation, AISBL
Av. de Tervueren 32, box 27 – B-1040 Brussels, Belgium - +32-2-743 24 70
internet: www.anec.eu

BEUC, the European Consumers' Organisation
80, Rue d'Arlon, 1040 Bruxelles - +32 2 743 15 90
Want to know more? Visit www.beuc.eu

Introduction

For most of the questions in the on-line questionnaire, no further background information could be given apart from a "yes" or "no" answer. For some questions, it was difficult to choose an option, as in some cases, one could answer "yes", but in other cases, one tends to answer "no" for the same question. Therefore, in addition to the ANEC and BEUC on-line replies to the consultation paper, this paper is intended to give the Commission further explanation/justification (in *italics*) why we have chosen to answer "yes" or "no".

ANEC-BEUC answers

I. Questions on standardisation procedures under the General Product Safety Directive

1. Would you favour the application of *international standards* (such as *ISO and/or IEC standards*) whenever a risk or a product is not covered by a *European standard referenced in the OJEU*?

NO.

Justification:

We answered NO to this question, as international standards are often more difficult to develop and rarely contain requirements that are detailed enough to ensure products are safe. As the development of international standards is also more difficult for European consumers to influence, they should not be favoured. Moreover, in most cases, international standards relevant to the GPSD will not be available.

However, the option might be supported if an adequate procedure is in place. If the Directive allows for establishing any safety requirement on any product on a temporary or permanent basis, it may be possible to make use of an international standard wholly or partly. It should also be possible to adopt the provisions of an international standard in a modified form. A comitology procedure should be used to this end and a proper consultation and evaluation involving stakeholders would need to be ensured. If it is proposed that an international standard be referenced in the OJEU without such a procedure, we could not agree.

2. Would you favour the application of *non-European standards* (other than *international standards*) whenever a risk or a product is not covered by a *European standard referenced in the OJEU*?

NO.

Justification:

We answered NO to this question, as we have very little influence over non-European standards. However, as with question 1, the option could be supported in principle if a comitology procedure is used and a proper consultation and evaluation involving stakeholders is ensured. If such procedure is in place, it may be useful in some cases to adopt safety standards from non-European countries, e.g. ASTM standards, wholly or partly. For example, the current CEN high chair standard is inferior to its US counterpart. It should also be possible to adopt the provisions of a non-European standard in a modified form under this procedure.

3. In your opinion, the safety of consumers throughout the EU would be better ensured if product specific safety requirements were laid down at the EU level and made directly applicable to *economic operators*, while leaving to standardisation the development of technical solutions to meet such requirements.

Strongly agree

4. In your opinion, should the *general product safety legislation* grant *presumption of conformity* with an existing standard as an interim measure to address emerging risks while a permanent solution is being developed?

NO.

Justification:

It could set a dangerous precedent to make direct reference to an existing standard, especially one that may have originated outside the EU and where the public interest may not be guaranteed. Instead, we favour COM Decisions which could refer to such standards.

5. In your opinion, should the *general product safety legislation* contain provisions whereby an existing *European standard* developed without a mandate from the Commission would be directly referenced in the *OJEU*, provided that it ensures a high level of consumer protection?

NO.

Justification:

It depends on the procedure. Who is going to decide if the standard ensures a high level of consumer protection? If the procedure would allow Member States and stakeholders to object to the standard being referenced in the OJEU (as is done now under the GPSD), then we could agree. If the Directive allows for establishing any safety requirement on any product on a temporary or permanent basis it may also be possible to make use of an existing European standard wholly or partly. It should be also possible to adopt the provisions of an existing European standard in a modified form. A comitology procedure should be used to this end and a proper consultation and evaluation involving stakeholders would need to be ensured.

6. In your opinion, should the *general product safety legislation* contain provisions whereby the Commission could issue *"standing or framework" mandates* to *European Standardisation Organisations* for developing or revising *European standards*?

NO.

Justification:

Framework mandates often contain requirements that are too vague. A framework mandate would give ESOs too much freedom to develop specifications without clearly specified tasks. This would make it impossible to verify whether the tasks have been fulfilled. In terms of procedure, proper adoption of specific mandates by Member States is needed instead of informal instructions being given by the Commission to ESOs.

7. Please provide any other comments or suggestions concerning standardisation procedures under the *General Product Safety Directive*?

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.

- Our main concern with regard to the 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.

In case the Commission would in the future favor the application of international standards, they should go through the same procedure as European Standards before being referenced in the OJEU. If the Directive allows for establishing any safety requirement on any product on a temporary or permanent basis it may also be possible to make use of an existing European standard wholly or partly. It should be also possible to adopt the provisions of an existing European standard in a modified form. A comitology procedure shall be used to this end and proper consultation and evaluation including stakeholders must be ensured.

- Political issues should be dealt with at the political level and not delegated to the standardisation bodies. 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" and moreover recognise the "distinct responsibilities and competencies" 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 alternative 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.

- 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:

We 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 Framework, are incorporated into the revision of the GPSD. 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 2009 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. We welcome the recommendation of the EXPRESS panel 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.

II. Harmonisation of diverging safety evaluations of products

II.A Harmonisation of diverging safety evaluations of products necessitating an emergency action

8. Do you foresee any problem if the *EU product safety "emergency" measures* were directly applicable to *economic operators* ?

No.

9. Please provide any other comments or suggestions concerning *EU product safety "emergency" measures*?

Although the GPSD 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. 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 permanent measures had been adopted following a comitology procedure (or safety requirements having a legal status).

II.B Harmonisation of diverging safety evaluations of products in non-emergency situation

10. Have you encountered diverging safety evaluations with respect to a particular product by the national market surveillance authorities of different Member States?

Yes.

Justification:

Examples are child appealing products (Member States do not know how to evaluate products as there is no harmonized definition in EU legislation of what is child appealing); baby walkers and bath seats (some Member States evaluate these products as being unsafe and would prefer to ban them; others disagree); disco soothers (these soothers, popular with teenagers some years ago, contained a battery to make the soothers flash and some batteries exploded. As a result, soothers were banned in some Member States but not in others).

11. In your opinion, which of the following options would best resolve lasting divergences in the views of different Member States on safety aspects of products?

Answer: Binding EU-wide measures setting specific safety requirements for certain products.

12. Please provide any other comments or suggestions concerning diverging safety evaluations of identical products in different Member States?

- Ensure the safety of child-appealing products by developing a harmonised definition for child-appealing products.

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.

- Establish specific safety requirements for child appealing products.

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 Directive 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 opinion 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 Appliances. 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. Secondly, a Commission Decision 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').

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 children. 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 risks. We call for the Commission to take measures against these dangerous products that reflect the SCCS opinion as soon as it is published.

- The case of dangerous food-imitating products:

Products that imitate foodstuffs but are not edible - such as soap resembling a strawberry or an oil lamp containing liquid that looks like lemonade - 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 Directive 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.

Our proposal:

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.

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

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.

Our proposal:

We ask for the GPSD to make also specific reference to "people with disabilities" under Article 2 (b) (iv), to avoid any potential diverging safety evaluation of products.

III. Harmonisation of diverging safety evaluations of products

III.A Questions on market surveillance coordination and cooperation

13. Member States ensure enforcement of *product safety legislation* to ensure a high level of consumer protection against dangerous products.

DISAGREE

Justification:

They should but in reality it is not the case because of lack of staff and funding.

14. More intensive information sharing and/or cooperation between Member States would enhance the safety of consumers throughout the EU.

AGREE

15. How could cooperation between market surveillance authorities be further improved? (multiple choice)

Answers: all, except “don’t know”.

15.1 “Other”:

Through strengthening the European framework for market surveillance:

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, 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, as well as during the Spanish Presidency Conference on Product Safety of 10 and 11 June 2010 - 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 should be initiated.

16. Please provide any other comments or suggestions concerning market surveillance cooperation and coordination under the *General Product Safety Directive*?

Through better product traceability. 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 incorporation of the requirements regarding manufacturers’ obligations

from the Decision on a common framework for the marketing of products, 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;
- and 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.

III.B Functioning of RAPEX

17. In your opinion, does *RAPEX* contribute to more even protection of consumers throughout the EU?

YES

Justification:

Yes, it contributes, but it concerns only serious and immediate risks and should be improved.

18. In your opinion, which aspects of *RAPEX* could be improved?

- A wider access to information about dangerous products:

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 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.

- The establishment of an EU funded accident statistic system:

The recent report 'Injuries in the European Union - Statistics Summary 2005-2007' 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.

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 proposal:

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.

- The creation of an EU complaints handling and reporting point:

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 EEA. 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 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 welcome the Commission's effort to harmonise the pathway and classification of consumer complaints at a national level in order to inform the Commission in an efficient manner and to make data comparable. In relation to safety complaints, we are of the opinion that on top of the national authorities to report to, consumers should be able to respond to an EU contact point.

We therefore 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 this 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 ANEC. 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 2006, 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.

III.C Market surveillance of the safety of products sold on the internet

19. Are you aware of any potentially dangerous *consumer products* that are sold on the Internet in the EU?

YES.

> *Example: consumers in the EU could order on the internet clothes or accessories produced outside the EU which do not fulfil European safety requirements. Clothes and shoes for sale on the internet could contain AZO dyes, DMF, certain flame retardants and other dangerous chemical substances banned in the EU. Other examples are handcraft products such as toys, made by people not being aware of applicable legislation or standards. Child care articles are also sold on the internet, as well as children's clothes with dangerously long cords.*

20. In your opinion, the attention that the market surveillance authorities give to the safety of *consumer products* sold on the Internet compared to those products sold through other distribution channels is…

SIGNIFICANTLY LOWER.

21. In your opinion, which measures, legal and/or administrative tools should be introduced to tackle the issue of dangerous *consumer products* sold on the Internet?

- Cooperation between market surveillance authorities and customs;
- International cooperation (e.g. EC and US CPSC) and exchange of data and experiences;
- Improved traceability of those products sold on the internet;

In addition to the suggestions above, ANEC and BEUC are of the opinion that a common approach by all MS authorities would be the most effective way to stop placing on the market dangerous consumers goods sold over the Internet. We know that some national authorities have memoranda of understanding with major internet retailers, in the field of products falling under the R&TTE Directive. The aims of such memoranda of understanding (additional to legislative measures, not substitute) would be to facilitate the enforcement of legislation. The Commission should assess which tools are

best to ensure that products sold on the Internet are as safe as products sold in shops;
Information campaigns for consumers (additional to legislative measures, not substitute): when communicating to consumers about the dangers of e-commerce, they should also be made aware of dangerous consumer products sold on the Internet, and should be provided with appropriate tools to identify and report unsafe goods.

IV. Alignment with the Free Movement of products package

22. *Economic operators* in EU ensure *traceability* of products sold to consumers.

DISAGREE.

Justification:

They should, but in reality some do while others do not, depending on the kind of product. It is therefore difficult to choose one of the options, but we tend to disagree as there is room for improvement.

23. In your opinion, would the safety of consumers be better ensured, if the *obligations of economic operators in respect of harmonised products* were also applied to *non-harmonised products* ?

YES.

24. In your opinion, would the safety of consumers be better ensured, if there was an obligation for *economic operators* to establish and maintain *technical documentation* in respect of all *consumer products*, i.e. both *harmonised* and *non-harmonised* ?

YES

25. Please provide any other comments or suggestions to any question concerning the application of a uniform set of product safety rules to *economic operators* ?

- **Provide for an opportunity to apply higher conformity assessment modules than industry self declaration:**

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. 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 proposal:

We 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.

- **Through the creation of collective redress mechanisms:**

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.

26. In your experience, the exposure of consumers to risks resulting from a product provided within the context of a service depends on whether the product by help of which the service is provided is operated by the consumer or by the service provider?

DISAGREE.

Justification:

It does not matter whether the product provided within a service is operated by the consumer or by the service provider. All products provided in the context of a service should be safe, irrespective of whether the product is operated by the consumer or by the service provider (see also our answer to question 27).

27. In your opinion, should all products provided in the context of a service be safe irrespective of whether the product is operated by the provider of the service or by the consumer?

YES.

28. Please provide any other comments or suggestions to any question concerning the safety of products provided in the context of a service?

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:

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 Market 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.

Article 2 of the GPSD states that the Directive 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 as to 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 the GPSD or any other 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 implementing measures, incorporating the GPSD provisions into national law, cover all products regardless of the context in which they are used.

Products like fairground equipment or water slides, responsible for a high number of serious accidents, are good examples of products for which the safety aspects are not covered by any European Directive or legislation. Turning to the GPSD, although it does cover products used in the context of a service to a certain extend (i.e. those operated by consumers) it does not cover other crucial safety aspects related to services such as the installation, operation and maintenance of equipment or the competences of the personnel. All these concerns raise the need to address the legal gaps which exist in respect of the safety of services.

We reiterate our call for a **comprehensive European legal framework for the safety of consumer products and services.**
