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PRODUCT SAFETY AND MARKET SURVEILLANCE PACKAGE

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

More Product Safety and better Market Surveillance in the Single Market for Products

(Text with EEA relevance)

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1. PRODUCT SAFETY AND MARKET SURVEILLANCE ARE AT THE CORE OF THE SINGLE MARKET

Europe is still struggling to overcome the worst of the economic recession and to restore growth and jobs. The EU 2020 Strategy is designed to haul Europe out of recession through smart, sustainable and inclusive growth, leading to higher levels of employment. The single market must play a large part in achieving this objective.

The free movement of goods is the most highly developed of the four ‘freedoms’ that make up the single market. Around 75 % of intra-EU trade is in goods. In today’s single market for goods, it is easy to buy and sell products in 27 Member States with a total population of more than 503 million. Consumers have a wide choice and are able to shop around for the best offers. The free movement of goods is also vital to the success of thousands of EU businesses.

We have free movement of goods in the Union because, for most products, we have managed to agree on the extent to which we should protect at Union level various public interests that could otherwise be invoked by Member States to justify barriers to goods entering (or leaving) their territories. So-called ‘harmonisation legislation’ specifies essential requirements that products must meet to benefit from free movement. Legislation on general product safety requires consumer products to be safe when made available on the Union market. In the absence of harmonisation legislation, the Treaty applies in accordance with the jurisprudence of the European Court of Justice, particularly that relating to the principle of mutual recognition.

The most significant (but not the only) public interest invoked is the protection of the health and safety of persons, which in the context of free movement of goods signifies the consumer. Safe products move freely. So, product safety rules and the market surveillance that underpins them are the basis of the single market for goods. If we want the full economic benefit of the single market for goods, we need a set of high standards and rules on the safety of products sold and an effective, well-coordinated, Union-wide market surveillance system to underpin it. Safer and more compliant products will also contribute to safer, better performing services throughout the Union and will foster their cross-border provision, thereby contributing to the achievement of a more integrated single market for services.

In the context of the economic crises, consumer spending has fallen due in a large part to falling incomes and uncertainty about the future. This is why it is necessary to continue to ensure that consumers can be confident in the safety and fitness for

purpose of products. Fair and reliable businesses are more likely to start up and thrive if they know that they operate in a level playing field where competitors who cut corners and flout the rules are penalised.

The single market for goods is an undoubted success. But, to continue to ensure its success in order to be the driver of lasting growth and the creation of new, long term employment, every single cog in the machinery of the single market for goods must work properly. There is still untapped potential in the single market for goods and this must be fully realised. There is scope for lowering compliance costs for economic operators, reducing the administrative burden on national authorities and eliminating unfair competition from unscrupulous traders. Products on the market can be made even safer, boosting consumer confidence and stimulating sales.

Although new rules for harmonised products came into force on 1 January 2010, there is a clear need to streamline, simplify and improve market surveillance rules and procedures to make it easier for national authorities and economic operators to apply and follow them. In order to achieve this, the operation of the system on the ground must be improved in order to exploit synergies and ensure cost efficiencies where these may exist. National authorities must cooperate better within their own territories and with their counterparts in other Member States. Market surveillance action must be more focused and better coordinated across the Union. This means greater resource- sharing, better IT tools, tougher and more targeted external controls at the Union borders and harsher penalties for infringements.

The General Product Safety Directive 2001/95/EC (GPSD) contains the core safety provisions that must be respected for many consumer products: it requires that consumer products be safe, provides for standard setting, imposes obligations on Member States and national market surveillance authorities and lays down procedures for the exchange of information and for rapid intervention in relation to unsafe products. The Directive needs to be revised to update its product safety rules and align them, as far as possible, with those in place for harmonised products. In particular, the obligations of economic operators (especially product identification and traceability requirements) must be strengthened to give market surveillance authorities the tools necessary to carry out their activities effectively.

Today, the Commission has adopted the Product Safety and Market Surveillance Package of measures which will simplify and make more uniform the safety rules applying to non-food products, streamline market surveillance procedures and better coordinate and monitor the carrying out of market surveillance activities in the EU.

The Package consists of –

- A proposal for a new Regulation on Consumer Products Safety
- A proposal for a single Regulation on Market Surveillance for Products
- A Communication on Safer and compliant products for Europe, setting out a multi-annual plan for market surveillance
- A Report on the implementation of Regulation (EC) No 765/2008, including a financial evaluation.

2. THE CONSUMER PRODUCT SAFETY REGULATION

Over two decades, EU legislation on general product safety (Directive 92/59/EEC and then Directive 2001/95/EC) has established a product safety and market surveillance framework that has contributed enormously to the safety of consumer products. This includes a rapid alert information exchange system (RAPEX) concerning dangerous products and procedures for setting European standards for products that are otherwise not covered by Union harmonisation legislation.

In response to calls from almost all groups of stakeholders and from the European Parliament to simplify Union rules on market surveillance and make them more accessible, the provisions of the GPSD dealing with market surveillance, including RAPEX, are removed and integrated into the new market surveillance regulation which forms part of this package.

As for the remaining provisions of the GPSD, recurrent product safety alerts have clearly signalled the need for more effective, up to date product safety rules. The requirement that consumer products made available in the EU must be safe also remains the key provision of the new Consumer Product Safety Regulation. Its interaction with sector-specific legislation applicable to consumer products, however, is clarified to avoid undue overlaps and increase legal certainty for economic operators.

To reflect the challenges of a globalised market, emphasis is put on enhanced product identification and traceability. The obligations for economic operators (manufacturers, importers, distributors) are aligned to the 'New Legislative Framework for the Marketing of Products' adopted in 2008 to ensure consistency with sector-specific rules. Last but not least, the proposed regulation promotes enhanced use of European standards. The procedures to identify or update existing standards or to develop new ones which provide the presumption that a product is 'safe', is significantly simplified and aligned with the recently adopted European Standardisation Regulation 1025/2012.

The new Consumer Product Safety Regulation completes the EU product safety regulations of the 21st century. It will boost consumer confidence in the single market of products and ensure a level playing field for businesses.

3. THE MARKET SURVEILLANCE REGULATION

Notwithstanding legislation in place, unsafe and non-compliant products still find their way onto the market. People still suffer harm and harmful products still pollute the environment. Rogue traders persist - flouting the rules and undermining a clear level playing field for operators. This undermines the internal market and is a disincentive to businesses that invest a lot of resources in ensuring that the design and manufacture of their products is safe. Often this is the result of the fact that the rules in place are not respected. Enforcement activity needs to be stepped up in order to avoid harm to consumers, to protect the environment and to give honest traders a chance to compete on equal terms.

Market surveillance is our main tool. A more concerted and determined market surveillance effort across the entire Union will help keep unsafe or otherwise harmful

products off the market, will deter rogue traders and will encourage businesses to respect the rules.

3.1. Simpler, clearer and better

Market surveillance is carried out by the authorities of the Member States by checking and testing products both on the market and arriving at the external border of the Union. Internal borders do not exist for products – it is vital that they do not exist for national market surveillance authorities either. Improving cross-border action and cooperation is the key to making market surveillance more effective.

As a result of the various legislation adopted over the years, Union rules on market surveillance have become fragmented and confusing, creating gaps and overlaps and difficulties for operators. In particular, consumer goods are subject to different market surveillance rules in both consumer legislation and product harmonising legislation. This is seriously hampering the efforts of market surveillance officers in the field.

Specifically, market surveillance rules are spread across three separate 'tiers' - Regulation 765/2008, the General Product Safety Directive and various pieces of product harmonisation legislation (which is gradually being aligned with reference provisions set out in Decision 768/2008). The relationship between the three tiers is often unclear, particularly as many consumer products are covered by all three.

The Schaldemose Report of the European Parliament on the revision of the General Product Safety Directive and market surveillance was highly critical of this 'three tier' approach, asserting that it led to uncertainties, incoherence and confusion in the internal market. The Report proposed that the Commission establish a common European framework for market surveillance concerning all products on the internal market or entering the EU market. It urged the Commission to set up a single market surveillance system for all products, based on one legislative act.

This proposal for a new single regulation on market surveillance is a response to this call and addresses these failings paving the way for a more collaborative, joined-up system of market surveillance in the European Union. It proposes a number of very simple but very effective measures:

- It collects together the market surveillance rules currently spread across the three tiers of legislation. This not only simplifies the Union market surveillance framework by presenting it in one legislative instrument but also resolves incoherence and eliminates overlaps.
- As far as possible, the proposed regulation does not distinguish between consumer and non-consumer products, nor between harmonised and non-harmonised products. All products are subject to the same rules except where the specific characteristics of a category of products dictates otherwise. On occasion, distinctions will still need to be made but it will be clear to both economic operators and market surveillance authorities how they must proceed.
- Procedures for the notification by Member States of information about products presenting a risk and corrective measures taken will be streamlined.

Hitherto, Member States often could not tell under which legislation to notify required information. To a great extent, the same system of notifications will be used for all products. Only the final phase of the market surveillance procedure (in which, in the event of disagreement among the Member States, the Commission may decide whether measures taken by the original notifying State are legitimate) will be restricted to harmonised goods.

3.2. Other, specific improvements

The proposal would strengthen controls at external borders by making clear that the release for free circulation in the Union of any product within the scope of the regulation should be suspended if the authorities responsible for external border controls have cause to believe that it presented a risk. Market surveillance authorities would then check whether the product did in fact present a risk before instructing the border authorities to release or refuse release, as appropriate. Only products entering the Union in the physical possession of natural persons and destined for their personal use would be exempt. Thus internet purchases of product from third countries may be controlled.

The regulation promotes the exchange and retention of information relating to market surveillance activities in an easily accessible database. One particular intended consequence is that the market surveillance authorities should not repeat tests and assessments already carried out in relation to a particular product by the authorities of another Member State. It should become standard practice to search the database for records of such tests and assessments. Given the high cost of product test this will lead to high savings for the Member State competent authorities and facilitate better surveillance in smaller markets within the Union.

Market surveillance authorities would be given the power to charge economic operators fees where they require corrective action to be taken in relation to a product or must monitor corrective action proposed by an operator.

The RAPEX system, used to process notifications by Member States concerning products presenting a risk, is being improved. Accordingly, the notification criteria are being simplified, more detailed information must be notified for better relevance and follow-up, and time-limits for sending notifications are being made more realistic and workable.

Experience with EU product safety "emergency" measures has also shown that the validity of these measures (up to one year) is not enough to prepare a permanent solution at the EU level and they usually have to be repeatedly renewed, creating legal uncertainty and confusion for economic operators who must decide whether to make long-term investment to adapt their products to the new product safety requirements. Under the new Regulation, the Commission should be given more flexibility as regards the type and content of restricting measures in respect of dangerous products. To this end, the Commission should be in a position to adopt measures that are either addressed to the Member States or that are directly applicable to economic operators. Those measures could either be limited in time or not.

The Commission is committed to providing guidance and useful information to companies and other interested parties on the interpretation and application of the new product safety and market surveillance rules. The proposed European Market Surveillance Forum will play a pivotal role to develop best practices for a harmonised implementation across the Union. Business and consumer associations will have the possibility to make their voice heard in that Forum. The European Enterprise Network (EEN) offices in each Member State should further disseminate the information, especially to SMEs and advise them, collectively and individually, on their rights and obligations under the new regulation. The Network, supported by SME Envoys, should also collect feedback from SMEs and report on their specific needs, interests or concerns to be taken into account for the implementation of the new rules.

4. THE MULTI-ANNUAL MARKET SURVEILLANCE PLAN

Products (including products imported from outside the Union and released into free circulation) move easily across borders within the Union. Checks on their safety must be done with sufficient frequency and consistency right across the Union. This means getting market surveillance authorities of the Member States to work together more closely and effectively.

The development of a multi-annual plan for market surveillance is one of the 50 action points in the Single Market Act. Member States must already establish and keep up to date national market surveillance programmes. The multi-annual plan must not duplicate activities already planned or underway at national level but identify and pursue areas in which coordination by the Commission would add value and bring about real improvements. It sets out an ambitious list of 20 individual actions to be undertaken over the next three years.

- (1) Under the plan, market surveillance authorities in the Member States will be encouraged and enabled to communicate with and support each other better. Information about national rules and business practices will be gathered through studies, surveys and consultation. Suitable IT will be put in place to collect and store information in an easily retrievable manner. Divergences, disparities and specific needs will be identified and appropriate training, technical assistance and guidance offered.
- (2) The nuts and bolts of market surveillance are the identification and assessment of risk. Common practices will be developed and followed across the Union. The Commission is committed to promoting effective methods of communication, preparing guidance and drawing up a common approach to the conduct of physical documentary and laboratory checks of products.
- (3) Greater centralised coordination of joint programmes and action will maximise their useful scope, ensure the high quality of their content and thus improve their effectiveness.
- (4) The pooling of resources wherever possible helps eliminate the duplication of tasks and facilitates exchanges of experience and information. A large quantity of information on risk assessment, testing methods, corrective measures taken and so on, assembled from market surveillance authorities across the Union, is

being collated and stored in the ICSMS database, managed by the Commission. The market surveillance authorities of one Member State will be able to see quickly and clearly whether (and if so, how) a particular problem has already been addressed in another. The results of laboratory testing will be available, obviating the need for repeat testing leading to savings and reduction of administrative burden. The usefulness of this tool depends entirely on the speedy, accurate and diligent entering of information into the database and the authorities of all Member States will be encouraged to play their part. Any necessary training and guidance will be made available to ensure that the huge potential of this growing resource is fully realised.

- (5) A continuous exchange of views between the Commission, consumers, business stakeholders and national authorities is essential to underpin this pan-European cooperation. This will be achieved without adding to the over-abundance of Union-citizen-business interfaces.
- (6) Improvement of the efficiency of border safety controls requires enhanced cooperation between customs and market surveillance authorities as well as the use of modern tools to better target the checks to be carried out in respect of products entering the Union market.

The Union multi-annual market surveillance plan will bring real, tangible benefits to the conduct of market surveillance activities on the ground, responding to the considerable demands of a modern, highly functional internal market for goods.

5. THE REPORT ON THE IMPLEMENTATION OF REGULATION 765/2008

The report, drawn up by the Commission in accordance with Articles 36(2) and 40 of Regulation 765/2008, completes the Product Safety and Market Surveillance Package. With this report, the Commission informs the European Parliament and the Council about the outcome of its evaluation on the implementation of that Regulation and on the relevance of the conformity assessment, accreditation and market surveillance activities that receive Union financing. The findings of the Commission's evaluation have helped to identify how to do better and are hence reflected in the proposed set of new rules.

6. CONCLUSION

The aim of this package of proposals is to address three major objectives: more safety for consumers; less burden for businesses; more co-operation among competent authorities. Ultimately through better rules that are fit for purpose this package seeks to build more confidence in the single market and thus to stimulate growth.

Once these proposals are adopted and implemented, consumers will be able to rely on a safer market for consumer products and to benefit from transparent and comparable information, in line with the priorities set out in the European Consumer Agenda. The implementation of the package will also have significant advantages for economic operators, in particular SMEs, that will be able to rely on clear rules and to secure better competition in the Single Market. Ultimately public authorities across

Europe will benefit from the rationalisation of the market surveillance framework and from increased synergies, which will lead to a more efficient use of public resources and expenditure and to a better enforcement.

The co-legislators are invited to adopt the two legislative proposals in order to ensure that this key action of the Single Market Act II, like all other key actions, will be agreed at EU level as a priority by spring 2014.

With this package of legislative and non-legislative measures, the Commission strives to allow citizens and businesses to reap the full benefits of the Single Market for industrial and consumer products, thus contributing to more growth and jobs in Europe.