Opinion of the European Economic and Social Committee on the 'Proposal for a regulation of the European Parliament and of the Council on market surveillance of products amending Council Directives 89/686/EEC and 93/15/EEC, Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC and 2011/65/EU, and Regulations (EU) No 305/2011, (EC) No 764/2008 and (EC) No 765/2008 of the European Parliament and of the Council'

COM(2013) 75 final – 2013/0048 (COD)

(2013/C 271/16)

Rapporteur-general: **Mr LEMERCIER**

On 8 and 12 March 2013 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union (TFEU), on the

Proposal for a Regulation of the European Parliament and of the Council on market surveillance of products amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC and 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council

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On 12 February 2013, the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr LEMERCIER as rapporteur-general at its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), and adopted the following opinion by 116 votes, with 2 abstentions.

1. **Conclusions and recommendations**

1.1 The Committee welcomes the provisions of the proposed regulation. The current provisions on market surveillance and the checking of products are spread too widely across a number of texts with differing content, which unduly complicates the task of the monitoring authorities, manufacturers, consumer associations and workers' organisations. The Committee is pleased to note that the previous sector-specific provisions will be amended and brought together in a single, strengthened, cross-cutting regulation.

1.2 The Committee concurs with the legal basis but believes that reference should also be made to Article 12 of the Treaty on the Functioning of the European Union (TFEU), which states that consumer protection is a cross-cutting policy whose 'requirements shall be taken into account in defining and implementing other Union policies and activities'.

1.3 The proposed instrument is a regulation, which the Committee considers to be the most appropriate form for facilitating cooperation and exchanges between Member States and between individual Member States and the EU. It feels that the package proposed by the Commission meets the proportionality and subsidiarity requirements established by the treaties. The Member States remain fully responsible for national market surveillance and external EU border controls and their financing.

1.4 The EESC supports the Commission's affirmation that products moving within the European Union must meet requirements that guarantee a high level of protection for public interests such as health and safety in general, health and safety at the workplace, consumer protection, environmental protection and public safety.

1.5 The Committee considers that respect for manufacturing and trade secrets should not prevent warnings from being issued when user health or safety might be affected by one of the components of the product in question. Surveillance and control bodies should therefore continue to apply the consistent practice under the RAPEX system of putting public interests before private ones.

1.6 Members or employees of surveillance and customs authorities should provide guarantees of their honesty and independence and be protected from possible pressure or attempts to corrupt them in the exercise of their duties. People notifying faults or risks in relation to a product must be given protection, in particular against legal action, and their identity should remain confidential.

1.7 The Committee calls for including in the proposed Regulation a legal basis for a pan-European Injuries Database (IDB), which should be considered as a third pillar of the EU-market surveillance information exchange system complementary to RAPEX and ICSMS.

1.8 Lastly, the Committee would very much like to receive the reports that the Commission will be issuing every five years in order to monitor implementation of the regulation.

2. **Introduction: Commission proposals**

2.1 Even the best legislation governing product safety and harmonising rules in the internal market is not enough to provide full safety guarantees for consumers, as regards consumer products, or for workers, as regards products intended for professional use.

2.2 As recent scandals have shown, fraud perpetrated to increase profits or reduce production costs is still on the agenda in Europe. Moreover, imported products do not always comply with European standards and may compete unfairly with products of European origin.

2.3 Market surveillance and product compliance checks are essential and call for expert services and staff (customs, technical services, inspections, etc.) to be operating in every Member State.

2.4 Directive 2001/95/EC on general product safety (GPSD), whose transposition was supposed to be completed in 2004, and Regulation (EC) No 765/2008 on accreditation and market surveillance, which came into force in 2010, together with the directives and decisions on sectoral harmonisation, have resulted in visible progress. Nevertheless, the provisions on market surveillance are both fragmented and in places overlapping, and this can lead to confusion between the surveillance rules themselves and the obligations applying to operators, which complicates their task and that of national legislators and civil servants.

2.5 The Commission is proposing to clarify the regulatory framework for market surveillance by uniting all the relevant provisions within a single legal instrument to apply across all sectors. The new regulation on market surveillance would be accompanied by a multi-annual market surveillance plan covering the period 2013-2015.

2.6 This is a major component of the European Consumer Agenda and of the Single Market Acts I and II and also meets the requirements of the New Legislative Framework.

2.7 Using the same methods in each country, it is necessary to ascertain whether the products marketed, including those from third countries, are safe and whether they can be placed on the single market, and withdraw and ban them if they are dangerous or non-compliant.

2.8 However, market surveillance and compliance checks are not sufficiently effective and a large number of non-compliant products enter the market, owing mainly to a lack of coordination between national surveillance authorities and to the poor quality and reliability of the information exchanged.

2.9 It is therefore up to the EU to take steps to secure better coordination of measures and to make cross-border market surveillance more effective so as to protect the public. The Commission maintains that this right to take action derives from Article 114 (proper functioning of the internal market) and Articles 168(1) (health protection) and 169(1) (consumer protection) of the Treaty on the Functioning of the European Union (TFEU). There is also a need to simplify the legal framework applicable and eliminate current ambiguities.

2.10 It is necessary to simplify the RAPEX procedure, and introduce a regulation on product safety to replace the GPSD, together with a new regulation on surveillance to replace the current provisions that are currently spread across a number of documents at various levels.

2.11 Improvements to the coordination and effectiveness of surveillance and control measures would be achieved not only through the normal procedure for evaluating legislation, but also via Eurobarometer surveys on consumer perceptions, the GRAS-RAPEX and ICSMS information systems and the introduction of indicators allowing peer review. State notification procedures will be streamlined, with a single notification system for all products.

2.12 Border controls will be stepped up and the movement of any product suspected of presenting a risk will be suspended until its status can be more accurately ascertained by the surveillance authority.

2.13 The RAPEX notification system for products presenting a risk will be improved in terms of notification periods and the relevance of the information provided on the risks posed by the product concerned.

2.14 The Commission may adopt appropriate restrictive measures for dangerous products, which would be applicable immediately, should standard emergency measures prove inadequate or unsuitable.

2.15 The Single Market Act makes provision for a Multi-annual Action Plan (MAP) on market surveillance. This plan should apply to areas in which coordination by the Commission could bring real added value and substantial improvements.

2.16 The MAP is the main tool for action at EU level and will foster improved communication and cooperation. IT tools will allow easy access to information and best practice from surveys and studies stored in the system. Needs will be identified and training, technical assistance and guidance tools will be offered within this framework.

2.17 The Commission will establish a common approach for technical and documentation checks and for laboratory tests. Tighter coordination of joint measures and programmes will make surveillance more effective.

2.18 By pooling resources, synergies will be generated and overlaps prevented. The data collected by national authorities in the course of their work will be kept on the ICSMS platform managed by the Commission, which will provide the funding and training needed to derive the full potential from this database.

2.19 All the parties involved must be informed and consulted on a regular and flexible basis.

2.20 The report drawn up by the Commission under Regulation (EC) No 765/2008 provides the institutions and stakeholders with information and assesses the accreditation, surveillance and market control measures funded by the EU.

2.21 It is necessary to increase the resources and powers of customs services and step up checks at the external frontiers of products entering the EU and the European Economic Area, which will mean earmarking additional resources, particularly with respect to training and technical tools.

3. **General comments**

3.1 The Committee welcomes the initiative to step up surveillance and safety checks on products placed on the market, be they of EU, EEA or third country origin. This guarantees better product safety and is thus a key Single Market Act measure and in line with the new approach.

3.2 The Committee nevertheless points out that the procedures for informing and consulting the economic and social stakeholders are very vague. It would be better to establish a suitable and flexible framework at various levels, without introducing or entrenching bureaucratic procedures.

3.2.1 The businesses concerned expect a great deal from legal and technical information, which should offer them the legal certainty they need when it comes to making decisions about investment in the manufacturing or marketing of their products. They should have access to the information gathered by the various surveillance and control bodies concerning the products they are presenting to be checked or assessed for compliance.

3.2.2 Consumers and workers have the right to be sure that the products on the market, which they will be using for work or for their own consumption, are safe. They are entitled to know what steps are being taken to this effect at national, EU or sectoral level to ensure that their health and safety are not being compromised.

3.2.3 The Committee believes that confidence in product safety is essential to the smooth functioning of the single market and to the free movement of goods, which has a positive effect on growth and employment.

3.3 It considers that surveillance and checks, particularly at the EU's external borders, are mainly the responsibility of the Member States, whilst the EU takes care of coordination and the measures essential for effective joint action, together with product standardisation. Such surveillance and checks impact on businesses and represent a substantial cost for both the Member States and economic operators in terms of compliance (standardisation, the CE marking). The Committee calls on Member States and the Commission to take due account when conducting their activities of the administrative burden shouldered by businesses, and particularly SMEs, to avoid putting them under financial pressure during a period of crisis and high unemployment.

3.4 The free movement of non-food products covered by the proposal for a regulation should not be affected by leniency or weakness in the regulatory framework or in the number or quality of resources and checks. The Member States and the Commission must therefore allocate sufficient resources for implementing surveillance and control measures so as to ensure that they are fully effective. The Committee recognises that budgets are currently tight, but nevertheless feels that the public interests at stake require every effort to be made to secure consumer health and safety and environmental protection when it comes to defective or dangerous products. The proper functioning of the internal market is essential for economic recovery and creating new jobs.

3.4.1 In this respect, the Committee believes that the current system of market surveillance and control has serious shortcomings and weaknesses. Cooperation between the relevant national bodies, the Commission and the parties concerned should be stepped up and regular consultations organised. Consumers' and workers' organisations should be given the right to issue warnings in respect of certain products, for which they should enjoy a guarantee of immunity. The bodies responsible, surveillance authorities, technical certification bodies, customs departments and fraud prevention agencies must cooperate and share information collected, so as to avoid overlaps and waste and constantly improve the checks being carried out.

3.5 The effectiveness of the Community system for rapid exchange of information (RAPEX) depends entirely on how quickly notification is sent and on the relevance of technical information on suspect products. The guidelines drawn up for managing RAPEX need to be constantly updated and sufficiently clear for there to be no doubt as to the nature and scope of the information to be provided. Criteria should be established within the framework of these guidelines to make it possible to identify serious risks, and the measures to be taken accordingly - such as a temporary ban, the requirement to make technical changes, or even an outright ban - should be clearly set out.

3.6 Even moderate risks, or those that have not been verified scientifically, should be notified under RAPEX in order to consider enforcement measures such as a temporary ban under the precautionary principle if necessary or other appropriate measures, such as requirements to provide further information for consumers or warnings to users, in addition to the usual product labelling requirements.

3.7 Where risks have been identified and the Commission is intending to adopt implementing acts with respect to a product or category of products in order to establish uniform conditions for checking these products, the Committee would like consumers', employers' and workers organisations to be notified and their opinions taken into account as far as possible. It should be noted that these organisations can quickly pass on to their members any measures adopted by the Commission, helping greatly in terms of them being understood and swiftly implemented.

3.8 As regards the Commission and Member State forum established by the regulation, the Committee notes that civil society organisations would be invited to participate in an advisory capacity in any sectoral sub-groups the forum might set up. It feels that, although only providing advice, the opinions and proposals issued by these organisations should be duly taken into consideration as far as possible, bearing in mind the active role they play for the consumers and the economic and social spheres they represent.

3.9 The same should apply when, acting on certain risks, the surveillance authorities of a Member State draw attention to the risks presented by certain products and potential protective measures. They should cooperate with the economic operators to avert the risks presented by certain products and also with the relevant civil society organisations that can make available their knowledge and channels for passing on information to their members.

3.10 Finally, the Committee believes that, on the whole, the proposal under consideration meets the requirements of the New Legislative Framework (New Approach), as well as those of subsidiarity and proportionality. It also approves of the legal basis on which the relevant DGs have established their proposal. The Committee also refers to Article 12 TFEU, which stipulates that consumer protection must be 'taken into account in defining and implementing other EU policies and activities'.

4. **Specific comments**

4.1 The Committee is still concerned about the potential differences in the way the regulation is interpreted in the various countries. EU action must be aimed at making interpretations and practice truly uniform for the sake of operators' legal certainty and user safety.

4.2 It is also concerned about the implementation of the provisions governing confidentiality, which might stand in the way of better information on components or dangerous products which could impact on health, personal safety and the quality of the environment, for example in terms of trade secrets. The public interests at stake are generally more important than private interests, which would be wrongly protected by too absolute an interpretation of the concept of confidentiality. Information must, under all circumstances, flow between the Member States and EU bodies entrusted with the surveillance and control system. Personal data must, however, be protected by law and investigations under way must not be compromised.

4.3 As the regulation requires, the authorities must publish on a dedicated website information concerning dangerous products and the risks they pose, any preventative measures and the decisions taken with regard to operators. The Committee calls for care to be taken that this is not hampered by excessive concern for confidentiality regarding trade secrets when the health and safety of users is at stake. This is moreover the approach taken by the Commission when managing the RAPEX system, an approach which must be maintained.

4.4 The Committee emphasises the need for surveillance and control bodies to be independent and transparent. The staff working for these bodies must be protected from any interference and any attempts to corrupt them in the performance of their duties. They must be impartial and take on board all complaints raised by consumers and users or their organisations, and take action if appropriate. Test laboratories must also operate completely independently, as must the bodies responsible for issuing standardised labels, which are essential for enabling business decision-makers and consumers to make their choices.

4.5 The Committee believes that the proposed Regulation should contain also provisions establishing a pan-European Injuries Database (IDB) which would cover all types of injuries. Such database would:

— assist market surveillance authorities to make more informed risk assessment decisions,

— provide a basis for preventive actions and public awareness-raising campaigns; allow standardisers to develop better product standards,

— help manufacturers to adapt the design of safety into new products, and

— evaluate the effectiveness of preventive measures and set priorities in policy making.

4.5.1 Therefore, the Committee suggests to:

— include in the proposal a missing provision from Regulation (EC) No 765/2008 requesting Member States to monitor accidents and harm to health which are suspected to have been caused by those products, and

— establish a legal basis for the IDB where the European Commission would support the co-ordination of the collection of data from Member States and smooth operation of the IDB.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE