

5. Consumer Product Safety

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Justification

The Commission's proposal aims to establish a legal framework providing a high level of consumer protection and requiring consumer products to be safe.

- A **regulation** is the most appropriate instrument for this consolidation of existing legal texts, bringing them into line with the new legislative framework for the marketing of products. The regulation will enable the same level of safety to be established in all EU countries, with common criteria.
- As the regulation is the only instrument that allows adoption of the same measures with the same support for the same levels of risk in all the countries of the EU, it is important that it **uses terms that can be interpreted in the same vein in all the countries of the EU**.
- Given the importance of standardisation in securing product safety, **the Commission should increase support for consumer involvement** in the European Committee for Standardisation (CEN), ANEC and other similar bodies.
- Consumer protection requires **that the goods and services made available to consumers do not, when used in normal or foreseeable circumstances, endanger the health of consumers, and, where they do, that they be withdrawn from the market by means of fast, simple procedures**.
- With **the creation of the Rapid Alert System for non-food products (RAPEX)** a system was established for the circulation of information among the Commission and Member States' authorities on measures taken by these authorities and economic operators in relation to products posing a serious risk to the health and safety of consumers, in order to deal with "emergency situations". In 2004¹, the Commission adopted specific guidelines to ensure that RAPEX worked properly.

Although the Member States have transposed the directive into their respective legislation, **the methods of implementation have not been the same in all Member States**, with discrepancies in some transposition acts, including the following:

- ✓ the safety assessment aspects provided for of the directive;
- ✓ as far as traceability is concerned, some Member States have made it obligatory to indicate on the product or packaging the identity and details of the producer (or importer), while other Member States have left this optional;
- ✓ moreover, in some Member States, notification by producers is required only in the case of a known risk, and there is no obligation to notify when the producer "ought to know" the risk based on available information.

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Commission Decision 2004/418/EC ([OJ L 151, 30.4.2004, p. 84](#)).

Justification

- The proposal is part of the "Product Safety and Market Surveillance Package", which also **includes a proposal for a single market surveillance regulation and a multi-annual action plan for market surveillance covering the period 2013-2015.**
- **The proposal aims to complement the legislative framework for consumer product safety and the marketing of these products, adopted in recent years in the area of non-food manufactured products** but excluding certain products, underpinning the exercising of shared powers between the EU and the Member States.
- The Commission aims **to maintain a high level of protection of consumer health and safety, streamlining and simplifying the operation of the safety system and its interface with other EU legislation.**
- The provisions regarding market surveillance and RAPEX that are currently contained in the General Product Safety Directive have been transferred to the proposal for a new single Market Surveillance Regulation, **which will bring all market surveillance rules together in a single instrument and in which RAPEX will be the single alert system regarding products presenting a risk.**
- The proposal has been simplified thanks to **the introduction of a clear link with sector-specific legislation and simplification of standards.** Consumer products that comply with sector-specific EU harmonisation legislation that aims at ensuring the health and safety of persons shall also be presumed to be safe under this proposed regulation.
- In addition, **the definitions section has been updated and aligned with the New Legislative Framework for the Marketing of Products.**
- The obligations of economic operators address, among other things, **issues related to labelling, including size of text, simplified information, and the language used in product identification, corrective actions to be taken in case of unsafe products and provision of information to the competent authorities.**
- The **proposal requires economic operators to be able to identify the operators who supplied them with the product and their clients.** The Commission is empowered to adopt measures requiring economic operators **to establish or adhere to an electronic traceability system.**
- This helps **provide legal certainty for the market and consumers,** which, along with the simplified measures, will reduce the economic cost of adopting the regulation. Its terms should therefore be interpreted in the same vein in all the countries of the EU.

Recommendations

- Like the directive, the proposed **regulation** requires that consumer products be "safe" and sets certain obligations on economic operators and contains provisions for the development of standards in support of the general safety requirement.
- However, **its provisions do not refer to the "precautionary principle" which should govern product safety, which should be included explicitly in the main body of the text.**

Further recommendations

Definitions

- The proposal attaches particular importance to **the need to unify and simplify the requirements for economic operators**, given the confusion affecting both economic operators and national authorities.
- With regard to the **reference to "vulnerable" consumers**, it should be made clear whether the concept of vulnerable consumer is based on a general factor (age, health, etc.) or depends on the product characteristics (insufficient awareness). In order to make EU law more consistent, self-standing concepts that apply across all EU law should be used and separate concepts should not be established for each and every legislative proposal.
- Article 6(2)(h) refers to reasonable **consumer expectations concerning safety**. The term "reasonable" should be qualified with phrases such as "in terms of its nature, composition and intended use". This would give the article greater legal certainty.
- Consumers have the right to clear and precise information on the origin of products, which should in all cases bear an indication of their specific provenance in line with the provisions of EU law.
- Furthermore, the wording of this provision should be revised to the effect that manufacturers and importers must "ensure" compliance with the requirements laid down therein.

Obligations of manufacturers and other operators

- The proposal lays down **rules on the drafting of documentation by manufacturers** and the steps they have to take to maintain consumer safety.
- These specific obligations consist of **sample testing of products made available on the market, investigating complaints and keeping a register of complaints, non-conforming products and product recalls, and keeping distributors informed of any such monitoring**.
- However, **the proposal does not specify implementing procedures, leaving it up to each Member State to manage the measures they have to take** as if they were merely setting up a special register. It would be preferable to harmonise these measures with a view to securing a warning system that allows the market to be informed early enough to be able to take effective measures before damage is done.
- As the text appears to make the manufacturer responsible for any damage an unsafe product may cause, it would be more appropriate to state that **the content of the technical documentation should be valid for ten years**.
- To make things clearer, in Article 8(6) the words "manufacturers shall ensure" should be replaced with "**manufacturers shall be responsible for ensuring**". The same should apply, with the necessary modifications, to importers and their responsibility, along with the requirement to keep the technical documentation for 10 years, as other economic operators have to.
- In order to enable consumers to exercise their right to information on a specific product without any kind of hindrance, **the manufacturer to indicate a single address at which they can be contacted – not to be burdensome for the consumer**, to avoid giving the impression that using it would mean being penalised.

- With regard to **products appearing to be other than they are, there is the need for maximum protection, particularly for products which look like toys, which should be subject to the provisions of the Toy Safety Directive, to ensure a higher level of protection for minors.**
- **The need for traceability of products should be enforced throughout the entire supply chain,** as this helps to identify economic operators and to take effective corrective measures against unsafe products, whether recalls or, where necessary, withdrawal from the market.
- The transitional provisions and presumption of conformity need to be made clearer in order to provide greater legal certainty.
- Given the importance of standardisation, **European standardisation bodies should have the necessary resources to increase their productivity and ensure high quality; more effective representation of consumers is also needed.**
- As regards penalties, **there is the need for harmonising the types of infringement and the corresponding penalties².** Simply making an across-the-board call for these penalties to be effective, dissuasive and proportionate could lead to distortion in the operation of the market.
- In order to implement the provisions of the regulation benefiting consumers the Member States should have **access to proper, effective means of redress from the relevant courts.**

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In the same way as Regulation (EC) 1071/2009, for instance ([OJ L 300, 14.11.2009, p. 51](#)).