ORGALIME

Position Paper

Brussels, 23 August 2013

Draft IMCO Report for a Regulation on Consumer Products Safety: Steps in the wrong direction

COM(2013)0078 – C7-0042/2013 – 2013/0049(COD)

1. INTRODUCTION

Orgalime expects the Regulation on Consumer Product Safety (**CPSR**) along with the Regulation on Market Surveillance of Products (MSPR) to be the stepping-stones of a coherent and efficient legal framework for the marketing of products in the internal market. The intention of this package, which has been requested by European manufacturers increasingly faced with unfair competition in the internal market because of poor application of existing regulation, is to at last establish fair and competitive market conditions while at the same time ensuring that the protection of consumers is reinforced. We do not believe that the purpose of this draft Regulation is to create yet more confusion in the market and more administrative and financial burdens on EU manufacturers who respect the law.

Therefore, we call upon the European Parliament and the Council to reject any vague requirement proposals that neither manufacturers would know how to apply, nor market surveillance authorities how to enforce. Such confusion would lead to scattered and uneven levels of market surveillance for consumer products and certainly not contribute to improving consumer safety.

Moreover, we call on the European Parliament and the Council to refrain from adding administrative requirements for the marketing of consumer products. Legislation should be as simple and precise as possible, whether for market operators or market surveillance authorities.

Only with such a framework are legitimate operators not discouraged and authorities focussed on identifying unscrupulous manufacturers and taking non-compliant or dangerous products out of the market.

2. UNCLEAR REQUIREMENTS DO NOT WORK FOR CONSUMER SAFETY

a. The CPSR should be restricted to non-harmonised consumer products only

Orgalime urges the European Parliament to **reject amendment 37 and to modify article 1 or article 2.4**.

For the sake of clarity and legal certainty, products subject to Union harmonisation legislation designed to protect human health and safety should be excluded completely from this Regulation's scope.

Orgalime, the European Engineering Industries Association, speaks for 38 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.3 million people in the EU and in 2012 accounted for some €1,840 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

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Product-specific legislation is more precise for ensuring consumer protection against all risks foreseen for a given product category than a general "safety net" would be for the following reasons:

- Firstly, safety, traceability and compliance requirements are already specified for all economic operators under applicable product-specific Union harmonisation legislation. In most cases, these requirements are at of much higher level of precision and accuracy for each product category concerned than in the proposed CPSR.
- Secondly, such essential requirements oblige manufacturers to protect end-users even when they place innovative products on the market.
- Thirdly, thanks to European standardisation, precaution, foreseeable conditions of use and emerging risks are adequately addressed, under the scrutiny of Member States and the European Union.

The simpler and more precise the legal framework is, the easier its application by economic operators will be. This also contributes to a more efficient enforcement by market surveillance and customs authorities. A simple and precise legal framework will certainly lead to a higher consumer safety level.

b. The definition of consumer products should be narrowed down and clarified

Orgalime urges the European Parliament and Council to **clarify the provision of article 2.1 (b)** about products "*which are likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them*", so that they limit the liability of manufacturers of products that are clearly not intended for use by consumers, but are intended for professional use.

It would be disproportionate and inequitable to place extra liability on manufacturers, who have clearly indicated in the safety information and user instructions, that these products are intended to be used by trained professionals.

On the contrary, provisions that would place part of the responsibility on other parties for the adequate installation, maintenance, rental, usage, or repair of a consumer product would be more balanced and provide a better "safety net" for the final user.

3. DEFINE CLEAR RULES FOR ASSESSING THE SAFETY OF PRODUCTS

The European Parliament's draft Report obliges manufacturers to take into account several vague concepts in their risk assessment. We fear such requirements will neither improve manufacturers' careful design nor facilitate market surveillance.

a. The precautionary principle and injury statistics cannot be used in one manufacturer's risk assessment

Orgalime calls upon the European Parliament and the Council to **reject amendments 16, 17, 20, 38, 45 and 49** which foresee the precautionary principle to be taken into consideration in manufacturers' risk assessment.

We consider that the application of the precautionary principle should be the responsibility of the legislator not that of manufacturers or local inspectorates. It should be up to the legislator to determine the balance to strike between innovation and precaution in case of scientific uncertainty. Manufacturers should be expected to apply the law and inspectors to enforce it. This is clearly underlined in the Commission Communication on the precautionary principle (COM(2000)1).

Indeed, in the context of enforcement, we do not believe that market surveillance authorities have either the means, or the legitimacy to decide upon the acceptable level of protection for safety or

other public policy objectives. Given their scarce resources, market surveillance authorities may take decisions on little evidence. These would lead to scattered and biased measures which would mostly impede the free movement of goods without demonstrable improvement in consumer safety.

For the same reasons, we call the European Parliament and the Council to **reject amendments 19 and 50, which require from each manufacturer to take into account the Pan-European Injuries Database records' in their conformity assessment**.

Experience and studies show that accidents and injuries involving products are mostly the result of human behaviour (misuse, etc.). Direct causality of product failures is rarely reported and difficult to analyse for authorities. Therefore, it would be confusing and irrelevant to request manufacturers to take into account the extrapolated statistics of a Pan-European Injury Database in their risk assessment. Again, this is an issue, we believe, for policy-makers.

b. Market surveillance authorities should not be able empowered to overrule product conformity

Orgalime requests the European Parliament and the Council to **reject amendment 43**, as a source of major legal uncertainty for legitimate manufacturers of harmonised consumer products.

This amendment allows market surveillance authorities to challenge the law itself by taking out of the market compliant products at their discretion. This practically overrules Articles 4 and 5 of the same Regulation, which presume that a product is safe as long as it is compliant with Union harmonisation legislation designed to protect human health and safety.

c. Vague concepts of 'vulnerability' and 'child appealing' should be removed

Orgalime requests the European Parliament and the Council to **remove from the CPSR any reference to the notion of "vulnerable consumers"** (cf. Article 6.1.1.d and IMCO amendment 46).

According to the legislation on product liability (Directive 1985/374), manufacturers are already obliged to take largely into consideration the specific needs of their potential consumers in their variety of age, strength, and level of education. These depend on the intended use of the product in realistic and focused conditions which can be reasonably foreseen: an iron is not intended to be used by a child; it would not be reasonable to use a pair of glasses which was tailor-made for another family member, etc.

Serious manufacturers exclude as many possible risks under these conditions of use and provide safety information for any remaining risks. Therefore any requirement to take vulnerable consumers into consideration cannot be disconnected from the manufacturer's intended use.

For the same reasons, we believe the European Parliament and Council should **reject amendments 18, 47 and 57** on '**child appealing'** products. On the contrary, the CPSR should ensure that so-called 'child appealing' products are assessed with due consideration for normal parental or carers' supervision. Education and surveillance is often the most effective risk mitigation approach, out of the manufacturer's control: this is the case for products such as vehicles, sports equipment, kitchenware or work tools.

Moreover, **amendment 48 should be rejected** because the concept of "**reasonable consumer expectations concerning safety**" covers too wide a spectrum of situations. These practically escape the normal conditions of liability, which should be proportional to the product's intended use. Therefore, manufacturers cannot be expected to cover them during their risk assessment.

4. ADMINISTRATIVE BURDEN SHOULD BE AVOIDED WHEN NOT IMPROVING SAFETY

Orgalime calls the European Parliament to delete provisions that add new inefficient administrative obligations causing disproportionate costs to legitimate manufacturers and widening the gap in sales prices with unfair competitors, who deliberately ignore or circumvent such obligations.

a. Technical documentation and instructions are a bureaucratic overkill for most non-harmonised consumer products

Orgalime urges the European Parliament and the Council to **delete Article 8.4 and to reject amendments 53 and 54**. These oblige manufacturers to draw up **full technical documentation**, which is superfluous for most non-harmonised consumer products, as these entail no risks or only risks easily managed by consumers (for example manipulating a table knife or a screwdriver).

Moreover, the European Parliament or Council should **amend article 10.8, so that importers would not be obliged to keep the technical documentation**. This obligation raises strong confidentiality issues among manufacturers and importers. We suggest taking up the harmonised legislation's solution, which obliges importers to ask for the technical file from the manufacturer and to provide it to the authorities upon request.

Furthermore amendments **55, 56 and 58 should be rejected** because the obligation of including safety information, such as **instructions and warnings on all consumer products, even simple ones such as spoons or cups,** will add unnecessary costs to manufacturers of simple consumer products. These amendments disregard common sense and education. On the contrary, they take as granted that consumers are literate (whilst 75 millions Europeans lack basic reading skills according to the UN).

b. Stricter traceability requirements are inefficient against rogue traders

Orgalime supports effective traceability that enables consumers and market surveillance authorities to trace the manufacturer or importer, who are the liable entities for placing products on the market.

Therefore, Orgalime calls on the European Parliament and the Council to:

1) **Adapt the CPSR article 8 paragraph 7 to modern supply chains**, so that the requirement to affix the name and address of the manufacturer and/or the importer on the product should be flexible and offers the option to be either in the form of a web or postal address.

2) **Delete article 15**, because it is unnecessary, inefficient and costly to enable the Commission to establish systems for the "*collection and storage of data by electronic means enabling the identification of the product and of the economic operators*". There are at least 3 good reasons:

- Market surveillance authorities have all the necessary means to identify legitimate economic operators in the CPSR (article 8) or Union harmonisation legislation;
- Unscrupulous manufacturers will ignore such additional traceability system, as they currently ignore existing traceability requirements (name and address of the manufacturer).
- It will add costs to all: legitimate manufacturers to comply with an additional traceability system, consumers to purchase legitimate products, the public authority to manage and check compliance with such a system.

Removing anonymous non-compliant or dangerous products from the market is the only effective and efficient way to improve product safety across the EU.

5. ADDING NEW MARKINGS IS INEFFECTIVE, CONFUSING AND COSTLY

Whatever marks, whether private or public, are put on products, they make sense and add value to consumers only if the mark's owner is ready to invest in its relevance and protection. Without a corresponding increase in enforcement means, more mandatory markings would:

- confuse consumers, especially the proposed 'CE+' marking[1],
- add costs on *ad hoc* management system to legitimate manufacturers,
- trigger more counterfeiting and deceptive practices [2],
- place further strain on market surveillance authorities to check markings' trustworthiness, instead of focusing on tackling dangerous consumer products.

a. Third-party certification is ineffective

We call on the European Parliament to **reject amendments 13, 21, 52**, because 'CE+' marking or e-Trustmark would neither improve consumers' protection nor their information.

Moreover, 'CE+', even as a voluntary marking, would require consumer products to be subject to third party certification in order to obtain it. This would practically undermine the value of "internal production control" (module A) conformity assessment procedure, despite this being applied successfully in many pieces of Union harmonisation legislation (Low Voltage, Machinery, Electro-magnetic Compatibility directives). We fear that such a requirement would only lead to huge costs and confusion for all: manufacturers, consumers and enforcement authorities.

b. Indication of origin (article 7)

Orgalime urges the European Parliament and Council to delete article 7, which obliges all consumer products to bear an indication of origin. Although some of our members see potential benefits in such a provision, its impact has not been assessed. It would, in most of our members' view, neither improve consumer safety nor product traceability, which are already ensured by other means in harmonised legislation and in the CPSR (for example: Article 8 point 7).

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[1] "*A new mark would overlap with CE marking and would create confusion in the consumer's mind*", p.2 at the European Commission's staff working document "Feasibility of a consumer safety mark and its possible relation to CE marking"

[2] Such marks are forged and counterfeited, especially where they represent a marketing asset: Many dangerous products' examples of bearing marks of reputable third-party test houses are on display in the RAPEX notification system *e.g. in 2013, reports n°2, n°7, ref. A12/0042/13; reports n°4, n°5, ref. A12/0133/13; report n°6, 23, ref. A12/0190/13; n°36, ref. A12/0203/13; n°40, ref. A12/0207/13; reports n°10, n°12, ref. A12/0387/13*