

Brussels, 11 October 2013

Product Safety and Market Surveillance Package: Industry calls on for clear rules

Orgalime recommendations prior to the EP IMCO vote

Orgalime expects both Regulations on Market Surveillance of Products (**MSPR**) and Consumer Product Safety (**CPSR**) to be the stepping-stones of a coherent and efficient legal framework for the marketing of products in the internal market. Unfortunately, we see a trend in the European Parliament of creating yet more confusion, administrative and financial burdens on both legitimate EU manufacturers and enforcement authorities. Such confusion would lead to scattered and uneven levels of market surveillance for consumer products and would certainly not contribute to improving consumer safety or any other public interests, on the contrary.

Therefore, we call upon the European Parliament and the Council to reject without compromise any vague requirement proposals that neither manufacturers would know how to apply, nor market surveillance authorities how to enforce.

1. MARKET SURVEILLANCE OF PRODUCTS REGULATION (MSPR)

A. Manufacturers need legal certainty

The Regulation on the Market Surveillance of Products (MSPR) should establish clear rules to ensure legal certainty for legitimate economic operators. Therefore:

1. **The concept of a “non-compliant product”** to Union harmonisation legislation **should be distinguished from a “product presenting a risk”** for non harmonised consumer products;
 - a. We support amendments 17, 20, 107, 108, 109, 110, 111, 124, 125, 170, 201, 202, 203, 204, 214, 215;
 - b. We recommend rejecting amendments 113, 114, 115, 117, 118, 205, 206, 216, 276.
2. **Blur concepts** that are put forward to assess product safety and conformity should be rejected without compromise (support to amendments 151, 152, 291, 308; against amendments 18, 116).
3. **Applying the Precautionary Principle** in the face of scientific uncertainty is a political decision that is up to policy makers. It would be unfit to request companies (99.8% of them are SMEs, 92.2% <10) and most market surveillance authorities to apply it: Neither have the skills or resources to evaluate scientific uncertainty nor whether to choose an alternative route in product design that could have been the better decision.

Hence all related amendments should be rejected: 14, 28, 92, 93, 159, 160, 161, 162, and 271.

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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4. **Obligations of economic operators are set with accuracy in product specific legislation.** Diverging from well-established concepts as recently endorsed in the New Legislative Framework is counter-productive. Therefore:
- a. Orgalime supports amendments 35 and 210;
 - b. Orgalime calls for rejection without compromises amendments 19, 36, 119, 120, 121, 122, 184, 187, 190, 191, 193, 194, 195, 196, 197, 198, 199, 200, 207, 208, 209, 223, 224, 225, 226, 228, 229, 230, 231, 232, 233, 234, 235, 250 and 287.
5. **The flexibility of the European conformity assessment system is a key asset** for the competitiveness of the European manufacturing industry in challenging times. Provisions which would undermine the self-declaration of conformity and de facto lead to a generalised third party certification system would be counterproductive. Therefore we recommend rejecting amendments 65, 143, 389, 390 and 391.

B. Market surveillance should be efficient and effective

Further to clear and easy-to-apply legislation, Orgalime supports the establishment of efficient and effective **coordination measures of market surveillance activities** among Member States, under the European Commission's guidance and active stakeholder participation. Therefore:

6. **The European Commission should have a strong co-ordination role.** Therefore:
Orgalime supports amendments 7, 8, 23, 25, 33, 34, 43, 171, 172, 269, 270, 277 and 297.
7. **Market surveillance authorities should mutually recognise each other's test results.** Hence:
Orgalime recommends rejecting amendments 211, 212, 213, 286, 309.
8. **Serious risks only should be subject to rapid alerts in RAPEX.** Market surveillance authorities could exchange information on cases involving less serious risks or non-compliance in ICSMS, as is already the case today. Consequently,
- a. Orgalime supports amendments 82, 318, 319, 320, 321, 325, 326, 327 and 355;
 - b. Orgalime recommends rejecting amendments 83, 330 and 338.
9. **A Pan-European Injury Database can significantly improve the knowledge** of market surveillance authorities and other stakeholders.
Therefore, Orgalime supports amendments 6 and 357
10. **Fees and Penalties should be proportionate, but dissuasive for the latter.** Therefore, in our view, penalties should not vary according to the size of the undertaking but according to the severity of the infringement and the undue revenues derived from it. Therefore:
- a. Orgalime supports amendments 261, 263, 383, 384, 385, 386, 387;
 - b. Orgalime recommends rejecting amendments 3, 12, 62, 63, 64, 81, 86, 87, 88, 246, 247, 248, 249, 262, 264, 307, 310, 311, 312, 313, 382.

2. CONSUMER PRODUCT SAFETY REGULATION (CPSR)

The CPSR should not be set in an illusory "safety net". Actual support to enhanced consumer safety results through efficient and effective enforcement of clear-cut obligations for economic operators.

1. **CPSR should not overlap with the NLF legislation:** Requesting market operators to apply vague CPSR requirements on top of product-specific legislation would only result in legal uncertainty for market operators and varying interpretations from market surveillance authorities. Therefore,

- a. Orgalime supports amendments 78, 91, 112, 124, 126, 131, 144, 145, 146, 148, 149;
 - b. Orgalime recommends rejecting amendments 10, 11, 35, 37, 44, 113, 125, 127 and 147.
2. **Products intended for use by professionals**, that are clearly presented as such, should be excluded from foreseeable conditions of use under CPSR. Therefore:
- a. Orgalime supports amendments 115 and 114 under the condition that the labelling clause be removed.
 - b. Orgalime recommends rejecting amendments 7.
3. **Blur concepts** – and in particular **the precautionary principle** – should be removed from the CPSR or precisely clarified:
- a. Orgalime supports amendments 51, 84, 88, 161, 164, 165, 171, 172, 178, 179;
 - b. Orgalime recommends rejecting without compromise amendments 16, 17, 18, 20, 38, 43, 45, 46, 48, 142, 151, 152, 162, 163, 166, 167, 173, 174, 175, 176 and 177.
4. Product **composition or authenticity** are subject to other well-established legislation and should not be regulated under the CPSR. We oppose amendments 85, 86, 129, 130 and 158.
5. **No deviation from the terminology used in Union harmonisation legislation is advisable.** Therefore, Orgalime recommends rejecting amendments 40, 132, 133, 135, 136, 139, 140, 141, 150, 157, 201, 203, 204, 212, 215, 216, 217, 218, 219, 220, 227, 228, 229, 230, 231, 233, 234, 235, 256, 278, 279, 282, 305, 306.
6. **However the CPSR alignment with harmonisation legislation should be proportionate.** No premarket requirements (declaration of conformity, technical file, sample testing, etc...) are necessary for simple consumer products, where risks are low, obvious and easy to mitigate by consumers. Moreover, there is no need for even stricter provisions than in the NLF. Therefore:
- a. Orgalime supports amendments 223, 224, 225, 232, 237, 238, 240, 255, 257, 260, 275, 276, 280, 314, 318, 319, 320, 321 and 330;
 - b. Orgalime recommends rejecting amendments 55, 56, 57, 58, 59, 61, 62, 66, 67, 205, 206, 207, 208, 209, 210, 211, 213, 214, 221, 222, 242, 244, 245, 247, 248, 249, 250, 258, 262, 263, 265, 266, 267, 268, 270, 271, 272, 274, 281, 287, 288, 289, 290, 291, 294, 295, 308, 310, 312, 315, 316, 323, 324, 325, 326.
7. **Orgalime supports establishing a Pan-European injury database** as a tool for gathering knowledge for market surveillance authorities and other stakeholders. However, statistics on reported injuries could not be set as a reference for the risk assessment by type of products. Therefore:
- a. Orgalime recommends rejecting amendments 19, 28, 50 and 68.
- New markings without corresponding market surveillance are counter-productive**, as they can be easily forged. Which is true for the proposals on “CE+” and “marking of origin”:
Orgalime supports amendments 99, 100, 101, 102, 184, 185, 186, 187, 188, 189 and 190;
- b. Orgalime recommends rejecting amendments 21, 30, 31, 32, 52, 94, 95, 96, 97, 103, 104, 105, 182, 183, 191, 192, 193, 194, 195, 196, 197, 198, 199)
8. **There is no need to include provisions on penalties and fees in the CPSR**, given that these are set for both Union harmonisation legislation and the CPSR in the MSPR. Consequently:
- a. Orgalime supports amendments 342, 343;
 - b. Orgalime recommends rejecting amendments 33, 34, 71, 346 and 72.

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