ORGALIME

Position Paper

Brussels, 6 December 2010

Draft Orgalime comments on EP IMCO report on the General Product Safety Directive and Market Surveillance

2010/2085(INI) of 12/11/2010 – Rapporteur: Christel Schaldemose

1. GENERAL COMMENTS

Orgalime welcomes the European Parliament's initiative to make an own initiative report and opinion on the revision of the General Product Safety Directive and market surveillance, given the importance that the lawful marketing of safe consumer products represents for the industries Orgalime represents, the overwhelming majority of which are SMEs.

We support the statements and recommendations made in the recitals (A to G) and in paragraphs 22, 27 and 29, and especially those made in paragraphs 1, 2, 3, 4, 5, 7, 25, 26, and 27 which were already highlighted in the Orgalime-ANEC position paper on market surveillance of April 2009.

We especially welcome paragraph 11 which "*urges the Commission to establish one market surveillance system by proposing e.g. "A General Product Safety and Market Surveillance Regulation" including the Regulation on market surveillance and the revised GPSD in one updated legislative proposal which covers both harmonised and non-harmonised products*". We would nevertheless highly recommend that this suggestion leads to a solution which:

- does not delegate powers to the Commission to set harmonised safety requirements for products in the non harmonised area that should stay the privilege and responsibility of the legislator;
- preserves the manufacturer's right to demonstrate that his products are safe on the basis of his risk assessment, and
- clearly defines the scope of the future legislative instrument with regard to consumer and non-consumer/professional products, i.e. provides for the necessary flexibility especially in conformity assessment obligations that is currently ensured by the New Legislative Framework to non-consumer products under specific directives.

Traceability requirements should not be unified: they are set in a tailored manner under harmonised legislation and should not be applied blindly to GPSD products, which are overwhelmingly not hazardous. Traceability throughout the supply chain must be ensured in a proportionate manner, taking into account the type of products and the risks associated with these. No technical file, specific register of manufacturers or products should be requested on the basis of a European requirement under the GPSD for products in the non-harmonised area: this would constitute a clear source of red tape for all manufacturers concerned and will not improve the traceability of products of unknown origin, which clearly stem from unlawful market operators.

Orgalime, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.6 million people in the EU and in 2009 accounted for some €1,427 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

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Orgalime is concerned that the inclusion of a "definition" of a "child appealing product" in the Community legal framework, as it could lead to arbitrary administrative decisions and hence legal instability for European manufacturing companies, especially SMEs.
Whereas more than 1 household out of 2 has no children, it would be disproportionate to ban a whole product type/design on the grounds of an administrative decision when there is no evidence of accidents linked with this product type/design that may be used by adults and that is not accessible to children (Rationale: 1- all products could be attractive for children as they consider them as toys or objects to discover; 2- a product may be attractive one day for one child and not attractive another day for the same child ; 3- two different children would not be attracted by the same products). Besides, child education and parental responsibility are important in assessing how, in practice, the attractiveness of a product could constitute a hazard for a child. According to state of the art paediatric knowledge, learning about risk and its management is part of the education of children under the responsibility of their parents. Risk management cannot be taught by restrictions in the design of products.

2. SPECIFIC COMMENTS

We have some comments on statements made in paragraphs **n°8** (call for aligning obligations of manufacturers of GPSD "benign risk" products with those of the NLF), **10** (disproportionate call for a uniform traceability system), **12** (inclusion of a hopelessly subjective definition of "child appealing product" into the GPSD), **13** (responsibility of consumer service providers), **15** (call for risk free products for "vulnerable stakeholders"), **16** (manufacturers' obligation to document his risk analysis), **17** (emergency Community measures), **21** (access to the RAPEX information), and **29** (separation of powers between the legislator, the standardiser and the enforcement authority).

We provide hereinafter some suggestions for improvement.

Besides, we firmly call on for the deletion of paragraphs:

- **n°9**, which disproportionately calls for the traceability requirements in place for harmonised products to apply to non-harmonised consumer products, while most of them are not hazardous;
- **n°28**, which challenges the voluntary nature of European standards, contrary to the recommendations made in the Kožušník report on the future of standardisation;
- **n°30**: the safeguard clause mechanism does not make sense for a general safety purpose: it would be too widely open to varying interpretations.

We look forward to clarifying further the rationale for these suggestions with the Rapporteur and all interested members of the European Parliament.

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