Position Paper

Brussels, 28/05/2013

Market Surveillance Regulation: A brave step towards an effective pan-European market surveillance system

Executive Summary

In 2009, the European engineering industries Association (**Orgalime**) and the European consumer voice in standardisation (**ANEC**) called on policy makers to take practical measures for re-enforcing border controls and the surveillance of products placed on the European market[1]. The rule should be simple: a product which is on the Internal Market must respect all European legislation.

Within the European Union, all consumers expect safe products; all manufacturing companies expect fair competition. Product safety and product compliance with applicable legislation are pre-requisites for placing a product on the market. Safety and compliance with other EU rules grant products free circulation within the Single European Market, contribute to consumer choice and confidence, and boost industry's competitiveness and development.

The European Commission's Proposal for a Product Safety and Market Surveillance Package[2] addresses most of our concerns.

In particular, we are pleased to see the following provisions, which meet our proposals to a large extent:

- The Package provides a clear chronological approach to market surveillance activities, which applies to both harmonised and non-harmonised products, whether for consumers or workers.
- The scope (articles 1 and 2) of the Regulation for the Market Surveillance of Products (MSPR) would place on an equal footing health and safety requirements along with consumer protection, the environment, public security and other public issues.
- The European Commission will maintain the information and communication system for market surveillance (ICSMS) to deal with cases of products reported not to be in conformity, but not presenting a serious risk (article 21). RAPEX should continue to be reserved for cases involving a serious risk, requiring immediate action.

[1] ANEC: http://tinyurl.com/cx73dw ; Orgalime: http://tinyurl.com/c2k7hbq
[2] The Package comprises a draft Regulation on Consumer Product Safety (CPSR), a draft Regulation on Market Surveillance (MSR) and a multi-annual action plan on market surveillance. http://tinyurl.com/d7ydmuy.

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- The European Market Surveillance Forum would contribute to the development of common risk assessment guidelines (article 27 point I and j).

Nevertheless, we believe the following aspects have not been sufficiently addressed. Therefore, we call on the legislators to take them into account in the MSPR's adoption process:

- Establish a European database of injuries;
- Secure adequate funding for market surveillance authorities and open European Structural Funds for market surveillance purposes.

Position

1. COMMIT THE NECESSARY RESOURCES AND FOCUS ON THE WEAKEST REGIONS

We are pleased to see that the European Commission will be financing important activities, such as the drawing up of market surveillance guidelines, the function of the Executive Secretariat to the European Market Surveillance Forum, and experts' meetings (Articles 26 and 29).

Nevertheless, we consider a simple call to Member States for entrusting market surveillance authorities with the necessary resources (article 5.2) not to be sufficient in view of the authorities heightened responsibilities. Sharing resources (chapter VI) and the deployment of best practices of market surveillance are welcomed, but will not be sufficient to tackle the challenges of rogue trading.

Therefore, we very much hope that the European regulator will provide the Commission and Member States with adequate funding to support the accompanying "multi-annual plan for market surveillance of products" (COM(2013)76).

Adequate funding is central to unleashing this regulatory package's potential to meet the objectives of improved product safety, environmental compliance and the competitiveness of the European engineering industry.

We believe that this could be achieved via the financing scheme of the European Structural Funds, and by earmarking infringement fines to fund at least part of market surveillance authorities' activities. Other financing options could also be explored.

2. DEVELOP A EUROPEAN CO-OPERATION FOR MARKET SURVEILLANCE

We welcome the establishment of a European Market Surveillance Forum (article 25) in charge of coordinating market surveillance programme and related activities.

Additionally, we suggest setting up a standing Advisory Board composed of relevant EU

stakeholders (including manufacturers and importers) to provide input to the European Market Surveillance Forum, following the same structure as the European Accreditation Advisory Board.

Such a consultative body would enable a coherent and regular dialogue between European stakeholders, the Commission and market surveillance authorities, with a view to:

- providing input about risk assessment methods and priority settings for both market surveillance and import controls;
- detecting problems and needs, collect expertise and views on areas of concern (implementation at national level) as well as concrete suggestions for the elaboration of a general methodology of compliance and risk assessment.
- providing feedback on guidance documents for the market surveillance authorities and economic operators.

3. ESTABLISH A PAN-EUROPEAN EU INJURY DATABASE (IDB)

We were surprised and disappointed with the absence of a provision establishing a pan-European Injuries Database (**IDB**). 28 stakeholder organisations, including Orgalime and ANEC, reacted with a joint call in favour of this [3]. We firmly believe that such a 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;
- evaluate the effectiveness of preventive measures and set priorities in policy making.

In response, the European Commission has committed itself to examine the costs and benefits of an EU accident and injury database in its multi-annual plan for the surveillance of products in the EU. This would unfortunately come too late to preserve the experience and benefits of the existing system, which will stop in March 2014, should there be no further EU funding[4].

Therefore, Orgalime and ANEC call on the European Regulator to establish a legal basis for the IDB in the proposed MSPR Regulation. More specifically, we suggest under:

- Article 6 "*General obligations of market surveillance authorities*", paragraph 5: reintroducing a missing provision from Regulation EU 765/2008[5] requesting Member States to establish

[3] In March 2013, Orgalime and ANEC, with 26 other European associations from across the economic & social spectrum, joined forces to call on the European Commission to establish a pan-European Accidents & Injuries Database. The Joint Call was formally presented to Commissioner Borg at the European Consumer Day Conference in Brussels on 14 March 2013, hosted by the European Economic and Social Committee (EESC). More.
[4] Currently funded via the Joint Action on Injury Monitoring in Europe (JAMIE).
[5] Cf. Regulation EC 765/2008, Article 18 paragraph 2, sub paragraph (b)

adequate procedures to monitor accidents and harm to health which are related to products;

- Article 21 bis (new): establishing a legal basis for a pan-European Injuries Database (IDB) which would further continue the implementation of the Council Recommendation on the Prevention of Injury and Promotion of Safety of 31 May 2007. Its scope should cover all types of injuries, and namely those related to products used at home and for leisure, transportation and work activities.
- Article 26 "*Commission support and executive secretariat*": Calling on the European Commission to support the co-ordination of the collection of data from Member States and the smooth operation of the pan-European Injuries Database (IDB).

4. STRENGTHEN NATIONAL CRIMINAL LAWS ON THE PLACING OF DANGEROUS OR NON-COMPLIANT GOODS ON TO THE COMMUNITY MARKET.

We welcome the Commission's call to Member States to lay down rules on penalties for infringements (article 31).

However, Orgalime and ANEC are concerned by the reference to the size of the undertaking and the reference to small and medium sized enterprises in defining the penalties. In our opinion, size of the undertaking is irrelevant to the context of market surveillance activities. To be both dissuasive and proportionate, sanctions should be proportional to the seriousness of the infringement and the amount of illegitimate revenue generated by the placing of non-compliant products on the market.

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ANEC *is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment, as well as related legislation and public policies. ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 33 countries. ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.*
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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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