

Brussels, 22 April 2009

Call for an effective pan-European market surveillance system

European Consumers and European engineering industries call on policy makers to take practical measures for re-enforcing border controls and surveillance of products placed on the Community market

Introduction

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

In the present position paper,

ANEC, the European consumer voice in standardisation, and

Orgalime, the European engineering industries associations,

provide a common view on the New Legislative Framework (NLF) – which includes Regulation (EC)765/2008¹ and Decision 2008/768/EC² of 13 July 2008. With proper implementation, ANEC and Orgalime believe that this framework provides the potential to achieve a real improvement for both the safety of consumers and for the competitiveness of the European engineering industry.

In the face of the increasing complexity of enforcing EU legislation, ANEC and Orgalime call on Member States and the European Commission to allocate significant resources to market surveillance and to increase their co-ordination efforts, so as to ensure that the acquis communautaire of the Single European Market is preserved and strengthened to the benefit of both consumers and responsible manufacturers.

We are pleased to detail below some shared concerns and common proposals in this respect.

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 11 million people in the EU and in 2007 accounted for some €1,813 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.

ANEC represents consumers from EU Member States and 3 EFTA countries (Iceland, Norway and Switzerland). The adoption during 2008 by the European Council and the European Parliament of the 'New Legislative Framework' for products has reinforced the importance of ANEC as an organisation with the mission to promote and defend the interests of European consumers in the processes of standardisation and conformity assessment, and in related political and legislative developments.

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Position

ANEC and Orgalime believe that there is an urgent need for governments to take immediate measures and for policy makers to plan the streamlining of European legislation against the model laid down in the New Legislative Framework.

Call for immediate measures

The rule should be simple: a product which is on the internal market must respect all European legislation. No more, no less.

Therefore ANEC and Orgalime call on Member States of the EU/EEA to:

- **Commit the necessary resources** - both in terms of staff and funds - to enable them to fulfil their obligations as public enforcement authorities. Such resources are especially needed for tracing products and market operators; for carrying out administrative checks and physical controls against the applicable set of EU laws with support of the related available harmonised standards (EN); for the funding of information campaigns and for supporting co-operation with consumer and trade associations in order to improve local best practices of market surveillance.
- **Commit to a co-ordinated approach to market surveillance**, based on available harmonised European standards (EN), for evaluating the risks to the safety of consumers and other users, to the environment or to another core community interest specified in European legislation. In this respect, authorities should participate systematically in the related standardisation activities in order both to contribute their expertise and develop an understanding for the results of standardisation. In case of carrying out physical tests on products in the framework of market surveillance activities, Member States should check products against European standards as referred to in the EC Declaration of Conformity or against the manufacturer's specifications as indicated in the technical file.
- **Develop a European Co-operation for market surveillance**: rogue traders take advantage of the scattered national enforcement of European product legislation. Therefore, we believe that it is time that Member States organised a peer assessment system of their national market surveillance activities and procedures, with the support of an advisory board open to stakeholders (including consumer and industry organisations) that would develop recommendations on the basis of best practices. PROSAFE could be chosen for such a purpose, acting as a facilitator in operating targeted market surveillance campaigns, upstream communication with customs authorities and downstream communication with manufacturers, trade and consumer organisations.
- **Commit to a cross-policy approach for the various market surveillance authorities in charge of the enforcement of different legislation applying to the same product**: indeed a product which, in one country, is found to be not in compliance with regard to environmental legislation (e.g. REACH) may well also not be in conformity with other EU legislation, including product safety legislation.

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- **Use ICSMS as a common platform of exchange of information in case of non compliant products:** ICSMS should be improved and could provide such across-policy tool to enhance the speed and efficiency of EU-wide market surveillance and contribute to removing both unsafe and otherwise non compliant products from the market.

ANEC and Orgalime call on the European Commission to:

- Facilitate the implementation of the New Legislative Framework by **clarifying as soon as possible the relationship between Regulation 765/2008/EC and both the General Product Safety Directive 2001/95/EC and sectoral product legislation**, such as the Low Voltage Directive and the Machinery Directive, that apply to a large number of consumer products. In particular, the qualification of “serious risk” for rapid alert (RAPEX) notifications should be clarified too.
- **Strive to adopt a single set of Risk Assessment Guidelines for use by enforcement authorities.** The Risk assessment guidelines which have been developed for the enforcement of the GPSD need to take into consideration the manufacturer’s risk assessment which is often documented in standards. This is necessary as the overwhelming majority of e.g. electro-technical consumer products are covered by the design requirements of sectoral legislation. Such clear risk assessment guidelines for authorities would contribute to building a common approach to the market surveillance of non-food products and removing varying legal interpretations by authorities and consequent legal uncertainty for manufacturers.

Call for medium and longer term measures

ANEC and Orgalime call on the Member States to:

- **Improve**, under co-ordination of the European Commission, **the scope, reliability and relevance of the EU Injury Database (IDB)³** on statistics detailing accidents and injuries at work, home and during leisure. This would require an ambitious research programme involving a credible set of volunteer hospitals across the EU, in order to monitor user/consumer behaviour in relation to the main product categories. This would clarify the concept of foreseeable misuse and enable suppliers to improve the safety of their products. It would also help market surveillance authorities to optimise their resources in improving the focus of their surveillance plans and strategies.
- **Strengthen their criminal laws on the placing of dangerous or non-compliant goods on to the Community market.** They should adopt deterrent penalties including heavy fines for operators who deliberately breach the rules. The administrative measures putting into effect product bans in particular, if the necessary dialogue with the market operators is not successful, should be made public as often as possible in order to make border controls and market surveillance more visible and act as a deterrent to rogue market operators.

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ANEC and Orgalime call on the Council and the European Parliament to:

- **Open up the possibility of financial support, within the framework of the European Structural funds**, in order to assist Member States whose geographic or economic conditions place them in weaker position to fight against illegal trade and unlawful imports from abroad. This is especially true for countries with maritime ports, where 90% of the freight of goods imported into the EU transit every day.

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¹ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 ([JOCE L218/30 of 13/08/2008](#)).

² Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC ([JOCE L218/82 of 13/08/2008](#)).

³ EU Injury Database: <https://webgate.ec.europa.eu/idb/>

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