

Brussels, 15 November 2010

Comments on a “draft Atlas for Household Appliances – child appealing designs”

1. Introduction

CECED and Orgalime have been invited to participate as stakeholders in the “Joint Market Surveillance Action on Child Appealing Designs” of EMARS/PROSAFE.

We would like to express our disappointment that during the entire project stakeholders were given insufficient time to provide feedback, which made the consultation with our members very difficult and sometimes impossible.

Although industry stakeholders were invited to the meetings and asked for their opinion, very few of our contributions were taken into account and no counter arguments were tabled.

Although we see some improvement in the Version 2 of the Atlas (of 04-11-2010), we do not recognise much of our input. We would therefore welcome that the project group includes a section to the Atlas which would highlight the level of consensus reached by all stakeholders.

We provide hereafter our joint comments on the draft Atlas for Household Appliances – child appealing designs.

2. General comments

In all cases, manufacturers have an obligation to run their own risk assessment before placing an electrical household product on the market. As there are no specific requirements for the protection of children in Directive 2001/95/EC (GPSD), the protection of children is part of the assessment where relevant. Therefore, the planned Atlas, although intended as a non-binding guide for market surveillance authorities, cannot in our view supplement the existing market surveillance practice and replace a case-by-case examination of the manufacturer’s risk assessment under the LVD.

ORGALIME, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies, mostly SMEs, 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 some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

CECED represents the household appliance manufacturing industry in Europe. Its member companies are mainly based in Europe. Direct Members are Arçelik, Ariston Thermo Group, BSH Bosch und Siemens Hausgeräte GmbH, Candy Group, De’Longhi, AB Electrolux, Fagor Group, Gorenje, Liebherr, Indesit Company, Miele, Philips, SEB and Whirlpool Europe. CECED’s member Associations cover the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

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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.

- **Directive 2001/95/EC requires warnings to be taken into account for assessing the safety of consumer products**

The Directive, which is based on Article 95 of the Treaty (Art. 114 of the Lisbon Treaty), clearly specifies in its Article 2 (b)(iii) that “*the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product*” should be taken into account to assess whether a product is safe under the Directive.

Consequently, the draft Atlas cannot ignore article 2 (b)(iii) of the GPSD that gives manufacturers the possibility to warn their customers-consumers, should they have children, about the possible risks that the attractiveness of the design might pose for young children.

Market surveillance authorities should carry out a risk assessment on a case-by-case basis, and should base their evaluation on the evidence that they have collected, directly or via the supply chain, from the manufacturer. Such evidence (technical file, test reports, etc...) would clarify the various means that were envisaged to minimise the intrinsic risks of the product for families with children, if reasonably intended for them. Risk mitigation through warnings on the packaging should be possible: e.g. that the product “is not a toy” and should not be used by unattended children, as is the case for lifts in private buildings.

- **Child education and parental responsibility are important in assessing how, in practice, the attractiveness of a product could constitute a hazard for a child**

We have noted in particular the conclusion of the study which stresses how “*challenging*” it is to determine which characteristics are child appealing, given the evidence that they “*vary immensely*” according to the way they are combined and interact with the child “*in association with the function and child's individual preference*”. The “non-attractiveness” of the product design depends very much on the mood and character of the child and affords no guarantee of risk reduction for a child for the reasons detailed hereafter.

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. This could even be counterproductive since certain risk factors are related to the child himself: his normal psychomotor development and health, his sex, personality and behaviour (with respect to the risk). These factors are best evaluated by the parents and reflected in their decisions when they buy a product which is likely to be used by their child/children.

Manufacturers cannot be held responsible for shortcomings and negligence in a child’s education and supervision regarding the foreseeable risks of a household appliance under normal conditions of use.

In our view, adequate enforcement of the existing Low Voltage Directive combined with an ad hoc campaign in the press on situations that would involve additional risks to children on a large scale would be much more efficient.

3. Specific comments

Orgalime and CECED regret that the considerations on the “impact of the study” reflect the opinion of the Atlas authors but provide no sound evidence. The draft Atlas gives no clear definition or tool for identifying:

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- the "*child appealing characteristics and or the association with the function and child's individual preference*" that could lead to a hazardous situation for the child in normal conditions of parental supervision;
- Which "*characteristics of the child appealing household appliance may induce children to touch hazardous parts*" (cf. LVD AdCo Recommendation of November 2008)
- the "*criteria to determine whether risks increase by the child-appealing character of a product*" (cf. results of the MSA Joint Action 2009-82-01)

Instead, the draft Atlas introduces a difference (p.5, §4) between "normal (electric) household appliances and those with (additional) child appealing characteristics".

The Atlas does not distinguish between child appealing products and adult appealing products that, like commercial appliances, are not intended for use by children.

In addition the Atlas mentions (pages 6-7 §4) that it provides "*a common agreement...and the opinion of all relevant stakeholders*". Based on what is stated in Art.1 of this paper, this is not true.

- **Modification of the definition – “child appealing designs”**

The Intertek study (mentioned under chapter 3 of the Atlas) clearly shows that all electrical goods are child appealing, particularly TVs, telephones, DVD players and alarm clocks. On these grounds we reiterate our request to change the definition to “toy like appliances”. However, we are ready to discuss any other definition that would provide a clear understanding, avoiding the unacceptable confusion created by the current concept of “child appealing design”.

- **Parental responsibility should be taken into consideration**

Parental responsibility is severely undermined. Parental supervision and parents’ knowledge of the behaviour of their own children, or any other similar responsibility and duties conferred upon all adults in childcare work or in charge of children, such as in kindergartens or schools, should be seriously taken into consideration in further work on the Atlas.

- **The suggested discrimination method is too subjective**

The “tool” (Excel spreadsheet and graphics in Annex 4) remains an intrinsically subjective method to discriminate between normal (electric) household appliances and those with (additional) characteristics deemed to be child appealing. Different people can arrive at significantly different conclusions using the tool. In our view:

- The tool needs to clarify for all items where applicable, that if the specific characteristic of the item (colour, shape, smell, etc...) is used for functional purposes, for example a pan with a hotspot system, the relevant score to evaluate additional child appealing characteristics should be ‘0’ (zero).
- There is no age group differentiation. There are clear examples of different perception between different age groups. Even looking at the outcome of the Intertek study, it is quite clear that the perception of a 13-year old child is very different from that of a 4-year old child.

Therefore, Orgalime and CECED ask the Joint Action members to take due account of the comments made in this document and in documents previously submitted, and consequently update accordingly the Draft Atlas.

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