ORGALIME

Position Paper

Brussels, 29 July 2010

Envisaged Review of the General Product Safety Directive (2001/95/EC)

In response to the public consultation on IPM:
http://ec.europa.eu/consumers/safety/prod_legis/GPSD_consultation/index_en.htm

Orgalime welcomes the opportunity to submit its views in the context of the current public consultation on the revision of Directive 2001/95/EC on general product safety (GPSD).

1. GENERAL COMMENTS

The safety of consumers is of great concern to Orgalime and the industries it represents, as our members duly consider product safety and compliance with applicable legislation as pre-requisites for placing their products on the EU market.

Orgalime believes that there is no urgent need to revise the GPSD, since the adoption of regulation 765/2008/EC now provides a single set of rules for the market surveillance of both consumer and professional products under harmonised Community legislation. On the contrary we feel that the constant change of legislation affecting our products just creates unnecessary burdens on our companies, including the many SMEs that we represent. For other consumer products that could circulate freely on the market under Regulation 764/2008/EC, the GPSD has efficiently performed as a safety net since January 2004.

Improvement in consumer safety can be best achieved by efficient enforcement of the existing New Legislative Framework (Regulation 765/2008/EC and Decision 768/2008/EC) and all related product safety directives.

Therefore, Orgalime calls on the Commission to ensure that any future revision of the GPSD will:

1) **contribute to establish a single EU market surveillance regime**, which should be consistent with Regulation 765/2008/EC in order to ensure, without unnecessary administrative burden, the safety of both consumers and professional users in both the harmonised and the non-harmonised areas.
2) **complement and not supersede Regulation 765/2008/EC** and the body of existing product specific directives which already provide for sufficient rules to ensure a high level of protection to European consumers.
3) **keep emergency measures decided by comitology temporary in nature**, i.e. limited in time or at least by the execution of a specific and feasible event;
4) **leave possible permanent requirements for placing a product group on the consumer market up to the decision of policy makers under the normal legislative (co-decision) procedure**, especially if this product group is already subject to harmonised legislation;
5) **maintain as voluntary the use by manufacturers of mandated harmonised standards.**

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.

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2. Specific comments

A. Standardisation procedures under the GPSD

EC objective to ensure faster adoption of mandates for European standards

A faster adoption of standardisation mandates should not hamper the necessary consultation of all standardisation stakeholders including European trade associations such as Orgalime. EC consultation on draft standardisation mandates, which are expected to be more specific under the GPSD, takes time (at least 8 weeks). Besides, the acceptance period for standardisation mandates to be accepted by European standardisation organisations (ESOs) is quite reasonable compared to the standardisation work itself, which would typically need up to 1-3 years, depending on the complexity of the work, and number of genuinely interested stakeholders involved. Orgalime believes that speeding up the standards development should be balanced with the application of the principles of WTO/TBT agreement (transparency, openness, impartiality and consensus, effectiveness and relevance, coherence). Openness and wider consultation of all stakeholders, including the SMEs that often need a summary in their own language, call for more time.

EC objective to make the safety requirements in the "mandates" directly applicable

Orgalime would strongly oppose any change in the GPSD that would lead to making specific safety requirements in standardisation mandates directly applicable for the following reasons:

- **It is up to product specific legislation to lay down specific safety requirements**. In the electrical, mechanical and metalworking fields, New Approach directives apply, such as the Low-Voltage Directive for the safety of electrical equipment (2006/95/EC), or the Machinery Directive (2006/42/EC).
- **The GPSD should support Member States authorities to address the residual risk** that would be evaluated as "serious" for consumers either in the non-harmonised area or, in exceptional cases, when the risk cannot be mitigated in the harmonised area.
- **It is not and should not be the purpose of the GPSD to take over Regulation 765/2008/EC** and harmonise the conditions for placing consumer products on the market where no harmonisation legislation is in place.
- **Striking a balance between all interests in society with those of consumers is the privilege of policy-makers**. Specific safety requirements for consumers should not be set by *comitology procedure and their transposition delegated to European standards organisations*.

Therefore, "product specific safety requirements" (as referred to in question 3) should be laid down through the co-decision procedure with the European Parliament and Council, in directives and regulations applying to products, especially those that would be made "directly applicable to economic operators", should the GPSD be transformed into a Regulation.

EC objective to allow for adoption of "standing or framework" mandates

Standards are voluntary tools and serve goals other than laws. Their relevance therefore depends on their capacity to serve the needs of their primary users, i.e. companies that will use them for designing products or supplying services. In the context of harmonised legislation, standards can be useful tools in support of the protection of consumer safety.

Consequently, Orgalime supports the use of standards in support to consumer safety legislation provided that:

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- **the specific safety requirements are embedded in the law**, i.e. not decided on a case by case basis by the Commission in a Delegated Act,
- **the use of standards provides market operators with the presumption of conformity** with such safety requirements,
- **the use of standards remains voluntary**. In this respect, the Commission cannot invite the national market surveillance authorities to consider that "**The product is presumed not to be safe where it fails to comply with** established limit values (...) laid down in (...) **standards**," (cf. page L 22/39 of Decision 2010/15/EU laying down the new guidelines for the management of the "RAPEX" system and of the notification procedure established under Article 11 of the GPSD). This is at odds with the nature of standards as documents developed by private standardisation experts within privately governed organisations, and the *'New Approach'* principles of voluntary application of standards as embedded in Regulation 765/2008 EC and Decision 768/2008/EC.

- **EC objective to provide for easier takeover of European and/or international standards among the standards which provide for "presumption of conformity" under the GPSD**

"Presumption of conformity" under the GPSD should not mean "obligation to comply". The presumption of conformity which is granted by the publication of the standard's reference in the OJEU facilitates the task of manufacturers to demonstrate conformity with applicable harmonised legislation for the protection of consumers' health and safety, among other objectives.

The Commission states that *"the current provisions do not include the possibility of referring to an existing standard to address a specific risk as an interim measure".* However, where there are no harmonised standards, the GPSD allows in art. 3§3 the use of other technical specifications such as:

1. voluntary national standards transposing relevant European standards other than [harmonized standards]
2. the standards drawn up in the Member State in which the product is marketed;
3. Commission recommendations setting guidelines on product safety assessment;
4. product safety codes of good practice in force in the sector concerned;
5. the state of the art and technology;
6. reasonable consumer expectations concerning safety.

Although these possibilities do not provide manufacturers that would use them with the presumption of conformity, they provide already useful alternative solutions to harmonised standards which could provide a higher level of safety to consumers.

The European Commission should streamline European harmonised legislation with respect to existing international standards and contribute with Member States to create common regulatory objectives via WTO, UNECE and bilateral agreements with Europe's main trading blocks. Nevertheless, direct reference to specific standards in the GPSD should be avoided because it would make these standards de facto mandatory, as they would constitute the official reference for assessing the risks for the products covered by the standard. Moreover, should there be the takeover of non-European standards, it would hamper the open and democratic process of consultation and standardisation development of the members of the European standardisation organisations.

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B. Harmonisation of diverging safety evaluations of consumer products

EC objective to provide, in emergency situations, for more flexibility to avoid existing confusion in the application of EU "emergency" measures

Whether for the harmonised or the non harmonised area, "emergency measures" could be decided by comitology provided that they are proportionate to the risk arising and remain of temporary nature. For the sake of efficiency, such decisions might be directly applicable to economic operators, provided that the impacted stakeholder organisations are duly consulted beforehand.

Any decision that may affect, in the longer run, a product group should not, in our view, be decided by the Commission alone in comitology, but by the legislator via the co-decision procedure after an impact assessment.

EC objective to minimise, in other situations, divergent safety evaluations of an identical product in different Member States

The safety evaluations of consumer products should take first of all existing harmonised product safety legislation into consideration. About 80% of products that have been notified with the RAPEX procedure over the past 5 years are covered by harmonised product legislation. This legislation already provides Member States with a legal framework to take restrictive measures to remove dangerous consumer products from the market.

In their common "call for an effective pan-European market surveillance system" (22/04/2009), ANEC and ORGALIME have stressed the need for the European Commission to "**Strive to adopt a single set of Risk Assessment Guidelines for use by enforcement authorities**. (...) 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."

Consequently, we call on the Commission to revise the guidelines for the management of the "RAPEX" system so as to take into consideration the implementation of Regulation 765/2008/EC in order to meet the objective of minimising, in other situations, divergent safety evaluations of an identical product in different Member States.

C. Market surveillance framework

EC objective to provide a permanent platform for cooperation among market surveillance authorities, e.g. for performance of joint actions

In their common "call for an effective pan-European market surveillance system" (22/04/2009), ANEC and ORGALIME stated that they "*believe that it is time that Member States organise 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.*"

EC objective to enhance functioning of RAPEX

1) RAPEX notifications should be processed in the same system as all products falling under the scope of Regulation 765/2008/EC, given that, for a large number of products, safety aspects

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cannot be differentiated between a likely use by consumers or by a professional (worker). There is consequently a need for simplifying the task of market surveillance authorities that should be able to handle notifications for non compliance with specific product safety legislation as easily as for failure to meet the requirements of the General Product Safety Directive.

2) Consequently, the qualification of "serious risk" for rapid alert notifications should be clarified for products in both the harmonised and the non-harmonised area.
3) RAPEX should in our view be linked up with ICSMS as a common platform for exchange of information in case of non compliant products and could provide such an 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.
4) The collection of data under RAPEX should evolve in a way to provide patterns that could be usable by customs officials in their procedures for evaluating risks from imported products.

- **EC objective to tackle unsafe consumer products sold on the Internet**

The GPSD already applies to all distribution channels including e-commerce. Rogue trading occurs in all supply chains and trade channels. Consumer safety is not more endangered through internet sales as it is in other forms of generic, non-specific forms of distribution. Tackling the problems of internet sales cannot be dealt with separately for consumer protection reasons, as it ought to be for protecting other core Community interests, such as energy efficiency targets, environment protection, etc... The Commission already plans to review the Distance Selling Directive and to address more specifically internet sales under the Consumer Rights Directive. There is consequently no need to introduce specific measures, legal and/or administrative tools into a revised GPSD to tackle the issue of dangerous consumers products sold on the Internet. Again focusing regulation on this area in one piece of legislation would support Better Regulation.

- **EC objective to ensure better monitoring of market surveillance in the EU primarily on the basis of existing tools, e.g. annual "Enforcement Indicators"**

Any initiative that would be conducive to Member states carrying out more efficient market surveillance is welcome. Nevertheless, we reiterate the need for reinforcing the actual means of market surveillance authorities at national level, without imposing on them bureaucratic reporting requirements, which will become a drag on their often insufficient resources. For the very same reason, Orgalime is against any idea that would favour setting up a European consumer safety agency.

D. Alignment with the Free Movement of Products Package

- **EC objective to extend certain new enforcement and reporting mechanisms to the non-harmonised area (alignment of definitions)**

The explanatory memorandum of the current GPSD indicates that the intention of the legislator was to address the general safety problems for consumers that may arise for all those products whose conditions for their placing on the market are not harmonised. Such products are not subject to harmonisation legislation, for they were not considered by the legislator as posing a threat at the EU level. The placing on the market of such products is consequently subject to the application of the subsidiarity principle and their lawful placing on the market is regulated by Regulation 764/2008/EC. **There is consequently no need for the Commission to obtain delegated powers in order to set harmonised safety requirements for products in the non-harmonised area**.

The requirement to maintain technical documentation already exists for all products falling under the scope of harmonised legislation (Regulation 765/2008/EC). This technical file contains the

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manufacturer's risk assessment which takes due consideration of all applicable legislation for the safe use of the product, including by consumers, if intended for or likely to be used by them.

Special reference to the general product safety requirement of the GPSD is superfluous. Reference in the technical file to harmonised standards mandated or not under the GPSD or any other legislation should remain voluntary, as standards cannot be a substitute for legal requirements.

Reference to possible future comitology decisions should be kept to the minimum, so as to ensure the stability of the legal framework that all manufacturers need to carry out their business. 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.

- **EC objective to clearly define product safety obligations of economic operators in the non-harmonised area**

As explained above, consumer safety results from a combination of factors among which there are both adequate and lawful design of the product and adequate and mindful use of the product by the user-consumer, according to the manufacturer's instructions.

The safety of products provided with a service depends on the aptitude of the final user-consumer (or the user-worker under the supervision of the employer) to make a safe use of the product. When the service is entirely under the control of the service provider (e.g. the application of cosmetics by the hairdresser) the latter's responsibility is obvious. When the service is provided indirectly, for example making available training machines in a fitness club or renting a professional machine-tool for do-it-yourself applications, the responsibility should be shared between the service provider and the user-consumer. It is the responsibility of the service provider to ensure that consumers have read, listened to the advice and understood the safety instructions provided by the manufacturer with the product and also in some cases, that the consumer is fit and trained to use the proposed product. This already works smoothly for car rental, or some violent sports for instance. It would be disproportionate to establish general obligations to apply to all situations and all particular cases of service provision.

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2. DETAILED ANSWERS ON BEHALF OF AN INDUSTRY ORGANISATION (ORGALIME)

I. Questions on standardisation procedures under the General Product Safety Directive

1. Would you favour the application of *international standards* (such as *ISO and/or IEC standards*) whenever a risk or a product is not covered by a *European standard referenced in the OJEU* ? (compulsory)

☑ **No**

2. Would you favour the application of *non-European standards* (other than *international standards*) whenever a risk or a product is not covered by a *European standard referenced in the OJEU* ? (compulsory)

☑ **No**

3. In your opinion, the safety of consumers throughout the EU would be better ensured if product specific safety requirements were laid down at the EU level and made directly applicable to *economic operators*, while leaving to standardisation the development of technical solutions to meet such requirements? (compulsory)

☑ **Don't know**

4. In your opinion, should the *general product safety legislation* grant *presumption of conformity* with an existing standard as an interim measure to address emerging risks while a permanent solution is being developed? (compulsory)

☑ **No**

5. In your opinion, should the *general product safety legislation* contain provisions whereby an existing *European standard* developed without a mandate from the Commission would be directly referenced in the *OJEU*, provided that it ensures a high level of consumer protection? (compulsory)

☑ **Don't know**

6. In your opinion, should the *general product safety legislation* contain provisions whereby the Commission could issue *"standing or framework" mandates* to *European Standardisation Organisations* for developing or revising *European standards* ? (compulsory)

☑ **No**

6.2. Please specify why, in your opinion, shouldn't the *product safety legislation* contain provisions whereby the Commission could issue "*standing or* framework" mandates to European Standardisation Organisations for developing or revising European standards:

Standards are voluntary tools and serve goals other than laws. Their relevance therefore depends on their capacity to serve the needs of their primary users, i.e. companies that will use them for designing products or supplying services. In the context of harmonised legislation, standards can be useful tools in support of harmonised legislation for the protection of consumer safety.

Therefore, "*product specific safety requirements*" (as referred to in question 3) should be laid down through the co-decision procedure with the European Parliament and Council, in directives and regulations applying to products, especially those that would be made "*directly applicable to economic operators",* should the GPSD be transformed into a Regulation. It should not be the purpose of the GPSD to take over the scope and relevance of existing product directives and regulations which altogether already ensure the safety of consumer products in the harmonised area.

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7. Please provide any other comments or suggestions concerning standardisation procedures under the *General Product Safety Directive*? (optional)

Consequently, Orgalime supports the use of standards in support to consumer safety legislation provided that:

- the specific safety requirements are embedded in the law, i.e. not decided on a case by case basis by the Commission in a Delegated Act, and
- the use of standards provides market operators with the presumption of conformity with such safety requirements,
- **the use of standards remains voluntary**. In this respect, the Commission cannot invite the national market surveillance authorities to consider that "**The product is presumed not to be safe where it fails to comply with** established limit values (...) laid down in (...) **standards**," (cf. page L 22/39 of Decision 2010/15/EU laying down the new guidelines for the management of the "RAPEX" system and of the notification procedure established under Article 11 of the GPSD). This is at odds with the nature of standards as documents developed by private standardisation experts within privately governed organisations, and the *'New Approach'* principles of voluntary application of standards as embedded in Regulation 765/2008 EC and Decision 768/2008/EC.

II. Harmonisation of diverging safety evaluations of products

II.A. Harmonisation of diverging safety evaluations of products necessitating an emergency action

8. Do you foresee any problem if the *EU product safety "emergency" measures* were directly applicable to *economic operators* ? (compulsory)

☑ **No**

9. Please provide any other comments or suggestions concerning *EU product safety "emergency" measures* ? (optional)

Whether for the harmonised or the non harmonised area, "emergency measures" could be decided in Comitology provided that they remain proportionate to the risk arising and of temporary nature. For the sake of efficiency, such decisions might be directly applicable to economic operators, provided that the impacted stakeholder organisations are duly consulted beforehand.

Any decision that may affect, in the longer run, a product group or a servicing activity should not, in our view, be decided by the Commission alone in comitology, but by the legislator via the co-decision procedure after an impact assessment.

10. Have you encountered diverging safety evaluations with respect to a particular product by the national market surveillance authorities of different Member States? (compulsory)

☑ **Yes**

10.1. How often have you experienced diverging safety evaluations in different Member States with respect to a particular product during the last 5 years?

☑ **Sometimes**

10.2. Please indicate the source of the divergence in the safety evaluations of the given product(s)? (multiple choice)

- ☑ **Diverging test results**
- ☑ **Diverging risk assessment**
- ☑ **Other**

10.2.1. Please specify other sources for the divergence in the safety evaluations of the given product(s):

Diverging interpretation of the essential safety requirements of harmonised legislation applying to consumer products.

11. In your opinion, which of the following options would best resolve lasting divergences in the views of different Member States on safety aspects of products? (compulsory)

- ❑ Binding EU-wide measures setting specific safety requirements for certain products
- ❑ Non-binding EU-wide recommendations on the safety assessment of certain products
- ☑ **Other**

11.1. Please specify other options that would best resolve lasting divergences in the views of different Member States on safety aspects of products:

A single set of Risk Assessment Guidelines for use by enforcement authorities for both harmonised and GPSD legislation.

12. Please provide any other comments or suggestions concerning diverging safety evaluations of identical products in different Member States? (optional)

The safety evaluations of consumer products should take first of all existing harmonised product safety legislation into consideration. About 80% of products that have been notified with the RAPEX procedure over the past 5 years are covered by harmonised product legislation. This legislation already provides Member States with a legal framework to take restrictive measures to remove dangerous consumer products from the market.

In their common “call for an effective pan-European market surveillance system” (22/04/2009), ANEC and ORGALIME have stressed the need for the European Commission to “***Strive to adopt a single set of Risk Assessment Guidelines for use by enforcement authorities****. (...) 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*.”

Consequently, we call on the Commission to revise the guidelines for the management of the "RAPEX" system so as to take into consideration the implementation of Regulation 765/2008/EC in order to meet the objective of minimise, in other situations, divergent safety evaluations of an identical product in different Member States.

III. Harmonisation of diverging safety evaluations of products

III.A. Questions on market surveillance coordination and cooperation

13. Member States ensure enforcement of *product safety legislation* to ensure a high level of consumer protection against dangerous products. (compulsory)

- ☑ **Don't know**

14. More intensive information sharing and/or cooperation between Member States would enhance the safety of consumers throughout the EU. (compulsory)

☑ **Agree**

15. How could cooperation between market surveillance authorities be further improved? (multiple choice) (compulsory)

☑ **By providing more financial support for exchanges and training of officials**
☑ **By providing more financial support for joint market surveillance actions**
☑ **By providing more detailed rules on cooperation at EU level**
☑ **By obliging Member States to respond to a request for cooperation by another Member State**
❑ By establishing a coordination body at EU level to ensure cooperation between national authorities
❑ Other [please specify]
❑ Don't know

16. Please provide any other comments or suggestions concerning market surveillance cooperation and coordination under the *General Product Safety Directive* ? (compulsory)

Formulated as an affirmation, question 13 leads to doubt: "*Member States ensure enforcement of product safety legislation to ensure a high level of consumer protection against dangerous products*".

- If what is meant is "should ensure enforcement...", the answer is clearly "strongly agree".
- If it is meant as a description of the current situation, the answer is variable depending from the country and/or the product sector.

In any case, "a high level of consumer safety" does not arise only from one of the following:

- effective enforcement of product safety legislation by Member States only, nor
- manufacturers' compliance of their products with consumer safety requirements,
- the lawful placing of products on the Community market by economic operators,
- or adequate and mindful use of products by consumers only.

A high level of consumer safety results from the combination of all 4 actions by economic operators, authorities and consumers, as described above.

In their common "call for an effective pan-European market surveillance system" (22/04/2009), ANEC and ORGALIME have detailed what they expect from Member States of the EU/EEA and from the Commission. "***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*.**"

Member States should, in our view, strengthen their criminal laws on the placing of dangerous or non-compliant goods on to the Community market.

III.B. Functioning of RAPEX

17. In your opinion, does *RAPEX* contribute to more even protection of consumers throughout the EU? (compulsory)

- ☑ **Yes**
- ❑ No
- ❑ Don't know

18. In your opinion, which aspects of *RAPEX* could be improved? (optional)

1) RAPEX notifications should be processed in the same system as all products falling under the scope of Regulation 765/2008/EC, given that, for a large number of products, safety aspects cannot be differentiated between a likely use by consumers or by a professional (worker). There is consequently a need for simplifying the task of market surveillance authorities that should be able to handle notifications for non compliance with specific product safety legislation as easily as for failure to meet the requirements of the General Product Safety Directive.
2) Consequently, the qualification of “serious risk” for rapid alert notifications should be clarified for products in both the harmonised and the non-harmonised area.
3) RAPEX should in our view be linked up with ICSMS as a common platform for exchange of information in case of non compliant products and could provide such an 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.
4) The collection of data under RAPEX should evolve in way to provide patterns that could be usable by customs officials in their procedures for evaluating risks from imported products.

III.C. Market surveillance of the safety of products sold on the Internet

19. Are you aware of any potentially dangerous *consumer products* that are sold on the Internet in the EU? (compulsory)

- ☑ **Yes**

20. In your opinion, the attention that the market surveillance authorities give to the safety of *consumer products* sold on the Internet compared to those products sold through other distribution channels is… (compulsory)

- ❑ …significantly higher.
- ❑ …higher.
- ☑ **…equal.**
- ❑ …lower.
- ❑ …significantly lower.
- ❑ Don't know

21. In your opinion, which measures, legal and/or administrative tools should be introduced to tackle the issue of dangerous consumers products sold on the Internet? (compulsory)

The GPSD already applies to all distribution channels including e-commerce. Rogue trading occurs in all supply chains and trade channels. Consumer safety is not more endangered through internet sales as it is in other forms of generic, non-specific forms of distribution. Tackling the problems of internet sales cannot be dealt with separately for consumer protection reasons, as it ought to be for

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protecting other core Community interests, such as energy efficiency targets, environment protection, etc... The Commission already plans to review the Distance Selling Directive and to address more specifically internet sales under the Consumer Rights Directive. There is consequently no need to introduce specific measures, legal and/or administrative tools into a revised GPSD to tackle the issue of dangerous consumers products sold on the Internet. Again focusing regulation on this area in one piece of legislation would support Better Regulation.

IV. Alignment with the Free Movement of Products Package

22. *Economic operators* in EU ensure the *traceability* of products sold to consumers. (compulsory)

☑ **Agree**

22.2. *Economic operators* in the EU ensure *traceability* of products sold to consumers in a uniform way.

☑ **Disagree**

23. In your opinion, would the safety of consumers be better ensured, if the *obligations of economic operators in respect of harmonised products* were also applied to *non-harmonised products*? (compulsory)

☑ **No**

23.1. Please indicate the reason why you think that the enforcement of product safety legislation would not be easier and/or more effective if the *obligations of economic operators in respect of harmonised products were also applied to non-harmonised products*:

The explanatory memorandum of the current GPSD indicates that the intention of the legislator was to address the general safety problems for consumers that may arise for all those products whose conditions for their placing on the market are not harmonised. Such products are not subject to harmonisation legislation, for they were not considered by the legislator as posing a threat at the EU level. The placing on the market of such products is consequently subject to the application of the subsidiarity principle and their lawful placing on the market is regulated by Regulation 764/2008/EC. There is consequently no need for the Commission to obtain delegated powers in order to set harmonised safety requirements for products in the non-harmonised area.

24. In your opinion, would the safety of consumers be better ensured, if there was an obligation for *economic operators* to establish and maintain *technical documentation* in respect of all *consumer products* , i.e. both *harmonised* and *non-harmonised* ? (compulsory)

☑ **No**

24.1. Please indicate the reason why you think that the enforcement of product safety rules would not be easier and/or more effective if an obligation to establish and maintain *technical documentation would exist for economic operators*:

The requirement to maintain technical documentation already exists for all products falling under the scope of harmonised legislation (Regulation 765/2008/EC). This technical file contains the manufacturer's risk assessment which takes due consideration of all applicable legislation for the safe use of the product, including by consumers, if intended for or likely to be used by them.

25. Please provide any other comments or suggestions to any question concerning the application of a uniform set of product safety rules to *economic operators* ? (optional)

Special reference to the general product safety requirement of the GPSD is superfluous. Reference in the technical file to harmonised standards mandated or not under the GPSD or any other legislation should remain voluntary, as standards cannot substitute legal requirements. Reference to possible future comitology decisions should be kept to the minimum, so as to ensure the stability of the legal framework that all manufacturers deserve to carry out their business. 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.

26. In your experience, the exposure of consumers to risks resulting from a product provided within the context of a service depends on whether the product by help of which the service is provided is operated by the consumer or by the service provider? (compulsory)

☑ **Strongly disagree**

27. In your opinion, should all products provided in the context of a service be safe irrespective of whether the product is operated by the provider of the service or by the consumer? (compulsory)

☑ **Yes**

28. Please provide any other comments or suggestions to any question concerning the safety of products provided in the context of a service? (optional)

As explained above, consumer safety results from a combination of factors among which there are both adequate and lawful design of the product and adequate and mindful use of the product by the user-consumer, according to the manufacturer's instructions.

The safety of products provided with a service depends on the aptitude of the final user-consumer (or the user-worker under the supervision of the employer) to make a safe use of the product. When the service is entirely under the control of the service provider (e.g. the application of cosmetics by the hairdresser) the latter's responsibility is obvious. When the service is provided indirectly, for example making available training machines in a fitness club or renting a professional machine-tool for do-it-yourself applications, the responsibility should be shared between the service provider and the user-consumer. It is the responsibility of the service provider to ensure that consumers have read, listened to the advice and understood the safety instructions provided by the manufacturer with the product and also in some cases, that the consumer is fit and trained to use the proposed product. This already works smoothly for car rental, or some violent sports for instance. It would be disproportionate to establish general obligations to apply to all situations and all particular cases of service provision.

SUBMIT