

CEOC International - EUROLAB - IFIA Safety Seminar 2013

*“Safer Products and Industrial Installations in a Globalising World”*

27<sup>th</sup> November 2013, Brussels, Belgium

## **"Consumer Product Safety & Market Surveillance"**

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### **Abstract**

Most consumers think market surveillance will protect them from buying unsafe and non-compliant products. But this is not true as market surveillance means different things in different countries. Even the best laws and standards become worthless if not applied or enforced.

The present revision of European product safety and market surveillance legislation is an occasion to step up consumer protection but the actors involved have different ideas about what to achieve and how to do it.

ANEC's presentation will explain consumer expectations from product safety and market surveillance, highlight the challenges and propose consumer relevant policy responses to meet these challenges.

### **Content:**

- ANEC in a nutshell
- Are consumer products safe?
- What is missing?
- Conclusions

Ladies and Gentlemen,

Perhaps I should start by saying a little about ANEC, although I know many of you already know us.

ANEC was created in 1995 by national consumer associations and public authorities in the Member States and EFTA countries

We are supported politically and financially by the European Union and EFTA, while our members contribute in kind. We provide technical and policy expertise based on a network of volunteer representatives from across Europe. Our experts contribute directly to the work of the ESOs – the European Standardisation Organisations (CEN/CENELEC/ETSI) - as well as to ISO and IEC.

Our mission is to promote and defend the consumer interest, not only in European and international standardisation but also in the shaping of legislation on consumer products and services. But why?

In Europe, product safety legislation is supported by the use of standards developed by the ESOs. Their European Standards provide a presumption of conformity to the legal safety requirements. This ‘New Approach’ remains specific to Europe. It helped create a Single Market for goods. But standards are also important beyond safety as they provide the nuts and bolts of our modern society.

However, despite standards affecting us all every day, it is the voice of industry that is the most present and heard in standardisation meetings. Industry has the financial and human resources to contribute to the development of standards. And the incentive as it has the most to achieve from the presumption of conformity.

Although it is not in the interests of industry to ignore the voices of consumers in the development of standards if it wants to sell its products and services, it is vital to have organised consumer participation in the process in order to ensure the standards meet the needs of all consumers, and not only the average or mainstream consumer.

That is why ANEC exists.

On to product safety. Most consumers think market surveillance will protect them from buying unsafe products. But this is not true. Before we even speak of resources, market surveillance means different things in different countries. There is no harmonised definition of activities or priorities across the EU. And, of course, once a product enters one Member State, it is free to circulate to all Member States. Even the most stringent laws and standards are worthless if they are not applied or enforced.

Hence the overall effectiveness of market surveillance is dependent on the quality of market surveillance in the weakest Member State. Within the Single Market, market enforcement authorities have responsibility to protect consumers' health and safety. Moreover, those authorities have the exclusive competence to undertake surveillance activities at the national level. This leads to inconsistencies and, above all, sees insufficient resources available to police the many products on the market. As a result, the consumer expectation for safe products is not always met.

Let's have a look at the most recent data at European level.

RAPEX is the alert system that facilitates the rapid exchange of information between Member States and the Commission about products posing a serious risk to the health and safety of consumers or users.

In 2012, the number of RAPEX notifications increased by 26% on 2011. Is it a sign of better enforcement or the arrival of more unsafe products? Given the insufficient resources given to non-food market surveillance – as we heard from the authorities during the Parliament's public hearing on the Product Safety Package in May – we doubt it is because of more effective surveillance.

The 2012 Eurobarometer survey, and 7th Consumer Markets Scoreboard, show how the Single Market is performing for consumers.

In 2012, 27% of consumers thought that a significant number of non-food consumer products sold in Europe was unsafe. Behind this percentage however, are considerable differences among consumers in different Member States. The financial crisis has hit the structures that seek to ensure consumer safety very hard: from the activities of market surveillance authorities, to the solvency of consumer associations. So what price product safety? Could it become a luxury even here in Europe?

As most you know, at the beginning of the year, the European Commission adopted a proposal for a Product Safety Package. Just let me say here that ANEC welcomes the package. It gives an opportunity to introduce more demanding requirements for surveillance activities in Member States, and their funding, and sees a proposal for a European Market Surveillance Forum. But it remains to be seen what authority the Forum will have in setting a common framework for surveillance.

On 17 October, Malcolm Harbour's IMCO Committee agreed its reports on the two proposed regulations in the package - the CPSR and the MSR - ahead of the triologue with the Commission and Council. I'd like to share our thoughts on those with you.

Regarding the legislative report on the CPSR, among other things, ANEC welcomes:

Explicit reference to the Precautionary Principle. We have heard from several sources – including the Commission – that reference to the Principle is not needed. The argument is that, through case law, the Principle has become a general principle of the EU law, even though the Treaties refer to the Precautionary Principle only in the context of environmental protection.

Perhaps. But the Principle is a cornerstone of the present GPSD (2001/95/EC). And its inclusion there was considered by the Council and the Parliament to be a necessary clarification of the original GPSD of 1992, as the first recital of the present Directive records. So, we think there should indeed be explicit reference to the Principle in both

Regulations. Let's not go backwards when dealing with potential risks to the health & safety of consumers.

Someone told me that the Principle did not appear in the Commission proposals as a potential concession to the US in the TTIP negotiations. I hope that isn't true. I am one who believes consumers have as much to gain from TTIP as business, but only if the present levels of consumer protection in Europe are at least maintained.

Child-appealing products. Although more of these products are entering the market, there are no directions in the present EU legislation as to whether a product is indeed child-appealing, or whether the product presents specific risks to young children.

Although we accept not all such products pose potential risks to children, we believe the CPSR needs to require that, when a product has child-appealing characteristics, it is safe for children to use, explore, and interact with, under all foreseeable conditions.

Penalties. We welcome the intention to establish an effective deterrent and for these to help provide surveillance authorities with resources to carry out their tasks. Such an approach can potentially provide better justice, as non-compliant operators need to bear the consequences of their illegal actions. Nevertheless, we would not support the authorities chasing known companies for small offences, rather than pursuing the more obscure perpetrators of more serious crimes.

Turning to marks, these are aspects about which we have the greatest concern.

Country of origin marking. It's been a hot topic in the Parliament and it remains a hot topic in Council. Some consumers see value in it; others do not. The same division can be found among business people. On its own, it's probably not enough to help product safety, but needs to complement other measures on traceability. Such as the requirement to provide the names & addresses of the manufacturer & importer on the product, and the requirement for economic operators to be able to identify to whom they delivered a product and from whom they received it. (the so-called one up, one

down). So it will be a huge shame if the whole Product Safety Package falls because some countries demand country of origin is in, while others demand it is out.

Turning to the report on the MSR.

Once again, we welcome explicit reference to the Precautionary Principle.

The accident & injuries database? Put simply, we are delighted by the support shown by MEPs for the creation of the database. It is needed to help identify preventive measures and assess their effectiveness. And to help market surveillance authorities make more informed decisions on risk assessment. It is not only consumers who want the database: industry and others do too. The coalition of European associations we co-lead with EuroSafe, which supports the database is now 32 in number, from across the economic & social spectrum, including several here today.

We welcome the clarification proposed to the scope of the MSR, in order to add the health & safety of persons, as well as environmental and public interests.

And, of course, it should be a given that consumers be informed immediately when a dangerous product is detected. Moreover, it is only common sense to include other routes to market these days, such as internet sales.

We welcome the proposal of a more open environment in which to assess risks with market surveillance authorities, and to determine common actions. And I have already spoken about the importance of penalties to punish and deter.

ANEC does not support use of CE marking on products or their packaging. Never has. Never will. CE marking is not meant for consumers. It is for market surveillance authorities as a statement that the product meets all applicable European legislation. Yet it misleads consumers who see it as a safety mark, or mark of approval by some European authority. But, in the case of almost all consumer products, it can be added by the manufacturer without an independent check. To us, CE marking means *caveat emptor* (“buyer beware”).

Nevertheless, the myth continues that CE marking means a product is guaranteed safe for consumers to buy and use.

Look at the findings of a TÜV survey among others. 79% of survey respondents said they were “horrified and worried”, or at least misled, when told that CE marking did not mean an electrical product was certified as safe. For those who have not seen it, the European Economic & Social Committee produced a nice video earlier this year about people’s misunderstandings of CE marking. And, last year, we heard from Gitte that Supplier’s Declaration is not working and needs to be adapted better to global supply chains, and to ensure traceability beyond the NLF.

Quite simply, CE marking should be relegated to the technical file of a product and not used on the product or its packaging.

So, is the “EU Safety Label” a good idea?

Well, even now, most consumers believe products bought on the European market to be safe, irrespective of the origin or marking. An EFTA study showed consumers pay more attention to brand name than third-party marks.

ANEC has reached similar conclusions. We find consumers look for marks associated with other characteristics of the product, such as its environmental impact, but rarely safety.

In all honesty, we fail to see how a new, voluntary mark could achieve higher levels of product safety. But if the CPSR were aligned with the harmonized product legislation, and a mark was required for products posing a particular risk – either absolutely or to certain vulnerable consumers? And the use of the mark was linked to the multiannual surveillance programme? Well, there may be merit in the idea then.

## **Conclusions**

But, above all, the key remains effective market surveillance and enforcement.

Expectations that the authorities will act to protect consumers from unsafe products are high. Especially in times of economic and financial crisis.

We consider there is an urgent need to establish a European framework for market surveillance, in order to ensure a coherent approach to market surveillance activities across all Member States. And to make more financial and human resources available for surveillance activities. We welcome the Commission proposals and IMCO reports on the Product Safety Package, although not all the proposals and amendments have gone in the right direction.

On the particular aspect of marking and certification, the value of any mark depends on the mechanisms used to award the mark, and the requirements behind the mark.

Hence, in principle, any discussion on a mark is about conformity assessment, the drivers behind the type of assessment, and the controls of the system. We therefore believe it better to focus on conformity assessment than on the marks themselves.

Above all, a plea to the regulators to fix CE marking. Forget a voluntary Safety Label. Two wrongs won't make a right (ENDS).