



**Raising standards for consumers**



**The Consumer Voice in Europe**

## Ensuring consumers' safety – What way forward for Market Surveillance in the EU?

Our Recommendations on the draft Regulation for compliance and enforcement (2017/ 0353 (COD))

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## Why it matters to consumers

When consumers purchase new products such as toys, clothes or electronics, they expect them to be safe. However, products are often unsafe because safety rules are missing, too lenient, violated by manufacturers and traders, or Member States fail to check goods. To protect consumers from harmful products, the European legislation must do more to ensure that only safe products make their way into physical and online shops.

## Summary

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The European Commission published a 'Goods Package' on 19 December 2017 to:

- strengthen compliance of harmonised products;
- improve mutual recognition of non-harmonised products, i.e. those that are not subject to common EU rules.

We welcome that the Commission highlights the importance of enforcing consumer rights. The proposal contains very useful provisions to boost market surveillance such as:

- the possibility to dedicate joint facilities for testing and enforcement;
- the creation of compliance networks for better cooperation at EU level and among Member States;
- clear rights for authorities to do 'mystery shopping' to better control online sales;
- the obligation for every seller to have a contact person in the EU market who can be contacted by the market surveillance authorities.

The proposal, however, contains severe shortcomings which need to be addressed:

- better market surveillance rules are needed for all products, not only harmonised ones;
- better traceability rules must be set to identify who the producer and the retailer are;
- a pan-European accident and injury database should be introduced;
- new safety threats - such as the ones stemming from internet connected devices - need to be addressed.

## 1. Introduction

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Consumers have a fundamental right to be safe. This means they have the right to be protected against products, production processes and services that are hazardous to their health or lives.

While the responsibility for ensuring safety lies with the manufacturer, public authorities have the role to prevent and investigate abusive or illegal trading practices. Market surveillance must ensure that unsafe products do not endanger consumers and other public interests, such as the environment. To this end, market surveillance activities include sampling products from shops and warehouses for laboratory testing, checking technical documentation, withdrawing and recalling unsafe products, and sanctioning economic operators who breach EU and/or national safety rules.

The lack of market surveillance has been pointed out by many players in Europe, including consumer organisations, the industry, the European Parliament, and the European Commission.<sup>1</sup> The following factors partly explain the insufficient level of safety:

- **Member States do not invest sufficient resources in market surveillance.** Consequently, there is not enough staff who can sample products, and there are not enough financial and technical resources available for testing in laboratories.
- **Supply chains are very complex**, and producers often sit outside the EU. Consumers regularly purchase products over the internet. This includes shopping via third country websites and platforms through which the products are directly delivered to the consumer without compliance checks beforehand.
- **Member States do not sufficiently cooperate at EU level and among each other** which makes it difficult to take unsafe products off the shelves across the Single Market.
- **Safety rules are often missing or are not strict enough.** This is true especially for chemicals in consumer products which makes enforcement of the basic right to safety difficult.

While longstanding problems on product safety are still to be solved for consumers, new ones are emerging with the 'Internet of Things'. More and more consumer products, such as cars, baby monitors, fridges and toys, that are coming to the market can connect to the internet. While these products potentially offer many new services and greater convenience to consumers, consumer organisations' research and testing has shown that such products can have multiple flaws. Indeed, they may put consumers' health and physical integrity at risk or violate their privacy. Neither EU nor national legislative frameworks are up-to-date and cover this new type of product and risks, thereby possibly leaving consumers without proper protection.

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<sup>1</sup> See the EU Commission's Impact Assessment on the Regulation on enforcement and compliance.

We applaud this Commission for giving a high importance to the enforcement of consumer rights and for making efforts to advance consumer protection against faulty products. With the Regulation on enforcement and compliance which was published on 19 December 2017, the Commission aims to improve market surveillance in the EU. This reform proposal rightly comes at a moment when a previous reform package from 2013 has been politically blocked for years and might never be finalised.

This paper outlines the consumer perspective specifically on the draft Regulation for compliance and enforcement (2017/ 0353 (COD)) but also provides a wider vision on how the product safety and market surveillance regime should be reformed.

## 2. Scope and purpose: The need to tackle *all* consumer products

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### 2.1. Including non-harmonised goods

The Goods Package covers only enforcement and compliance rules for those products that are harmonised, i.e. those that are subject to common EU rules. For example, the proposal covers many products such as toys, medical devices (e.g. thermometers, blood pressure meters, contact lenses), household appliances (e.g. refrigerators, washing machines, dishwashers) and mobile phones. However, it exempts many consumer products from better market surveillance rules, such as furniture, shoes and textiles, ladders and child care articles.

The market surveillance of non-harmonised products is governed by the outdated General Product Safety Directive (GPSD). Indeed, this piece of legislation urgently needs reform to adapt it to different market realities, such as e-commerce and internet-connected products.

Consumers legitimately expect all products to be safe. Therefore, it does not matter to them which rules regulate their fridge or their child care articles. So the new rules must encompass *all* consumer goods.

We are therefore disappointed that the Commission does not propose any improvements to the GPSD, and does not include all consumer products in the efforts to improve enforcement and compliance. Consumers legitimately expect all products to be safe and it therefore does not matter to them if they fall into the harmonised or non-harmonised area as safety must be ensured in both.

#### **ANEC/ BEUC recommendation:**

- We call on the European Parliament and Member States to include all consumer products into the scope of the Regulation on enforcement and compliance.

### 2.2. Improving market surveillance for environmental requirements of consumer products

In the Dieselgate scandal, car manufacturers used software to make cars compliant with emissions norms only when being tested in a laboratory, not on the road. Consumers have been and are suffering tremendously from air pollution, due to NOx emissions from these faulty cars being much higher than announced. This shows very prominently that we can no longer afford to leave environmental aspects out of coordinated European-wide market surveillance actions.

ANEC and BEUC had proposed already in 2013 to include key pieces of environmental legislation into the scope of a European-harmonised market surveillance system<sup>2</sup>. We are therefore glad that the European Commission includes provisions in the scope of the Goods Package that focus on environmental aspects of consumer products. Market surveillance authorities should focus more in their strategies and product testing on these environmental aspects to verify, for example, compliance with Ecodesign and Energy labelling requirements, as well as chemicals in products.

**ANEC/ BEUC recommendation:**

- ➔ Member States should develop joint strategies to systematically take products off the market that fail to meet requirements to protect consumers' health or their financial interests.

### 2.3. Insisting on the need for safe products

The Regulation's text clearly states goals to ensure product compliance and the protection of public interests such as health and safety, consumer protection, the environment and security. However, it should be made much clearer that its **primary goal is that only safe and compliant products are made available to consumers.**

**ANEC/ BEUC recommendation:**

- In analogy with the General Product Safety Directive, article 1 of this Regulation should clearly state in the first sentence that the Regulation aims to make only safe and compliant products available to consumers.

## 3. Stronger tools for market surveillance authorities

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The enforcement and compliance regulation introduces some excellent new elements, such as the possibility to designate EU testing facilities and a contact person for compliance information in the EU. Yet we see a need for Member States authorities to be given the tools necessary to take dangerous and non-compliant products off the market.

In this chapter, we discuss the newly proposed tools for Member States and propose major improvements to upgrade them.

### 3.1. Role and importance of the precautionary principle

The precautionary principle crucially allows market surveillance authorities to take temporary and preventive measures in the absence of a final proof of harm to consumers or the environment. As such, we deplore that this fundamental principle is absent from the Goods Package.

While the European Commission already omitted it from the 2013 proposal, the European Parliament had strongly called to ensure its continued application in product safety matters. The Commission's Communication from 2000 on the precautionary principle clarifies that it is important to risk analysis and management. It is applied where scientific evidence is insufficient, inconclusive or uncertain, and preliminary scientific evaluation indicates that there are reasonable grounds for concern. In other words, a given product

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<sup>2</sup> <http://www.anec.eu/images/documents/position-papers/2013/ANEC-SC-2013-G-024final.pdf>.

has potentially dangerous effects on the environment, human, animal or plant health which may be inconsistent with the high level of protection chosen by the EU<sup>3</sup>.

**ANEC/ BEUC recommendation:**

- The European Parliament and Council should ensure that the precautionary principle is clearly mentioned in the proposal. It could for example appear in article 12, which describes the activities of market surveillance authorities, and in article 14, which lists the powers and duties of market surveillance authorities.
- It needs to be clarified that market surveillance authorities carry out their activities based not only on proportionality but also a precautionary approach.

### 3.2. The legal representative

In the past, market surveillance authorities frequently reported problems to identify where a product came from and who placed it on the market. Consequently, authorities struggled to check compliance of those products. It is thus an important improvement that the proposal foresees that companies must make a contact person available on the EU territory who can provide compliance information to Member States' authorities.

The contact details of the person responsible for compliance information should be disclosed on the product, its packaging, the parcel or accompanying document to easily link a product with its legal representative.

The unfinished 2013 Product Safety Package proposed additional tools to improve traceability, such as the full name and address of the manufacturer and the importer, a batch, type or serial number on the product. It also foresaw the possibility for the European Commission to introduce additional traceability requirements, such as RFID chips or other tracking technologies, in certain sectors where non-compliance is particularly high. These kind of requirements should be replicated in the new regulation.

**ANEC/ BEUC recommendation:**

- We call for stricter traceability rules in this proposal to make sure that products can be linked unequivocally to the responsible person in the EU and can be traced along the whole supply chain.

### 3.3. A pan-European database of accidents and injuries

The efficiency of the legal frameworks for consumer products in Europe depends on the ability of the Commission and Member States to identify problems. A regular surveillance of home and leisure accident data should play an important role to this identification. As market surveillance is poorly resourced, it is of importance for authorities to access EU-wide accident data to help them set priorities for enforcement activities.

The Commission's proposal leaves the monitoring of accident and injury data up to each Member State. We are concerned that this will result in a fragmented approach. The data collected would be difficult to use at European level to set new regulations and technical standards in pursuit of consumer safety.

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<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52000DC0001&from=EN>

All Member States should be required to contribute to the establishment of a database, and regularly deliver injury data to the Commission that is comprehensive and based on a common methodology and classification. The system should be accessible to all relevant stakeholders and allow analysis of injury risks, in particular those related to home and leisure accidents, and effective policy options and injury prevention measures. Such effective collection and assessment of injury data would enhance the ability of the Commission, Member States and stakeholders to continuously improve both the development and implementation of the legal frameworks and policies for health and safety. This would help create a fair system for European consumers and businesses.

#### **ANEC/ BEUC recommendation:**

As we already did in 2013 together with business organisations, retailers and standardisers, we call for the introduction of a pan-European Accident and Injury Database<sup>4</sup>. This would be a key tool to set priorities for enforcement, development of new safety legislation, the improvement of technical standards and prevention of further injuries. And it would help consumers to get information on which products are dangerous.

#### **3.4. Compliance partnerships lack added value**

The Commission's proposal foresees new tools called 'compliance partnerships' between market surveillance authorities and economic operators. The partnership aims to enhance collaboration in the pre-marketing phase to ensure compliance from the outset. While preventing non-compliant products from being produced would be most cost effective for producers, best for consumer's safety and for market surveillance authorities alike, we have reservations about the added value of this model.

The first responsibility for safety lies with the manufacturer. To this end, it must be the producers' obligation to ensure products are safe. They are responsible for gathering the relevant knowledge about technical standards and legislation that applies in the EU, and about how to ensure compliance. If manufacturers lack in-house knowledge on how to ensure safety, they can seek help from third-party certifiers who offer compliance checks in addition to advice and guidance on applicable legislation and standards.

A survey<sup>5</sup> about independent third-party testing shows that the compliance and safety of independently-checked products can be considerably higher than for products that rely simply on manufacturer's self-declaration of conformity. As this service is already available, it is not necessarily a task that market surveillance authorities should take over as they are already overburdened. Moreover, tax payers' money should not be used to support private companies to make their goods compliant.

Moreover, we believe this tool will not ensure that consumers will be protected from unsafe products that rogue traders place on the market, as such a tool would engage only those economic operators who are committed to ensuring product safety. While dangerous products can come from anywhere, including the EU, the annual RAPEX reports show there is a higher proportion of unsafe products that come from Asia. Collaboration through the compliance partnerships may not solve these problems due to geographical distance and language issues.

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<sup>4</sup> <http://www.anec.eu/attachments/Joint%20call%20for%20a%20pan-European%20accident%20&%20injury%20data%20system.pdf>

<sup>5</sup> <http://www.ifia-federation.org/content/wp-content/uploads/2016/11/Consumer-Products-Safety-Study-2016.pdf>



**ANEC/BEUC recommendation:**

The European Parliament and Member States should delete the provision on compliance partnerships (Art. 7). Such agreements between authorities and economic operators could confuse the impartiality and independence of surveillance authorities, especially if fees are payable under such agreements.

**3.5. Transparency to be enhanced**

We welcome that the European Commission foresees several measures that will enhance transparency about product compliance for consumers and consumer organisations. For example, the requirement for manufacturers to publish the declaration of conformity of their products.

However, we see additional options for improving transparency. Citizens have a legitimate interest to be informed about the level of market surveillance their government carries out in their country and what are the concrete outcomes of such investigations.

**ANEC/ BEUC recommendation:**

- The information and communication system (Art. 34) should have a public interface with key information about the outcome of market surveillance<sup>6</sup>. This portal should be available in all EU languages to easily inform consumers about their right.

**3.6. Union Product Compliance Network needs to take consumer knowledge and concerns into account**

We welcome the proposal to establish a Union Product Compliance Network to coordinate enforcement tasks in Member States. However, it is unclear whether the network will allow all stakeholders – including consumer groups – to help prioritise and select common simultaneous surveillance activities. The unfinished package from 2013 had foreseen the establishment of a Market Surveillance Forum which did emphasise the importance of involving all stakeholders to benefit from additional information on product compliance that could be useful for market surveillance authorities.

Consumer organisations carry out regularly comparative product testing in laboratories in which they find often unsafe consumer products, including the ones that carry CE marking. While we do share this evidence at national and European level with the authorities already, we would welcome more structured involvement in the Union Product Compliance Network.

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<sup>6</sup> 1) the type, number and outcome of the checks performed; 2) information on the type and number of non-compliances of the specific economic operators, 3) all temporary and final measures that market surveillance authorities have taken against economic operators. The information should refer at least to the product, the health and safety risk for consumers, include the name of the operator, the measure taken including the concrete penalty. 4) All results of follow-up measures against a non-compliant economic operator should be disclosed.

**ANEC/ BEUC recommendation:**

- As the establishment of a European market surveillance forum is currently uncertain due to the unclear future of the 2013 reform proposal, this regulation should clearly state the importance of involving stakeholders – including consumer groups - in the work of the Union Product Compliance Network.

## 4. Power and organisation of market surveillance authorities

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In addition to proposing several new tools, the Regulation makes provisions on the powers and organisation of market surveillance authorities. Unfortunately, the proposal fails to ensure an EU-wide harmonised approach to enforcement and compliance.

In this chapter, we comment on which provisions will bring added value and those that will need modification to be effective.

### 4.1. Using investigation evidence more effectively

The proposal underlines that evidence about dangerous and non-conforming products used by a market surveillance authority in one Member State may be used as part of investigations to verify product compliance in another Member State, without any further formal requirement. This is an important clarification which we welcome as it may help to avoid costly double-testing. Thereby limited resources will be better spent, and procedures may be accelerated and become more coherent.

**ANEC/ BEUC recommendation:**

Products that are considered non-compliant in one country shall be presumed to be non-compliant in another country, unless economic operators provide evidence to the contrary.

### 4.2. Running a minimum number of tests and improving the financial base

The basic failure of the proposal is that it does not address the core of the problem that underlies insufficient market surveillance in many Member States: a lack of financial and human resources to carry out a meaningful number of checks.

The Regulation should ensure more investment of Member States into market surveillance by introducing a minimum number of checks of the products that are placed on the market.

**ANEC/BEUC recommendations:**

- **Make it mandatory to check more products.** Article 15 (1) which calls for checks to be done on an 'adequate scale' per Member State will lead to different levels of consumer protection. 20% of products per product group should be checked in laboratories and under real-use conditions, in line with the priorities set by the Union Product Compliance Network. The 20% of products should be selected based on common hazard-based criteria that allow for meaningful prioritisation as well as on random checks to detect free-riders

- **The Commission should specify the size of surveillance resources.** Article 12 leaves too great a leeway to the Member States to determine the necessary level of human and financial resources. It will be insufficient to task them to carry out 'effective market surveillance' and to take 'appropriate and proportionate measures' without making any concrete and binding requirements on the necessary resources. The Commission should adopt implementing acts and/or delegated acts laying down the rules for Member States on how many personnel will be necessary to enforce this Regulation. Article 11.4 on liaison offices should also set specific requirements on the number of staff and other resources, as well as on competence and procedures for their proper functioning.
- **Apply substantial penalties.** If a product is dangerous and not in compliance with legislation, administrative fees and penalties should be charged to the manufacturer. Both the administrative fees and the penalties should be earmarked to finance other inspection measures in the future. It will therefore be crucial that financial penalties are high enough to improve the funding of market surveillance authorities.

### 4.3. Fining and sanctioning non-compliant companies

The Commission's impact assessment emphasises that an increasing number of illegal and non-compliant products are distorting competition and are putting consumers' interests at risk.

Today, the system of sanctioning companies for putting non-compliant and dangerous products on the market is broken. Penalties are not dissuasive as illegal profits are much higher.

If companies are not held responsible for their failures to comply with product safety legislation, this not only harms consumers and compliant businesses, but also damages fiscal interests. For example, a new study by the European Greens/ EFA estimates that, between 2010-2016, the combined loss of tax revenue in 11 EU Member States because of wrong CO<sub>2</sub> emission values was as high as 11.3 billion Euros<sup>7</sup>.

Therefore, the Regulation rightly calls on Member States to empower their market surveillance authorities to require economic operators to return the profits they obtained through non-compliance. We emphasise that Member States must vigorously make use of such power to reinstate fair market conditions. Ideally, restitution of profits should be an obligation, not only an option.

#### **ANEC/BEUC recommendation:**

- We urge the European Parliament and the Member States to delete the criterion on SMEs. The decisive criterion for determining the level of a fine should not be the company's size and financial situation but be based the severity of the damage.
- The European Commission should have the power to fine companies up to a certain ceiling, on top of fines from Member States. It is the case with the new legislation on market surveillance of cars and should also apply to other consumer products.

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<sup>7</sup> <https://www.greens-efa.eu/en/article/press/tax-co2-10bn-tax-gap-reveals-the-flaws-in-vehicle-taxes/>

## 5. Making market surveillance fit for global markets, new business models and innovative technologies

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### 5.1. Improving the safety of products sold online

Online sales through platforms lead to additional and new problems for market surveillance authorities. For instance, consumers may order products to be delivered directly to their homes from outside the EU without any safety checks or controls. Yet, most Member States have no dedicated strategies in place or are in very early stages of developing concepts for the surveillance of online sales.

In July 2017, the European Commission issued guidelines on how to help national market surveillance authorities better control products that are sold online<sup>8</sup>. However, these are not binding on Member States and such simple guidance on best practice is not sufficient to address the problem.

In the Goods Package, there is unfortunately too much focus on working with reliable economic operators through compliance partnerships, at the detriment of stepping up enforcement efforts against rogue traders who may be difficult to reach if located outside EU territory. Making a legal representative in the EU binding is a welcome step but it will remain a toothless tiger without better rules on traceability for products along the supply chain. This includes for example to make mandatory the mention of the producer's and importer's full names and addresses on the product or its packaging.

What is needed in addition are better tools for market surveillance authorities, such as the power to shut down websites of rogue traders who put consumer safety at risk.



On a global scale, e-commerce is growing at a phenomenal rate. Global e-commerce sales are expected to reach \$4 trillion in 2020, up from \$1.6 trillion in 2016. Moreover, in less than ten years, the trend of EU consumers buying online from a seller located outside of the EU has increased by 7.3%. EU consumers undoubtedly need to be able to trust more global online markets if they are to take full advantage of the benefits and boost international trade.

See [our study](#) on the challenge in protecting EU consumers in global online markets. Please consult also the [ANEC study](#) 'Cross-Border online shopping within the EU. Learning from Consumer Experiences'.

In the food sector, the enforcement coordination is more advanced and should be taken as a model by the non-food sector. The European Commission published in February 2018 the results of the first coordinated official controls of Internet-marketed foods carried out by 25 EU Member States, Switzerland and Norway<sup>9</sup>. The competent national authorities checked nearly 1,100 websites for offers of non-authorized novel foods and food supplements, of which 779 offers did not comply with EU legislation. The European Commission has taken a number of steps to support Member States in this task, including:

<sup>8</sup> Commission notice on the market surveillance of products sold online, [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017XC0801\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017XC0801(01)&from=EN)

<sup>9</sup> [https://ec.europa.eu/food/sites/food/files/oc\\_oof\\_analysis\\_main\\_outcome\\_en.pdf](https://ec.europa.eu/food/sites/food/files/oc_oof_analysis_main_outcome_en.pdf)

- Training of staff in online investigations;
- Establishing contact points for cooperation with major trading e-platforms and market places, including social media;
- Seeking cooperation with payment service providers and;
- Adjusting legislation and electronic reporting systems to the needs of official e-commerce controls.

#### **ANEC/BEUC recommendations:**

- Market surveillance authorities should be allowed to carry out mystery shopping of products sold online. This would bring added value in those Member States that do not yet have the possibility to hide their identity when placing an order online for surveillance purposes.
- All Member States should have the power to shut down websites and to remove illegal content from websites as a preliminary and permanent measure to prevent unsafe products from entering the market.
- Legal obligations for platforms and other intermediaries need to be established.
- The food sector should be taken as a model example of how to step up controls of online sales. To this end, the Commission should support EU Member States, e.g. through training officials as is already proposed through the e-enforcement academy.
- The cooperation should be intensified between market surveillance authorities and customs authorities who sometimes check products for tax payment.

#### **5.2. Adapting the legislative framework to Internet-connected products**

Consumers are increasingly using connected devices in their daily lives. Already today, Europeans can use their smartphones to remotely switch on the lights in their house, turn on their washing machine or open their door lock. While the number of connected products is rising, many of these products are manufactured without basic security features embedded in their system to prevent cyberattacks and misuse. Thus, a EU policy response to reduce cybersecurity risks is necessary as a matter of urgency<sup>10</sup>.

National authorities in charge of consumer protection, data protection, telecoms regulation, market surveillance and competition need to collaborate closely both at national level and EU level through the Article 29 Working Party<sup>11</sup>. In an ever more complex digital world, where bundling of products and services from different markets is becoming routine, it is essential that these groups of authorities work closely together to enforce EU law and uphold consumers' rights.


Moreover, important definitions in the General Product Safety Directive (GPSD) and sector-specific legislation need to be clarified. Even though manufacturers are obliged to make only safe products available on the market, the current concept of 'safety' is too narrow and fails to protect consumers from the security flaws that are associated with connected devices, thereby jeopardising the safety of users.

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<sup>10</sup> ANEC-BEUC position paper on cybersecurity of connected products (including European Cybersecurity Act) <http://www.anec.eu/images/Publications/position-papers/Digital/ANEC-DIGITAL-2018-G-001final.pdf>

<sup>11</sup> The Working Party is composed of: a representative of the supervisory authority designated by each EU country, a representative of the authority established for the EU institutions and bodies and a representative of the European Commission.

Product safety is understood in the traditional sense with regard only to potential harm to consumers' health or physical integrity, such as through exposure to harmful chemicals or physical injuries. This concept of product safety is outdated knowing devices that can connect to the internet can be hacked and thereby create new risks from a distance.



*Consumer vulnerabilities through [toys which can connect to the internet and GPS-watches for children](#) have been highlighted by our Norwegian member Forbrugerrådet as well as many other national, [European](#) and [international consumer organisations](#).*

If the regulatory framework for safety was broadened to include security, national market surveillance authorities would be able to take specific corrective measures when a product is found not to comply with the safety requirement. Among these corrective measures is the possibility to withdraw the product from the market.

Furthermore, the extension of product safety legislation towards security risks would also enable public authorities to notify to the Rapid Alert System (RAPEX) unsecure products that risk the safety of users.

While partial improvements are under discussion in parallel to this proposal through the Cybersecurity Act<sup>12</sup>, the EU needs to do much more to ensure security-by-design to ensure protection throughout the lifetime of the product and associated services.

The UK government presented a 'Secure by Design' report<sup>13</sup> in March 2018, which outlines how to improve security by design. The UK government emphasises that these principles will be made legally binding in the short term should the industry fail to implement them quickly on a voluntary basis. We consider this to be an important approach which should be followed swiftly at EU level.

Market surveillance authorities urgently need to develop common risk assessment methods and strategies to make sure that they can protect consumers from products which pose new kinds of threats through their ability to connect to the internet. This needs to be done urgently and cannot be left to any future potential reform proposal.

#### **ANEC/ BEUC recommendations:**

- National market surveillance strategies must be obliged to consider cybersecurity in their strategies;
- They should ensure that a product is withdrawn or recalled if it may compromise the health, safety or **security** of end-users;
- Union testing facilities should explicitly be in charge of developing new techniques and methods of analysis for such products, and help construct dedicated market surveillance strategies;
- A horizontal group on cybersecurity should be established in the context of the Product Compliance Network to discuss cross-cutting issues;

<sup>12</sup> Please consult also ANEC/BEUC joint policy recommendations: Cybersecurity for connected products, [http://www.beuc.eu/publications/beuc-x-2018-017\\_cybersecurity\\_for\\_connected\\_products.pdf](http://www.beuc.eu/publications/beuc-x-2018-017_cybersecurity_for_connected_products.pdf)

<sup>13</sup> <https://www.gov.uk/government/news/new-measures-to-boost-cyber-security-in-millions-of-internet-connected-devices>

- Beyond this regulatory framework, the Commission must also screen and update all general and sector-specific safety legislation to make sure the essential requirements and general safety provisions protect consumers effectively from new risks related to connected products.

### 5.3. Ensuring better international cooperation

The European Commission is in regular contact with the US Consumer Product Safety Commission (CPSC) and other key trading partners, such as in Canada, China and Japan. However, legal obstacles currently prevent an exchange of information in both the harmonised and non-harmonised areas about dangerous products. For this reason, it is important that the Regulation provides for a strengthening of international cooperation.

The possibility to conclude confidentiality agreements for the exchange of confidential market surveillance information cannot be restricted to the harmonised area only. A comparison of the notifications in the RAPEX database with the US CPSC notifications shows that often the same products are of concern, frequently in the non-harmonised area.

#### **ANEC/ BEUC Recommendations:**

- International cooperation agreements concerning the exchange of confidential market surveillance information must concern *all* consumer products, including the non-harmonised area.
- The EU Commission should actively seek to conclude such agreements, ideally with key trading partners that collaborate on product safety through the OECD.
- Regulatory authorities should not only exchange information about market surveillance but also enforcement and redress. They should cooperate to provide tools to consumers if something goes wrong after an online purchase.

### 5.4. Stepping up enforcement of chemical requirements to facilitate the circular economy

The EU has set itself the goal to transform the economy from a linear model of production and consumption into a circular one where products, materials and resources are maintained in the economy as long as possible, and the generation of waste is minimised. A precondition for closed materials cycles will be that hazardous chemicals are removed from consumer products to prevent endless toxic cycles of production.

While REACH is the most advanced framework on regulating hazardous chemicals, the compliance and enforcement is particularly weak when it comes to the surveillance of chemicals. While around 25% of the RAPEX notifications are linked to chemical risks, we assume this is only the tip of the iceberg.

The enormous lack of enforcement of chemicals regulation has been demonstrated recently by an enforcement project coordinated by the Forum for Exchange for Information on Enforcement of the EU's chemicals agency ECHA. Of 5,625 products checked, about 18% did not comply. As the report observes, this number is high considering that REACH restrictions apply to uses of chemicals with the highest risks to health or the environment. Products originating from the EU/EEA were non-compliant in 10% of cases. The highest non-compliance rate (39%) was observed for products of unidentifiable origin.

To keep consumers safe, and to ensure a transition towards a circular economy, market surveillance measures must be stepped up considerably with regard to chemicals requirements.

#### **ANEC/BEUC Recommendations:**

- The authorisation procedure needs to apply to all products that are sold in the EU Single Market irrespective of the place of production. This means imported articles need to be included;
- Full traceability of all consumer products needs to be ensured to allow market surveillance authorities to also check chemicals requirements;
- To make market surveillance coherent with regard to chemical requirements in products, all consumer products should be included into the scope of the Regulation.
- The Union laboratories should have a horizontal topic group in charge of joint testing of chemicals and developing common risk assessment methods.

### **6. Stronger rights for consumers who get non-compliant products**

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Member States do not systematically impose on companies to compensate consumers who purchased non-compliant products. However, consumer products that are unsafe or not compliant fail to meet legitimate consumer expectations.

Moreover, consumers do not have equal possibilities in all EU countries to get redress. While in some Member States consumer organisations can act on behalf of groups of consumers, this is not possible in others. For this reason, it is a major step forward that the EU has proposed as part of a New Deal for Consumers to introduce a collective redress option through a review of the Injunctions Directive<sup>14</sup>.

In fact, the Dieselgate scandal has revealed very prominently that consumers are often in a very weak position when non-compliant products are brought to the market:

- A national competent body (the German Kraftfahrtbundesamt, KBA) approved cars even though they were fitted with software that recognised when the cars were tested in a laboratory. Consequently, the cars were in conformity with emission limit values only while being tested and not when being driven on the road. While the cars have been sold all over Europe, only a few European countries have made recalls mandatory. It is unacceptable from a consumer point of view that a car with type approval can be sold freely in the Single Market but that restrictive measures, when they exist, apply only in some EU countries. This leads to different levels of consumer protection in the EU, despite harmonised EU legislation.

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<sup>14</sup> <http://www.beuc.eu/publications/%E2%80%98new-deal-consumers%E2%80%99-%E2%80%93-clear-improvement-not-needed-quantum-leap/html>  
<http://www.beuc.eu/blog/collective-redress-for-european-consumers-yes-we-can/>



- In many cases where the cars have been recalled and retrofitted with a software update, consumers have reported problems, such as higher fuel consumption, loss of engine power or other problems with the motor. Where consumers went back to the garage, they often had to pay considerable sums or were informed that the technical service could do nothing to fix the problem while recognising it was linked to the software update<sup>15</sup>. At the same time, consumer organisations have received no information from the competent body on how the software update has been programmed. This is in clear contradiction with Volkswagen's promises to bear all the consequences of this non-compliance.

#### **ANEC/ BEUC Recommendations:**

- Where the consumer chooses to get a product repaired, the manufacturer needs to be liable for the effectiveness of the repair and bear all costs.
- Where an authority orders that a product should be destroyed, consumers should receive financial compensation promptly, and the procedures for this should be transparent and simple.
- Collective redress procedures should be available to all consumers who have suffered harm due to the non-compliance of a certain product, especially (but not only) after the actions of market surveillance authorities.
- Voluntary measures as outlined in article 7 of the Regulation on enforcement and compliance should include information on consumers' rights related to a recall, such as giving the product back free of charge in exchange for a compliant one.
- The information and communication system should have a public interface to inform consumers about their rights related to non-compliant and dangerous products, including their right to return a product and receive compensation.

ENDS

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<sup>15</sup> In 2018, Test Achats (our Belgian member), OCU (our Spanish member), Altroconsumo (our Italian member) and Deco (our Portuguese member) polled over 10,000 car owners after the software update took place. 4 out of 10 drivers reported negative impacts on their cars. Consumers who went back to the garage to have their car fixed again had to pay on average between 745 and €1,160 depending on the country.



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