



# Position Paper

## How to protect vulnerable consumers?

December 2011

**ANEC-CHILD-2011-G-111final**  
**ANEC-DFA-2011-G-071final**

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# ANEC Position Paper “How to protect vulnerable consumers?”

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## 1. Background

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### **Allow all consumers to have the same chance**

On 21 November 2011, the Internal Market and Consumer Protection Committee (IMCO) of the European Parliament discussed an own-initiative report (a non-legislative document) on the protection of vulnerable consumers, with the title "A strategy for strengthening the rights of vulnerable consumers". The Rapporteur, Ms María Irigoyen Pérez (S&D, ES)<sup>1</sup>, presented her views on the issue in order to influence the European Commission's proposal for a Consumer Programme 2014-2020<sup>2</sup>, the future proposal for a Consumer Agenda and other consumer-focused policies and legislation.

The report will be the European Parliament's contribution to the prevention of consumer vulnerability and the protection of vulnerable consumers. It will review the European Commission's efforts to empower and protect vulnerable consumers in order to place them in a safe and equivalent position in the Single Market<sup>3</sup>.

It is expected that the report should be approved by the European Parliament in plenary during Spring 2012.

### **New strategy on consumer policy (Consumer Agenda)**

On 15 November 2011, the European Parliament adopted an own-initiative report drafted by the IMCO Committee, this time on a new strategy for Consumer Policy (Rapporteur: Kyriacos Triantaphyllides, GUE/NGL, CY)<sup>4</sup>. In its Resolution, the Parliament calls on the European Commission, amongst other issues, to "guarantee special protection for groups of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity, or made vulnerable by their social or financial situations (...)"<sup>5</sup>.

Moreover, the Parliament emphasized "the need to design consumer policies that take specific characteristics of vulnerable consumers groups into account" and called on the Commission "to include a consumer accessibility element in the Consumer Agenda in order to make sure that vulnerable groups have access to the essential products and services they need"<sup>6</sup>.

ANEC championed the inclusion of these perspectives in the report and welcomes their reflection in the Parliament's Resolution adopting the report.

The Commission is expected to present its proposal for a Consumer Agenda during the first half of 2012.

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<sup>1</sup> Shadow Rapporteurs: P. Juvin (EPP); O. Schmidt (ALDE); E. Turunen (Greens/EFA); K. Triantaphyllides (GUE/NGL); M. Salvini (EFD)

<sup>2</sup> <http://tinyurl.com/cnyp8kn>

<sup>3</sup> <http://tinyurl.com/brdzq7a>

<sup>4</sup> 2011/2149(INI)

<sup>5</sup> Paragraph 10

<sup>6</sup> Paragraphs 30 and 45

### Future of European standardisation

Vulnerable consumers were also cited in an IMCO report on the Future of European Standardisation (Rapporteur: Edvard Kožušník, ECR, CZ), adopted by Parliament in a Resolution of 21 October 2010. Again, ANEC was instrumental in this citation.

In the Resolution, Parliament “Emphasises that standardisation has great potential to remove barriers that prevent persons with disabilities and elderly people from exercising their capabilities and participating on equal terms in all areas of life; calls, therefore, for the development of standards that take into account the diverse needs of the population and create new opportunities for businesses to provide innovative solutions, with a view to fostering the development of products, services and infrastructures that are accessible to everyone; stresses the importance of the Design for All concept, which constitutes a creative and ethical challenge for standardisers, designers, entrepreneurs, public authorities and policymakers, since its aim is to enable all people to have equal access to, inter alia, the built environment, transportation, education, employment, housing, medical facilities, information and communication, culture, leisure and consumer products and services”<sup>7</sup>.

Further to the Parliament’s Resolution, in June 2011, the European Commission released its proposal for an evolution of the European Standardisation System. In the Communication accompanying the legislative proposal, the Commission highlights that “Standards are an important instrument for making society and economy more inclusive. In Europe, society is aging. As a consequence, there is a growing market for goods and services that satisfy the requirements of disabled and/or elderly people. Standardisation has the potential to respond to this challenge and to pave the way for the introduction of innovative state of the art technologies that ensure accessibility for all. However, this requires strong commitment from all stakeholders involved in this process”<sup>8</sup>.

### Revision of the General Product Safety Directive & Market Surveillance

Finally, another European Parliament report on the revision of the General Product Safety Directive (GPSD) also reflected ANEC views on the protection of vulnerable consumers as it “Calls, in order to ensure the safety of the widest range of particularly vulnerable consumers, for the introduction of a reference to people with disabilities (along with the references to children and elderly people that are already present)”<sup>9</sup>.

The Rapporteur, Christel Schaldemose (S&D, DK), suggested focusing on the most vulnerable consumers in the single market i.e. children, elderly and people with disabilities, and stressed that the European Community has a special responsibility towards these groups, including in issues of product safety.

The Commission proposal for the revision of the GPSD is expected by end 2012.

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<sup>7</sup> Future of European standardisation, 2010/2051 (INI), EP Own Initiative Report

<sup>8</sup> COM (2011) 311 final, Section 2.3.2. Accessibility for all

<sup>9</sup> 2010/2085 (INI) EP Own Initiative report

## 2. Executive Summary

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This ANEC position aims at expressing our views on how to protect vulnerable consumers better in the establishment of EU legislation, and the development of European Standards supporting EU legislation.

Since its beginning, child safety, and the safety of people with disabilities and older people, have been key among its priorities. Regrettably, the standards developed to support European product safety tend to focus on mainstream consumers and do not always cover the needs of the vulnerable.

At the same time, ANEC believes standards can be suitable in making products and services safe and accessible to all consumers, whatever their impairment, age and characteristic. This is because standards determine the manner in which a product or a service is designed or provided, before it is placed on the market.

Moreover, the development of new technologies allows standards-makers to meet the safety needs of vulnerable consumers better, thus implementing the concept of “safety for foreseeable and reasonable use”<sup>10</sup> in a meaningful way.

New trends and approaches in ethics, such as the concept of value-sensitive design, allow products to be designed that anticipate the safety needs of vulnerable consumers (e.g. “safety by design”), in circumstances where vulnerabilities prevent the tool of consumer information to play its usual role.

In the fifteen years and more of its existence, the activities of ANEC have striven to influence standards to be as inclusive as possible while contributing to the setting of legal bases that do not take into account the needs of only mainstream consumers.

This paper provides examples of what has been done, and provides proposals for future European policy on consumer protection, while keeping focus on consumer safety and the accessibility aspects of consumer protection.

The concept of “consumer vulnerability” is also dependent on the specific external circumstances in which consumers act and operate, such as economic and financial conditions or social disadvantages. These are beyond the scope of our position paper and we refer to the BEUC<sup>11</sup> position in order to cover the whole spectrum of consumer vulnerabilities.

Nevertheless, if consumer policy is to be effective, we believe it is a prerequisite for products and services to be both safe and accessible **before** they are placed on the market, while recognising the necessity of specific legal and policy provisions on the protection of vulnerable consumers in specific markets (e.g. financial services and travel contracts).

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<sup>10</sup> Directive 2001/95/EC on general product safety (GPSD)

<sup>11</sup> The European Consumer Organisation

### 3. Introduction

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#### Who are ‘vulnerable consumers’?

A person who is ‘vulnerable’ is capable of being easily or quickly harmed or injured, as vulnerability implies an association with the concept of risk<sup>12</sup>. For instance, children are vulnerable as they are often unaware of the dangers they face.

According to Recital 8 of Directive 2001/95/EC on General Product Safety, “The safety of products should be assessed taking into account all the relevant aspects, in particular the categories of consumers which can be particularly vulnerable to the risks posed by the products under consideration, in particular children and the elderly”.

According to Recital 21 of Directive 2009/048 on the Safety of Toys, children “are a vulnerable group of consumers”. Furthermore, according to Article 10 (2), “The ability of the users and, where appropriate, their supervisors shall be taken into account, in particular, in the case of toys which are intended for use by children under 36 months or by other specified age groups”. The Directive also introduces specific safety requirements for children under 36 months<sup>13</sup>.

The concept of vulnerability is linked to age (children and the elderly) as well as ability (physical and mental). This is also reflected in the policy documents referred to under section 1 “Background”.

In the context of this paper, vulnerable consumers are children, older people and people with disabilities.

According to ISO 26000:2010 ‘Guidance on social responsibility’, a vulnerable group<sup>14</sup> is a “group of individuals who share one or several characteristics that are the basis of discrimination or adverse social, economic, cultural, political or health circumstances, and that cause them to lack the means to achieve their rights or otherwise enjoy equal opportunities”.

The concept of “consumer vulnerability” is also dependent on the specific external circumstances in which consumers act and operate, such as economic and financial conditions or social disadvantages. These are beyond the scope of this paper and we refer to the BEUC position in order to cover the whole spectrum of consumer vulnerabilities.

#### Seven billion and counting

The world population has doubled since 1968, surpassing 7 billion on 31 October 2011<sup>15</sup>. Lower mortality rates, longer life expectancy and large youth populations in countries where fertility remains high, all contributed to the rapid population growth

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<sup>12</sup> This risk-based definition is adopted in the Report of the Expert Workshop on Ways and Means to Enhance Social Protection and Reduce Vulnerability, United Nations Commission for Social Development, November 1997 (E/CN.5/1998/5) p. 4.

<sup>13</sup> E.g. Annex II, point I (d), point III 8 and point V. 2; Annex V, Part B, point 1.

<sup>14</sup> ISO 26000:2010, Chapter 2 Definitions

<sup>15</sup> <http://www.unfpa.org/pds/ageing.html>

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of recent decades. As a result, there is an increasing trend of consumers who are (very) young or (very) old.

The proportion of older persons is increasing at a faster rate than any other age group. In developed countries, the proportion of older people already exceeds that of children. One fifth of the population is 60 years or older; by 2050, that proportion is expected to rise to almost a third, and there will be two elderly people to every child. Europeans reaching the age of 65 in 2050 can expect to live on average between four and five years longer than those reaching 65 today. There will be a sharp increase in the number of people surviving to the ages of 80 and 90, leading to many of them spending several decades in retirement and reaching an age where infirmity and disability are more prevalent<sup>16</sup>. Moreover, they constitute an important market share with an unequal share of disposable incomes.

50 million disabled citizens, representing more than 10% of the EU population, also have the right to become equal citizens in the European Society<sup>17</sup>.

91% of European citizens agree to spend more money in eliminating physical barriers for people with disabilities<sup>18</sup>. This overwhelming support is important when considering the relation between disability and ageing, and planning the actions to cope with demographic trends.

Consumers' needs change with age. And so do their vulnerabilities, as well as their perceptions of the effectiveness of consumer protection policy.

Although 70% of 15-24 year olds trust public authorities to protect their rights as consumers, this dropped to 59% for those over 54. The same trend is observed for consumer protection measures: 63% of 15-24 year olds agree they felt adequately protected by existing measures, compared with 56% for those over 54.<sup>19</sup>

A modern consumer policy has to meet these expectations.

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<sup>16</sup> European Commission, The demographic future of Europe – from challenge to opportunity, 2006

<sup>17</sup> <http://www.edf-feeph.org/en/welcome.htm>

<sup>18</sup> Euro barometer "Discrimination in the European Union" 2007 on disability matters

<sup>19</sup> Flash Eurobarometer 299, March 2011

## 4. Vulnerable Consumers safety policy and regulatory challenges and how to meet them

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### 4.1 What has been done so far?

In addition to the more recent policy activities mentioned in section 1, the following initiatives, aimed at taking into account the needs of vulnerable consumers, have been put in place in the fields of standardisation and market surveillance, all with ANEC’s participation and often on ANEC’s request.

#### **CEN/CENELEC Guide 6 ‘Guidelines for standards developers to address the needs of older persons and persons with disabilities’**

Following a request from ANEC the year before, in 1999, the European Commission stressed the importance of Inclusion and Design for All principles in standardisation by launching Mandate M/283 on the safety and usability of products for older and disabled people.

The text of the Mandate pointed out that special needs were addressed in standards related to assistive technologies, but that “there is no formal structure or procedure ensuring that the needs of all consumers of all ages, with or without disabilities or special abilities, are catered for in the entire standardisation process. Individual standardisation committees do not spontaneously take into account safety and usability for people with disabilities and for elderly people, except if they draft specific standards for assistive products. If general standards for consumer products do not meet the requirements of these consumers with special needs, this means that many products and services cannot be used by a large part of the European population”.

In 2001, ISO and IEC developed ISO/IEC Guide 71:2001: *Guidelines for standardization to address the needs of older persons and people with disabilities* to provide guidance to standards writers on how to accommodate the needs of older people and people with disabilities. ISO/IEC Guide 71 was also made available in Braille and was the first ISO publication that was made available in this format.

To comply with Mandate M/283, CEN and CENELEC decided to adopt ISO/IEC Guide 71 as a European publication. As a result, CEN/CENELEC Guide 6 was published in 2002. Hence ISO/IEC Guide 71 and CEN/CENELEC Guide 6 are identical documents. ANEC helped to draft ISO/IEC Guide 71 and Mandate M/283<sup>20</sup>. The latter required the setting up of a mechanism to ensure that the Guide was used and improved, and that existing standards were reviewed and amended in line with its guidance, which unfortunately never happened.

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<sup>20</sup> Updated ANEC Policy Statement on Design for All, ANEC-DFA-2007-G-043rev, <http://www.anec.eu/attachments/ANEC-DFA-2007-G-043rev.pdf>



## **CEN/CENELEC Guide 14 'Child safety - Guidance for its inclusion in standards'**

In 1998, ANEC also submitted a request to the European Commission to establish a mandate on child safety, in order to establish guidelines for standards writers to include child safety in standards. As a result, the European Commission launched Mandate M/293 the following year.

The text of the Mandate M/293 pointed out that "children are exposed to products, constructions and services from the very first day of their lives. Many of these are standardised, and for some products legislation and standards are developed with consideration to children and their behaviour. But most products, constructions and services are not developed with the aim of preventing child accidents" ... "the age factor needs particular attention when drafting standards. Usually safety for small children also creates a safer environment for all parts of the population and in particular for the elderly and the disabled".

CEN Guide 12 "Child safety - Guidance for its inclusion in standards" was adopted by CEN in 2006. Following approval by CENELEC, Guide 12 was published in 2009 as CEN/CENELEC Guide 14 "Child safety - Guidance for its inclusion in standards".

ANEC helped to draft Mandate M/293 and the Guide.

## **Safety of household appliances for all consumers**

Considering that the aim of European safety legislation is to "ensure a high level of consumer protection"<sup>21</sup> regardless of age or ability, ANEC finds it unacceptable that standards implementing safety legislation exclude the use of electrical household appliances by vulnerable consumers. For many years, we have been concerned at limited scope of the EN 60335 series of standards, implementing the Low Voltage Directive on the safety of household appliances<sup>22</sup>.

This is not only discriminatory, but also not in line with present market and social trends and realities. The level of use of domestic appliances by older people depends on the household composition. People living alone are more likely to continue using these products than those living with other people, where help is likely to be more readily available. However, the majority of older people wish to continue to live in their own homes for as long as possible, but many appliances are not designed to meet their changing needs as they age.

Considering the current changes in children's education and family composition, the ageing European population and vulnerability of older people to injury in the home setting, especially in bathrooms and kitchens<sup>23</sup>, ANEC believes standards can be used to help make products and services safe for as many consumers as possible, irrespective of their ages or abilities.

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<sup>21</sup> Article 169, Title XV - Consumer protection, Article 114 , Chapter 3 - Approximation of laws, Treaty on the Functioning of the European Union , 2009

<sup>22</sup> DIRECTIVE 2006/95/EC

<sup>23</sup> Injuries in the European Union 2003-2005 Report, IDB, EuroSafe's Injury Data programme, coordinated by the Austrian Kuratorium für Verkehrssicherheit, supported and co-funded by the European Commission.

This is why we have fought for the deletion of the exclusion clause<sup>24</sup>. Indeed, we have been successful in revising the following standards to take into account the safety of children, older people and people with disabilities: EN 60335-2-2 (vacuum cleaners), 2-3 (electric irons), 2-6 (cooking ranges, hobs, ovens), 2-7 (washing machines), 2-23 (appliances for skin or hair care), 2-52 (oral hygiene appliances).

All were adopted as European Standards in April 2010. The references are to be published in the Official Journal of the European Union as ‘harmonized standards’, so permitting manufacturers a presumption of conformity to the European health & safety legislation related to the products. The revision of more standards continues, with the fullest ANEC contribution.

### **Child appealing products: Atlas and Tool**

Despite more and more child-appealing products are entering the European market, there are no clear indications in EU legislation or in European standards on how it is decided whether a product is child appealing or not. There is a need for a common approach of what is a child-appealing product and for clear and common criteria to help assess whether a product is child appealing.

A toaster in the shape of a cartoon character; a shampoo bottle resembling a doll; a scented candle that looks like a strawberry, a cigarette lighter resembling a toy car: more and more products are shaped or decorated in a way that makes them appealing to children<sup>25</sup>.

There are only three instances where special (though unsatisfactory) attention has been paid to child-appealing products in the EU. To begin with, Member States saw a steady increase in the number of child-appealing domestic appliances on the market during the last decade. These appliances are covered by the Low Voltage Directive<sup>26</sup> as are all domestic electrical appliances; but there are no provisions addressing risks related to child-appealing characteristics<sup>27</sup>. In order to clarify how the potential risks to children from child-appealing appliances can be addressed in both a precautionary and coherent manner, national market surveillance authorities developed a Recommendation on Child-Appealing Household Appliances<sup>28</sup>. Unfortunately, it simply advises economic operators to evaluate the risks of such products on a case-by-case basis in order to ensure an acceptable level of risk. There is no indication as to what is to be considered a child-appealing domestic appliance, nor how to evaluate the risks it may pose to children. As a result, a joint market surveillance action from 13 EU Member States on child appealing products

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<sup>24</sup> Scope of EN 60335 states that it does not “In general, take into account persons (including children) whose physical, sensory or mental capabilities; or lack of experience and knowledge prevents them from using the appliance safely without supervision or instruction”.

<sup>25</sup> In general, the child-appealing characteristics of products include shape, size, texture, colour and decorative elements (e.g. eyes and feet). Other characteristics that can play a role are sound, smell, movement and function (e.g. a lighting function)

<sup>26</sup> Directive 2006/95/EC of 12 December 2006 relating to electrical equipment designed for use within certain voltage limits (also called LVD)

<sup>27</sup> Commission opinion of 3 May 2002 within the framework of Council Directive 73/23/EEC relating to electrical equipment designed for use within certain voltage limits - Portable child-appealing luminaires

<sup>28</sup> Recommendation of the Low Voltage Directive Administrative Cooperation Working Group (LVD ADCO) regarding Child-Appealing Household Appliances, November 2008

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was organised in 2010, to which we participated. A tool/matrix was developed to judge whether an electrical household product is child-appealing, depending on criteria such as colour, shape, sound and smell. In addition, an atlas is being established, containing pictures of child-appealing products, to help authorities to categorise a product as child-appealing or not. The aim is to contribute to a common understanding in assessing the child-appealing character of appliances, thus contributing to increase children protection through uniform market surveillance in Europe.

Secondly, a Commission Decision addresses the potential risks posed by child-appealing lighters<sup>29</sup>. This Decision bans lighters from being placed on the market if they resemble objects that are considered especially appealing to children (e.g. toys, mobile phones, food, cars) and which present a high risk of misuse ('novelty lighters'). A legal definition of a child-appealing product can so far be found only in this Decision, which states a “*child-appealing lighter' shall mean a lighter whose design resembles by any means to another object commonly recognised as appealing to, or intended for use by children younger than 51 months of age.*”

Thirdly, on Commission's request in March 2011, the Scientific Committee on Consumer Safety (SCCS) adopted an Opinion on the potential health risks posed by chemical consumer products resembling food and/or having child-appealing properties<sup>30</sup>.

### Mini-motorbikes

Following several fatal accidents involving young children, CEN/TC 354 was set up to draft a European standard for mini-motorbikes. Although ANEC trusted the discussions would lead to a standard in the best interests of child safety, no consensus was found as there was strong resistance from manufacturers to the introduction of obligatory age and speed limits in the standard. Despite repeated and fundamental opposition from ANEC, the draft standard was launched by CEN for the formal vote (of adoption) until 10 January 2012, without any obligatory age and speed limits<sup>31</sup>.

This is hugely disappointing bearing in mind the Business Plan of CEN/TC 354 says that “The whole standardization work will not be performed for the benefit of one regional industry but with a view to increase the safety of all the European citizens, and especially youngsters and children by setting the minimum safety requirements of the products”. Moreover, the Business Plan indicates that one of the expected benefits of the work of the TC is to “Increase the safety of all the European citizens, and especially that of children”. The current draft clearly neglects the text of the Business Plan when it comes to the protection of children and to the introduction of minimum child safety requirements.

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<sup>29</sup> Commission Decision of 23 April 2008 on specific child safety requirements to be met by European standards for lighters pursuant to Directive 2001/95/EC

<sup>30</sup>[http://ec.europa.eu/health/scientific\\_committees/consumer\\_safety/docs/sccs\\_o\\_056.pdf](http://ec.europa.eu/health/scientific_committees/consumer_safety/docs/sccs_o_056.pdf)

<sup>31</sup> FprEN 16029 'Ride-on, motorized vehicles intended for the transportation of persons and not intended for use on public roads - Safety requirements - Single-track two-wheel motor vehicles'

### 4.2 What is still to be done?

In product safety legislation and standardisation, the age and abilities of consumers must be taken into account in the assessment of risk if injuries are to be prevented.

Based on the experiences illustrated earlier, we believe the following actions should be part of the future European Consumer Policy Strategy, or the Consumer Agenda, in order to ensure the effective protection of **all** consumers.

#### A. Legislative actions

##### “Intended use” VS “foreseeable use”

From the point of view of a consumer, and especially a vulnerable consumer, the concept of “intended use” does not correspond with real-life situations and neglects the expectations of consumers in modern society. In particular, “intended use” does not address the specific risks that vulnerable consumers may face. However, apart from the GPSD and the Toys Directive, the other consumer relevant product safety pieces of legislation do refer to the concept of “intended use”.

ANEC thinks that vulnerable consumers can be effectively protected only if their (foreseeable) behaviour is duly taken into account by manufacturers when designing products. If manufacturers are allowed to rely on the concept of “intended use” of the product as laid down in the instruction for use, consumers who are too young to read or can not read, are at a higher risk of being exposed to harm or injury.

Hence, as far as consumer products are concerned, we call for the safety concepts of the R&TTE Directive and Low Voltage Directive <sup>32</sup> to be aligned with that of the General Product Safety Directive (“foreseeable use”)<sup>33</sup>. And we also call for the scope of the safety concept of the GPSD, which is also under revision, to not only include the needs of children and elderly but also people with disabilities<sup>34</sup>.

We expect European Consumer Policy to make use of opportunities arising from the revision of such directives to align the safety concept related to consumer products, in parallel with other initiatives such as the proposal for an Accessibility Act. The R&TTE directive is currently under revision while the LVD Directive is under recast.

#### Need for common approach and criteria for child appealing products

The lack of specific safety requirements in product legislation for child-appealing products raises concern, especially as children are among the most vulnerable of all consumers.

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<sup>32</sup> Directive 1999/5/EC, Directive 2006/95/EC.

<sup>33</sup> ANEC comments on revision of the R&TTE directive (ANEC-ICT-2011-G-001), ANEC response to the public consultation of the European Commission on the New Legislative Framework for the marketing of products: proposal to align 10 product harmonisation directives to Decision 768/2008: Low Voltage Directive – 2006/95/EEC (ANEC-DOMAP-2010-G-031)

<sup>34</sup> Revision of the General Product Safety Directive - Key issues from a consumer perspective (ANEC-GA-2010-G-001final)

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The definition of child appealing lighters, noted earlier, could serve as the basis for a definition or common approach in EU legislation (as in GPSD and other Directives, such as the Low Voltage Directive, R&TTE Directive, Cosmetics Directive). If the same definition is not applied in other legislation, there could be the risk of either no approach or different approaches for products not falling under the GPSD.

In addition to the introduction of a definition, there is also need for specific safety requirements for those products that take into account the specific risks to which children are exposed, due to their vulnerability.

Although we accept not all products with child-appealing characteristics pose risks to children, we consider specific legal requirements ought to be developed to ensure these products are indeed safe. In particular, we consider the GPSD should explicitly require that, whenever a product features child-appealing characteristics, the product must be safe for children under all conditions of use and foreseeable misuse.

If deemed necessary for the protection of children’s health and safety, a complete ban should be imposed on certain types of products, determined by a committee procedure. Such a ban should apply to dangerous chemical products (or their packaging) that are appealing to children<sup>35</sup>.

Of course, parents must also take responsibility. But the Product Liability Directive<sup>36</sup> grants consumers the protection they are entitled to expect, either reasonably or legitimately. Manufacturers should provide sufficient detailed instructions in order to avoid any potential risks that could result from the use of the product, including those that could commonly or regularly occur. However, they cannot limit their liability by simply stating in the user instructions that the product has not been designed for what is a foreseeable use, in this case, the interaction of the child with the product because of its child-appealing design.

### **“Impact on vulnerable consumers” to be added in Impact Assessment process**

In general terms, in order to take into account the needs of vulnerable consumers at the beginning of the legislative process, we suggest that a specific question/part should be added in the Impact Assessment procedure that any legislative proposal has to go through before it can be presented to the European legislators. This could cover both safety needs, as well as the other economic aspects which could have an impact on consumer vulnerabilities.

### **The establishment of an EU-funded accident statistical system**

The collection of accident statistics becomes ever more a problem. Such statistics are needed to underpin and drive preventive actions, especially those concerning

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<sup>35</sup> Dangerous chemical substances can be child appealing either because of their shape or colour, or because of the shape or colour of their packaging. Such products include for instance cosmetic products, household products and air fresheners that have – or which packaging has – the shape of cartoon figures or resemble foodstuffs in their colours, shape, smell, etc

<sup>36</sup> 85/374/EEC

vulnerable consumers. Most Member States do not collect statistics anymore. What is available is often old and not available for free.

The report 'Injuries in the European Union - Statistics Summary 2005-2007'<sup>37</sup> reveals around 7 million people are admitted to hospital each year, with 35 million more treated as hospital outpatients, as a result of an accident or a violence-related injury, with children and elderly on top of statistics charts. Injury data can be obtained from a wide range of sources. Sadly, most injury databases in the EU are fragmented, limited in their size and scope or incomplete. This makes it almost impossible to compile reliable statistics or reach conclusions. Even the so-called European Injury Data Base (IDB) cannot be considered as a reliable and representative database. Currently, only 13 Member States are known to collect injury data through hospitals which themselves do not always collect information in a regular and consistent manner. In addition, it is very difficult to gain access to the IDB or receive detailed information.

Accident and injury data is critical in the setting of priorities, the development of policy and the determination of preventive actions, especially concerning vulnerable consumers. Data is also needed to evaluate the effectiveness of preventive measures and the impact of the introduction of a new/revised regulation or standard.

Last but not least, the efficiency of the legal framework of the New Approach and the GPSD depends on the ability of the Commission and Member States to identify and recognise problems associated with unsafe consumer products. Such problems can be identified only through a regular surveillance of home and leisure accident data. We therefore urge the creation of an EU-funded accident statistical system, under the co-ordination of the European Commission. Member States should be required to contribute to the establishment of the database and its regular updating. This system could be the IDB system providing that it is improved and adequately funded by the European Union. Relevant stakeholders - such as consumer organisations - should also have access to the database.

### **B. Standardisation actions**

#### **“Alternative production line”**

European safety policy, and specifically the case of safety of household appliances, is based on the support of standards that provide presumption of conformity to the legal safety requirements. Although ANEC recognises the contribution European standardisation has made to removing technical barriers to trade, especially in support of the New Approach, we do not believe that standardisation necessarily offers the expected level of consumer protection, as demonstrated in the case of the “exclusion clause”.

ANEC believes the freedom allowed to industry to self-regulate through standards needs to be accompanied by an obligation to provide the highest level of protection to consumers that is economically and reasonably possible. As shown by the ANEC

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<sup>37</sup>[http://www.childsafetyeurope.org/csi/eurosafe2006.nsf/0/2DD3B414D49544AEC1257686004E6EBC/\\$file/2009-IDB-Report.pdf](http://www.childsafetyeurope.org/csi/eurosafe2006.nsf/0/2DD3B414D49544AEC1257686004E6EBC/$file/2009-IDB-Report.pdf)



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“Safety of household appliances for all” flagship campaign, it should also include the vulnerability of the consumer to the risks posed by household appliances. The subject of the ANEC flagship campaign is not only technical, but goes to the heart of good consumer safety policy-making and injury prevention.

The traditional process of standards development is voluntary. The decision of stakeholders to participate is made on their own resources and priorities. If the European Institutions believe it important to guarantee participation in the development of a particular standard, such as standards dealing with public interest issues, they must seek to create (and fund) an ‘alternative production line’ with CEN, CENELEC & ETSI, as mentioned in the European Commission Communication on the future of the European Standardisation System, and as proposed by ANEC<sup>38</sup>.

### **Specific part on vulnerable consumers in standardisation mandates**

Wherever or whenever relevant, standardisation mandates about safety of products and services should indicate the age and abilities of consumers that need to be taken into account to correctly assess the risk consumers are exposed to, in order to prevent harm and injuries, and develop adequate standards. Standardisation requests should focus on the potential barriers that certain consumers may face if their needs are not properly addressed.

### **Systematic approach to accessibility issues in standardisation**

ANEC welcomes standardisation mandate M/473 of 2010, requesting CEN, CENELEC and ETSI to include "Design for All" in relevant standardisation initiatives, as we believe it imperative that actions are taken to ensure the development of European Standards which can serve societal needs. This is particularly important if European Standards are used to complement implementation of European and International policies, such as the implementation of the UN Convention on the Rights of Persons with Disabilities. Universal access to products and services, as well as to the built environment, is essential in an inclusive society.

Regardless of the political achievements marked by the issue of the mandate and the setting up of CEN/BT WG “Strategic Advisory Group on Accessibility” (SAGA), ANEC remains concerned whether sufficient voluntary expertise is available to allow the technical bodies of the European Standardisation Organisations to address accessibility in the development of their standards. Hence, ANEC suggests that dedicated accessibility experts be contracted, as was done for previous standardisation mandates in the area of accessibility, in a systematic manner.

## **C. Market surveillance actions**

### **Specific market surveillance actions targeted at vulnerable consumers**

When setting priorities for market surveillance, we ask Member State authorities to take into account protection of vulnerable consumers. Market surveillance actions

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<sup>38</sup> Draft IMCO Report on the future of European standardization (2010/20515(INI)), ANEC summary and four proposals for amendments (<http://www.anec.eu/attachments/ANEC-SG-2010-G-005>)

on toys, child care articles or lighters, which were carried out in the past years, are only some examples which we think should be repeated.

**D. Research Actions**

**Study on anthropometrics data for children and elderly**

There is currently a lack of up-to-date anthropometric data to deliver good standards. The available data is often not available for free. We ask the Commission to undertake a study in order to have up-to-date anthropometric data available, especially for children and older persons. If the Commission is not able to undertake such a study, we ask the Commission to approach the World Health Organisation WHO to do so at the international level.



## 5. Conclusions

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When dealing with product safety legislation and standardisation, the age and abilities of consumers need to be taken into account to correctly assess the risk consumers are exposed to, in order to effectively prevent harm and injuries.

Since its beginning, the role of ANEC is to ensure that standards provide the highest level of consumer protection possible. This is because of the specific link between standards and legislation in Europe. Regrettably, the standards developed to support European product safety tend to focus on mainstream consumers and do not always cover the needs of the vulnerable.

At the same time, ANEC believes standards can be suitable in making products and services safe and accessible to all consumers, whatever their impairment, age and characteristic. This is because standards determine the manner in which a product or a service is designed or provided, before it is placed on the market.

Based on the experiences illustrated in this position, we suggest that actions ranging from the revision of relevant safety legislation to the gathering of sound scientific data and a reform of the European Standardisation System, should be part of the future European consumer policy, in order to ensure the effective protection of **all** consumers.

Furthermore, the recent trend in consumer policy about “consumer empowerment” should be complemented by a real empowerment of the public authorities and consumer associations, at the national and European levels, entrusted with the task of consumer protection. When dealing with the protection of vulnerable consumers, the role information plays in protecting consumers is by essence limited. ANEC believes that having sufficient and adequate knowledge about the safety of products consumers intend to buy and use, is an essential consumer need. Information should be reliable, understandable and transparent. Warnings should only be complementary to strict safety measures and should not exonerate manufacturers from ensuring that products do not present a risk to consumers, especially when consumers are children, persons with disabilities and elderly. And market surveillance authorities and consumers associations should have sufficient resources to enforce safety requirements.

Empowerment of consumers does not preclude protection of consumers whether vulnerable or not.

### Acknowledgements

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This position paper has been prepared in consultation with the ANEC membership. ANEC wishes to thank those who have actively contributed to the drafting of this position paper.

### APPENDIX – About ANEC and other documentation

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#### **A.1 About ANEC**

*ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment as well as related legislation and public policies. ANEC was established in 1995 as an international non-profit association under Belgian law and represents consumer organisations from 31 European countries. ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.*

*ANEC has signed the European Commission’s Register of Interest Representatives and accepted its Code of Conduct: Identification Number 507800799-30.*

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More information about ANEC and its activities is available at [www.anec.eu](http://www.anec.eu)

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