



Raising standards for consumers



POSITION PAPER

Working methods for setting safety requirements in the context of the General Product Safety Directive

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1. Executive summary

Article 4 of Directive 2001/95/EC on general product safety (GPSD) states that requirements shall be determined for the drawing up of European standards, in order to ensure that products which conform to these standards satisfy the general safety requirements of the GPSD.

There is however a lack of a standard operating procedure or working method to draft and develop safety requirements under the GPSD.

As a result, the European Commission introduced the document 'Working methods for setting safety requirements in the context of the General Product Safety Directive' at the October 2013 meeting of the GPSD Committee. Members and observers of the Committee have been invited to submit comments on this document until the end of November 2013.

Overall, ANEC is satisfied with the level of technical detail of the already adopted safety requirements under the GPSD.

However, a more systematic approach may be useful to ensure a consistent level of detail. To this end, ANEC makes the following recommendations:

- The process of drafting safety requirements should involve the identification of the hazards that need to be addressed by the standard. In this respect, we propose a hazard matrix to be used as a basis when developing safety requirements.
- The safety requirements should be drafted outside the GPSD Committee by small groups of experts according the related product(s).
- Safety requirements should be 'upgraded' to directly applicable legal requirements under the upcoming Consumer Product Safety Regulation (CPSR), in order to ensure legal certainty for economic operators and market surveillance authorities.
- The safety requirements should be drafted in an open and transparent way to ensure that the interests of all stakeholders are met. If the process of drafting the safety requirements is transparent and inclusive, this will also ensure that all relevant safety requirements are included.

2. Background

2.1 Legal framework

Under Directive 2001/95/EC on general product safety (GPSD), Article 4 for the drawing up of European standards states that requirements shall be determined to ensure that products which conform to these standards satisfy the general safety requirements of the GPSD.

The Regulation on European Standardisation (1025/2012), which became effective on 1 January 2013, lays down the general framework for the development of European standards, and is also applicable to standards to be developed in the context of the GPSD.

2.2 The problem

There is a lack of a standard operating procedure or working method to draft and develop safety requirements under the GPSD. The way in which the safety requirements are currently drafted and developed differs from case to case and is not always consistent. In some cases, this has led to lengthy discussions in the GPSD Committee meetings. The crucial point is how detailed the safety requirements should be and which details should be left to the European Standardisation Organisations (ESOs).

2.3 European Commission proposals

At the September 2012 meeting of the Consumer Safety Network, the European Commission introduced a 'Discussion paper on the drafting of safety requirements under the General Product Safety Directive'. The Commission suggested to draft the safety requirements in a shorter, more general manner, specifying what has to be achieved by the standards - instead of how it should be achieved - and allowing the technical issues to be addressed by the ESOs.

The extract from the minutes¹ of this meeting states that:

"Most of the Member States, whilst agreeing that it is important not to pre-empt the standardisation process and to avoid documents that are too detailed, expressed some reservations about such an approach. They thought that it was

¹ http://ec.europa.eu/consumers/safety/committees/docs/sum_25092012_csn_en.pdf, p. 1-2

important to strike the right balance and that sometimes more details, including limit values, need to be given.

ANEC suggested that the safety requirements for all products should be determined in the same way by considering what hazards have to be addressed, and suggested that this work could be done outside the GPSD Committee by setting up groups of experts”.

At the October 2013 meeting of the GPSD Committee, the European Commission introduced the document ‘Working methods for setting safety requirements in the context of the General Product Safety Directive’.

The extract from the minutes² of this meeting states that:

“... many Member States expressed their support for the principle of adopting standard working methods although there were divergent views on how much detail the safety requirements should go into. Some believed that requirements should follow a 'hazard based approach' and avoid overly prescriptive language which would stifle innovation whilst others advocated that more prescriptive requirements would give clearer guidance to the European Standardisation Organisations (ESOs) and thus avoid objections to standards at a later stage.”

3. ANEC comments and recommendations

In order to streamline the working methods for drafting safety requirements under the GPSD, ANEC makes the following comments and suggestions:

3.1 General considerations

ANEC shares the concerns of some Member States that the process of “(over)simplification” may lead to a situation where too much leeway is given to the ESOs, in whose work the business interest is often dominant, so undermining consumer protection. In general, ANEC is satisfied with the level of technical detail of current safety requirements. However, a more systematic approach may be useful to ensure a consistent level of detail. To this end, ANEC recommends to follow a hazard matrix (see point 3.2 below) when developing the safety requirements. In addition, the process of developing the safety requirements could be made more efficient and more transparent. In the following, ANEC outlines a way forward both with respect to content and procedure.

² http://ec.europa.eu/consumers/safety/committees/docs/sum_04102013_gpsd_en.pdf, p.3

3.2 Hazard based approach

ANEC suggests that the safety requirements for all products should be determined in the same way by considering what hazards have to be addressed.

Standardizers need to be asked to put requirements in the standards to address the hazards linked to these products. In other words, to write the standards in a hazard based format.

The process of drafting safety requirements should therefore involve the identification of the hazards that should be addressed by the standard.

In order to identify the hazards that should be addressed by the standard, we suggest the following skeleton – framework – template (non-exhaustive, to be adapted and extended as appropriate) as a basis for setting up safety requirements:

Chemical hazards related to:

- Mouthing (licking/sucking and ingestion)
- Inhalation
- Absorption through the skin

Thermal hazards related to:

- Flame propagation
- Flash effect
- Melting behaviour of materials
- Contact with flames
- Hazards from contact with hot/cold surfaces
- Hypothermia and hyperthermia

Mechanical hazards related to:

- Entrapment in gaps and openings where the head/neck, fingers and limbs may be trapped
- Hazards where moving parts result in scissoring/pinching
- Crushing hazards
- Injuries from protrusions, sharp edges
- Suffocation hazards from packaging, sheeting and decals
- Entanglement in cords, ribbons and parts used as ties
- Ingestion/inhalation hazards from small parts
- Falls
- Structural integrity of the product

The above hazards are common for child use and care articles. For **other products, hazards** which may need to be considered are:

- Suffocation hazard due to an enclosed space

- Falls from a hazardous height
- Hazards from moving and rotating objects
- Excessive noise
- Drowning
- Electric shock
- Radiation
- High intensity or concentrated light
- Biological hazards

We suggest that a hazard matrix based on the above suggestion is established for guiding the development of safety requirements. Furthermore, the mandates ought to make clear that in addition to the adopted safety requirements, any other relevant safety issue pertaining to the hazard matrix need to be addressed.

3.3 Use of small expert groups

ANEC suggests that the safety requirements be drafted outside the GPSD Committee by setting up groups of experts according the related product(s).

Some safety requirements set up in the past have led to lengthy discussions in the GPSD Committee meetings. Moreover, the 'Discussion paper on the drafting of safety requirements under the General Product Safety Directive', presented at the CSN meeting on 25 September 2012, states that *'in general, neither the members of the (GPSD) Committee nor the services of the Commission have the necessary technical expertise'*.

We therefore recommend that, whenever the Commission intends to set up safety requirements for a (group of) product(s), a call is sent out to members and observers of the GPSD Committee with a request to participate in an ad hoc group to set up the requirements.

These small groups of experts could help the Commission in setting up the safety requirements, using the above-mentioned framework (template) for specifying safety requirements in a hazard-based way.

We believe this method would avoid long and technical discussions during the GPSD Committee meetings. The decision could then take place in a GPSD Committee meeting.

3.4 How much detail?

As explained in the ANEC-BEUC position paper³ on the European Commission proposal for a Consumer Product Safety Regulation, our main concern with regard

³ <http://www.anec.eu/attachments/ANEC-GA-2013-G-007.pdf>, p. 8-9

to the standardisation procedure in the current GPSD is that the Commission Decision, which specifies the safety requirements a European standard should reflect, is not legally-binding. We therefore called for a reinforcement of the safety requirements to become legal acts in analogy to implementing measures of the Energy-related Products Directive.

Article 16 of the proposed CPSR presents a new and simplified procedure for the adoption of standardisation mandates. As Regulation 1025/2012 on European Standardisation has been adopted only recently, experience will show the effectiveness and transparency of this simplified procedure for issuing of standardisation requests to ESOs. In particular, it is unclear to us what happens if a standardisation mandate containing safety requirements is not or only partly accepted by the ESOs. As the ESOs are not obliged to accept a Commission mandate and the use of standards is always voluntary, there is no guarantee that the standard will be developed and even if it is, there is no certainty it will reflect what the mandate requires. In addition, there is a considerable time period between the establishment of the mandate and the publication of the reference of the adopted standard in the OJEU during which no legal certainty exists for economic operators and market surveillance authorities.

Therefore:

- In order to ensure legal certainty for economic operators and for market surveillance authorities, the CPSR should allow for the establishment of mandatory product-specific rules without limitations, either in terms of content or the period of applicability. It could then be decided case-by-case which level of detail should be defined in the safety requirements and which aspects left to the ESOs.
- The role of standardisation should be limited to providing the technical means through which compliance with the political decision is achieved or evaluated, and to the other technical characteristics of the product.

Our suggestion to 'upgrade' safety requirements to directly applicable legal requirements under the CPSR would require detailed requirements, instead of simplification.

The fewer details that are provided in the Commission Decision laying down the safety requirements, the more difficult it will become afterwards to assess whether the standards drawn up by the ESOs ensure compliance with the general safety requirement of the GPSD.

In case the GPSD Committee would judge that a standard does not ensure compliance with the general safety requirement of the GPSD, the EN will not be referenced in the OJEU. As a result, there will be no legal certainty for economic operators and market surveillance authorities, and much more time will be lost than if clear safety instructions to the ESOs had been established at the outset.

More prescriptive requirements, including limit values, would give clearer guidance to the ESOs and thus avoid objections to standards at a later stage.

We regret that our request is not reflected in the EP IMCO Legislative Report⁴ on the proposal for a Regulation on Consumer Product Safety.

3.5 Open and transparent process

Last but not least, the safety requirements should be drafted in an open and transparent process. Transparency is important to ensure that the interests of all stakeholders are met.

We welcome the proposal to ensure participation of experts from Member States and stakeholders in the development of the safety requirements.

If the process of drafting the safety requirements is transparent and inclusive, this will also ensure that all relevant safety requirements are included.

END.

⁴ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2013-355&language=EN>, 25 October 2013

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 is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.



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