



*Raising standards for consumers*



**The Consumer Voice in Europe**

## **Position Paper on European Commission proposal for a Consumer Product Safety Regulation**

**Key issues from a consumer perspective regarding  
the Product Safety and Market Surveillance Package  
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**Contact:** ANEC: Tania Vandenberghe ([tva@anec.eu](mailto:tva@anec.eu));  
Chiara Giovannini ([cgi@anec.eu](mailto:cgi@anec.eu))  
BEUC: Sylvia Maurer ([safety@beuc.eu](mailto:safety@beuc.eu))  
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**ANEC, the European Association for the Co-ordination of Consumer Representation in Standardisation**

Av. de Tervueren 32, box 27 – 1040 Brussels - +32 (0)2 743 24 70 - [www.anec.eu](http://www.anec.eu)  
EC register for interest representatives: identification number 507800799-30

**BEUC, the European Consumer Organisation**

rue d'Arlon, 80 - 1040 Brussels - +32 (0)2 743 15 90 - [www.beuc.eu](http://www.beuc.eu)  
EC register for interest representatives: identification number 9505781573-45

## Summary

On 13 February 2013, the European Commission published a product safety and market surveillance package comprising a draft regulation for consumer product safety, a draft regulation on market surveillance and a multi-annual action plan on market surveillance.

In this position paper, ANEC and BEUC give recommendations on the provisions that need to be modified in the Commission's proposal for a regulation on consumer product safety (CPSR) if the highest practicable level of safety for consumers is to be ensured.

We call for:

- Making the precautionary principle a key pillar of both Regulations, as it is of the present legal framework;
- The terms 'safe' and 'safety' to be used in a consistent way;
- Developing a comprehensive framework for the safety of services;
- Keeping the CPSR as safety-net, able to address potential loopholes in existing and future EU legislation with regard to product safety;
- The CPSR to allow for the establishment of mandatory product-specific rules without limitations, either in terms of content or the period of applicability
- The CPSR to provide for an opportunity to apply higher conformity assessment modules than supplier's self-declaration;
- Making the country of origin labelling mandatory only for food products in food products legislation;
- Extending specific traceability systems to product groups for which the number of non-compliances is high;
- Ensuring the safety of products that appeal to children and taking consumer expectations into account as a priority when assessing the safety of products;
- Obliging economic operators to inform consumers immediately in case of serious risk;
- A better definition of potential exemptions for economic operators;
- The CPSR to be more prescriptive concerning warnings and instructions for use;
- Penalties to be proportionate and dissuasive, taking into account various criteria such as the level of infringement, illegal profits and potential damage to consumers;
- The CPSR to introduce a collective redress mechanism.

## **Introduction**

Directive 2001/95/EC on General Product Safety (GPSD) has proved a landmark of European consumer protection policy in many ways. It intends to ensure a high level of safety for those consumer products not covered by specific sector legislation (such as child care articles).

In anticipation of the revision of the GPSD, ANEC and BEUC published a position paper in May 2010, detailing key issues from a consumer perspective<sup>1</sup>.

In particular, we urged the Commission to:

1. Establish a more effective regulatory framework, allowing quick market interventions and reliable long-term solutions, without delegating political decisions to the standardisation bodies;
2. Provide for an opportunity to apply higher conformity assessment modules than industry self-declaration;
3. Ensure that a comprehensive European legal framework for the safety of consumer products and services is in place;
3. Ensure a more effective market surveillance system;
4. Ensure the safety of child-appealing products through the GPSD;
5. Make specific reference to people with disabilities under categories of consumers at risk.

On 13 February 2013, the European Commission published a product safety and market surveillance package comprising a draft regulation for consumer product safety, a draft regulation on market surveillance and a multi-annual action plan on market surveillance.

In this position paper, we make recommendations on how the proposals should be amended during the ordinary legislative procedure to provide for the best level of consumer safety.

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<sup>1</sup> ANEC/BEUC (2010): Revision of the General Product Safety Directive - Key issues from a consumer perspective, <http://www.anec.eu/attachments/ANEC-GA-2010-G-001final.pdf>.

## **A Regulation will ensure a uniform level of safety in the internal market**

ANEC and BEUC welcome that the proposal takes the form of a Regulation. A Regulation imposes rules and requirements that are applicable at the same time throughout the Union, and which do not give room for divergent transposition by Member States. Experience has shown that a Directive can lead to different interpretation and deadlines, creating different level of safety for consumers and burden for economic operators in the single market.

## **The precautionary principle needs to remain a pillar of product safety**

### *∨ Our concerns:*

We welcome the streamlining of the CPSR with the New Legislative Framework (NLF) from the perspective of compliance, but we are surprised and very disappointed that the proposal deletes reference to the precautionary principle.

The precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the European Union (EU). It aims at ensuring a higher level of environmental protection through preventive decision-taking in the case of risk. However, in practice, the scope of this principle is far wider and covers consumer policy, European legislation concerning food and human, animal and plant health.

According to the Commission, the precautionary principle may be invoked when a phenomenon, product or process may have a dangerous effect, identified by a scientific and objective evaluation, if this evaluation does not allow the risk to be determined with sufficient certainty<sup>2</sup>.

Despite being a crucial pillar of relevant EU safety legislation, the precautionary principle is neither mentioned in the draft Regulation on Consumer Product Safety (COM(2013) 78 final) nor in the draft Regulation on market surveillance COM(2013) 75 final.

This is particularly unacceptable when the regulation on market surveillance will amend the Toy Safety Directive<sup>3</sup> and so delete the precautionary principle from that Directive.

As consumer organisations, we have welcomed the inclusion of the precautionary principle in relevant product safety legislation such as the GPSD (in recital 1, article 8.2) and the Toy Safety Directive (recitals 28 and 38 and article 39). It gives the legislator and market surveillance authorities a tool to remove a product from the market if there are suspicions that it could be dangerous. The precautionary principle is used in order to take action against products which have design features or contain materials that have a *potential* to cause accidents, and in cases where no accidents or few accidents are

<sup>2</sup> See [http://europa.eu/legislation\\_summaries/consumers/consumer\\_safety/l32042\\_en.htm](http://europa.eu/legislation_summaries/consumers/consumer_safety/l32042_en.htm)

<sup>3</sup> Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys refers in recitals 28 and 38 as well as in article 39 to the precautionary principle. See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:170:0001:01:EN:HTML>

known. The absence of accident statistics does not mean that there is a low level of risk. The attitude should be that it is more important to *prevent* than to act after accidents have occurred.

The precautionary principle has been used successfully by market surveillance authorities. It has prevented injuries and it has saved lives. Moreover, actions being taken under the precautionary principle require the producer, manufacturer or importer to prove the absence of danger. Deleting the precautionary principle could lead to reversing the burden of proof to public authorities and requiring them to demonstrate that a product is dangerous. This is not feasible and may negatively impact consumer safety.

Moreover, the precautionary principle is a pillar of consumer protection and we doubt its deletion fulfils the ambition of the treaties for the EU to achieve "a high level of consumer protection"<sup>4</sup>.

*↗ Our proposal:*

We urge the European Parliament and the Council to reintroduce the precautionary principle in the draft Regulation on Consumer Product Safety (COM(2013) 78 final), as well as in the draft Regulation on market surveillance COM(2013) 75 final.

We suggest the following changes to the draft text:

"(13) The safety of products should be assessed taking into account all the relevant aspects, in particular their characteristics and presentation as well as the precautionary principle and the consumers at risk who are likely to use the products.

"(14) To avoid overlapping safety requirements and conflicts with other Union legislation a product that conforms to sector-specific Union harmonisation legislation which aims at the protection of health and safety of persons should be presumed to be safe under this Regulation." Such an evaluation is based on the precautionary principle.

Article 6 number 2 i (new): the precautionary principle

<b>Definitions and use of terms</b>
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*↘ Our concerns:*

The current General Product Safety Directive and the proposal for a CPSR define only what a 'safe product' is but give no definition for the term 'safe' or 'safety'. To avoid legal uncertainty, the terms 'safe' and 'safety' should therefore not be used in any clause that might by-pass or contradict the definition of a 'safe product' within the Regulation. In particular, no clause should suggest that a compliant product is safe in an absolute meaning.

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<sup>4</sup> Consolidated version of the Treaty on the functioning of the European Union, 26 October 2012, See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0047:0200:EN:PDF>

With regard to assessing the safety of products, it is also crucial to take into account the development of technology and consumer expectations. While it seems acceptable that making available on the market products with a lesser degree of risk, this does not automatically make products that were already on the market dangerous. However, the current wording needs to be re-phrased to achieve legal clarity.

↗ Our proposals:

Article 5

Change heading to "Presumption of compliance with the general safety requirement"

Article 6

Change the heading to "Aspects of assessing compliance of products"

At the end of 1<sup>st</sup> paragraph replace "safe" with "in compliance with the general safety requirement" (or "in compliance with Article 4")

Replace the final paragraph of section 1 with "The feasibility of obtaining higher levels of safety ~~protection of the public interest concerned or~~ and the availability of other products presenting a lesser risk shall not be a reason to consider ~~that~~ a product ~~presents a risk~~ to be dangerous."

Replace "safe" in the first paragraph of section 2 with "in compliance with the general safety requirement"

<b>Need for a comprehensive framework for consumer safety, both for products and services</b>
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↘ Our concerns:

We welcome that the draft Regulation on Consumer Product Safety covers products used in the context of a service regardless of who operates them. A distinction between individual consumers and service providers has caused confusion and inconsistencies in the past.

Nonetheless, there is still a loophole in European legislation as the safety of consumer services is not covered by any European legislative act.

In the current GPSD, under recital (1), it is mentioned that the Commission 'intends to identify the needs & possibilities for Community action on the safety of services ...'. This has not been reflected in the proposal even though the Commission has still to fulfil this action.

We disagree with this approach as we see an urgent need to improve the safety of services in the EU. The consumer expectation of the safety of services should be met regardless of the Member State in which the consumer finds himself or herself. It is not at all satisfactory that safety levels vary among Member States. Thus, the lack of an

overarching legal framework for consumer service safety and quality is of fundamental concern to consumers and consumer organisations.

Moreover, it is not clear what is meant by Article 2.3 (h): *'Equipment on which consumers ride or travel which is operated by a service provider'*. Does it cover fairground equipment? Fairground equipment, responsible for many serious accidents, is still not covered by any European Directive or other legislation.

In general, when article 2.3 (h) excludes this equipment and expects it to be addressed in conjunction with the safety of the service provided, it also affects the way in which market surveillance is carried out. The lack of services safety legislation will make this difficult. The enforcement procedure will be the same as before and the checks done against national laws on services safety where they exist.

This leaves consumers less protected in some countries than in others, a special concern given the growing mobility of consumers and the cross-border dimension of many consumer services sectors.

➤ Our proposal:

- ANEC and BEUC ask for a comprehensive European legal framework for the safety of consumer products and services to achieve a level playing field.
- We ask for fairground equipment to be included in the scope of this Regulation and to clarify which equipment is meant under Article 2.3(h). All consumer products used in the context of a service should be covered without exemptions.

<b>CPSR must keep its role as a safety net</b>
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∨ Our concerns:

The current GPSD stipulates that all provisions of the Directive apply to cases where more specific provisions in community legislation are missing in order to ensure consumer health and safety. The GPSD thereby functions as a general safety net covering potential omissions in existing or future specific legislation. This umbrella function is less clear stated in the CPSR and we see an urgent need to retain this important principle in the future legislation.

It is insufficient to refer only to the "compliance" of products and a presumption of conformity. Moreover it is also insufficient to apply it only to possible loopholes in the food contact materials legislation.

➤ Our proposal:

We urge the European Parliament and the Council to reintroduce the umbrella function of the current GPSD in the legal text of the CPSR. Article 2 on the scope should contain the following provision similar to the recital 5 of the GPSD:

"There is a need for a broad-based, legislative framework of a horizontal nature to cover loopholes, in particular pending revision of the existing specific legislation, and to

complement provision in existing or forthcoming specific legislation, in particular with a view to ensuring a high level of protection of safety and health of consumers.”

This wording is more encompassing compared with what is mentioned currently in recital 7 of the draft CPSR.

### **European standards providing a presumption of conformity**

#### ∨ Our concerns:

A shortcoming of the current GPSD is that it almost entirely relies on the European Standardisation Organisations (ESOs) to provide detailed safety requirements for specific products. Moreover, although it allows regulators to adopt product specific requirements in the form of implementing measures in emergency situations, the adoption process remains extremely slow and the validity of the measures is always time limited.

Our main concern with regard 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.

A further shortcoming of the current GPSD is the lack of a procedure that allows Member States to express a formal objection to a standard (for example, as in Article 14 of the Toy Safety Directive, 2009/48/EC). The use of a formal objection should be possible even before a standard is cited in the Official Journal of the EU. We therefore welcome the introduction of Article 17 in the proposed CPSR, introducing requirements for formal objections to European Standards.

#### ↗ Our proposals:

- 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.

- 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.
- We ask to include under Article 21 'Evaluation' the effectiveness of Regulation 1025/2012 in relation to the CPSR.
- There is a need to clarify whether Article 6(2) of the proposed CPSR can be interpreted as allowing the Commission to recognise non-European standards or non-ISO/IEC standards at least as interim measures. For example, European consumers could have benefitted from the protection of the standard on Reduced Ignition Propensity (RIP) cigarettes which had been developed by the American Society for Testing and Materials (ASTM) several years ahead of publication of the European Standard. However, only Finland adopted the ASTM standard as an interim measure. Such a recognition would be consistent with the provisions of Article 11 of the MSR whereby the Commission will be empowered to impose a (collective European) enforcement measure on Member States if market surveillance authorities differ in their local (national) responses.

<b>Provide for an opportunity to apply higher conformity assessment modules than industry self-declaration</b>
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*∨ Our concerns:*

The current GPSD does not provide a possibility to choose an appropriate conformity assessment level depending on the risks a product may pose. This is a major shortcoming bearing in mind that the GPSD applies to all consumer products not covered by specific directives, even those that could pose significant risks.

Despite our request from 2010, we regret that the proposed CPSR does not take this into account. The proposal does not foresee obligatory EC-type examination (independent third-party testing) for certain categories of consumer products, such as products that have caused serious accidents in the past, or products aimed at the most vulnerable consumers (e.g. children under 3 years of age).

*↗ Our proposals:*

ANEC and BEUC call for the introduction of a provision which allows the use of conformity assessment procedures involving third parties for certain consumer products. The selection of a module higher than Module A which only requires a supplier's self-declaration should be linked to criteria established using a committee procedure.

**Label of origin should become mandatory only for food products**∨ Our concerns:

The European Commission proposes mandatory country of origin labelling for all non-food products based on the non-preferential rules set out in the Community Customs Code to supplement other requirements on traceability. The Commission argues that the added value would lie in identifying the actual place of manufacture in all those cases where the responsible manufacturer cannot be found.

Consumer organisations are not convinced of the added value of this provision applied to products for various reasons:

First, industry production chains are nowadays global and the component parts of a product may come from many places around the world. As often only some components pose a risk, it is more important for market surveillance authorities to be able to contact the responsible manufacturer who designed the product and who can identify his suppliers. Hence, we doubt that a mere indication of the country of origin labelling will considerably contribute to improved traceability.

Second, the country of origin labelling is used today by many companies as consumers associate production in some countries with a high level of safety or quality (for example "Made in Germany" for household appliances and cars; textiles "Made in Italy"; or shoes "Made in Spain"). Nonetheless, country of origin labelling is in many cases misleading for consumers. For instance, a German TV magazine reported that a bike of the brand "Kettler" had been labelled as "Made in Germany" although few components were manufactured in Germany: the tyres came from India and the seat post from Taiwan<sup>5</sup>. Consumers clearly do not know what the label "Made in" refers to, especially when production involves more than one country– i.e the country where the goods underwent their last, substantial, added value processing. It could lead to consumers making a choice for the wrong reason.

Finally, it is not clear from a consumer perspective why the Commission supports mandatory country of origin labelling in the area of non-food products while not introducing such provisions in the area of food as a matter of priority, where there is clear added value and a clear demand from consumers. In the area of food, consumers have repeatedly and overwhelmingly expressed their support for country of origin labelling meaning at least the specific country from which the food comes. For example, a Eurobarometer survey<sup>6</sup> found a substantial majority (71%) of respondents saying that the origin of food is important and 34% that it is "very important". Confirming the European Commission's own statistics, BEUC's opinion survey on origin labelling conducted in Austria, France, Poland and Sweden in July 2012 showed that, on average,

<sup>5</sup> Oeko-Test (who is not an ANEC or BEUC member) published an article on misleading consumers through origin labelling in the magazine 3/2013 in which the Kettler case has been mentioned.

<sup>6</sup> Special Eurobarometer 389: What Europeans think of food security, food quality and the relation between agriculture and the countryside, [http://ec.europa.eu/agriculture/survey/2012/389\\_en.pdf](http://ec.europa.eu/agriculture/survey/2012/389_en.pdf).

70% of consumers in these countries consider the origin as an important factor when buying food<sup>7</sup>.

The reasons for this vary from environmental and ethical principles to food quality and food standard choices. However, surveys have shown that consumers are more attentive regarding the origin labelling of food than when shopping for other goods.

*↗ Our proposal:*

- The EU Commission should extend mandatory labelling for the origin of food products based on what consumer organisations in Europe have proposed for inclusion in food legislation<sup>8</sup>.
- Article 7 CPSR, which requires origin labelling for non-food products, should be deleted in the CPSR and be the subject of a separate consideration as it is linked not only to consumer safety.
- To ensure traceability, priority should be given to other useful instruments such as ensuring a delivery along the supply chain without gaps through indicating the contact details of the manufacturer and importer as well as checks through track-and-trace technologies (see chapter below).

## Traceability of products

It is crucial for consumers that the withdrawal of unsafe products from the market, or the recall of products that hold potential risks to health and safety, is done as quickly as possible. We welcome therefore the new proposals that are made regarding the traceability of products, in particular the requirement to give the name and address of the manufacturer and the importer on the product, and the requirement for economic operators to be able to identify to whom they delivered a product and from whom they received it ("one up, one down"). However, we see a need to clarify the meaning of article 15 CPSR as establishing a specific traceability system is currently foreseen for certain products or categories of products which are "susceptible to bear a serious risk to health and safety of persons". We emphasise that products that pose a risk to health and safety of persons should not be on the market.

However, we see an added value in introducing additional traceability systems for product categories where:

- a) non-compliance would immediately pose a safety risk;
- b) the number of non-compliances is high and hence unfair competition exists at the expense of reputable companies and consumer safety.

<sup>7</sup> BEUC Factsheet on origin labelling on food, x/2013/005, January 2013, <http://docshare.beuc.org/Common/GetFile.asp?ID=44360&mfd=off&LogonName=GuestEN>.

<sup>8</sup> See BEUC report: Where does my food come from? <http://docshare.beuc.org/Common/GetFile.asp?ID=44362&mfd=off&LogonName=GuestEN>

We also consider the application of track-and-trace technologies, and product authentication technologies, would be beneficial to consumer safety. If such a system is considered any technology used should:

- ensure consumer safety;
- be reliable and applicable;
- improve tracing mechanisms to allow identification and safe recall;
- safeguard consumer privacy;
- not hinder competition and the environment;
- have no major impact on the final price of products.

The use of new technologies such as Radio Frequency Identification (RFID) technology tags and nano-printed intelligent packaging could aid traceability. However, from a consumer perspective, we ask for a full assessment of the advantages and disadvantages of each technology. The adverse effects RFID potentially holds for consumer privacy (tracking and profiling of consumers and consumer discrimination), security (ID theft) and health (EMF emissions) should be of concern.

### **Aspects of assessing compliance of products**

#### **a) Ensure the safety of child-appealing products**

##### *∨ Our concerns:*

A toaster shaped like a cartoon character, a shampoo bottle resembling a doll, a scented candle that looks like a strawberry, a cigarette lighter resembling a toy car that blinks.

Although more and more child appealing products are entering the European market, there are no clear indications in EU legislation on how it is judged or decided whether a child-appealing product presents a risk to children.

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

Although we accept that not all products with child-appealing characteristics pose potential risks to children, we consider the CPSR should explicitly require that, whenever a product features child-appealing characteristics, the product must be safe for children to use or to come into contact with, under all conditions of use.

##### *↗ Our proposal:*

We ask for a common approach to risk assessment to judge if child-appealing products are safe for use by children.

Article 6.1(e): Replace current text with:

“the appearance and characteristics of the product, its packaging and its presentation to purchasers, including any potentially misleading impression given that might lead persons to actions posing a risk to health and safety, in particular:

- (i) Where a product, although not foodstuff, resembles foodstuff and is likely to be confused with foodstuff due to its form, odour, colour, appearance, packaging labelling, volume, size or other characteristics
- (ii) Where a product, although not designed for use by them, may attract children to exploring it, coming into contact with it and interacting with it because of its design and characteristics,

## **b) Taking consumer expectations into account as a priority when assessing the safety of products**

### ∨ Our concerns:

Article 6.2 outlines the criteria for assessing the safety of products in a different order from the current GPSD. For example, “the state of the art and technology” has been moved to the top of the list while “reasonable consumer expectations concerning safety” remains at the very bottom. Technology progresses over time and so do consumer expectations of safety. This needs to be acknowledged.

If the documents mentioned under aspects (b), (c), (d), (e), (f) and (g) would not reflect the state of the art and technology, nor the reasonable consumer expectations concerning safety, this needs to be reflected by a regrouping of the aspects.

### ↗ Our proposal:

Move (h) “reasonable consumer expectations concerning safety” after (a) in the list.

## **Consumers need to be informed immediately in case of danger**

### ∨ Our concerns:

Economic operators should be obliged to inform consumers immediately in case of serious risk. Such a role cannot be left to the market surveillance authorities alone as time is of the essence when informing consumers about dangerous products.

### ↗ Our proposal:

Add in article 8 point 9 a reference to consumers in the first sentence as follows:

“Manufacturers ... shall immediately take the corrective action necessary to bring that product into conformity, to warn consumers who are at risk as a consequence of the non-conformity of what immediate precautions they should take, and to withdraw or recall the product as appropriate.”

**Provisions on exemptions from certain obligations of economic operators need to be clarified***∨ Our concerns:*

Article 13 CPSR outlines exemptions from certain obligations of manufacturers, importers and distributors not currently foreseen in the GPSD. The wording is rather unspecific and leaves room for interpretation. For example, it is currently not clear to what a “limited number of well identified products” refers: 1 unsafe product, 100 or even more? Moreover, the decision about what is useful information for authorities and the public cannot be left to economic operators alone. Finally, in particular for imported products, retailers cannot be sure whether the product has not been imported into other EU countries.

*↗ Our proposal:*

Article 13 should be deleted. If certain provisions on limited cases are needed, they could be specified in a guidance document that will not be binding and thereby ensure that the market surveillance authorities always have the possibility to take the decision on whether or not a RAPEX notification is needed.

**Warnings and instructions for use***∨ Our concerns:*

The first paragraph of Article 5.1 of the current GPSD requires producers to “provide consumers with the relevant information to enable them (a) to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and (b) to take precautions against those risks.” This is a particularly simple requirement against which to test the compliance of a product and difficult for a supplier to argue against if a necessary warning has not been provided.

No similar wording appears in the draft CPSR. Instead, Article 8.8 requires products to be accompanied by instructions but does not make any requirements on their content or how they are presented. The CPSR needs to be more prescriptive on these issues.

*↗ Our proposal:*

Add new point after Article 8.8 as follows:

“Manufacturers shall provide consumers with the relevant information to enable them (a) to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and (b) to take precautions against those risks.”

**Penalties must be used to finance market surveillance activities and be an effective deterrent against non-compliances***∨ Our concerns:*

As in the past, the draft CPSR foresees that defining the rules and level of penalties is left to Member States. We emphasise that such penalties must take into account several criteria such as being proportionate and dissuasive, taking into account the level of infringement, illegal profits and potential damage to consumers. The size of an undertaking alone is not the right criterion to decide on the level of penalties.

*↗ Our proposal:*

Article 18 number 2 should be modified as follows:

~~“The penalties referred to in paragraph 1 shall have regard to the size of the undertaking and in particular to the situation of small and medium-sized enterprises. The penalties may be increased if the relevant economic operator has previously committed a similar infringement and may include criminal sanctions for serious infringements.”~~

Similarly, article 31 in the MSR needs to be amended.

**Creating a collective redress mechanism***∨ Our concerns:*

It is well-known that compensation mechanisms increase consumer's confidence and require economic operators to be even more consumer-focused. Consumers should be able to seek redress through the most appropriate channel, including collectively. Given that the mass production of consumer goods can lead to the distribution of unsafe products on a large scale, significant numbers of consumers may be affected. Considering the cost and complexity of individual litigation, we believe that consumers suffering from damages due to the same defective or harmful product should be able to pursue their claims against the producer in a joint action.

*↗ Our proposals:*

Collective redress mechanisms should be put in place in all Member States to ensure fair compensation of victims notably in product liability cases.

In this context, we ask for the CPSR to require that information about the redress mechanisms offered, such as reimbursement and/or compensation, should be provided to the public at the same time as other information.

## **Vulnerable consumers**

We welcome that the proposal makes specific reference to vulnerable consumers under Article 6, 1.(d), as well as under pre-ambule (13), however, we would prefer to see the groups of vulnerable consumers specified in the legal text (article 6, 1.(d)), as is done in recital (13).

END.