BUSINESSEUROPE

CONSULTATION REPLY

5 December 2019

STAKEHOLDER CONSULTATION ON THE GPSD

BusinessEurope has encountered no significant practical problems with the working of Directive 2001/95/EC in its current form. There are in our view no specific new challenges posed by the emergence of new technologies, as referred to in the introduction to the questionnaire, that need to be addressed through the GPSD. This is a horizontal piece of legislation setting out a general safety requirement, which is then further detailed in standards; precisely due to its function as a 'safety net' the GPSD should not impose a set of detailed rules.

REPLY TO THE QUESTIONNAIRE

I. Functioning of market surveillance

The questions in this section apply to market surveillance of consumer products in general, i.e. market surveillance of both harmonised and non-harmonised consumer products.

RAPEX/Safety Gate

1. How regularly do you check the RAPEX/Safety Gate website?

☐More than once a week
☐Once a week
☐Once a month
☒Once every three months
☐Once every six months
☐Once a year
☐Less than once a year
☐Never
☐Don't know

Comments:

n/a

2. For what purposes do you use RAPEX/Safety Gate? Please mark all that apply

☒Check whether specific products/product categories are subject to notifications
☐Monitor the countries of origin of products subject to notifications
☐Monitor in which countries products subject to notifications were detected
☐Monitor if certain business operators have been subject to notifications

☒Monitor types of non-compliances and which safety legislation were applicable to the non-compliance
☐Monitor what types of hazards are notified
☒Monitor what types of measures were taken regarding notified products
☐Other (please specify in comments field below)

Comments:

The EU Safety Gate (RAPEX) is designed to exchange information about goods presenting a serious risk that are manufactured in the EU or imported from third countries and sold in the EU. It is a useful tool for us – not only can we directly use it ourselves to check what product categories and non-compliances are common, but more importantly it allows market surveillance authorities to cooperate better with each other on products presenting a serious risk to consumers.

3. In your view, how well is RAPEX/Safety Gate functioning, considering the needs of your organisation /your members?

☐Not at all functioning
☐Rather not functioning
☐Moderately well functioning
☒Rather well functioning
☐Very well functioning
☐Don't know

If you consider RAPEX/Safety Gate to not function well: What are the reasons?

n/a

4. Have you encountered one or more of the following impediments when using the information from RAPEX/Safety Gate? Please mark all that apply

☒Difficulties with information on risk assessment
☐Technical issues with the RAPEX/Safety Gate system
☐Lack of sufficient information to trace notified products
☐Difficulties related to delays of notifications appearing in RAPEX/Safety Gate
☐Other impediments (please specify below)

Please explain

Our members do not have issues with the risk assessment of companies, but rather with the information from the EU Safety Gate (RAPEX) on the risk evaluation of the respective market surveillance authorities. It is our impression that products are quite easily classified as a 'serious risk'. The EU Safety Gate should contain sufficient information to explain how and why this serious risk occurs.

5. In your view, would there be any possible area to improve the functioning of RAPEX/Safety Gate, considering the needs of your organisation/your members? Please explain.

The EU Safety Gate could be further tailored to allow for better information sharing on challenges resulting from e-commerce. It is key that market surveillance efforts are concentrated on products that present the biggest risk to consumers, and therefore we find that the Safety Gate should maintain its focus on products presenting a serious risk.

Cooperation with market surveillance authorities

BusinessEurope does not cooperate directly with market surveillance authorities.

Recalls and other measures

BusinessEurope does not cooperate directly in recalls.

Possible improvements of market surveillance

12. Have you encountered problems affecting the functioning of market surveillance in your country?

☒Yes
☐No
☐Don't know

Please explain

It is essential that the EU strengthens its market surveillance capabilities to ensure that only EU-compliant products are made available on the Union market. The new Regulation on Compliance and Enforcement (2019/1020) covers cooperation between national authorities and voluntary harmonisation of methods, which is to be welcomed. It however does not resolve issues of resources and capacity. Currently, diverging working methods and diverging levels of effectiveness between market surveillance authorities make it hard to raise efficiency and efficacy through scale effects, information exchange, orchestrated priority actions and mutual learning. This situation reinforces exploitation of the weakest links in enforcement by rogue economic operators, legal uncertainty and dissimilar treatment of similar cases in different parts of the Union.

12a. If YES in Question 12: Please mark up to five most relevant problems you have encountered

☒Limited staff resources of market surveillance authorities
☐Lack of expertise of market surveillance authorities in new technologies
☐Lack of expertise of market surveillance authorities in online market surveillance
☐Lack of expertise of market surveillance authorities for testing of consumer products
☒Lack of financial resources of market surveillance authorities for testing of consumer products
☐Unclear distribution of competences for market surveillance at the national level
☐Lack of coordination of market surveillance authorities at the national level
☐Lack of coordination of market surveillance authorities with customs authorities
☒Lack of cooperation between market surveillance authorities from different Member States (e.g. differences in the risk assessment)
☐Ineffective control of product safety at the borders
☐Lack of suitable product testing laboratories
☐Lack of statistics/data to set priorities for market surveillance

☐Lack of awareness of businesses with respect to product safety requirements
☐Lack of cooperation of businesses/business organisations with market surveillance authorities
☐Lack of cooperation of consumer organisations with market surveillance authorities
☒Lack of awareness of consumers with respect to product safety
☐Lack of cooperation of online actors with market surveillance authorities
☐Problems for market surveillance authorities to take effective action when the responsible economic operator is in another EU/EEA country
☐Problem for market surveillance authorities to take effective action when the responsible economic operator is outside the EU/EEA
☒Problem to control products from third countries directly reaching consumers
☐Other problem (please specify below)

Please explain

n/a

13. In your view, would there be any possible area to make market surveillance of consumer products in your country/the EU more effective?

☒Yes
☐No
☐Don't know

If YES, please explain

BusinessEurope finds that there should be a continued focus on capacity of national market surveillance authorities, both in terms of expertise and resources to do physical checks. In the implementation of the new Regulation on Compliance and Enforcement, the Commission should follow up on national market surveillance strategies and national information obligations. Market surveillance of harmonised and non-harmonised products should be balanced, and further co-operation and convergence of market surveillance methods should be considered for goods in the non-harmonised area.

II. Implementation of the GPSD in your country

Traceability

Article 5(1) of the GPSD contains general obligations for producers. Among others, producers must provide necessary information for tracing the origin of a product, including, for example, an indication of the identity and details of the producer and the product reference or, where applicable, the batch of products to which it belongs. Nevertheless, it is up to the Member States to adopt concrete measures to implement such obligations.

14. Have you encountered any practical problems with respect to the requirements of Art 5(1) GPSD regarding traceability in your country (as applied in your national implementation legislation of the GPSD)?

☐Yes

☐No
☒Don't know

If YES, please explain
n/a

15. In your view, what would be the best approach(es) to improve traceability of consumer products? Please mark all that apply

☐Requirement for all consumer products (harmonised and non-harmonised) to indicate name and contact details of the producer on the product or its packaging
☐Requirement for all consumer products (harmonised and non-harmonised) to indicate product reference or, where applicable, the batch of products to which it belongs on the product or its packaging
☐Requirement for business operators to keep supply chain records ('one up one down' traceability)
☐Requirement to use a barcode on the product or its packaging
☐Requirement to use other machine readable identification on the product or its packaging (e.g. RFID - radio frequency identification)
☒Other requirement (please specify below)

Please explain

Traceability requirements are important but should be targeted to cases where it is proportionate to the aim. For small, low-value products that pose no or an inherently low risk, the indication of the manufacturer imposes an unnecessary burden on companies. BusinessEurope finds that the traceability requirements from the GPSD, if changed, should include the option of digital labelling and leave leeway for the manufacturer to decide what is the best way to ensure traceability.

Definition and assessment of safety

16. Have you experienced practical problems with the definition of safety in the GPSD (Art 2(b))?

☐Yes
☒No
☐Don't know

Please explain

In general, we have not encountered any practical difficulties with the definition of safety. We think that this broad definition is necessary since the GPSD functions as a safety net for consumer products that are not covered by other legislation. We find it important that the concept of 'serious risk' is maintained.

Emerging safety issues

17. Are there any emerging safety issues with particular categories of consumer products in your country that are not addressed by current safety legislation?

☐Yes
☒No
☐Don't know

Please explain

There are in our view no specific new challenges posed by the emergence of new technologies, as referred to in the introduction to this questionnaire, that need to be addressed through the GPSD. This is a horizontal piece of legislation setting out a general safety requirement, which is then further detailed in standards; precisely due to its function as a 'safety net' the GPSD should not impose a set of detailed rules.

Possible improvements of legal framework

18. In your view, what would be the single most effective change of the GPSD that could make its implementation in your country more effective?

We are generally happy with the functioning of the GSPD and recommend that any future revision of the Directive maintains the current risk-based approach, where market surveillance focuses on products that present the largest risk for consumers. The emphasis should be on post-market surveillance and enforcement rather than ever-stronger requirements and pre-market verification. We would also recommend that the GPSD continues to function as a 'safety net' to cover only safety risks that are not already covered by other EU legislation.

III. Standardisation process under the GPSD

Article 4 of the GPSD provides for a separate standardisation process which differs from the process for harmonised consumer products.

19. Have you been involved in the standardisation process established under the GPSD (see Article 4 GPSD)?

☒Yes
☐No
☐Don't know

Comments

BusinessEurope is an observer in the Consumer Safety Network, where we are regularly updated on standardisation work under the GPSD.

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process

	Not at all functioning (1)	Rather not functioning (2)	Moderately well functioning (3)	Rather well functioning (4)	Very well functioning (5)	Don't know

STEP 1. Preparation of Commission Decision to set safety requirements	☐	☐	☒	☐	☐	☐
STEP 2. Commission issues a formal mandate /standardisation request to European Standardisation Organisations to develop standard	☐	☐	☒	☐	☐	☐
STEP 3. Development of standard by European Standardisation Organisations compliant with safety requirements	☐	☐	☐	☐	☒	☐
STEP 4. Preparation of Commission Decision referencing standard	☐	☐	☒	☐	☐	☐
Conclusion: Overall process of the standardisation process under the GPSD	☐	☐	☒	☐	☐	☐

Please explain

In the harmonised area, the Commission increasingly limits the margins of discretion that are unique to the NLF system of standard-setting. It is important that all standardisation mandates, including those under the GPSD, leave sufficient room for market relevance and that the development of mandates and publication of the reference in the OJEU happen in a timely manner.

19b. If you consider the process to not function well or to have certain weaknesses: What are the reasons? Mark all that apply

☐Lack of common priorities concerning which products need standardisation
☒Long duration of standardisation process
☐Complicated procedures compared to standardisation process for harmonised products (i.e. those under the 'New Legislative Framework')
☐Too narrow range of stakeholders involved

☐No independent safety consultant involved
☐Burden in terms of staff time on national authorities involved in GPSD committee/CSN
☐Lack of criteria for assessing the safety of a product in the period until the standard under GPSD is referenced in the EU Official Journal
☐Difficulty to obtain the text of the standard
☒Other reasons (please specify below)

Please explain

In the harmonised area, the Commission increasingly limits the margins of discretion that are unique to the NLF system of standard-setting. It is important that all standardisation mandates, including those under the GPSD, leave sufficient room for market relevance and that the development of mandates and publication of the reference in the OJEU happen in a timely manner.

19c. Please assess the impact of the standardisation process under the GPSD on your organisation in terms of resources used (e.g. staff time etc)? (Please only answer if your organisation is involved in the process)

☐No impact at all
☒Rather no impact
☐Moderate impact
☐Rather significant impact
☐Very significant impact
☐Don't know

Please explain

BusinessEurope is not directly involved in the standardisation process under the GPSD.

20. In your view, what would be possible improvements of the standardisation process under the GPSD? Please mark all that apply

☐Reducing the number of steps in the standardisation process under the GPSD
☐Streamlining standardisation process under the GPSD otherwise (please specify below)
☐Greater involvement of consumers organisations/NGOs in the process
☐Greater involvement of other stakeholders in the process (please specify below)
☐Involvement of an independent safety consultant in the process
☒Other improvement (please specify below)
☐No need to improve standardisation process under the GPSD

Please explain

In the harmonised area, the Commission increasingly limits the margins of discretion that are unique to the NLF system of standard-setting. It is important that all standardisation mandates, including those under the GPSD, leave sufficient room for market relevance and that the developments of mandates and publication of the reference in the OJEU happen in a timely manner.

IV. Closing questions

21. In your view, how has the level of safety of consumer products developed in your country since 2013?

☐General trend is positive (safety improved)
☐No clear general trend (level of safety largely unchanged)
☐General trend is negative (safety deteriorated)
☒Trend depends on product type or sales channel
☐Don't know

Please explain, and indicate the basis for your assessment (i.e. possible indicators)

It is difficult to make an overall assessment of the level of product safety; not only because "consumer products" is a very general category, but also considering the inherent challenges of obtaining data on levels of non-compliance. Enforcement data can provide indications, but it is hard to quantify non-compliances that go undetected and non-compliance as percentage of compliant products.

22. Do you think that market surveillance authorities have the tools at their disposal to address new challenges in your country (e.g. related to e-commerce, C2C sales, platform economy, new technologies etc)?

☐Yes
☐No
☒Don't know

If NO, please explain

New challenges in the area of market surveillance emerge continuously, for example with the proliferation of online retail and mass customised production of consumer goods. We find that market surveillance authorities have general issues of capacity, but these issues of capacity do not specifically arise from the use of new technologies in products (see questions 12-13).

23. Do you consider certain market surveillance approaches in your country to be best practice implementation of the GPSD, which could be of interest to other countries?

☐Yes
☐No
☒Don't know

If YES, please provide details

n/a