

**Workshop on Non-food Products Safety Monitoring**  
**Brussels, 8 November 2004**

**MARKET SURVEILLANCE: EXPECTATIONS AND CONCERNS OF CONSUMER ASSOCIATIONS**

*Dr Gottlobe Fabisch, ANEC Secretary-General*

Good morning Ladies and Gentleman, dear colleagues,

You might wonder what this is .... At first sight, it looks like a collection of guns and mobiles, doesn't it? But actually, what you can see here – a bit blurry though - is a collection of gas lighters imitating objects. Some produce sound, others light effects or both. Features which are very attractive to children and it is easy to imagine that a child - when playing with a lighter - could accidentally light it. These lighters are dangerous in terms of risk of burns and fire. That is why they were recently banned from the market by the authorities in Hungary.

I think this example illustrates that the best agreement or legislation is of no use if not properly enforced. And enforcement is crucial for the credibility of and the consumer confidence in the Single European market, in particular in the enlarged European Union. Commissioner David Byrne has highlighted the need for enforcement of consumer laws on many occasions and it is also stated in the revised GPSD itself.

During the next couple of minutes, I will reflect on the expectations consumer organisations have regarding market surveillance bearing in mind that product safety is a basic consumer right. The expectations stem from the European approach to product safety and in particular from the experiences consumers and consumer associations have made over the years regarding enforcement of safety legislation and safety standards.

In my daily work as SG of ANEC, I deal with consumer interests in standardisation complementing European legislation on product safety. Standards play an important

role in product safety. Hence, it is crucial that consumers do participate in standardisation both at national and European level and that they have a fair chance to do so.

As you know, the European concept of product safety is based on two pillars: the General Product Safety Directive (GPSD), and the sectoral directives, basically under the so-called New Approach Directives to Technical Harmonisation. The term New Approach implies that there is also an Old Approach, which indeed is still applicable for instance to cosmetics.

As described in the discussion paper prepared by DG SANCO for today's workshop, under the New Approach to technical harmonisation, the European legislator restricts himself to define the essential safety requirements in the directives. The technical solution is left to standards and the standards bodies. Harmonised European standards – if used by the manufacturer - give a presumption of conformity with the general safety requirement of the respective New Approach directive. Consumer products covered by New Approach directives range from toys of all kinds to toasters and vacuum cleaners and typically bear the CE marking affixed by the manufacturer as a passport for free circulation in the European internal market. I will come back to this later.

Certainly, both pillars, the sectoral directives and the GPSD, have helped to improve product safety in the European Union over the past ten years. However, despite progress and even though manufacturers and suppliers are responsible and requested to place only safe products on the market, we still meet too many unsafe products in the market. For instance in Germany, each year 70.000 accidents are related to faulty products. And in the UK, tests by Consumers' Association over many years show that about 7% of the products that they test have serious safety problems. In the Netherlands, enforcement officers even talk about 15 %, 20 % of unsafe products.

Reasons for this might be that the existing safety standards are not properly applied or simply because of misbehaving producers and rogue traders. Whatever the reason, the consequences can be found on the Internet, where DG SANCO

publishes weekly summaries of the alerts it receives from Member States about dangerous non-food consumer products, the famous Rapex.

On average 150 notifications were exchanged yearly during the past three years. The group of products most often notified in 2003 was toys, followed by other types of products for children. Main risks were choking and suffocation, fire, and electric shocks. This is appalling as children are especially vulnerable!

The picture of the lighters I have shown you at the very beginning was taken from this catalogue of notifications. The same goes for this children's desk lamp representing a teddy bear made of green rigid foam. It carries the risk of an electric shock due to unsafe features such as the switch, wire fixation, and accessible live components. The product does not comply with the Low Voltage Directive and the relevant European standards. It was voluntarily withdrawn from the market by the distributor and was notified by France this year.

This said and considering our experiences, producers and distributors need to be constantly challenged to maintain and improve the levels of safety that consumers reasonably expect.

### **Consumer concerns with respect to market surveillance**

This is serious. Faulty and unsafe products trigger a loss of consumer confidence in product safety and the European internal market. This is even reinforced when unsafe products bear the **CE marking**, especially these weeks before Christmas, the European market is swamped with toys and products whose safety we cannot be entirely sure about despite them bearing the CE marking.

Take for instance this "Socket Outlet" produced in China. It poses the risk of an electric shock (due to the insufficient cross-sectional area of conductors and inadequate cord anchorages). The product does not comply with the relevant European standards and it was banned from the market by the national authorities in Iceland.

The CE marking - this is actually number one on my list of consumer concerns regarding enforcement and market surveillance.

As you know, the CE marking is a self-declaration by the manufacturer that the product complies with the legal provisions. It is mandatory for all products falling under New Approach directives. It does not necessarily involve third parties or testing for safety. Actually, the rules governing the CE marking consist of a complicated modular system ranging from self-certification to the use of notified bodies. It is completely intransparent to consumers and it is not obvious at all, in which cases the CE marking has to be affixed on the product.

For instance, in general, a dummy is not CE marked as there exists no sectoral New Approach Directive for childcare articles. If the dummy, however, is attached to a doll it is perceived as a toy and must be CE marked.

From a consumer perspective, the CE marking has no added value. It provides no valuable information - on the contrary it is rather misleading and often perceived as a safety or quality mark or a mark of origin. In fact, it is addressed to authorities and not to consumers. Why then affix on the product?

As much as consumer organisations are concerned about the CE marking and its misleading impact on consumers as much we are convinced that there is a need for a single European quality mark, based on third party certification. But this is another story to be discussed at the Consumer Assembly on Wednesday.

My second example for our experiences with the downsides of enforcement relates again to lighters. Lighters fall outside sectoral directives, but are covered by the GPSD. For a long time, consumer organisations lobbied for a European standard on child resistance for lighters. Considerable concern had been expressed in Europe about the number of fires accidentally started by young children using lighters, which are excessively easy to operate.

This plea was supported by Member States and EFTA at the time because they wanted a standard or a benchmark for their enforcement agencies against the requirements of the GPSD.

After long and very difficult discussions with industry, in 2002, EN 13869, Lighters – Child-resistance for lighters – Safety requirements and test methods was adopted, along the lines of the US model. It is to be used in conjunction with the international standard, which covers in the main, mechanical safety.

(EN ISO 9994, Lighters – Safety specification, which covers, in the main, mechanical safety in terms of robustness. The additional requirements of EN 13869 are intended to make the lighter resistant to operation by children younger than 51 months, through a regime of ergonomic tests. )

Regrettably, some Member States seem to have forgotten about their original commitment and objectives. Ever since the adoption of this standard, consumer organisations, ANEC and BEUC urge the European Commission and the Member States to publish the standard in the Official Journal. Otherwise there will be little incentive for industry to produce in line with the additional requirements.

We more than regret that as to date, we did not achieve the same consumer protection as in the United States.

My third example is probably not a genuine enforcement problem. As you know the GPSD mentions **standardisation mandates** as a means of enhancing consumer protection. Consumer organisations do appreciate this option but are concerned about the lack of follow-up on mandates, in particular in cases where the original objective has not been achieved or is even challenged by the adopted standard. We should not forget that we are in the minority in standard-making and therefore might not always get what we want in terms of consumer protection.

Take for instance the mandates on child safety, which was initiated by consumer organisations. It seems that the European Standards Body CEN will not adopt the child safety guide nor the mechanism proposed to implement it and comparable guides such as Guide 6 on how to take the needs of older people and people with disabilities into account. We wonder what the Commission can do about it in order to ensure that the mandates are complied with?

### **Consumer expectations**

This said, consumer organisations certainly welcome the revised GPSD and are keen to see its rules implemented, in particular: Improved transparency and access to information on product risks, the intention to establish administrative collaboration between Member States on risk assessment, testing of products and market

surveillance as well as to promote a more systematic and structured approach to market surveillance, and finally, the intention to make a more effective use of standards to improve product safety.

In all of this, Member States and enforcement authorities at national level are in the lime light. The lesson to be learned from the example of the European standard on child-resistant lighters is that enforcement will only be successful provided consumer protection becomes the guiding principle in market surveillance and is non-negotiable!

Effective and efficient market surveillance has to detect, sanction and correct violation of product safety law. Basically, we think that a genuine European market control strategy is required, which ought to contain in addition to the rapid exchange of information; simultaneous and coordinated inspection of selected product groups on a large scale, benchmarking of existing enforcement practices with a view to identifying and facilitating the spread of best practices throughout the enlarged Union as well as common criteria for risk assessment.

Consistency is key for efficient enforcement, the same rules and procedures should be applied across the European Union in the same way, in order to avoid that manufacturers are able to work on double standards. A full integration of the new Member States through transfer of know-how and best practice has to be ensured.

The knowledge authorities collect needs to be shared with the general public.

Last but not least or more importantly, the best intention for improved market surveillance will be in vain if there is no considerable and visible increase in resources. Otherwise enforcement will remain wishful thinking.

To conclude, consumer organisations are keen to see the revised GPSD implemented. Member States play a key role regarding its implementation. It is too early to tell whether the GPSD will keep its promises. Maybe we need to meet again in three years time when the Commission will submit its first progress report!