



29 May 2013

European Nursery Products Confederation (ENPC) position paper on the European Commission's proposal for on a new Market Surveillance of Products Regulation

The European Nursery Products Confederation (ENPC) represents the interests of childcare product manufacturers in Europe and it is composed of national associations including both SMEs and bigger industries.

The safety of childcare articles is the ENPC's priority, and the Consumer Product Safety Regulation is considered the main legislation in the ENPC sector. Having an efficient and effective European Consumer Package for childcare articles that are not covered by any specific legislation is a fundamental requirement for the safety of our children.

ENPC welcomes the European Commission Proposal on a new Market Surveillance of Products Regulation taking a step towards a closer cooperation between the market surveillance authorities and custom authorities and improving the safety of childcare products as well as improving the security of the single market combating counterfeiting.

Nevertheless ENPC has some concerns about the Market Surveillance of Products Regulation, and calls upon the Members of the European Parliament to consider the following points:

Only the products presenting a serious risk must be notified in RAPEX (Art. 9, 20)

ENPC welcomes the distinction between "product presenting a risk" and "product presenting a serious risk" as defined in the Regulation (Art. 3), however, this provision does not allow any distinction to be made between dangerous products and products that do not comply with the standards but which are not considered dangerous. It is believed that the ability to make this distinction would be beneficial.

In accordance with the general obligation of Market Surveillance Authorities, **only products posing serious risks to the health and safety of consumers** have to be notified in the EU's rapid alert system (RAPEX).

Obligation for the provision of an Economic Operator needs clarification in the information and documentation (Art. 8)

The provision introduces a "responsibility problem" in the use of the wording "economic operator". The current provision states that the article does not protect commercial secrets compromising confidential information giving the distributors the right to have automatic access to the technical information of the manufacturers and/or importers. The article should clarify that **the manufacturers or the importers (if based outside EU borders) shall make available to the market surveillance authorities any documentation and information. The distributors shall dispose of the technical documentation when they become importers and the products are modified.**



Measures taken by Market Surveillance Authorities must take into consideration the RAPEX guidelines for destroying and rendering a product inoperable (Art. 10)

Nevertheless ENPC agrees on the new measures that can be taken by the Market Surveillance Authorities in order to ensure safe products on the market (especially in the childcare sector), ENPC considers that the Commission proposal needs to ensure that only **a product presenting a serious risk will be destroyed or rendered inoperable**, respecting the principles of necessity and proportionality.

In order to set up an integrated and workable EU system, ENPC calls for the definition of a serious risk to be made in the proposal of RAPEX (published in the Official Journal of the European Union (Vol. 53, 26/01/2010) applying the risk assessment method (Art. 2.3.3) as well as the guidelines setting out the risk assessment method to be used by the Member State Authorities to assess the level of risks posed by a product. The document states:

“Risk: Balanced combination of a hazard and the probability that damage will occur. Risk describes neither the hazard, nor the probability, but both at the same time.”

“Risk assessment: Procedure for identifying and assessing hazards, consisting of three steps:

- Identification of the seriousness of the hazard
- Determination of the probability that a consumer will be injured by that hazard
- Combination of the hazard with the probability”

“Risk level: Degree of risk, which may be ‘serious’, ‘high’, ‘medium’ and ‘low’. When the (highest) level of risk has been identified, the risk assessment is complete.”

“Risk management: Follow-up action, which is separate from risk assessment and aims to reduce or eliminate a risk.”

Sum up ENPC calls for:

- Only products which pose a serious risk to the health and safety of consumers must be notified in RAPEX
- Better clarification on the documentation shared by the economic operators and Market Surveillance Authorities: manufacturers or the importers (if based outside EU borders) shall make available to market surveillance authorities any documentation and information. The distributors shall dispose of the technical documentation only when they become importers and if the products are modified.
- Clarification that the measure for destroying and rendering a product inoperable shall be applied only in cases of serious risk when applying the definition reported in RAPEX (published on the Official Journal of the European Union (Vol. 53, 26/01/2010)) under the risk assessment method