



Presidency of the EU, per e-mail: Greek Ministry of Development and Competitiveness (Secretary General Mr George Stergiou, Ms Evvagelia Salomou, Mr G. Frysalakis and Mr Loukas Gourgiouths); Greek Permanent Representation in Brussels (Mr George Kapantaidakis and Ms Artemis Rompogiannaki)

Copy, per e-mail: European Commission (Commissioners Mr Neven Mimica and Mr Antonio Tajani, Director Generals Ms Paola Testori-Coggi and Mr Daniel Calleja, Directors Ms Despina Spanou and Ms Liliana Brykman, Heads of Unit Ms Maija Laurila and Mr Hans Ingels); European Parliament's Rapporteurs Ms Christel Schaldemose and Ms Sirpa Pietikainen, and Chairman of the IMCO committee Mr Malcolm Harbour.

07 January 2014

Dear members of the EU Presidency,

Introduction

Our industries welcome the *intention* of the Product Safety and Market Surveillance Package proposed by the Commission to simplify legislation. However, the proposed regulations and in particular the changes proposed by the European Parliament's Internal Market Committee (IMCO) do not contribute to this objective and will have the unintended consequence of adding burden on operators and authorities without increasing the level of safety.

The recent vote of the IMCO committee on the Commission proposals for a Consumer Product Safety Regulation (CPSR) and a Market Surveillance of Products Regulation (MSPR) has confirmed that most provisions of the CPSR should not apply to products subject to Union harmonisation legislation for health and safety. We invite the Council to go further and refrain from referring to the CPSR as a "safety net", to avoid legal uncertainty, confusion and disproportionate discretionary enforcement measures. We believe that the future CPSR should exclude products that are already subject to Union harmonisation legislation for health and safety from its scope of application altogether.

We welcome the IMCO committee recognition of the need for a clear differentiation between the definitions of a 'non-compliant product' and a 'product presenting a risk'. Furthermore, the obligation on authorities to formulate a "reasoned request" to market operators when they require documentation and information demonstrating the compliance of a product with relevant rules is also a positive step.

With the current European Parliament's mandate soon coming to an end, we would welcome a swift adoption of this package, and therefore urge EU Member States to overcome their differences and to

adopt this Package for the benefits of the European Internal Market, competitiveness, and consumer welfare as soon as possible.

However, our industries would like to highlight some aspects which deserve careful attention ahead of the upcoming negotiations. Please note that each of the signatories of this joint letter may have additional relevant issues they support or oppose.

1) Voluntary 'EU Safety Tested' marking

Safety is not an option. It is the responsible manufacturers' number one priority. They invest a lot of resources to ensure that their products meet and very often exceed legal safety requirements set around the world. Safety is paramount for consumers' trust in our brands and products, hence our market share.

Decision 768/2008 recognises that *"the manufacturer, having detailed knowledge of the design and production process, is the best placed to carry out the complete conformity assessment procedure"* and acknowledges that conformity assessment should *"remain the obligation of the manufacturer alone"*. Responsible manufacturers have production processes and quality management systems in place where product conformity testing and safety play a central role. We therefore oppose the IMCO proposals on third party checks and audits.

We call on the Council to reject the proposed "EU Safety Tested" marking because it would:

- Mislead the consumer, who may then wrongly assume that products without the new marking are not safe;
- Send the signal that products that are "less safe" are allowed on the market;
- Not lead to an overall increase in safety. Any mark can be faked so rogue traders can continue to deliberately place unsafe products on the market whilst putting responsible economic operators at a competitive disadvantage;
- Lead to legal uncertainty with regard to its relationship with the CE marking, which, according to Regulation 765/2008, *"shall be the only marking which attests the conformity of the product with the applicable requirements of the relevant Community harmonisation legislation providing for its affixing."*;
- Be complex and costly to implement and disproportionate to the objective being pursued, which is to reassure consumers that the product is safe;
- Lead to a de facto costly mandatory scheme as having this label will be seen as indispensable by some manufacturers, distributors and consumers;
- Be redundant for a number of sectors or situations where third party testing is already compulsory;
- Have a detrimental effect particularly on smaller economic operators without an increase in safety.

2) RAPEX

The proposal would expand the scope of the Union Rapid Exchange Information System (RAPEX) from products presenting "a serious risk" (see NLF Regulation 765/2008, Art.22) to all products presenting a "risk". We doubt that this would be beneficial for the protection of public interests, as it is precisely the current distinction between risk or non-conformity and "serious risk" that enables a rapid intervention for the latter and guarantees its signalling function. An expansion of the scope of RAPEX would therefore be counterproductive.

3) Penalties and a Union-wide blacklist

Industry supports effective and dissuasive sanctions that are proportional to the seriousness of the infringement and the amount of illegitimate revenue generated by non-compliant products. However, setting administrative penalties of up to 10 % of the relevant economic operator's total annual turnover is neither appropriate nor proportionate.

Moreover, the establishment of a public Union-wide blacklist of economic operators that have been repeatedly found to intentionally breach the Regulation may prove to be counterproductive. Rogue economic operators that frequently establish new temporary companies with a view to escaping liability can circumvent placement on the list, whilst diligent companies that have been supplying the market with compliant products for years with the exception of a few cases of unintentional non-compliance may in practice be added to such a list. The latter are for the most part well-established brands that would suffer unnecessary and disproportionate damage if placed on such a blacklist, while overall compliance in the EU would not be improved. Furthermore, keeping such a central database updated takes a lot of resources and it is doubtful that all Member States would actually report on economic operators in a uniform way. These resources should be spent in market surveillance activities.

4) Complaints database

We oppose the creation of an EU-wide and public "consumers' complaints database" as proposed by the IMCO committee in the MSPR. The RAPEX system works well and there is no need for such a database. Consumers are not risk assessment experts. Consequently such a database would require a time consuming scrutiny of complaints to analyse their relevance with regard to a possible non-conformity of the challenged product. Otherwise, there is a high risk of misinterpretation of data and unfair stigmatisation of products and companies. A European multilingual database of complaints would also be completely unmanageable and the costs would be disproportionate compared to any benefits that may be derived from it.

We kindly ask you to forward this letter to all the members of the Council. We are at your disposal for further questions.

Yours sincerely,



AISE
Susanne Zänker
Director General



CEC
Jean-Pierre Renaudin
President



CECED
Paolo Falcioni
Director General



ENPC
Roberto Marelli
President



ESF
Henk Vanhoutte
Secretary General



EURATEX
Francesco Marchi
Director General



FESI
Alberto S. Bichi
Secretary General



HDS/L
Alberto S. Bichi
Director of Governmental
Affairs



TIE
Catherine Van Reeth
Director General

Supporting industry associations:

ABOUT AISE – A.I.S.E. represents the soaps, detergents and maintenance products industry in Europe. Its affiliates include 9 direct member companies as well as 34 National Associations in 39 countries, covering more than 900 companies ranging from small and medium-sized enterprises to multinationals active both in the consumer goods and the industrial & institutional (I&I) markets.

ABOUT CEC – The European Confederation of the Footwear Industry (CEC) groups national associations and federations from the European Union, which represent approximately 87% of the European manufacturing. CEC's overall purposes are to encourage the development of an environment in which European footwear manufacturing can be successful, as well as to reinforce the competitiveness and growth of the whole sector's supply chain. From 2008 till 2012, EU 27 footwear exports to third countries have increased by 24,1% in quantity, and by 31,5% in value: A remarkable achievement under the period of economic crisis.

ABOUT CECED – CECED represents the household appliance manufacturing industry in Europe. Its member companies are mainly based in Europe. Direct Members are Arçelik, Ariston Thermo Group, BSH Bosch und Siemens Hausgeräte GmbH, Candy Group, Daikin Europe, De'Longhi, AB Electrolux, Fagor Group, Gorenje, Indesit Company, LG Electronics Europe, Liebherr Hausgeräte, Miele & Cie. KG, Philips, Samsung, Groupe SEB, Vorwerk, and Whirlpool Europe. CECED's Member Associations cover the following countries: Austria, Belgium, Bulgaria, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey and the United Kingdom. For more information, please see www.ceced.eu.

ABOUT ENPC – The European Nursery Products Confederation (ENPC) is a trade association for childcare product manufactures in Europe. It is composed of national associations representing small and medium-size enterprises (SME), and large companies (leaders in the sector) playing a key role in the European single market. Childcare products estimated market size in five major EU countries amounted to 2.8 billion Euros: France (768 million euros), UK (707 million euros), Germany (539 million euros), Italy (444 million euros), and Spain (351 million euros). ENPC is involved in ensuring safety requirements in the legislation, it is a liaison partner of the European standards organisation, and our members are actively involved in the technical committee CEN/TC 252 with the scope of developing standards for all products related to child use and care.

ABOUT ESF – The European Safety Federation (ESF) was founded in 1991. 9 national organisations each representing the manufacturers and suppliers of PPE (Personal Protective Equipment) in their country decided to group and unite the European manufacturers, suppliers and distributors of Personal Protective Equipment (PPE) and to represent them at government level of the European Union and other European institutions and instances.

Today, ESF represents over 600 companies, which have over 50.000 employees. The effective and cooperative members of ESF and the enterprises that affiliated to the national federations are dedicated and committed to provide CE certified high quality PPE. Moreover, they link quality and service by giving expert advice and assistance in the process of risk assessment and analysis as well as training and advice in all aspects related to PPE. Supporting a safety conscious way of life is a common interest to all of us.

ABOUT EURATEX – EURATEX's main objective is to promote the interests of its members while taking into account the European Union's institutional framework and its international obligations.

As the voice of the European textile and clothing industry, EURATEX's main objective is to create an environment within the European Union which is conducive to the manufacture of textile and

clothing products. Its headquarters in Brussels are within touching distance of the major decision-making bodies of the EU, at Commission, Parliament and Council level.

The EU textile and clothing industry, including manmade fibres, remains an essential pillar of the local economy across the EU regions and is competing intensively at international level while striving for a level playing field with the rest of the world. According to EURATEX latest revised estimates, the 181.423 EU-27 companies active in this industry did reach in 2012 a turnover of €165.300 million and generated more than €45 billion of added value thanks to its 1.780.000 workers. The Extra-EU exports reached in 2012 the €42,1 billion or 25,5% of the global sales, a growing share of the EU-27 turnover.

ABOUT FESI – Founded in 1960 FESI represents the interests of the European Sporting Goods Industry. FESI's members directly and indirectly employ about 650,000 workers in the EU with an annual European turnover of over €66 billion. 70-75% of FESI's membership is made up of Small and Medium Enterprises. 1,800 companies are members, either directly or indirectly through national sports industry federations from Austria, the Czech Republic, Denmark, France, Germany, Greece, Italy, Netherlands, Spain, Sweden and the UK. FESI also includes some of the most renowned global sporting goods brands such as adidas and Puma from Germany or Lotto and Tecnica from Italy. More information on: www.fesi-sport.org.

ABOUT HDS/L – HDS-L, the Federal Association of the German Footwear and Leather Goods Industry (Bundesverband der Schuh- und Lederwarenindustrie), represents the manufacturing companies in the German shoe and Leather Goods industry and promotes their interests to the retail sector, public authorities and legislators.

ABOUT TIE – Toy Industries of Europe (TIE) is the trade association for the European toy industry. The toy industry is highly international and is one of the most dynamic business sectors in Europe. Over 99% of the sector is composed of small and medium sized enterprises (SMEs), which have less than 50 employees. Members of TIE include corporate companies as well as national associations from Bulgaria, France, Germany, Italy, the Netherlands, Spain, Sweden, the UK and the Nordic region. TIE membership is open to both corporate companies with a presence in Europe and national associations from European Union Member States (including candidate countries). www.tietoy.org