E U R O P E A N E C O N O M I C A R E A

S T A N D I N G C O M M I T T E E
O F T H E E F T A S T A T E S

Ref. 1125673 2 September 2013

EEA EFTA Comment

On the proposal for a regulation of the European Parliament and of the Council on consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC
and
on the proposal for a regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council

(Product Safety and Market Surveillance Package)

1. GENERAL

1. The EEA EFTA States fully support the purpose of the draft regulations and the general approach. We welcome the opportunity to comment on the draft regulations and enclose some detailed comments for consideration. The main views of the EEA EFTA States are as follows:

2. CONSUMER PRODUCT SAFETY AND MARKET SURVEILLANCE

2. The draft regulations look to provide much needed clarity and provide simplifications in comparison to the current legislation, while maintaining a high level of protection for the health and safety of consumers and the environment.

3. However concerns still exist with regard to clarity surrounding issues such as the proposed CE+ mark.

4. Market surveillance, including setting national priorities and determining national resources, is an activity that takes place mainly at national level, and this should continue to be the leading principle. The aim of European legislation in this field should be to determine the framework for market surveillance and improve

coordination and information sharing at national level and across borders, including cooperation between market surveillance and border control authorities.

5. It is important to ensure through market surveillance that so-called rogue traders do not benefit from not following the rules. The objective of market surveillance should on the one hand be to safeguard the interests of consumers and worker as well as protecting the environment, while on the other hand ensuring compliance with the applicable rules independently of whether there is an immediate risk associated with the product. We therefore support that the obligation on market surveillance to ensure compliance is made clearer in the Market Surveillance Regulation (MSR).

6. It should not be made mandatory for market surveillance authorities to carry out a risk assessment when dealing with a non-compliant product which has been made available or placed on the market.

7. We support the introduction of the precautionary principle in the proposed legislation.

8. We support that the responsibility of economic operators is clarified in the legislation, in line with decision 768/2008.

9. The timely dissemination of information to consumers about products representing a serious risk is crucial.

10. We do not support the introduction of a CE+ marking. It is believed that this would lead to mandatory conformity assessment by third parties for products not subject to such procedures today and represent a radical change in the way most products are currently regulated. Furthermore, as this is proposed in connection with the Consumer Product Safety Regulation (CPSR), which covers also non-harmonized products, it seems appropriate to ask what would be the basis for third party certification for such products.

11. The exact level and details of reporting on activities to the European Commission (for the EFTA EEA states to the EFTA Surveillance Authority) should not be laid down by law. The risk is that an administrative burden is created without knowing what purpose the information should serve. We propose that this issue is clarified through discussions with member states in the EMSF to be established.

12. The obligation to notify products through RAPEX should be kept as it is today, limited to products presenting a serious risk. Extending this obligation to all products presenting a risk may create an extra administrative burden both for the notifying authority, the contact points, the EC and those who receive the notifications and have to evaluate them, with no proven added value. It may put the good functioning and the value added of RAPEX in danger.

13. We do not support the proposal that all actions by market surveillance authorities should be entered into ICSMS. National market surveillance must be given some freedom to assess what can be useful for others to find in ICSMS, and the level of reporting must be further determined through experience in using ICSMS.

14. We do not support the establishment of a European Injury database through the new regulations. This is a complicated issue and the value added of such a database need to be further assessed. We already have RAPEX and ICSMS as important tools for efficient market surveillance.

15. It should be left to national governments to decide the level of penalties and to decide which budget lines penalties should benefit. It should be up to national surveillance authorities to decide whether economic operators shall be requested to cover costs connected to market surveillance and sanctions. We support that the legislation makes it clear that market surveillance authorities require costs to be covered.

16. With regard to the recitals, we propose that the attention is drawn to the principle of substitution (CPSR) and to the initiating country principle (MSR). Both principles may benefit the objectives of the legislation.

Detailed technical comments have been prepared by the EEA EFTA states and input into the two draft reports from IMCO. Comments have been made on the draft Articles of the proposed legislation and on the recitals highlighting specific areas of support and also of concern in the draft reports.

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