Protection of consumers: general product safety (rev. Directive 92/59/EEC)

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Directive 2001/95/EC on general product safety was adopted on 3 December 2001. It entered into force on 15 January 2002 and the deadline for its transposition by the Member States was 15 January 2004. The purpose of the Directive is to ensure that only safe consumer products are placed on the Community market. The Directive applies to non-food consumer products but safety of services falls outside of its scope.

The Commission makes the following conclusions in relation to the implementation of the Directive:

- General: the Directive has proven to be a powerful tool for ensuring a high level of consumer protection. It has helped to track down and eliminate a vast number of unsafe products from the European market. The RAPEX system, set up by the Directive, has complemented the existing regulatory framework applying to some key consumers' products (such as toys, cosmetics, electrical appliances and luminaries, personal protective equipments, vehicles with a dedicated rapid exchange and alert system);
- Transposition: while transposition of the Directive by the Member States is overall adequate, there are still certain inconsistencies. The Commission services are cooperating with the Member States to ascertain whether further measures by certain Member States are needed, but the Commission reserves the right to initiate infringement proceedings, where necessary. This concerns in particular the observation of time limits for the enforcement of measures under Article 13 of the Directive;
- Functioning of Market Surveillance: the major increase in RAPEX notifications over the last four years is a clear indication that market surveillance under the Directive has been successful. Nevertheless, in an increasingly global market with more and more products coming to the EU from third countries, there is a need for further co-ordination of market surveillance activities between the Member States, including cooperation with customs authorities. Such coordination would benefit from the implementation of commonly-agreed best practices (such as those resulting from the EMARS project), increased exchange of information between Member States authorities within the existing IT tools, proper implementation of the framework set out in the New Legislative Framework and a stronger role for the Commission in joint priority setting for market surveillance;
- Functioning of RAPEX: many countries regard the Directive, and the RAPEX system in particular, as a benchmark, and several national, regional and international organisations have expressed an interest in participating in the system or in receiving assistance to set up similar systems. While the increase in the number of notifications has placed the system under some strain, it is nevertheless a clear indicator of improved consumer protection at European level. The increase in reported measures adopted directly by economic operators to contain the risks posed by consumer products also shows that responsible businesses take product safety seriously and respect the obligations placed on them by the Directive;
- Traceability of Products: the identification of the producer on the product or its packaging is an important element for ensuring traceability. However, this requirement is not mandatory in all Member States' legislations and this leads to unsatisfactory results. If the market surveillance authority cannot trace the manufacturer or importer of a product that is found to be dangerous, it is not in a position to take fully effective measures. Further improvements could be achieved if the mandatory nature of this identification requirement were clarified and if all products carried this information about the economic operator responsible for the product's safety. This would also bring it more closely in line with the provisions of the New Legislative Framework Decision which makes it obligatory for the name, registered trade name or registered trademark of the manufacturer or importer as well as their address to be indicated on the product;
- Community Measures based on Article 13 of the Directive: while temporary measures are indeed necessary in certain circumstances, the Directive contains no specific provisions explicitly permitting a permanent ban on non-harmonised products, once they have been unambiguously proved to be dangerous;
- Standardisation: the standardisation provisions should be simplified to allow greater flexibility. It should be possible to lay down safety requirements for a specific category of products (e.g. childcare articles, furniture, clothing, etc.) and, on the basis of those, issue "framework" or "standing" mandates to the European standardisation organisations (ESOs). This would streamline the lengthy procedure for issuing the safety requirements for each individual product. Moreover, technological improvements and new risks could be addressed swiftly. The Commission should also be able to publish the reference of a standard adopted by an ESO without a corresponding mandate, if the product covered by the standard falls within pre-identified categories of products for which the Commission has set relevant safety requirements, and provided that such standard satisfies them. In this way, the resulting presumption of conformity with the general safety requirement would encourage business compliance and lead to better protection of consumers.