



Mr Maros Šefčovič

Vice President

Commissioner for Inter-Institutional Relations and
Administration - Health and Consumer Policy
European Commission

200, Rue de la Loi,

B-1049 Brussels

BELGIUM

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Dear Sir,

I am writing to you to express BUSINESSEUROPE's support for an increased focus on how to ensure proper awareness and enforcement of legislative requirements in the field of product safety.

The European Commission is planning to initiate a revision of regulation 765/2008 on accreditation and market surveillance over the coming months. It has drawn up a roadmap for a multi-annual plan for enhancing market surveillance with a view to obliging Member States to carry out more efficient market surveillance and coordinate their actions more effectively. BUSINESSEUROPE has presented to the Commission several suggestions and observations for improved and more efficient market control.

This letter seeks to emphasise the need for more harmonised disciplines with respect to the enforcement of legislative requirements. BUSINESSEUROPE has long advocated that good governance of the Single Market is a key element for its functioning. Better monitoring and the transparent presentation of results, for example through the Internal Market Scoreboard, is of great importance.

In this context, we would like to highlight the importance of there being adequate controls at EU ports where a large proportion of imported goods – over 90% – enter the EU market. The European Commission has sent a formal notice to the Netherlands regarding the case of dangerous lighters (see also annex), recognising the potential hazard of having non-compliant products in the market. We call on the Commission to increase such efforts to hold the Member States to their surveillance and enforcement duties and to also follow up robustly if their response is insufficient. Non-compliant products pose a risk to public safety and to the public interest in general.

The current lack of enforcement of important consumer safety rules also sets a dangerous precedent because it provides a clear economic incentive to flout consumer safety rules for economic advantage. This is unfair to companies that follow the rules.

BUSINESSEUROPE could support the use of penalties to deter deliberate cheating and as a possible way to co-fund surveillance efforts. We oppose a general burden for all players, but could support a system where mainly the offenders pay. Repeated offenders should receive progressive penalties, possibly including denial of further market access for the product types for which they violated the rules.



BUSINESSEUROPE is a strong supporter of pan-EU cooperation in surveillance and enforcement. We support a single market surveillance instrument, covering all products, as well as efficient and homogeneous market surveillance by Member States, including increased cooperation across borders.

It is also important to have close cooperation with important trade partners to organise surveillance along the supply, production and distribution chains to address problems at as early a stage as possible.

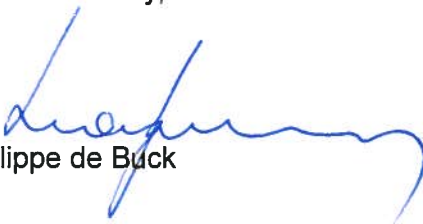
Finally, we would like to highlight a problem which is becoming increasingly evident. Formally the Commission, the European Parliament and the Council create rules and approve detailed requirements. There is now a growing tendency towards soft regulation by market inspectors who decide themselves what is acceptable through guides and risk assessment – often without due regard to the legislation.

We urge the European Commission to ensure better awareness of the rules on the free movement of goods and to monitor more carefully the proper application of the mutual recognition principle.

In the annex there are three examples that illustrate the problem at hand well, namely that non-compliant products pose threats to the public interest and that there is a need for an increased focus on how to ensure enforcement of legislative requirements.

I thank you for taking our views into account. A copy of this letter has also been sent to Vice President Tajani as well as the Commissioners responsible for customs, Mr. Šemeta, internal market and services, Mr. Barnier, and trade, Mr De Gucht.

Yours sincerely,



Philippe de Buck

ANNEX: Cases that demonstrate need for urgent action

1. Lighters

According to tests carried out by PROSAFE (2011) and Bureau Veritas (2010) between 73 and 80% of lighter models in EU markets do not conform to the ISO9994 safety standard, which is the basic safety requirement for lighters. Despite efforts by the European Commission, namely with the launch of a second lighter project for the period 2010-2012, the situation has not improved, with some Member States failing to take sufficient action to address the issue. To this end, the initiation of an infringement procedure against the Netherlands shows the strong will of the Commission to police Member States in the enforcement of EU regulation.

In addition, the case of lighters highlights the economic consequences of the problem. EU companies have invested significant resources in order to comply with EU legislation. Nevertheless, the fact that their competitors can avoid compliance has resulted in losses in the EU market share as well as job losses. For instance, BIC has invested € 40 million to adapt its production to EU standards, losing however 25% of its market share in the EU, while also being forced to reduce the workforce of its factory in Spain.

As other nations have succeeded in banning unsafe lighters and thereby reducing the incident rate substantially, this is not a general but rather a problem specific to the EU.

2. Chain saws

Producers of chain saws and other combustion-powered garden and forestry machinery in the EU have to comply with a series of safety and environmental standards, including regulations on emissions and the machinery directive. Over the past years, EU manufacturers have invested in engines, other machinery equipment and components in order to be able to produce according to EU-relevant standards. For example, since 2002, STIHL has developed more than 55 products with new low-emission engines.

The spot checks that have been carried out by STIHL and other EU manufacturers in several EU countries have shown particularly the problem of non-compliant imports in the segment below € 200. Approximately 30% of these products in Western Europe and 40% in Eastern Europe infringe EU standards. These chain saws do not fulfil the EU 1 emission limits, which have been obligatory since 2005, also exceeding the EU 2 emission limits by a factor of 4 to 6. Furthermore, these products are sold at extremely low prices (for € 70 per item or even less), which poses unfair competition for compliant manufacturers.

Companies take both individual action as well as cooperation with the European Commission (Market Surveillance website: www.market-surveillance.eu) in an effort to

describe the characteristics that the compliant products should have. These actions however do not present an alternative to emission measurements by market surveillance authorities.

3. Tyres

Following the directive banning high-aromatic oil in tyres, which is also incorporated into the REACH regulation, the tyre industry has gradually phased out the use of these oils at a cost of € 200 million.

The second testing programme conducted by the European Tyre and Rubber Manufacturers' Association (ETRMA) in 2011 showed that 10% of tested tyres, all of which were imported, were non-compliant with the REACH regulation. In addition, one systematically non-compliant foreign manufacturer was detected.

These results not only show the failure of national authorities to enforce existing EU legislation on REACH standards, but also raise concerns about the effectiveness of the enforcement of the upcoming labelling legislation which will come into effect by the end of the year.