



Ms Minor  
Director Consumer Affairs  
DG SANCO  
European Commission  
200 Rue de la Loi  
1049 Bruxelles

6 March 2012

Dear Ms Minor,

I am writing to provide you with some updated comments on the revision of the General Product Safety Directive (GPSD) in light of the Commission's Roadmap on this issue and the discussions that have taken place over recent months in the Commission's GPSD Committee, in which BUSINESSEUROPE is an observer.

According to the Commission Roadmap, a product safety package will be presented during the 4<sup>th</sup> quarter of 2012 consisting of: (1) a revision of the General Product Safety Directive; (2) a new horizontal single legislative instrument for market surveillance; (3) a non-legislative multi-annual action plan for market surveillance.

In its position of July 2010, BUSINESSEUROPE suggested that a revision of the GPSD should predominantly aim to improve the consistency of the legislation in support of product safety and that before embarking on such a revision a political vision should be developed on the total palette of regulatory instruments needed to ensure safety.

In this context, BUSINESSEUROPE is pleased that the Commission is aiming for a consistent approach to product safety as the interplay between the various layers of EU product safety legislation is indeed complex and currently leads to uncertainties and incoherence in the internal market. Simplification of the product safety legislation, if done well, will ease enforcement and contribute to growth by providing business with clearer rules, lower compliance costs, and a more level playing-field for legitimate business.

Although the essence of our earlier position paper on the GPSD<sup>1</sup> is still valid, you will find at annex some further updated comments that BUSINESSEUROPE deems important in the revision of the GPSD.

We remain at your disposal should you wish to discuss these comments further and look forward to further cooperation with you on this matter over the coming months.

Yours sincerely,

Jérôme P. Chauvin  
Director  
Legal Affairs Department  
Internal Market Department

<sup>1</sup> <http://www.businessseurope.eu/content/default.asp?PageID=568&DocID=26914>



### 1. Scope

Business needs a coherent legislative framework. The General Product Safety Directive (GPSD) should apply to consumer products for which no harmonised legislation exists. It should, as a general rule, not apply in areas where specific product regulation exists, i.e. for products bearing the CE marking. If it is used in the harmonised domain, its use should be made exceptional. This is because directives based on the New Legislative Framework, which apply to harmonised products, set out to comprehensively regulate the safety of covered products and include essential safety requirements. Therefore, for harmonised product areas, the use of the GPSD instruments should be limited to serious risks to avoid creating legal uncertainty, serving thus as a safety net in cases of previously unforeseen risks. Necessary new safety requirements, if any, should for harmonised products be defined under the New Legislative Framework.

We welcome that in future there will be 'one' market surveillance Regulation covering all products. Furthermore, it might make sense to bring the instruments for swift action against products posing risks that are both severe and urgent under this new market surveillance Regulation.

### 2. Mandates

The Roadmap and previous statements from the Commission characterise the making of mandates for standards as a slow, bureaucratic and inefficient process. We believe that this statement is rather misguided and that mandates should not be rushed. It is imperative that the procedure for issuing mandates is clear and that a wide consultation of stakeholders takes place in order to produce good quality and market-relevant standards. In addition, it should be made clearer under the GPSD that the use of such standards must remain voluntary as is the case for standards in general. The notion of 'presumption of conformity' under the GPSD is currently ambiguous and business is concerned about the growing tendency to treat non-use of the standard by the supplier as a presumption of non-conformity. This should not be so because the supplier may have an alternative underpinning as to why the product is safe.

### 3. Traceability

BUSINESSEUROPE appreciates that effective market surveillance requires adequate instruments, some of which demand requirements from economic actors. However, proportionality is of the essence and we are concerned about legislative overshoot. Given the nature of many products in the non-harmonised domain we strongly suggest defining GPSD requirements for traceability and other issues such as labelling or the creation of a technical dossier in a less stringent way than as currently defined under the New Legislative Framework (or for some requirements, like a dossier, not at all).



Traceability is essential to deny rogue economic actors an easy route to ignore the law. However, requiring the manufacturer, distributor and/or importer's name/address to be printed on the product unless this is not possible (in which case it should be on the packaging) is disproportionate for a great many small, low-value products that pose inherent low risk such as stationery.

It must not be forgotten that the tool for minimum traceability requirements is already in place for tax reasons (e.g. invoices from the manufacturer or distributor). This should be sufficient to enable market surveillance authorities to trace the person liable for placing the product on the Community market.

Furthermore, the distributor should be able to indicate from whom he bought the product. If the distributor is not in a position to do this, he should assume responsibility for the products (he should have the invoice anyway and thus it would not mean extra administration).

#### **4. Exemptions to the application of EU rules to micro-enterprises**

According to the Commission's recently developed policy in this area, from January 2012, the Commission's preparation of all future legislative proposals affecting enterprises, including revisions, will start from the premise that micro-companies<sup>2</sup> should be excluded from the scope of the proposed legislation, unless the necessity and proportionality of their being covered can be demonstrated.

BUSINESSEUROPE welcomes the Commission initiative to further emphasise the need to 'Think Small First' and to strengthen the application of the SME test in the impact assessment in order to identify possible exemptions or burden reductions for SMEs and in particular micro-entities<sup>3</sup>. However, we question why in the consumer safety domain certain requirements should exist that do not apply to micro-enterprises. Consumer safety is not a matter of choice, but a justified mandatory legal requirement in existing EU health and safety legislation.

Micro-enterprises, in their capacity as manufacturers, importers or distributors, are responsible for millions (in value) of low-cost products in the EU market, such as toys. Relevant requirements to guarantee the safety of the consumers of these products are hence equally proportionate for all companies. The policy aim should be to minimise regulatory burden for all companies alike, whilst ensuring consumer safety. If any requirement is not absolutely necessary and can be waived for micro-enterprises, there should be strong scrutiny as to why it should exist for larger companies.

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<sup>2</sup> Enterprises with less than 10 employees and a turnover or balance sheet total equal to or less than EUR 2 million.

<sup>3</sup> <http://www.business europe.eu/content/default.asp?PageID=568&DocID=29886>