



4 June 2013

**‘PRODUCT SAFETY AND MARKET SURVEILLANCE: HOW TO ENSURE SAFE PRODUCTS THROUGH BETTER REGULATION’  
4 JUNE 2013, 8.00-9.30, EUROPEAN PARLIAMENT**

**Introductory speech by Paul Coebergh van den Braak - Chair of BUSINESSEUROPE’s Free Movement of Goods working group**

Thank you Christel, for hosting this event.

The majority of companies aim to play by the rules and want safe products on the market. This is good for consumers and society, and it makes good business sense. So no doubt – safety is a must! The challenge is to define proportionate, effective measures to achieve it and to discourage irresponsible behaviour.

The proposed package is a big step in the right direction. It aims to simplify, to reduce costs and ease enforcement. This will reduce non-compliance and support growth by limiting burdens for bona fide operators.

Therefore we ask the European Parliament and Council to support the fundamental aim of simplification and to avoid introducing new complexities in the joint decision process.

I can only cover the main items here. You can find more comments in our position paper.

**First, as a general statement,**

It is great that both the MSR and the CPSR reduce legislative fragmentation and cast much more clarity than we have today.

We welcome the scope demarcation of the CPSR. Notably the more detailed obligations for economic operators do not apply to products subject to harmonizing legislation. This is essential for legal certainty and we would not like to see this amended whatsoever! Instead we like to see it strengthened: we believe this exclusion should also apply to Chapter 1 on General Provisions.

The MSR covers exactly what we need: a single legal basis for market surveillance for all legal requirements for all products. Market surveillance



currently faces a complex maze of legal rules. This also creates legal uncertainty for business. We hope the new regulation will put an end to this.

However we find the use of the word “risk” very confusing. Only safety issues represent risks, other shortcomings should be called non-compliance. In pursuit of proportionate actions the regulations should also clarify various degrees of safety risks and tell paperwork or marking errors from real, harmful non-compliance.

**This brings me to the point of requirements for economic operators.**

Effective market surveillance requires information. Much of this must come from economic operators. This is fine but the CPSR creates an overshoot at some points. Proportionality should be more leading.

Traceability is vital for enforcement and thus for a level playing field. But requirements must only be set where necessary. The CPSR requires the manufacturer and/or importer’s name and address on the product unless this is not possible – and then it must be on the packaging or documents. This is disproportionate for many products that inherently carry very little risk such as pencils or cutlery. Would you want an importer’s name on your wine glasses? Is it really possible to write the manufacturer’s name on every USB cable or just impracticable and useless?

Likewise, to draw up technical documentation for non-harmonized consumer products need not be a systematic obligation for manufacturers. Why not just require to swiftly produce it on demand once the product raises concerns? Also, in so far technical documentation is confidential, manufacturers cannot share it with downstream operators.

**A next point is the need to improve market surveillance practice.**

As of now, risk assessment outcomes are not uniform. This is confusing. It harms the single market, business and consumers alike if the same product can be found non-compliant in some Member States and fully acceptable in others.

The MSR addresses this. We are happy that it requires authorities to primarily check compliance with legislative requirements and harmonized standards that apply, and to co-operate and share information between themselves. And we like the EU level review of assessments.

Legal certainty demands that any product enjoying presumption of conformity can freely circulate, unless it presents a risk of a magnitude and



urgency that justify restrictive measures. No doubt authorities must have powers to mitigate material risks whatever the circumstances, but they should only overrule presumption of conformity for pressing reasons and they should be required to demonstrate that. If not, there is too much room for arbitrary judgments and disproportionate measures.

We therefore also stress the need for a quick appeal procedure. Economic operators are now powerless vis-a-vis market authorities when they want to challenge disputable decisions. Going to court gives no practical relief.

**This brings me to resources. Improving without them will be an up-hill battle.**

The political will to fund market surveillance is insufficient, while it is a cornerstone of the regulatory framework! But beyond money, market surveillance needs an effective and efficient organization, good facilities and competent officers, who know and apply the law.

Fees and penalties can help cover the costs and improve compliance but must never steer towards the wrong controls or actions. Market authorities must fight harmful non-compliance, not pick the easy targets and punish them for silly issues without substance! Legislators must spell out the details for fees and penalties and not leave this to market and border authorities. Justified penalties must be both proportionate and dissuasive.

We hear ideas to more broadly require third party testing. That is a pre-market burden. Please keep in mind that unwilling operators will forge certifications but bona fide payers would see their costs go up. This rewards the wrong behaviour by making non-compliant products more competitive. Therefore we don't believe it will help at all, while it would harm European competitiveness and growth. Let us just stick to the risk-based approach as per the NLF modules.

We strongly support the European Market Surveillance Forum, where business and other stakeholders will be heard. This will improve consistency of interpretations and risk assessments and can feed market surveillance and customs efforts with up-to-date market intelligence.

**Finally** about implementing powers for the commission to shape several important measures. We see it essential to consult with stakeholders when doing so. We like the regulations to prescribe this.

Thank you very much.