

S T A T E M E N T of
Polish Association of Cosmetics and Home Care Products Producers
on
the proposals for Regulations on
Consumer Product Safety and Market Surveillance

The detergents and maintenance products industry fully supports all measures aimed at product safety. The safety and well-being of consumers are of utmost importance for our sector. We welcome the objectives of the draft Consumer Product Safety (CPSR) and Market Surveillance (MSR) Regulations. However, we are concerned about some aspects of the draft Regulations.

1. Indication of Origin Marking

Article 7 of the CPSR proposal introduces a country of origin marking requirement. The requirement has neither been addressed by the original impact assessment, nor is it contained in the New Legislative Framework. It would not improve consumer safety or product traceability, which are already ensured by other means in harmonised legislation and in the CPSR. Information such as batch number and the name and address of the responsible person are available on the product themselves or/and the accompanying technical information. They provide market surveillance authorities with all the information they need to trace back potentially unsafe products, and identify distributors and manufacturers along the chain. The requirement will complicate sourcing and risks stigmatizing certain countries of origin. It would also mislead consumers of products that result from a complex worldwide supply chain and could be interpreted by them as a quality label when its purpose should be traceability. Finally, its implementation and verification would be resource intensive for both economic operators and public authorities. **We recommend removing the country of origin marking requirement.**

CPSR Amendments (+): 99, 100, 101, 102, 184, 185, 186, 187, 188, 189, 190

CPSR Amendments (-) 97, 103, 104, 105, 191, 192, 193, 194, 195, 197, 198, 199

2. Precautionary Principle

There are numerous amendments seeking to make reference to precaution. There is a concern within industry as a whole how the precautionary principle might be applied within this context. Under the current product safety regime (i.e., General Product Safety Directive), risks associated with potentially unsafe products are assessed via an evaluation of the potential severity of injury (i.e., the fundamental hazard) and the probability of such an injury occurring (i.e., the exposure to that hazard). Both aspects are integrated together to determine overall risk. This process takes place within the context of a framework provided by prescriptive

guidelines in Commission Decision 2010/15/EU. Application of the guidelines (http://europa.eu/sanco/rag/help/rapex_guid_en.pdf) means that risk practitioners within competent authorities dealing with common inputs will arrive at similar conclusions i.e., the outcome of the process is essentially predictable. Predictable outcomes permit informed and consistent decision making. A potential issue with the precautionary principle in the current instance is that it will likely be interpreted in a different manner by different people. In its proper sense, it should be applied when risk cannot be determined with sufficient certainty (i.e., in the absence of data to permit proper assessment). In practice, different people will be prone to make different judgments in an inconsistent and unpredictable manner. If the outcome of the evaluation process is unpredictable, it precludes consistent decision making. Any reference to precaution should be accompanied with a clear signal as to when and how it applies, in line with the Commission Communication on the Precautionary Principle (COM [2000] 1). **In this respect, CPSR Amendment 16 (Recital 13a) from Ms. Schaldemose is to be preferred over all others.**

CPSR Amendments (+): 16

CPSR Amendments (-): 17, 20, 38, 45, 49, 152, 174

3. Proportional Financial Penalties

Several amendments have been submitted that seek to define an overly punitive framework for financial penalties up to 10% of turnover in a similar fashion to that in anti-competitive cases (e.g., MSR # 62, 86, 382, 386). Such comparisons are misplaced. Penalties need to be proportional to both the seriousness of the infringement and the volume of the defective products actually placed on the market, rather than related to the totality of the activities of the economic operator. With a framework based on % turnover, a minor infringement by a large company that has not injured any consumers could potentially attract a higher penalty than that imposed on an SME that has marketed a product that has resulted in serious injury or death. **The amendment from Ms. Schaldemose (MSR # 387) provides a more measured and appropriate scope for penalties (i.e., related to seriousness of the infringement and the amount of undue revenue derived from it).**

MSR Amendments (+): 63, 387

MSR Amendments (-): 62, 86, 382, 386

4. Harmonisation of Risk Assessment Practices

With the explicit and multiple inclusion of the precautionary principle to many provisions with the CPSR, there are implications for the predictability and consistency of the safety evaluation process. An amendment from the MSR Rapporteur Ms. Pietikainen (MSR # 297) provides a role for the Commission when Member State competent authorities start to respond to similar risks from similar products in an uncoordinated manner. **The additional requirement for the involvement of the scientific committees would tend to ensure a more predictable and consistent approach.**

MSR Amendments (+): 297

5. Confusion between Non-Compliance and Products Posing a Risk

Historically, compliant products carried a presumption of safety. New provisions would also incorporate the corollary, namely the presumption that non-compliant products are potentially unsafe and consequently subject to corrective measures. Given that the source of any non-compliance can vary greatly from nominal inaccuracies in labelling to more fundamental issues, this provides for a potential proliferation in corrective measures disproportionate to any actual risk. **Amendments which provide for clearer separation between products presenting a risk and other separate aspects of non-compliance and a distinction in their subsequent treatment are to be preferred.**

MSR Amendments (+): 107, 108, 109, 125, 126, 201, 202, 203, 204, 205, 216, 221

MSR Amendments (-): 17, 20, 38, 113, 114, 115, 117, 127, 128, 206, 214, 299, 307