



Department
for Business
Innovation & Skills

**PRODUCT SAFETY AND
MARKET SURVEILLANCE
PACKAGE:**

Impact assessment checklist

JULY 2013

Checklist for analysis on EU proposals

Title of EU proposal: Product Safety and Market Surveillance Package

Lead Dept: BIS

Other: Various

Date: February 2013

What are the potential impacts of the Commission proposal on the UK?

Background/Policy Objectives:

The General Product Safety Directive (GPSD, 2001/95/EC, implemented in the UK by the General Product Safety Regulations 2005) provides that all consumer goods must be safe. It applies to consumer goods that are subject to both EU harmonisation legislation (Single Market legislation ensuring the free movement of goods, e.g. toys and cosmetics) as well as to products that are not harmonised (e.g. domestic ladders and childcare items). The GPSD also includes obligations on business as well as a market surveillance framework which involves the EU flagship RAPEX system (the rapid exchange of information between member states and the Commission on products posing a serious risk), the use of emergency measures to remove unsafe goods, and sanctions for the market surveillance authorities to apply to unsafe products. The European Commission has been developing a proposal for the revision of the GPSD since 2009.

The Regulation on Accreditation and Market Surveillance (RAMS, Regulation No EC 765/2008, which took effect on 1 January 2010) introduced, amongst other things, a legal framework for market surveillance and new rules for the control of products entering the EU market from third countries. The market surveillance framework applies to products subject to harmonisation legislation (including products used by consumers and those designed for professional use) whilst the border control provisions apply to any products subject to EU legislation (the wider scope of "EU Legislation" means that it includes non-harmonised consumer products covered by the GPSD).

Sectoral harmonisation legislation also exists which contains stand alone provisions on market surveillance.

The overall regulatory system for goods is a confused picture of overlapping requirements and artificial distinctions between goods (dependent on the use) which is incoherent for the majority of businesses.

Therefore, the general policy objective of the package is to improve the functioning of the Single Market and achieve a high level of consumer protection through the reduction of the number of unsafe or non-compliant products on the single market. The package will do this by consolidating and reinforcing EU product safety requirements; better coordination and

increasing the effectiveness of market surveillance within the EU; and simplification of the EU legislative framework.

The proposed Regulations are independent but complementary and need to be considered together as part of a package. They are expected to come into effect on the same date.

Rationale for Legislation:

Overlapping and therefore incoherent legislative provisions including market surveillance systems which make it difficult for business and the market surveillance authorities to understand.

The GPSD needs to be revised to make it more effective in protecting consumers and to produce greater certainty for businesses (through different applications within member states) by closer alignment with the principles in EU harmonisation legislation, more streamlined standards development, enhanced traceability for products, clearer obligations on economic operators and the removal of the overlap with harmonised consumer legislation. A single market surveillance system is supported by the European Parliament's own interest report and is a key theme of the Single Market Act II.

Problem:

Unsafe products and other non-compliant products circulating on the single market. Lack of clarity between legislative requirements which often overlap leading to differing interpretations/perceptions that can distort trade in the EU. The distortion can lead to market access barriers. Economic operators (i.e. manufacturers, authorised representatives, importers or distributors) face increased compliance costs by having to accommodate divergent product safety requirements whilst facing unlawful competition from rogue operators taking advantage of the lack of co-ordination between market surveillance authorities. The result being a loss of market share for compliant businesses. Consumer and workplace safety is put at risk from the availability of unsafe goods often leading to low consumer confidence and uneven levels of protection across the EU.

Affected Groups:

The Commission estimates the volume of internal market trade in consumer products between 2008-2010 to be almost 1 trillion Euros. The value of the harmonised sectors in the EU (both consumer and workplace goods) to be no less than 2,100 billion Euros. The proposal affects all harmonised non-food products (i.e. those products subject to EU harmonisation legislation concerning the supply of goods) and all non-food consumer goods.

The following groups are affected:

Final users of the products e.g. consumers and employees where unsafe products present a risk of injury;

National market surveillance authorities who suffer increased costs (as a result of duplicate testing and investigations) as a result of inefficient EU action;

Economic operators (e.g. manufacturers, authorised representatives, importers, distributors) who suffer from unfair competition as a result of the prevalence of non-compliant goods, potential market access barriers in member states and higher costs as a result of incoherent legislation;

Member States who have to bear the burden for injuries caused by unsafe products and the economic damage from unfair competition.

Costs and Benefits:

The costs and benefits have not been quantified in the Commission's Impact Assessment because there is no reliable data on the number of unsafe or otherwise non-compliant products on the single market. The consolidation and reinforcement of EU product safety rules are expected to have a slight increase in costs for some businesses, especially manufacturers of non harmonised consumer goods (who will have additional responsibilities). However, this may be offset by benefits accruing as a result of legal clarity from the removal of overlapping provisions, safer consumers, lower legal costs and more effective market surveillance leading to less unfair competition. The proposal on market surveillance will have a pro competitiveness effect through the reduction in distortions in competition by tackling non-compliance. The simplification of the standardisation process in the non-harmonised area will lead to the faster adoption of product safety standards and therefore greater certainty for business leading to reduced costs. Greater regulatory certainty and simplification should benefit SMEs as compliance costs tend to be disproportionately higher for smaller companies. Overall rationalisation of coordination of market surveillance activities is considered to have a positive effect on consumers and on compliant economic operators because of more effective market surveillance across the EU without adding to the costs of the market surveillance authorities. Streamlining the notification procedures will reduce the burden on the market surveillance authorities from duplicate requirements.

Enforcement:

Enforcement is undertaken by the UK's existing market surveillance authorities; typically Trading Standards for consumer safety, the Health and Safety Executive (HSE) for workplace products, and a mix of specialist public sector enforcement authorities. The Regulation will not impact upon existing regulatory policies as envisaged by Hampton and successor policies. Compliance may be demonstrated using business friendly methodologies but enforcement is necessarily undertaken by public authorities who have experience with product safety legislation. Co-ordination mechanisms established when the UK implemented RAMS will be utilised to full effect to implement new market surveillance provisions.

Legal Implementation:

These 2 Regulations have direct effect and therefore may not be transposed into UK law. Copy out is therefore not an option. It is highly likely though that the UK will have to introduce implementing regulations through secondary legislation (possibly under the ECA) to provide for offences, penalties and

safeguards and as necessary to amend existing domestic legislation where overlapping or contradicting provisions within Directives are repealed. This is consistent with the usual approach used for implementing EU Regulations.

Ministerial sign-off:

I have read the analysis above of the potential impacts of this proposal and I am satisfied that, given the significance of the proposal, the time and evidence available, and the uncertainty of the outcome of negotiations, it represents a proportionate view of possible impacts.

Signed by the responsible Minister:

Date:

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