Study for the preparation of an Implementation Report of the General Product Safety Directive

Final report

Part 1: Main report

Prepared by Civic Consulting
July 2020

Justice and Consumers

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
E4 – Product Safety and Rapid Alert System

European Commission
B-1049 Brussels

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2020 EN

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LIST OF ACRONYMS

Acronym	Meaning
ANEC	European Association for the Co-ordination of Consumer Representation in Standardisation AISBL (The European consumer voice in standardisation)
BEUC	Bureau Européen des Unions de Consommateurs (The European Consumer Organisation)
CEN	European Committee for Standardisation
CENELEC	European Committee for Electrotechnical Standardisation
DG ENV	Directorate General for Environment
DG GROW	Directorate General for Internal Market, Industry, Entrepreneurship and SMEs
DG JUST	Directorate General for Justice and Consumers
DG TAXUD	Directorate General for Taxation and Customs
EEA	European Economic Area
EFTA	European Free Trade Association
ESO	European Standardisation Organisation
ETSI	European Telecommunications Standards Institute
EU	European Union
EUR	Euro
GPSD	General Product Safety Directive
MSA	Market Surveillance Authority
Safety Gate/ RAPEX	Rapid Alert System for non-food dangerous products
TOR	Terms of reference

Executive summary

Study context and objectives

This study was conducted by Civic Consulting for the European Commission. Its main objective was to map, collect and analyse evidence on the implementation of Directive 2001/95/EC (the General Product Safety Directive, GPSD) in all EU Member States, the EEA countries of Iceland, Liechtenstein and Norway, and the UK.

The GPSD requires that all consumer products placed on the EU market need to be safe. In order to guarantee the safety of products, the GPSD includes pre-market as well as post–market measures. Pre-market measures introduced by the GPSD include the standardisation process under the GPSD and legal responsibilities of businesses that place products on the market (including those regarding safety and traceability). Post-market measures include responsibilities of businesses, including the duty to recall products posing risks to consumers, as well as the responsibility of Member States to conduct market surveillance. The GPSD also establishes the EU Rapid Alert System (RAPEX), which enables quick exchange of information between EU/EEA Member States and the European Commission on measures taken regarding dangerous non-food products posing a risk to consumers and other users. The GPSD applies to non-food consumer products for which no specific EU harmonised legislation exists (the so-called 'non-harmonised products' such as childcare articles, furniture, clothing etc.). It is also applicable to the safety aspects or risks of harmonised products (such as toys), to the extent that there are no specific provisions with the same safety objective in the EU harmonised legislation. In this way, the GPSD provides a "safety net" for consumers.

This study covers the implementation of the GPSD at the national level, focusing on traceability requirements and the definition of safety of consumer products. It also assesses the functioning of market surveillance of consumer products, the functioning of Safety Gate/RAPEX, the standardisation work under the GPSD and jurisprudence at the EU and national level related to the GPSD. The study is based on country analyses by legal experts (including a review of case law and of relevant academic literature); a broad scale consultation process, consisting of a survey of market surveillance authorities (MSAs) and a related interview process covering 137 interviewees from market surveillance authorities in all 31 countries covered by the study; a general stakeholder survey which received 138 answers from 19 EU/EEA countries, complemented by interviews with key stakeholder organisations such as consumer organisations, standardisation organisations and business associations; and a comprehensive analysis of relevant studies, academic literature and RAPEX data. The fieldwork and the analysis for the study were concluded in March 2020.

Main conclusions

Based on the evidence collected, and the cross-cutting analysis of the 31 country reports presented in Part 2 of this report, the study arrives at the following main conclusions:

Traceability requirements

Article 5(1) of the GPSD contains general obligations for producers. Among other matters, producers must provide necessary information for tracing the origin of a product, including, for example, an indication of the identity and details of the producer and the product reference or, where applicable, the batch of products to which it belongs, on the product or its packaging, except where it is justified to not

give such an indication. The purpose of this indication is that in the event of a safety problem, dangerous products present on the market can be traced and swiftly removed if necessary to avoid putting consumers at risk. The GPSD does not specify the traceability requirement further, and it is up to the Member States to adopt concrete measures to implement such obligations. The most common method of implementing the traceability requirement is to require an indication of the name and contact details of the producer and the product reference or, where applicable, the batch of products to which it belongs. This is true for Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and Iceland. These countries either follow the Directive verbatim or at least come to the same result. There are, however, some national differences in detail as to how the rules are applied. While other requirements do exist in some countries, this is clearly a minority. For example, several countries (including Norway and Austria) rely on very broad general obligations without detailing that there should be a product reference or mark. Barcodes have not been mandated in any country.

A considerable number of market surveillance authorities and stakeholders reported having encountered practical problems related to the requirements of Art 5(1) regarding traceability[1]. The problems identified related largely to the following issues: non-compliance with traceability requirements; problems with traceability information on packaging only; problems related to rogue traders; and difficulties related to lack of or incorrect supply chain records.

Lack of information to trace products and producers remains a practical problem for enforcement authorities and stakeholders and is a particular problem for certain categories of products and sales channels (including online sales and online marketplaces, but also – in some countries – low priced products from Asia, distributed on open-air markets). The analysis of RAPEX data confirms that certain product categories are over-represented among dangerous products regarding the lack of at least *two* of three key information items relevant for traceability (brand, type/number of product, batch number/barcode). These are laser pointers, lighters, jewellery, decorative articles and lighting chains, which are all not subject to sector-specific harmonisation rules[2]. In other words: alerts concerning these five product categories falling under the scope of the GPSD are more likely to lack relevant information items that are essential to trace notified products. However, some harmonised products such as toys are also over-represented regarding the lack of *one* specific information item (for details, see table in section 4.1.2). Factors other than the legal framework are likely to contribute to this picture. For example, the top listed products in terms of absence of specific information items are mostly low value products, which are often unbranded.

Definition of safety

The definition of safety in Art. 2(b) GPSD does not explicitly cover cyber-security risks and other safety issues related to new technologies. The country research therefore specifically inquired as to whether or not any specific definition of safety was used for the application of the national implementation legislation of the GPSD in the area of new technologies. In none of the countries was such a specific definition reported to exist. There was a general concern about lack of clarity over the definition of safety in the GPSD. However, whilst some felt the definition was too general, others felt it was too narrow. There was also uncertainty about how the GPSD applied to products using new technology. Part of the uncertainty concerned whether the GPSD applied to

[1] 42% of market surveillance authorities and 22% of general stakeholders.

[2] Note that some lighting chains can fall under the scope of the Low Voltage Directive (LVD).

software[3]. Also, products were reported to give rise to new risks that often do not fall under the GSPD's definition of safety, but which concern factors such as cyber-security, and data privacy.

Functioning of market surveillance of consumer products

Market surveillance systems for consumer products in the countries subject to this study can be categorised by the degree to which market surveillance is conducted by the authorities with broader or narrower sectoral responsibility, and whether responsibility for market surveillance is (partly) delegated to or is the competence of sub-national administrations, in line with the administrative structure of the country. The following table shows the results of this analysis.

Figure 1: Organisation of market surveillance of consumer products in EU/EEA countries, according to sectoral distributions of responsibilities and involvement of sub-national administrations

	Responsibility for market surveillance is centralised (no sub-national administrations involved)	**Responsibility for market surveillance is (partly) delegated to or competence of sub-national administrations, in line with the administrative structure of the country**
One Market Surveillance Authority for all non-food products	Malta	-
A main Market Surveillance Authority for consumer products, complemented by a small number of other MSAs in specific sectors (e.g. telecommunications, chemicals)	Belgium[c)], Cyprus, Denmark, Estonia, Ireland, Netherlands, Finland, Iceland, Latvia, Luxembourg, Sweden	France[b)], Croatia, Greece, Lithuania, Poland[a)]
Several MSAs with sectoral responsibilities for consumer products	Bulgaria, Liechtenstein, Slovenia, Slovakia, Norway	Austria, Czech Republic, Germany, Hungary, Italy, Portugal, Romania, Spain, (UK)

Source: Civic Consulting. Notes: Considered are market surveillance authorities for harmonised and non-harmonised consumer products, not including medicinal products. Notes a) to c), see full table in section 5.1.

The table shows the large variation in the organisation of market surveillance for consumer products in EU/EEA countries. In a small country such as Malta, a single market surveillance authority can have responsibility for market surveillance of all non-food products (except medicinal products). In a second group of countries, a main market surveillance authority at the national level has broad responsibilities for consumer products, and is complemented by a small number of other MSAs in specific sectors (e.g. telecommunications, chemicals). Some (often larger) countries that have a main market surveillance authority for consumer products also rely on sub-national administrations or regional networks for enforcement, in line with their overall administrative structure. Finally, there are countries where several MSAs have sectoral responsibilities, without an organisation having a general or broad competence for consumer products. While in several countries this organisational approach only involves MSAs at the national level, in other countries following this approach responsibility for market surveillance is also (partly) delegated to or is the competence of sub-national administrations.

Due to the sometimes large number of authorities involved, market surveillance requires a high degree of coordination. Authorities therefore use a wide range of

[3] Only from Austria was it reported that according to the Product Safety Act (PSA) "product" means "all moveables including energy". According to the explanatory remarks of the legislator, software is therefore part of a product.

communication tools and channels. In all countries, market surveillance authorities regularly exchange information, conduct meetings and informally cooperate with their counterparts at other authorities (often on basis of a joint national market surveillance programme or plan, and slightly less frequently on basis of a formal agreement). The information systems RAPEX and ICSMS are also very common cooperation channels[4]. Cooperation between market surveillance authorities and customs is also often reported to be very close, and in most countries takes place once a week or more frequently. In nearly all countries, market surveillance authorities regularly exchange information, conduct meetings and informally cooperate with their counterparts at customs (often on basis of a formal agreement and/or a common strategy). However, market surveillance authorities mostly do not use a common national IT system with customs. One of the reasons for a limited use of common national IT tools is that customs uses its own system, the EU Common Customs Risk Management System (CRMS), which provides a mechanism to exchange risk-related information directly between Member States' customs authorities[5].

All Member States have to prepare National Surveillance Programmes in line with EU requirements[6]. These annual surveillance programmes are prepared either by the responsible national ministry (as in e.g. Cyprus, Estonia, France, Greece, Ireland, and Slovenia) or by a national Market Surveillance Authority (as in e.g. Lithuania, Malta, the Netherlands, Poland and Iceland)[7]. Several Member States indicated that the national surveillance programmes were prepared by the national ministry or authority in coordination with other sector-specific or regional MSAs (as in Cyprus, Latvia, Poland, Slovenia, Spain, and Iceland). In several countries, there are market surveillance programmes in place at the regional or local level in addition to the national surveillance programmes.

In most countries, authorities conduct market surveillance activities regarding consumer products sold online (which was a specific focus of this study), at least regarding online sales where the trader is located within their own country. For some authorities, market surveillance activities regarding online sales even account for a large share of their inspections (in the case of a Danish authority, more than 50% of the total number of inspections). In roughly half of the 31 countries subject to this study (16 countries), market surveillance authorities reported conducting market surveillance activities with respect to the safety of products containing new technologies (such as Internet of Things, connected devices). Only a minority of MSAs (from 11 countries) conduct mystery shopping regarding products sold online (i.e. purchasing products under a cover identity for subsequent testing), and an even smaller number of authorities report that they do so frequently[8]. Finally, a small number of authorities also conduct market surveillance regarding C2C products (products sold by consumers to consumers), including authorities from Denmark, Estonia, Italy and Iceland.

The goal of market surveillance is to ensure that businesses comply with their obligations to place only safe products on the market. However, the analysis of trends related to product safety in the EU is hampered by the lack of reliable data. While the number of notifications in Safety Gate/RAPEX and related trends are important indicators, the interpretation of these figures is not straightforward, as an increase in the number of notifications may not only represent more products posing a safety risk,

[4] See section 5.3.1.

[5] See section 5.3.2.

[6] Art 18 of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products.

[7] While National Surveillance Programmes mostly focus on harmonised products, they include an optional section on 'Other consumer products under GPSD'.

[8] This is partly due to legal limitations in the powers of these authorities, see section 5.2 below.

but also an increase in the number of inspections or other factors. Another potential indicator for product safety trends is the number of accidents/injuries related to consumer products. However, such data is not consistently available in the EU. MSAs and other stakeholders were therefore asked to assess at a qualitative level how the level of safety has improved in their country since 2013 (the beginning of the reference period of this study). The largest group of respondents considered the trend to be positive, i.e. suggested that the safety of consumer products improved over this period. Only a small minority saw a negative trend. Other respondents either saw no clear general trend or found that the trend depends on the product type or sales channel[9]. Stakeholders that considered the safety trend to depend on product type or sales channel mostly referred to sales on online platforms, products directly sold from non-EU/EEA countries and products with new technologies as being more problematic in terms of product safety.

Clear majorities of MSAs and other stakeholders have encountered problems affecting the functioning of market surveillance in their country[10]. According to their assessment, two of the three top problems affecting the functioning of market surveillance relate to a lack of resources: limited staff resources of market surveillance authorities in general, and more specifically, a lack of financial resources for product testing[11]. Limited resources of MSAs have already been identified as a key concern in previous studies. The second most important cluster of problems for market surveillance identified by MSAs and other stakeholders concerns online markets, and in this context, specifically B2C transactions with economic operators in non-EU/EEA countries in which products from those countries are delivered on an individual basis. These problems relate to issues of jurisdiction and practical difficulties in establishing the identity and the location of a trader in non-EU/EEA countries (see section 4 on traceability). Frequently mentioned in this context was the role of online marketplaces, which an EU business association called "the blind spot of market surveillance" in the EU. Both MSAs and other stakeholders agree that online sales remain the biggest challenge for market surveillance at this moment, also because it is not possible to check each package/shipment at the border.

Often, market surveillance authorities reasoned that limited human and financial resources combined with the absence of specific tools meant that they were in a weak position vis-à-vis new challenges related to e-commerce, the platform economy and new technologies. This concerned, for example, technical tools, such as IT tools for the screening of websites (e.g. webcrawlers) with the aim to detect dangerous products sold online. Sometimes even basic infrastructure is missing[12]. Even where MSAs have basic tools, there is considered to be an urgent need for more advanced ones, and a lack of special knowledge and expertise in using new tools. In contrast, MSAs in a small group of countries indicated that sufficient tools were available or under development, including technologies like webcrawlers, web scraping and data miners[13].

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9 About 42% of MSAs and 39% of general stakeholders considered the trend to be positive, i.e. suggested that safety of consumer products improved over this period. Only 1%/7% saw a negative trend. No clear general trend (level of safety largely unchanged) was indicated by 15%/20% respondents, and 16%/26% found that the trend depends on the product type or sales channel.

10 70% of MSAs and 57% general stakeholders report to have encountered problems affecting the functioning of market surveillance in their country.

11 Both issues are confirmed by our country research, see section 5.1.3. on staffing of MSAs, and number of inspections/tests conducted.

12 For example, an MSA reported to have very limited access to the Internet, and no access to Facebook or online platforms. In other countries, MSAs lack a credit card to conduct online purchases.

13 For example, in Denmark and the Netherlands, more advanced technologies like webcrawlers, web scraping and data miners are already being used or being developed, including in the context of EU-funded projects. Authorities in Germany also reported the use of webcrawlers that search, for example, rating platforms for relevant combinations of words (such as a particular product and “fire”). This has

The country research also confirms that the different institutional models for market surveillance at the national level are often characterised by a high degree of fragmentation of responsibilities. While this may sometimes be unavoidable to some degree (especially in large and federally-organised countries), many examples show how fragmentation and unclear distribution of responsibilities and other institutional issues (such as a lack of communication/coordination between authorities) can affect the effectiveness and efficiency of market surveillance. Stakeholders noted that institutional fragmentation may also lead to significant problems for the companies affected by market surveillance, as this may lead to different practical interpretation of legal requirements; diverging working methods; diverging levels of effectiveness; and as a result, a lack of a level playing field for companies. This reportedly affects the producers of non-harmonised and harmonised consumer products alike.

Problems regarding the legal framework for market surveillance either relate to the overall framework or to the absence of specific legal tools. Problems experienced with respect to the overall framework concerned differences in the implementation of the GPSD across countries, the complexity of regulation in the different product sectors, the different legislative requirements for harmonised and non-harmonised products, and a perceived legislative gap regarding online marketplaces (which are not considered to be distributors under the GPSD) and other new actors in the online environment (such as social networks, which serve as new sales channels for both B2C and C2C sales). More specific problems relate to the lack of coverage of C2C products in the current legal framework, and the absence of specific competences or enforcement powers of MSAs in certain countries, e.g. with respect to mystery shopping and the blocking of websites.

Functioning of Safety Gate/RAPEX

RAPEX[14] is the key channel for market surveillance authorities when communicating and cooperating with other relevant authorities in the EU/EEA. RAPEX not only allows market surveillance authorities to notify dangerous products rapidly, but also ensures that this information reaches the appropriate contact point in all EU/EEA countries. MSAs and other stakeholders to a large extent appreciate the functioning of RAPEX, and find the system to function well considering their needs. Still, certain issues currently impede its operation, such as delays between the detection of a dangerous product in a Member State and its notification to RAPEX. In most cases, this duration is two weeks or more. Several authorities emphasised that the duration between detection of a dangerous product and its notification to RAPEX depended on the type of product, the risk, the required testing and the behaviour of the economic operator (objections by the relevant economic operator is in some cases reported to lead to significant delays). Institutional factors also seem to be relevant, with some countries having notification procedures that are simpler and shorter than in other countries. Legal and liability aspects, as well as the specific circumstances of each case in which a potentially dangerous product is identified, appear to be additional key factors affecting the duration of the notification process.

Other impediments encountered by RAPEX users include the lack of sufficient information to trace notified products (which was one of the highest ranked problems). Notifications published on Safety Gate/RAPEX sometimes do not contain enough information to identify the products, and provide, for example, no information about the brand, manufacturer/importer/distributor, type/model, batch number, or sales

already led to the detection of safety risks in products that would not have been on the agenda otherwise.

[14] RAPEX is the rapid alert system for dangerous products, the data of which is provided through the EU Safety Gate web portal.

channel (at least in the public version of the system)[15]. Also, pictures of products are sometimes missing or are of poor quality. Stakeholders also suggested that the description of the hazards in the risk assessment was not always clear and lacked context, or that based on the information provided it was not always possible to fully understand the technical reasons which have led to the notification, or to assess the problem in detail.

Standardisation work under the GPSD

The GPSD requirement for producers to put "only safe products" on the market is often difficult to apply for businesses because of the lack of a common benchmark on what constitutes a "safe" product. Therefore, the European Commission provides for the development of European Standards to make this general safety requirement more operational. Following the recognition of a need for a European Standard under the GPSD, the standardisation process consists of four steps, which are:

1. The Commission issues a Decision to set safety requirements to be met by the standard;

2. The Commission issues a formal mandate to European Standardisation Organisations (ESOs) to develop a standard;

3. The ESOs develop a standard compliant with safety requirements;

4. The Commission issues a Decision about the referencing of the standard in the Official Journal of the European Union (OJ EU).

Both market surveillance authorities and other stakeholders were asked to assess how well each of the above described four steps functions from their perspective, as well as the overall standardisation process. Market surveillance authorities, consumer organisations and standardisation bodies involved in the standardisation process under the GPSD assessed it on average considerably more positively than business stakeholders[16]. An exception is Step 3 – Development of the Standard by ESO –, where the assessment of other stakeholders was more positive than the assessment of MSAs.

The long duration of the standardisation process was the most commented-upon weakness. One of the factors contributing to this is that the GPSD brings into play a parallel EU committee regime. The GPSD Committee is involved in the front and back end of the process establishing the safety requirements in a Decision (Step 1) and ensuring the standard formulated complies with the Decision (Step 4). The Standardisation Committee is, however, the one responsible for taking the decision with respect to the standardisation request to ESOs (Step 2). This means that two separate EU committees are involved in the process, which inevitably increases its duration. In terms of delay, Step 3 came in for particular criticism. The procedure of elaborating a European Standard was considered to take too long. The elaboration of a standard by the European Standardisation Organisations is subject to a number of

[15] The internal RAPEX system for Member States' authorities may contain contain additional data, e.g. with respect to risk assessment, test reports and traceability information, which are, however, not publicly accessible.

[16] In our survey of market surveillance authorities and other stakeholders, respondents that have been involved in the standardisation process established under the GPSD were asked to assess how well each of the above described four steps is functioning, as well as the overall standardisation process. Respondents were given a scale from 1 (Not at all functioning), to 5 (Very well-functioning), with the midpoint of 3 indicating a moderately well-functioning standardisation process. The detailed results for the overall assessment of the standardisation process by stakeholder group are as follows: Consumer organisation/NGO (4.00), Standardisation body/organisation (3.67), MSAs (3.52), Organisation involved in product testing (e.g. test laboratory, 3.40), Business association (2.90), Company (2.82).

requirements, principles and commitments, such as the participation of all interested parties, and the application of the consensus principle, which aims at unanimous agreement on the draft standard. As a result, there is a considerable time period between the start and the end of the standardisation process under the GPSD, i.e. from begin of Step 1 (identification of a need to develop a standard) to the end of Step 4 (publication of the reference of the adopted standard in the Official Journal of the EU). During this period, there continues to be lack of criteria for assessing the safety of a product and a resulting uncertainty for economic operators and market surveillance authorities.

Jurisprudence on issues related to the GPSD

Recent case law with respect to or relevant for the GPSD or its national implementation legislation was only reported from about half of the EU/EEA countries, including Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, Spain and the United Kingdom. Product safety often involves administrative procedures that provide means to handle differences within their structures. Market surveillance authorities often work with economic operators to resolve problems, and producers and distributors often have incentives to be co-operative. Also, enforcement is often carefully targeted towards clear cases posing serious risks. The incentives to challenge enforcement in court may therefore be limited. There is relatively little litigation about the concepts contained in the GPSD, though, as might be expected, there is some discussion of how to apply the general safety requirement of the GPSD[17]. There is debate about which standards to apply and how to apply them[18], underlining the complexity of the relationship between standardisation and the regulation of safety in EU law. In some Member States, courts have also considered the matter of who has standing to request the regulatory authority to check the safety of a product and challenge the outcome of that process, in some cases granting standing to business competitors. This means that an entrepreneur may challenge the findings of the Market Surveillance Authority with the purpose of preventing dangerous (and cheaper) products from being imported by a competing entrepreneur[19]. Several cases have been built regarding the use of enforcement powers[20]. This includes cases concerning RAPEX notifications and product related warnings issued by authorities, which were not held to be justiciable[21]. There has also been discussion of how the GPSD interacts with other legislation, such as unfair commercial practices law[22]. The national and EU case law is presented in detail in Section 8 of this report.

Potential improvements

Suggestions for improvements, based on the analysis presented in the report, on the comments provided in the survey of MSAs and stakeholders, and on the interviews in all 31 countries covered by the study, are elaborated below. Please note that the order in which potential improvements are presented does not imply any priority or assessment of feasibility by the authors.

- *Make traceability requirements mandatory.* Improvements as regards traceability requirements could include requiring the name and contact details of the producer to be shown on the product or packaging and to indicate the

[17] See section 8.1.3.

[18] See section 8.1.3.

[19] See section 8.1.4, which specifically refers to a Tallinn Administrative Court decision.

[20] See section 8.1.6.

[21] See sections 8.1.5 and 8.1.6.

[22] See section 8.1.7.

product reference or the batch to which it belongs on the product or its packaging. These two aspects are already mentioned as possible means of compliance in the Directive and are already found in the implementing legislation in many EU/EEA countries. The third most suggested amendment was for businesses to keep supply chain records. A similar requirement has been applied for many years in the food safety area (Art. 18 of the General Food law, Regulation 178/2002, which requires food and feed business operators to identify their suppliers and other businesses that are their customers).

- *Increase responsibility of online marketplaces and related measures.* Many MSAs and stakeholders suggested that stricter accountability rules should apply to online marketplaces. Although it may be hard to enforce EU traceability rules on non-EU producers directly, this might suggest that the requirement be extended to those who place the goods on the EU market. However, for EU law to be effective, there needs to be someone responsible based within the EU. Regulation (EU) 2019/1020 provides a solution in that it requires an economic operator established in the Union to be responsible for key tasks in relation to some categories of products. This might be a manufacturer, importer, authorised representative, or a fulfilment service provider. However, these provisions are limited to products subject to harmonisation legislation. It was therefore suggested by MSAs and some other stakeholders to extend the provisions of Regulation (EU) 2019/1020 to cover non-harmonised products, such as furniture, shoes, textiles, ladders and childcare articles. It is also possible to introduce stricter obligations regarding traceability on distributors[23].
- *Clarify the definition of safety with respect to products containing new technologies*: For the most part, the general safety requirement of the GPSD is drafted in terms that can be interpreted to apply to products using new technology. Any uncertainty might be addressed through guidance or legal clarifications. There are some issues though that might raise new concerns. Although the GPSD may impose ongoing obligations on producers to be aware of the risks their products pose, the risk of post-marketing defects arising is increased with new technology. Technological bugs are an inherent issue with software, and therefore obligations to monitor and fix them might be appropriate. Artificial intelligence (AI) devices might alter their operation as they "learn" from the environment. If a product becomes dangerous post-marketing, the market surveillance authorities should still have the power to take appropriate action with regard to the product. Consideration might be given to making the post-marketing obligations of economic operators more explicit, and providing greater clarity to the definition of safety, including regarding the extent to which cyber security and data breaches are covered. These reflect serious consumer concerns; however, it is not clear that they all relate to the physical safety of consumers as protected by the GPSD. Security breaches can affect safety, and guidance could make that clear.
- *Cover standalone software*: The position of standalone software is uncertain with respect to the general safety requirement. Software may itself pose a danger to consumers (e.g. through the advice it gives) or it may produce dangers as it interacts with other products (e.g. when a signal giving instructions is sent to another device). There is a general move to apply similar rules to software as to products as seen in the Digital Content Directive.
- *Provide guidance on recalls:* The GPSD provides Member States with the power to order product recalls, though preference is given to voluntary recalls.

[23] For example, in the Czech Republic, the information and documentation requirements, which focus on traceability, are more detailed and require that the "seller" shall ensure that products are visibly and intelligibly marked, which includes also the designation of the producer, importer or supplier.

However, recalls are difficult procedures to implement and there can be uncertainty as to what is required. In some countries, such as the UK, there is recent guidance on how to conduct product recalls given in a code of practice. Such guidance is not available across the EU, and there were calls for additional guidance to provide greater clarity on how recalls could be carried out (see section 5.5 below for a detailed discussion of recalls and the available guidance).

- *Improve resources for market surveillance*: Proposed improvements regarding the lack of staff and financial resources of MSAs mostly revolve around the provision of more staff, more budget, more training, more powers, more spot checks and better controls in certain areas. Potential sources of funding that were suggested included EU funds/projects for market surveillance, but also the allocation of funds originating from sanctions imposed by MSAs. It was suggested that the European Commission should enforce Member States' obligations when it comes to market surveillance, including by developing comparable ways to measure the resources used in the Member States for this purpose, or by specifying the intensity of sampling. Other suggestions referred to the need for more risk-based and efficient market surveillance activities.
- *Centralise market surveillance:* A large number of MSAs and stakeholders supported improvements concerning institutional problems related to market surveillance, such as fragmentation of responsibilities and lack of cooperation. In general, there was a tendency to suggest a more centralised organisation of market surveillance for consumer products. A better coordination between market surveillance authorities is needed with a clear role for the leading authority. It was also a common view that in federal states more competences should be at the federal level rather than at the regional/local level. It was also proposed to define an "umbrella" or "last resort" market surveillance authority in each country that is responsible for new areas which are not in the scope of other market surveillance authorities. The role of customs for improved product safety in the Single Market was highlighted frequently, and related suggestions referred to the joint setting of priorities with the neighbouring countries' customs to facilitate more efficient market surveillance; the presence of product safety officials at the border on a permanent basis; and the designation of customs as a market surveillance authority in its own right, to allow for a more pro-active role of customs.
- *Continue improving Safety Gate/RAPEX:* In line with the function of the RAPEX system, published notifications should always provide the essential information needed to trace a dangerous product, to understand the risks involved and to allow MSAs and third parties to take targeted action (which was currently not considered to be the case). In line with the reported inconsistencies of risk assessments, additional efforts to harmonise and improve risk assessment approaches of MSAs could be made, building on the existing guidelines and tools. Technical improvements proposed by stakeholders and MSAs concerned a variety of areas, including search functions and the interoperability of RAPEX with IT tools used by or envisaged by MSAs (or retailers). Several MSAs suggested to allow automated access to RAPEX data, to enable them to use webcrawlers and other IT tools for checking websites. Similar techniques are used in other areas, such as datafeeds that are provided by e-commerce sites to price comparison websites. If these RAPEX datafeeds were also available to third parties, this could facilitate automated checking of the inventories of retailers and online marketplaces. MSAs and stakeholders also made a large number of suggestions for procedural improvements related to the notification process, including: streamlining the process from identification of risk to notification to ensure that more rapid action can be taken; providing better templates for improving the quality of notifications; and informing manufacturers/authorised representatives in the EU in the case of an upcoming notification.

- *Standardisation process:* Possible improvements for the standardisation process under the GPSD favoured by stakeholders and MSAs include the involvement of an independent consultant for the assessment of standards during Steps 3 and 4 of the process (elaboration of the standard by ESO and referencing). It was also suggested to make the standardisation process under the GPSD more efficient by reducing the time needed for the elaboration of the standard by ESO (Step 3), or by streamlining the other steps of the process, e.g. by reducing the number of Commission Decisions involved, and/or by taking other appropriate measures.

1. Introduction

This is Part 1 of the final report of the "Study for the preparation of an Implementation Report of the General Product Safety Directive", conducted by Civic Consulting.

Part 1 presents the main analysis and is structured as follows:

Section 2 describes the objectives and scope of the study, and summarises the methodology applied;

Section 3 describes the background of the study;

Section 4 analyses the implementation of the GPSD in the EU/EEA countries and focuses specifically on traceability and safety of consumer products;

Section 5 describes the functioning of market surveillance of consumer products, and includes a summary of Joint Action reports;

Section 6 reviews the functioning of Safety Gate/RAPEX and cross-border cooperation;

Section 7 presents the analysis with respect to the standardisation work under the GPSD;

Section 8 provides an overview of the jurisprudence at EU and national level on issues related to the GPSD; and finally

Section 9 presents main conclusions and an overview of potential improvements.

In the Annex we provide detailed survey results, an overview of standards referenced under the GPSD, supporting RAPEX data and a list of references.

Part 2 of the report presents the country reports, and Part 3 the detailed summary of Joint Action reports.

2. Description of the study

2.1. Objectives and scope of the study

The main objective of this study is to map, collect and analyse evidence on the implementation of the GPSD in the EU to feed into a report on the implementation of the GPSD. The study covers:

1. Safety of consumer products, in particular on improved product traceability;
2. Functioning of market surveillance;
3. Standardisation work (including areas covered under Article 4(a) to (d) of the GPSD);
4. Functioning of RAPEX;
5. Developments of the Community legislation relating to product safety.

The study covers all EU Member States (MS) as well as the United Kingdom and the EEA countries of Iceland, Liechtenstein, and Norway[24]. The time period covered is 2013 to 2018 (except with respect to Task 5 on Joint Actions, for which relevant Joint Action reports also include earlier actions).

2.2. Methodology

The study is based on country analyses by legal experts (including a review of case law and of relevant academic literature), a broad scale consultation process, consisting of a survey of market surveillance authorities (MSAs) and a related interview process, a general stakeholder survey complemented by interviews with key stakeholder organisations, and a comprehensive analysis of relevant studies, academic literature and RAPEX data. The methodological tools are elaborated in more detail below.

Country analyses by legal experts

The study is based on detailed country analyses conducted by country experts, who have analysed the national implementation of the GPSD, related case law, and conducted research on the market surveillance systems for consumer products in each of the 31 countries covered by the study, based on interviews and a review of documents and relevant academic articles. The resulting country reports are presented in Part 2 of this report.

Interviews of market surveillance authorities

In total, 137 interviews with representatives of national and relevant sub-national authorities or sectorial administrations dealing with market surveillance were conducted in all EU/EEA countries. The interviews covered the following aspects:

- *Functioning of market surveillance* (market surveillance programmes; market surveillance regarding new technologies, online sales and C2C products; cooperation with other authorities; Safety Gate/RAPEX; cooperation with customs; cooperation with businesses/business associations; cooperation with consumer organisations and awareness raising of consumers; recalls and other

[24] Note that in the following sections of this report, a reference to 'Member States' includes the EEA countries Norway, Iceland and Liechtenstein, as well as the UK (which was during the reference period an EU member), and is interchangeably used with the term 'EU/EEA countries'.

measures; statistics, complaints and injury data; possible improvements of market surveillance)

- *Implementation of the GPSD in the national legislation* (traceability; definition and assessment of safety; emerging threats and safety issues; administrative measures and penalties, case law)
- *Standardisation process under the GPSD*

Interviews with other stakeholders

To complement the interviews with authorities, we conducted a total of 25 interviews with other stakeholders. These focused on EU level business associations, the EU level consumer organisations BEUC and ANEC, CEN/CENELEC, Commission officials and consumer organisations performing or reporting on testing activities in the product safety field.

Survey of Member States' MSAs

The evidence collection survey of MSAs complemented the country interview process in all EU/EEA countries. The survey questionnaire was circulated to the relevant authorities in advance of the interview, and refined following the interview, to include the additional clarifications provided. The survey results informed the preparation of the country reports, and the compilation of the comparative tables presented in Part 1 of the report.

General stakeholder survey

The general stakeholder survey covered key issues of the study, focusing on those questions that were of direct relevance for each group of stakeholders. The survey targeted businesses and their associations, standardisation bodies, and consumer and other civil society organisations, both at the EU level and in Member States/EEA countries, as well as EU organisations of testing institutes and product safety experts. The survey was implemented on EU Survey and stakeholder organisations were invited by email, with several subsequent email reminders. A link to the survey was also published on the EU Safety Gate website. We received a total of 138 survey responses, mostly from EU Member States and EEA countries.

Analysis of RAPEX data

The study analysed the level of satisfaction with RAPEX among market surveillance authorities and of impediments encountered, and collected data regarding the duration from identification of a dangerous product to its notification in RAPEX. The analysis was complemented by an evaluation of RAPEX data, focusing on the availability of traceability-related information items and recall-related notifications.

Review of Joint Action reports

Joint Actions (co-financed by the European Commission) are aimed at improving the effective application of the GPSD through co-operation between national authorities responsible for the assessment, market surveillance and enforcement of the safety of non-food consumer products and services. For this study, we have reviewed and summarised the reports on 40 Joint Actions. The full summaries are presented as Part 3 of this report.

Complementary research and analysis

The methodological tools presented above were supplemented by desk research concerning relevant guidance, documents, reports, academic literature, media reports, statutes, and case law, and complemented by legal research and analysis.

2.3. Acknowledgements

We would like to express our gratitude to all contributors, without whom this study would not have been possible. In particular, we would like to thank the representatives of market surveillance authorities in all 31 EU/EEA countries who agreed to be interviewed regarding their work and experiences, and provided data and insights regarding the complex issues covered by the study. We would also like to thank all other organisations who provided valuable input through interviews and who responded to our surveys. We are especially grateful for the support of EU stakeholder associations and bodies, who helped us in understanding their perspective and kindly distributed the survey to their members.

Finally, we thank the Directorate-General for Justice and Consumers of the European Commission for their continuous support and constructive cooperation throughout the study.

3. Background of the study

Protecting the health and safety of European consumers is a priority for the EU[25]. In order to ensure that only safe products are placed on the European market, the General Product Safety Directive (2001/95/EC) (GPSD) establishes a general safety requirement for all non-food consumer products and contains provisions for the referencing of standards in the Official Journal of the European Union in support of the general safety requirement. It replaced an earlier General Product Safety Directive dating from 1992. The GPSD is applicable in the whole EU and is also applied in the EEA (European Economic Area) countries: Iceland, Liechtenstein, and Norway. It complements sector specific product safety legislation by applying fully to consumer products falling outside the scope of specific legislation, e.g. to childcare articles, and by applying partially to consumer products covered by sector legislation, for example toys, for all aspects not covered by the specific harmonised legislation. In 2008, the GPSD was complemented by Regulation (EC) 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, accompanied by Decision (EC) No 768/2008 on a common framework for the marketing of products.

In June 2019, the EU legislator adopted Regulation (EU) 2019/1020 on market surveillance and compliance of products. This new piece of legislation was a reaction to an increasing number of illegal and non-compliant products on the market that distorts competition and puts consumers at risk. Among others, it consolidates the existing framework for market surveillance activities mainly for harmonised products; requires a responsible economic operator in the EU for certain products placed on the EU market (under the scope of this Regulation); addresses challenges of international e-commerce and online trade; encourages joint actions by market surveillance authorities from several member states; aims to ensure effective, speedy and accurate exchange of information between authorities and the Commission; and creates a strengthened framework for controls on products entering the single market and for improved cooperation between market surveillance authorities and customs authorities. It also reorganises the Union Product Compliance Network and provides it with additional tasks and powers, including defining priorities for EU-level common market surveillance actions. Moreover, it introduces the possibility to establish a peer-review system for national market surveillance authorities.

EU product safety law must be seen in the context of the free movement of goods in the internal market. This is most visible in sector specific legislation of the 'New Legislative Framework'. The so-called 'New Approach' as introduced in the 1980s, and its follow-on system, the 'New Legislative Framework', was meant to substitute national measures so as to facilitate the cross-border trade and avoid the presence of products that bear a risk for health and safety on the EU market. The manufacturer who puts products into circulation must certify that the products comply with the required safety requirements and affix the CE mark; and in the case of high-risk products, EU law requires a conformity assessment to be carried out by an independent third party (the 'notified body') in sector specific legislation, such as medical devices law. Products that bear the CE mark can circulate freely in the internal market[26]; which means, for example, that Member States cannot make the marketing

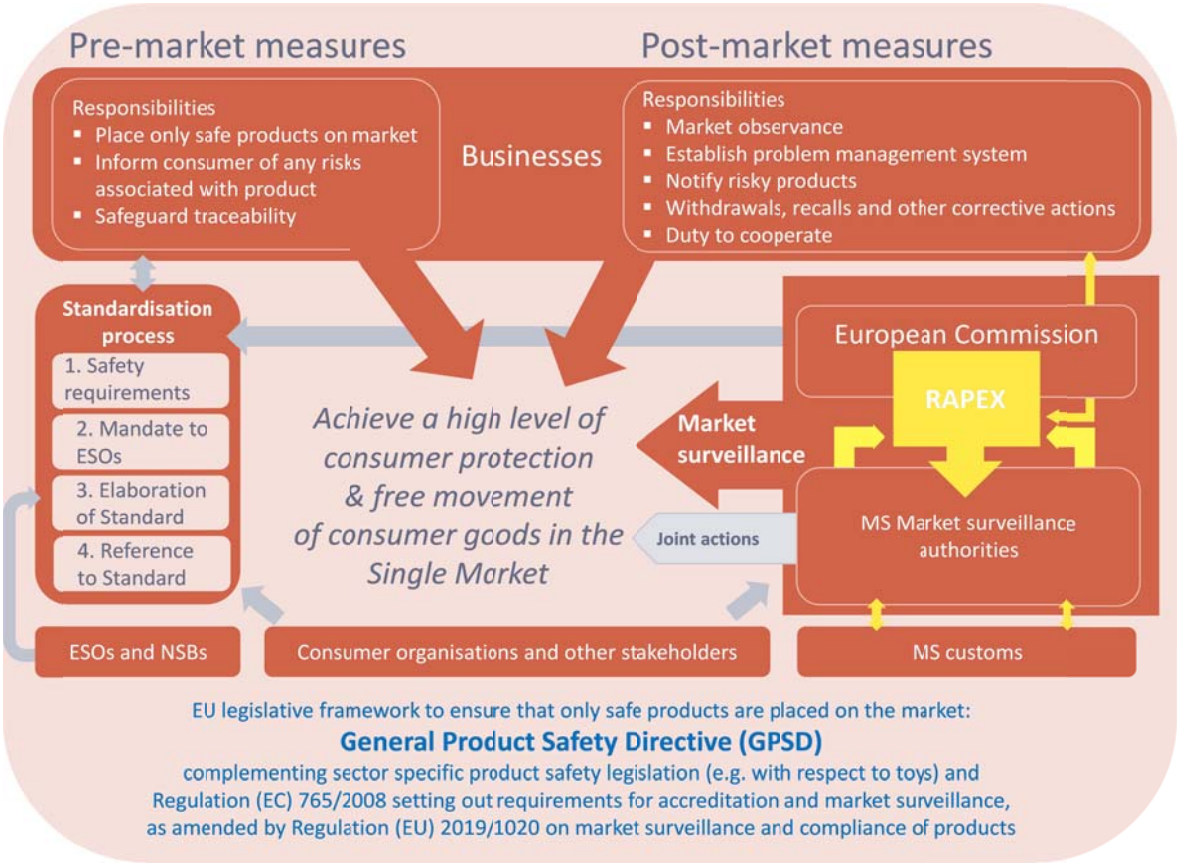
[25] See, for example, European Commission, The Goods Package: Reinforcing trust in the single market, COM(2017) 787, at 2.

[26] See also ECJ, 19 March 2009, C-489/06 Commission v. Greece, ECLI:EU:C:2009:165. For the relevant point in time, see GC, 26 January 2017, T-474/15 Global Garden Products Italy SpA v. Commission, ECLI:EU:T:2017:36.

of the products subject to a prior approval procedure, and they also cannot ask for additional certification from the person who puts the product into circulation[27].

The GPSD is not a 'New Approach' directive but has the same internal market background[28] and works similarly in some aspects. In order to guarantee the safety of products, the GPSD involves pre-market as well as post–market measures. The figure below illustrates the different elements of the system as well as their systemic dimension in contributing to a high level of consumer protection and the free movement of consumer goods.

Figure 2: The consumer product safety system of the GPSD



Source: Civic Consulting

As the figure illustrates, pre-market measures include the standardisation process under the GPSD and legal responsibilities of businesses that place products on the market (including regarding traceability), whereas post-market measures include related responsibilities of businesses, such as market observance and the duty to notify and recall products posing a risk, as well as the responsibility of Member States to conduct market surveillance, facilitated by RAPEX and supported through joint actions.

The pre-market duties of *producers* are threefold. They have a responsibility to:

[27] See ECJ, 17 April 2007, C-470/03 A.G.M.-COS.MET Srl v Suomen Valtio and Tarmo Lehtinen, ECLI:EU:C:2007:213; . ECJ, 8 May 2003, C-14/02 ATRAL SA v Belgium, ECLI:EU:C:2003:265.

[28] See recitals (2) and (3).

- *Place only safe products on the market.* Products have to comply with the general safety requirement as set out above. Products are presumed safe as far as the risks and risk categories covered by relevant national standards are concerned when they conform to voluntary national standards transposing European standards, the references of which have been published by the European Commission in the Official Journal of the EU;
- *Inform consumers of any risks associated with the products they supply.* The aim is to enable them to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and to take precautions against those risks. This duty must be fulfilled when the product is made available on the market. It not only relates to information on the proper use of the product (as described in user manuals), but also to risks that come, for example, with the age or the long-term use of the product;
- *Safeguard traceability.* Make sure that any dangerous products present on the market can be traced and swiftly removed if necessary to avoid putting consumers at risk.

Post-market duties of *producers and distributors*[29] are as follows:

- *Market observance.* According to Article 5(1) subparagraph 3 (a), producers shall adopt measures commensurate with the characteristics of the products which they supply, enabling them to be informed of risks which these products might pose. Thus, they must observe the performance of their products on the market.
- *Establishment of a problem management system.* According to the same subparagraph, producers shall adopt measures commensurate with the characteristics of the products which they supply, enabling them to take appropriate action including, if necessary to avoid these risks, withdrawal from the market, adequately and effectively warning consumers or recall from consumers. Thus, producers must establish a management system that allows them to react speedily in the event of a product turning out to be unsafe. This duty not only arises once the problem becomes apparent but it is of a preventive nature.
- *Notification of products posing risks to consumers.* Producers and distributors are also required to immediately notify the respective authorities in EU Member States in case they know or ought to know, on the basis of the information in their possession and as professionals, that a product that they have placed on the market poses risks to the consumer that are incompatible with the general safety requirement (Article 5(3)).
- *Withdrawal from the market, warnings and recalls.* According to Article 5(1) subparagraph 3(b) and subparagraph 5, producers shall withdraw unsafe products from the market, publish warnings of unsafe products or recall products from consumers on a voluntary basis or at the request of the competent authorities; whereby recalls should be the measure of last resort.
- *General duty to cooperate.* Generally, producers and distributors shall cooperate with the competent authorities on actions taken to avoid the risks posed by products which they supply or have supplied. The relevant procedures are to be established by the competent authorities.

These duties of businesses are complemented by the requirement for Member States to establish systematic approaches to perform effective market surveillance. Member

[29] Distributors are defined as "any professional in the supply chain whose activity does not affect the safety properties of a product (Art. 2).

States establish or nominate national authorities competent to monitor the compliance with product safety requirements and give necessary powers to these authorities to take appropriate measures. National market surveillance authorities have a responsibility to:

- Ensure that producers and other actors in the supply chain comply with their obligations from the GPSD (as implemented by the Member States);
- Ensure effective market surveillance in line with Article 9;
- Take appropriate action in case a dangerous product is detected on the market and notify it in RAPEX (RAPEX contains notifications of dangerous harmonised and non-harmonised products).

The organisation of market surveillance at the national level and the competences of the national authorities have not been harmonised yet, and they differ significantly between Member States. Most market surveillance authorities in the Member States work on the basis of annual inspection programmes which take into account, among others, previous experiences and findings, products that are frequently notified through RAPEX, and consumer complaints. If necessary, all Member States carry out controls and tests which are not necessarily foreseen in their programming, for example in emergency situations. To provide assistance to the EU Member States' product safety authorities, the Commission has co-funded more than 40 Joint Actions on market surveillance among these authorities since 2007 (for more details, see section 5.4 below).

4. Implementation of the GPSD in Member States - traceability and safety of consumer products

This section analyses two key aspects of the implementation of the GPSD in Member States: the transposition of Article 5 (1) regarding traceability, and the application of Article 3 with respect to the definition of safety and scope of the GPSD in the area of new technologies. We then consider the results of the country research in terms of emerging safety issues identified by market surveillance authorities and stakeholders, and finally conclude on potential improvements of the legislative framework.

4.1. Traceability

4.1.1. Legal analysis of the transposition of Article 5 (1) GPSD regarding traceability

Article 5(1) of the GPSD contains general obligations for producers[30]. Among other matters, producers must provide necessary information for tracing the origin of a product, including, for example, an indication of the identity and details of the producer and the product reference or, where applicable, the batch of products to which it belongs, except where not to give such indication is justified. The purpose of this indication is that in the event of a safety problem, dangerous products present on the market can be traced and swiftly removed if necessary to avoid putting consumers at risk. The GPSD does not specify the traceability requirement further, and it is up to the Member States to adopt concrete measures to implement such obligations. Already the 2009 Implementation report of the Commission stated that "some Member States have made it obligatory to indicate on the product or packaging, the identity and details of the producer (or importer), while other Member States have left it optional. Consequently, producers' obligations can differ in practice from one Member State to another"[31].

To update this analysis, our country research identified the traceability requirements in the national legislation for non-harmonised consumer products and for those harmonised products for which EU legislation does not provide specific traceability requirements[32], differentiating between the following requirements:

- General requirement to indicate name and contact details of the producer on the product or its packaging;
- General requirement to indicate product reference or, where applicable, the batch of products to which it belongs on the product or its packaging;
- General requirement to use a barcode or other machine readable identification on the product or its packaging;
- Product-specific traceability requirements;
- Other requirements related to traceability.

[30] Note that according to Art 2 GPSD, the term 'producer' includes importers, if there is no representative of the manufacturer established in the Community.

[31] European Commission. (2009). Report from the Commission on the implementation of Directive 2001/95/EC on general product safety, p 6.

[32] The following table therefore does not refer to traceability requirements that derive from other EU legislation.

The following table indicates which of these requirements are implemented in the national legislation of each EU/EEA country according to our country research (for more details, please refer to the country reports in part 2 of this report).

Figure 3: Overview of transposition of Art 5 (1) GPSD regarding traceability

	Requirements to indicate on the product or its packaging			***Product-specific and other***	
	Name and contact details of the producer	Product reference or, where applicable, the batch of products to which it belongs	Barcode or use other machine readable identification	Product-specific traceability requirements	Other requirement related to traceability
Austria					g)
Belgium	✓	✓			
Bulgaria	✓	✓a)			✓a)
Croatia	✓	✓			
Cyprus	✓	✓			
Czech Republic	✓	✓			
Denmark	✓	✓			
Estonia	✓	✓			
Finland	h)				✓h)
France	b)	b)			
Germany	✓	✓n)			
Greece	✓c)				
Hungary	✓i)	i)			i)
Ireland	✓l)	✓l)			
Italy	✓	✓			
Latvia	✓d)	✓d)			
Lithuania	✓	✓			
Luxembourg	✓	✓			
Malta					m)
Netherlands	✓	✓			
Poland	✓	✓			
Portugal	✓e)	✓e)			
Romania	✓	✓			
Slovenia	✓	✓			
Slovakia	✓	✓			
Spain	✓	✓			
Sweden	✓	✓			
UK	k)	k)			
Iceland	✓	✓			
Liechtenstein	✓				
Norway				✓f)	✓f)

Notes: ✓= mandatory requirement

a) The Bulgarian legislation states "the name of the manufacturer, other information about manufacturer or the batch of goods to which the goods belong should be given", but what is to be understood by other information is not specified. The Bulgarian legislation also imposes on producers the duty to store and make available upon request from the control authorities all documentation necessary for tracing the origin of the goods to the producer.

b) The general obligations in respect of producers providing the necessary information for tracing the origin of a product, such as an indication of the identity and details of the producer and the product reference or the batch of products to which it belongs is applied in a contextual way in France, depending upon the products concerned. As was stated by the DGCCRF, the traceability obligations are "determined in respect of the characteristics of the products: potential risks, and modalities / extent of the distribution, on a case-by-case basis."

c) The national implementation legislation of the GPSD in Greece transposes the content of the GPSD with identical wording, it therefore does not contain any further specification of the traceability requirement. For non-harmonised consumer products, a general requirement to indicate the name of the product, as well as the name and contact details of the producer, is applicable that pertains to the labelling of the product and is not conducive to the traceability of the product.

d) In Latvia, article 8(5) of the Law on the Safety of Goods and Services provides that the distributor is under obligation to keep and ensure the necessary documentation for tracing the origin of the goods. Article 2 (2) generally requires that a manufacturer shall indicate (mark) the goods, their packaging, in the technical documentation or the technical registration of the goods his or her name (firm), given name, surname, trademark or other distinctive mark, or the person who has reconditioned the goods in order to put them into circulation.

e) In Portugal, article 6 (3) (a) of Decree-Law no. 69/2005 of 17 March obliges the producer to make available, on the packaging or on the product, the identity and full address of the producer and the person responsible for placing the product on the market. In addition, the manufacturer must also

include instructions for use and product references, including the name, model, and type or batch of products to which it belongs.
f) The national legislation of Norway only specifies a general requirement to give the customer the relevant information.
g) No concrete measures are foreseen in the Austrian product safety act (Produktsicherheitsgesetz 2004 - PSG 2004). Companies are free to choose the means to guarantee traceability.
h) Requirement to indicate the name of the producer or importer.
i) The Hungarian law requires indication of the name and contact details of the producer on the product or on the package of the product and in addition the product reference, where applicable. Indication of the batch of products to which it belongs on the product or on its packaging is also required in Hungary. Article 15(1) of Law LXXXVIIII obliges the business entities to provide the Market Surveillance Authority with information on its suppliers and its customers.
k) In general terms, in the UK there is an obligation on distributors to take measures to keep themselves informed of risks associated with products so as to be in a position to choose to take any appropriate action to avoid such risks, including warnings, or withdrawing or recalling the product. Such action will entail measures to assist in enhancing the traceability of products, as by identifying the producer and the product's batch number, and measures to test samples of the product and generally monitor its use and keep distributors informed of such monitoring. These measures are not detailed specifically in the implementing legislation. There are also product-specific traceability requirements.
l) The Irish Regulations from 2004, and in particular those Regulations in relation to traceability, transpose the GPSD almost verbatim. Therefore, the measures referred to in Regulation 6(4) are examples of a more general traceability obligation.
m) In the case of Malta the applicable legislation does not provide specific traceability requirements and as long as the producers include some form of identification as a link between themselves and the product in question, the obligation is satisfied. The form that this identification may take is left up to the producer/importer. The responsible Authority advocates the inclusion of the name and contact details on the product or its packaging. However, in view of the discretionary language of the legislation in this respect, various forms of traceability information are accepted e.g. even just model numbers as long as the link between the product and the producer/importer can be established through reference to the documentation presented.
n) The German Product Safety Act requires in Article 6(1) "to affix unambiguous markings allowing the identification of the consumer product".

Requirements closely based on Directive's wording

As shown in the previous table, the most frequent traceability requirements in Member States' national legislation for non-harmonised consumer products and for harmonised products for which EU legislation does not provide specific traceability requirements are the indication of name and contact details of the producer and a product reference or, where applicable, the batch of products on the product or its packaging. This is true for Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and Iceland. These countries either follow the Directive verbatim (but as a mandatory requirement) or at least come to the same result (see table above). While other requirements do exist in some countries, this is clearly a minority (see below).

However, the application of these requirements is not uniform. For example, while France has the general traceability obligations as listed above, they are applied in a contextual way depending upon the products concerned. The responsible authority, DGCCRF (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*), stated that the traceability obligations are "determined in respect of the characteristics of the products: potential risks, and modalities / extent of the distribution, on a case-by-case basis." This approach is reported to pose problems, however, and to generate uncertainty for business. It was moreover noted by the DGCCRF that "it was sometimes difficult to explain to an economic operator that the characteristics of their product required that it was specifically identified and was traceable in the distribution chain"[33].

The Directive states that an indication does not need to be given in justified cases. In several countries the implementing legislation contains this clause as well (e.g. in the Netherlands and Slovenia), without giving guidance as to what justifies an exception.

Even in countries where the traceability requirements follow closely the Directive, requirements may vary, as illustrated by the following examples:

- Some countries extend the obligation beyond the producer. Thus Germany in § 6 para 1 sent. 1 no. 2 *Produktsicherheitsgesetz* provides that the manufacturer, its authorised representative and the importer[34] shall have the

[33] See country report France.

[34] The German Product Safety Act is stricter in the sense that according to Article 6 *the manufacturer, its authorised representative and the importer* have these traceability obligations. In contrast, under the GPSD, the importer only has these obligations when the manufacturer is not established in the Community and there is no representative established in the Community (in line with the definition of 'producer' in Article 2 e) (ii) of the GPSD).

obligations when making a consumer product available on the market, to ensure that the names and contact address of the manufacturer or, if it is not domiciled in the European Economic Area, of the name and contact address of its authorised representative or the importer are affixed to the product. It also specifies that the marking should be unambiguous.

- Portugal places the obligation on the producer to provide details of both the producer and the person responsible for placing the product on the market[35].
- The Bulgarian legislation states the name and other information about the producer should be given, but what is to be understood by other information is not specified. The Bulgarian legislation is also interesting in imposing on producers the duty to store and make available upon request from the control authorities all documentation necessary for tracing the origin of the goods[36].
- Spanish law provides that information on product batches must be kept for three years or one year beyond any expiration or best by date[37].

Reliance on general requirements

A minority of countries rely on very broad general obligations without detailing that there should be a product reference or mark. Thus in Norway, there is just a general requirement in national legislation to give the customer relevant information. Also, no concrete measures are foreseen in the Austrian product safety act[38]. Companies are free to choose the means to guarantee traceability. The Latvian Law on the Safety of Goods and Services in Article 2 (2) generally requires that a manufacturer shall indicate (mark) the goods, their packaging, in the technical documentation or the technical registration of the goods his or her name (firm), given name, surname, trademark or other distinctive mark, or the person who has reconditioned the goods in order to put them into circulation. It is unclear from this as to in exactly how many places the indication should be given. Article 6 (2) of the Maltese Product Safety Act, which transposes Article 5(1) of the GPSD, provides that producers and importers are to include "... whenever appropriate, marking of the products or product batches in such a way that they can be identified …". In this case the obligation is placed on the importer as well as the producer. This is one example of the obligations being extended to parties other than the producer (as in Germany, see above)[39].

Barcode requirement

According to the legal analysis conducted by our country experts, none of the 31 EU/EEA countries have national legislation requiring that there should be barcode or other machine readable identification on the product or its packaging for non-harmonised consumer products and for harmonised products for which EU legislation does not provide specific traceability requirements.

4.1.2. Problems with respect to traceability of consumer products

Lack of traceability information can cause problems if a product is considered to be dangerous and therefore notified on RAPEX. In the survey of MSAs and general stakeholders, 'Lack of sufficient information to trace notified products' was considered to be one of the most important impediments when using the information from Safety

[35] See country report Germany.

[36] See country report Bulgaria.

[37] See country report Spain.

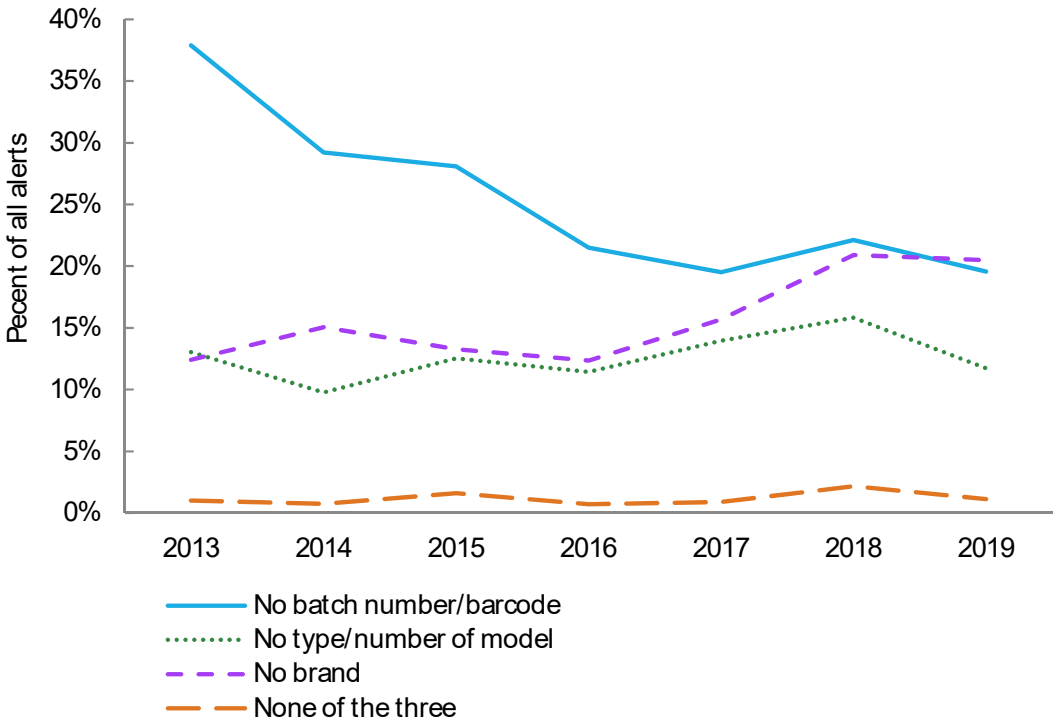
[38] Produktsicherheitsgesetz 2004 - PSG 2004

[39] See country reports Norway, Latvia and Malta.

Gate/RAPEX. Four out of ten MSAs (43%) and three out of ten stakeholders (34%) had encountered this problem[40].

The information from RAPEX provides more insights regarding the availability of information that can be used to trace a product. The following figure shows the share of RAPEX alerts regarding dangerous consumer products with unknown product information items over the period 2013 to 2019 (including both harmonised and non-harmonised consumer products). The figure shows that in this seven year long period, there are contradictory trends regarding specific information items: While the share of alerts where the brand was unknown increased from 12% in 2013 to 20% in 2019, the share of alerts where no type/number of model was provided remained largely stable at around 13% to 15%. In contrast, the share of alerts where no batch number/barcode was provided decreased substantially from 38% in 2013 to 20% in 2019. In many cases, however, information regarding at least one of these items was provided. Only between 1% and 2% of alerts concerning dangerous consumer products did not provide any of the three information items.

Figure 4: Share of RAPEX alerts with unknown product information items (2013-2019)



Note: Indicated is the share of alerts with unknown brand, unknown type/number of product, and unknown batch number/barcode as percentage of total alerts. Source: Civic Consulting, based on RAPEX data retrieved in January 2020 (calculation on basis of full dataset, number of alerts concerning consumer products with serious risks 2013-2019).

[40] The general stakeholder survey comprises answers from business associations/companies, consumer organisations/NGO, and other stakholders (standardisation bodies/organisations, organisations involved in product testing and product safety experts). Results in the following refer to the overall survey results, except in the case where there are considerable differences between the groups. For detailed results by group refer to the Annex. See also the research methodology in section 2 above.

The lacking of relevant information items that are essential to trace notified products, reported by many MSAs and general stakeholders, is therefore confirmed by the RAPEX data.

The database also allows for considering whether there are specific types of products that are more likely than others to result in alerts with unknown product information items. The following table lists all product categories that are over-represented in terms of lacking the above listed information items. The 'over-representation factor' presented in the table is calculated by dividing the share of alerts with the unknown information item in a specific product category by the share of the same product category in total alerts. For example, while 57% of alerts with unknown brand information between 2013 and 2019 were toys, their overall share in alerts was only 28%, leading to an over-representation factor of 2.0. However, toys are underrepresented in the alerts where no type/number of product is provided (0.8), and also in the alerts without batch number/barcode (0.6). In the table below, an over-representation factor >1 therefore indicates that a product category is over-represented (marked in bold), whereas a value <1 indicates that it is under-represented in the alerts where the specific information item is missing.

Figure 5: Product categories that are over-represented in RAPEX alerts with unknown product information – over-representation factor by information item (2013-2019)

Product Category	Over-representation factor		
	No brand	No type/number of product	No batch number/ barcode
Laser pointers	**2.7**	**1.6**	**2.4**
Lighters	**1.2**	**3.3**	**1.8**
Jewellery	**1.3**	**2.1**	**1.8**
Decorative articles	**1.4**	**1.7**	**1.1**
Lighting chains	**4.0**	0.8	**1.1**
Cosmetics	0.3	**3.9**	0.5
Chemical products	0.2	**3.0**	0.8
Toys	**2.0**	0.8	0.6
Pyrotechnic articles	**2.0**	0.1	0.7
Clothing, textiles and fashion items	0.2	0.9	**2.0**
Machinery	0.5	0.2	**1.7**
Hobby/sports equipment	0.9	1.0	**1.4**
Lighting equipment	**1.2**	0.5	1.0
Electrical appliances and equipment	**1.1**	0.7	1.2
Childcare articles and children's equipment	0.4	1.0	**1.2**
Other	0.9	**1.1**	1.0
Protective equipment	0.2	0.5	**1.1**

Note: Indicated is the over-representation factor. Note that this table presents the availability of specific information items in RAPEX notifications, and does not consider differences in the traceability obligations applying for specific product categories. It is calculated by dividing the share of alerts with the unknown information item in a specific product category by the share of the same product category in total alerts. For example, there were 91 alerts concerning laser pointers (0.7% of all alerts in the period 2013-2019), of which 39 were of an unknown brand (1.9% of all alerts with unknown brand). As 1.9/0.7=2.7, this product category is 2.7 times over-represented in the notifications with unknown brand, compared to their share of total notifications. Values in bold indicate product categories that are over-represented (value>1). Source: Civic Consulting, based on RAPEX data retrieved in January 2020 (calculation on basis of full dataset, number of alerts concerning consumer products with serious risks 2013-2019). Only product categories accounting for 0.5% or more of alerts are included in the table, which are at least over-represented regarding one information item that was missing. The detailed data for calculation of this table is presented in Annex IV.

Product categories listed in the table above as being over-represented regarding the lack of at least two of the three information items relevant for traceability (no brand, no type/number of product, no batch number/barcode) are:

- Laser pointers;
- Lighters;
- Jewellery;
- Decorative articles;
- Lighting chains.

None of these product categories are subject to sector-specific harmonisation rules.[41] In other words: alerts concerning these five products categories falling under the GPSD are more likely to lack relevant information items that are essential to trace notified products.

However, as mentioned above, harmonised products are also frequently over-represented regarding the lack of one specific information item (as is the case for toys regarding brand information), and factors other than the legal framework are likely to contribute to this picture. For example, the top listed products in terms of the absence of specific information items are mostly low value products such as lighters and decorative articles.

To further explore potential problems regarding traceability, we asked both market surveillance authorities and stakeholders whether they had encountered practical problems related to the requirements of Art 5(1) regarding traceability. 42% of market surveillance authorities and 22% of general stakeholders indicated that they had experienced such problems[42]. The problems identified related largely to the following issues:

- Non-compliance with traceability requirements;
- Problems with traceability information on packaging only;
- Problems related to rogue traders;
- Problems with online sales and online marketplaces;
- Difficulties related to lack of or incorrect supply chain records;
- Other practical issues.

Each group of problems is discussed separately in the following sub-sections.

Non-compliance with traceability requirements

Practical problems related to the requirements of Art 5(1) regarding traceability experienced by MSAs and stakeholders referred often to the non-compliance with the provisions of the national implementation legislation of the GPSD. In these cases, required traceability information is not provided (such as contact details of the producer on the product or its packaging and the product reference or, where applicable, the batch of products). Many of these problems were blamed on supplies from outside the EU (often low cost goods). China was mentioned by some as a source of products that were not properly marked. Authorities in several countries noted a lack of familiarity of importers with the applicable legislation and the possible

[41] Note that some lighting chains can fall under the scope of the LVD.

[42] The percentage of respondents to the stakeholder survey that encountered problems was higher for specific stakeholder groups, such as business associations (28%) and organisations involved in product testing (e.g. test laboratory, 55%). 21% of responding consumer organisations/NGOs encountered problems related to the requirements of Art 5(1) regarding traceability, as did 14% of responding companies. See detailed survey results in the Annex, Question 14, and MSA Survey, Question 32.

repercussions of importing such products, as well as a reluctance or unwillingness of importers to adhere to the applicable legislation[43]. For example, the Maltese MSA referred to the fact that there are quite a large number of importers who tend to favour products sourced from non-EU/EEA suppliers, particularly suppliers located in East Asia. The majority of these products sourced from these suppliers however are not branded and do not have the information required in terms of traceability.

Problems with traceability information on packaging only

Practical problems were also noted regarding traceability information that was only placed on the packaging of the product but not on the product itself (including in the case of small goods or parts). This means that after the removal of packaging, the information may get lost. Similar issues were reported concerning the traceability of goods that have been repackaged.

Problems related to rogue traders

MSAs from several countries, but also other stakeholders, frequently referred to the problem of rogue traders. For example, according to the Czech authorities, the issues related to traceability and emerging safety issues in this country are mainly connected with non-EU/EEA products and dangerous products sold by smaller rogue firms in markets. In these cases, distributors use fake invoices and false addresses and either do not cooperate with the authorities or submit insufficient accompanying documents, according to which the products cannot be correctly identified, e.g. incomplete invoices. From Estonia it was reported that there were cases where documents concerning the product appeared to be manipulated or where the origin or correctness of the documents raised doubts, but the authorities did not have competence and skills necessary to prove the forgery of the documents[44]. A multinational company suggested in their response to the stakeholder survey that some of their competitors used either no model identification on their products, or multiplied the number of models for products that are actually similar, which was suggested to hamper the work of market surveillance authorities, and deter them from performing controls as this significantly increased the level of resources needed for controls.

Problems with online sales and online marketplaces

Notified products that were sold online are more likely to lack specific information items that are essential to trace notified products, as the following table illustrates. The table provides data on online sales channels for the years 2018 and 2019 (for previous years, this information is not available). The first row of the table shows that while the overall share of RAPEX alerts in which 'sold online' is indicated is 7%, the share of products 'sold online' in which one of the three information items was missing was between 13% and 17% (depending on the item), i.e. notified products sold online were roughly twice as likely to miss a relevant information item essential to trace the product. Interestingly, the share of products 'sold online' in which all three information items were missing was even higher at 60% (or 38 of 63 such alerts in the two year period).

[43] See e.g. country reports Malta, Slovakia.

[44] See country reports Czech Republic and Estonia.

Figure 6: Number and share of RAPEX alerts concerning unsafe consumer products with unknown product information items (by sales channel, 2018-2019)

	Sold 'online' indicated in alert	'Online' not indicated in alert	Total	Share online
Notifications for consumer products, of which:	274	3590	3864	7%
- No brand[a)]	100	700	800	13%
- No batch number/barcode[b)]	138	667	805	17%
- No type/model[c)]	80	451	531	15%
- None of the three	38	25	63	60%

Source: Civic Consulting, based on RAPEX data retrieved in January 2020 (calculation on basis of full dataset). The number of RAPEX notifications refers to the number of alerts concerning consumer products with serious risks (2018-2019). Notes: The sales channel online has been indicated since 2018. The column 'online' contains the number of alerts in which the description contained the term 'online'. It therefore includes products that were "sold online" or "(also) sold online". a) Brand 'unknown' or database field blank b) Batch number/barcode 'unknown' or field blank c) Type/model 'unknown' or field blank.

A large number of stakeholders and several MSAs identified in particular problems with online marketplaces. For example in Spain, authorities noted that it is increasingly common to find alerted or potentially unsafe products offered on online marketplaces where an identification of sellers is not always possible, and also from France it was reported that there have been many difficulties concerning traceability with respect to products purchased via online platforms[45].

A related problem for market surveillance authorities noted by the French authorities is that online platforms are often the entities which hold the most relevant information to be able to organise recalls effectively (e.g. customer names and contact details)[46]. It was suggested that action might be taken to make online platforms take responsibility to ensure that the goods supplied within the EU are traceable. This is part of a broader debate that focuses on the function and responsibilities of online platforms (see below).

Difficulties related to lack of or incorrect supply chain records

A variety of problems reported from market surveillance authorities related to the lack of (access to) supply chain records. For example in Ireland, the responsible market surveillance authority (the Competition and Consumer Protection Commission) currently does not have the power to access supply chain records and noted that such powers would be very helpful. From Spain it was reported that there have been difficulties in locating or identifying buyers (of unsafe products). Exceptionally, some distributors or producers sell products without sales invoices or they only issue receipts that prevent authorities from identifying buyers. When sales of products without sales invoices are detected, the Spanish Tax Agency is duly informed. However, due to its duty of confidentiality, market surveillance authorities are not informed about the identity of businesses that have made purchases.

In some cases, supply chain information is not available, even if authorities have the relevant powers, as not all economic operators are aware of their obligations in this regard and/or can provide details of their suppliers/buyers up and down the supply chain (as reported from the Netherlands). The Polish country report notes that in practice, it can occur that the producers' contact details differ as to the location of its

45 See country reports Spain and France.

46 See country reports France and Spain.

registered seat and the location of its actual place of operation. This hinders provincial inspectors of the Polish Trade Inspectorate, as they may not be able to easily identify the producers' warehouses. At the moment, the information obligations regarding the provision of an address of the trader are directed at consumers, which means that the address given on a product or product documentation is intended to facilitate consumers getting in contact with the trader. It is, therefore, not always suitable for inspectors of the Trade Inspection trying to identify the place where they could conduct an inspection without prior notification to the trader. Moreover, on certain marketplaces in Poland, goods were resold within long supply chains, within which it is often considered to be impossible to establish who the actual producer is or even to which product batch a given unsafe product belonged. This means that as a result of an inspection of a particular product, that product, if deemed unsafe, may be removed from the market, but it is difficult to draw conclusions as to the whole batch of products or to a particular producer, if the supply data is missing[47].

Other practical issues related to traceability requirements

Other practical problems related to the requirements of Art 5(1) regarding traceability mentioned by stakeholders or authorities include a lack of related enforcement capacities of market surveillance authorities (see Section 5), and difficulties for consumers to identify whether a specific product appearing in the market again after a recall has actually been modified to be safe or is still the dangerous product, as this may be not clear from the traceability information provided. Interestingly, this problem is addressed in Spanish product safety legislation (Article 10 of Royal Decree n. 1801/2003), which states that after the competent authorities had ordered relevant measures, "placement of all unsafe products on the market may be prohibited and the supplementary measures necessary to guarantee compliance with this prohibition established. If product risk may be avoided with certain modifications, warnings, or conditions prior to its placement on the market, the administrative prohibition must indicate the same. Specifically, it may be indicated that the product itself bears the pertinent warnings, clearly written and easily understandable, as to the possible risks, at least in Spanish. When these indications are complied with, the product may be marketed, the producer being required to add some external element to differentiate [the modified product's packaging from the product that was originally prohibited]"[48].

4.2. Safety of consumer products

The GPSD obliges producers to only place safe products on the market and to take all necessary measures in order to prevent consumers from risks of health and safety (Article 3).

Art. 2(b) of the GPSD provides that "safe product" shall mean "any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons". It further provides that, in particular, the following points should be taken into account:

> "(i) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;

[47] See country reports Ireland, Spain and Poland.

[48] See country report Spain.

(ii) the effect on other products, where it is reasonably foreseeable that it will be used with other products;

(iii) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product;

(iv) the categories of consumers at risk when using the product, in particular children and the elderly."

Also "the feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be 'dangerous'".

Art. 3(2) goes on to explain that products will be presumed safe if they comply with national law or national standards that comply with European Standards drawn up under the Art. 4 procedure of the GPSD. Otherwise the following are to be taken into account:

(a) Voluntary national standards transposing relevant European Standards other than those referred to in paragraph 2;

(b) The standards drawn up in the Member State in which the product is marketed;

(c) Commission recommendations setting guidelines on product safety assessment;

(d) Product safety codes of good practice in force in the sector concerned;

(e) The state of the art and technology;

(f) Reasonable consumer expectations concerning safety.

In the following, we discuss how this definition is applied in the area of new technologies and consider related problems, as well as emerging issues with consumer products.

4.2.1. Scope of GPSD in the area of new technologies

The definition of safety in Art. 2(b) GPSD does not explicitly cover cyber-security risks and other safety issues related to new technologies. Our country research involving the market surveillance authorities in all EU/EEA countries therefore specifically inquired whether or not any specific definition of safety was used for the application of the national implementation legislation of the GPSD in the area of new technologies. In none of the countries was such a specific definition reported to exist. Only from Austria was it reported that according to the Product Safety Act (PSA) "product" means "all movables including energy". According to the explanatory remarks of the legislator, software is part of a product. Hence, the PSA 2004 covers emerging threats related to new technologies[49].

[49] See country report Austria. The PSA specifies in Art 3(1): "Product" shall mean any movable property, including energy, also where it is part of another movable property or joined to an immovable property, which property is intended – also within the framework of the rendering of a service – for consumers or might be used by consumers under reasonably foreseeable conditions even where it is not designed for consumers. (*„Produkt" ist jede bewegliche Sache einschließlich Energie, auch wenn sie Teil einer anderen beweglichen Sache oder mit einer unbeweglichen Sache verbunden worden ist, die – auch im*

We further scrutinised whether the national implementation legislation transposing the GPSD covered emerging threats related to new technologies. A list of potential threats was identified on basis of desk research as follows:

- Poor cyber security of consumer products that may lead to physical harm (e.g. through enabling hacking of vehicle software)
- Poor cyber security of consumer products that may lead to loss of usability or loss of data (e.g. through vulnerability to ransomware)
- Poor cyber security of consumer products that may expose private data causing a risk to personal security (e.g. enabling hacking of baby monitors or Internet-enabled toys, vulnerability to spyware)
- Poor cyber security of consumer products that may expose a network to potential attacks (e.g. routers that can easily be infected with malware)
- Malfunctioning of software which is embedded in a product that can affect safety of the product for consumers
- Malfunctioning of non-embedded software (e.g. downloadable as an application) in a product that can affect safety of consumers
- Products with AI/machine learning capabilities that can affect safety of consumers
- Other threats related to new technologies

In the country research, there was a great deal of uncertainty expressed as to how the GPSD applied to these potential threats. In part this seems to result from two issues being conflated: how does the general safety requirement apply to a product that involves new technology, and does the general safety requirement cover new risks posed by technology such as cybersecurity risks like hacking?

The responses given by MSAs might depend upon on the main concern of the interviewees, which could either be coverage of safety risks regarding products involving new technology, or the coverage of new threats such as cyber security by the general safety requirement. Thus some countries' MSAs confirmed that their national implementation legislation transposing the GPSD covered at least some of the listed emerging threats related to new technologies, or was interpreted as covering them (see below). Most authorities considered new threats were not covered, or like in Hungary[50] did not know if they were covered. This might be referring to how the general safety requirement applied to safety risks linked to new technologies. It seems unlikely, however, that the general safety requirement would not apply at all. Such responses could, however, also refer to whether new threats such as cyber security fall within the general safety requirement. In Liechtenstein, for example, the question of whether new technologies (e.g. cyber security/software related threats) are covered under the national implementation legislation has not been an issue so far. It would be within the discretion of the responsible MSA (the Office of Economic Affairs) to interpret the national implementation legislation of the GPSD accordingly, which might then be subject to judicial review[51]. These issues are considered in more detail in the following sub-section.

4.2.2. Problems with respect to the definition of safety in the GPSD

As the French country report notes, the definition of safety in the GPSD is a somewhat open-textured definition, as recognised by stakeholders and commentators. It quotes

Rahmen der Erbringung einer Dienstleistung – für Verbraucher/innen bestimmt ist oder unter vernünftigerweise vorhersehbaren Bedingungen von diesen benutzt werden könnte, selbst wenn sie nicht für diese bestimmt ist.).

50 See country report Hungary.

51 See country report Liechtenstein.

the view of a French academic that "the definition of Article L 421-3 is general, vague, and no doubt a source of difficulty for professionals". However, this analysis illustrates well the legislator's dilemma by also recognising that the imprecision is the feature "which is the strength of this article, which due to the general nature of its terms can be applied to any particular scenario"[52].

As this open-textured norm is drafted to apply to a large range of products, it inevitably leaves a margin for discretion and interpretation when applying it to particular products. We sought to discover whether applying the general safety requirement was problematic in practice. A majority of market surveillance authorities (48%) and other stakeholders (62%) did not experience problems with respect to the definition of safety in the GPSD in Article 2(b)[53]. Several of the country reports confirm that no problems with the definition were experienced, while in other countries there were mixed views, depending on the perspective of the respective MSA.

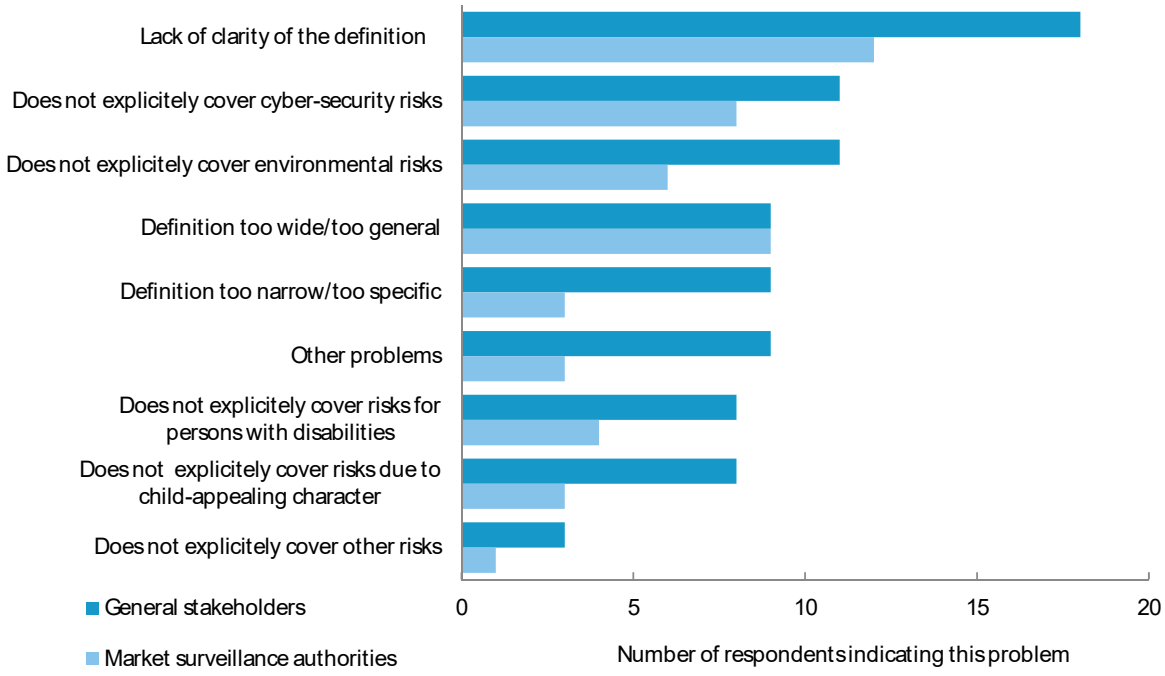
However, a considerable number of MSAs (27%) and other stakeholders (25%) reported that they had experienced problems with respect to the definition of safety in the GPSD, coming from more than half of the EU/EEA countries[54]. Vagueness of the definition was mentioned as an issue in some of the country reports (Belgium, France, Germany and the Netherlands), though it was also noted that a flexible definition of safety can have advantages. Those that had experienced such problems provided the following details (see the figure below).

[52] See Julien, J, (2019) Droit de la consommation, Paris: Domat, paras 352 and 354.

[53] See results of the stakeholder survey in the annex, Question 14, and MSA Survey, Question 32.

[54] MSAs in Austria, Belgium, Czech Republic, Germany, Denmark, Greece, Spain, Finland, France, Ireland, Latvia, Malta, he Netherlands, Poland, Portugal, Sweden, Slovakia indicated they had experienced problems with respect to the definition of safety in the GPSD. In some cases, this view was not shared by other MSAs in their county.

Figure 7: Problems with respect to the definition of safety in the GPSD – Assessment of MSAs and general stakeholders (only respondents that have experienced such problems)



Note: Based on MSA survey Q34, stakeholder survey Q16a. See Annex for full details.

The reported problems with the definition of safety of the GPSD can be grouped into two categories. Some focus on the way the definition is formulated, whereas others concentrate on whether specific risks are covered.

Lack of clarity and the problem of striking the balance in defining a general safety clause

The figure above shows that the lack of clarity of the definition was the main problem experienced. This may be inherent in developing an open-textured definition to cover a wide range of products. The difficulty of finding the right balance is perhaps illustrated by equal numbers of stakeholders feeling the definition was too narrow/too specific as felt it was too wide/too general. In contrast, amongst market surveillance authorities, it was clear that the main concern was that it was too wide/too general. For instance, the Danish report noted the surveillance authority finds that the definition of safety in the GPSD seems too wide or too general and lacks clarity[55]. One might speculate that those who feel it is too broad struggle to apply its flexible terms in hard cases, whilst those who feel it too narrow may find it lacks express reference to the new and emerging risks mentioned above and considered further below. They may therefore be talking about different aspects of the definition.

In German academic literature, it is alleged that the criterion of "foreseeable use" causes problems in practice, in particular when it comes to foreseeable misuse. One author claims that market surveillance authorities too lightly equate use that has

[55] See country report Denmark. See also comments in Latvian, Netherlands and Swedish reports.

occurred in practice with foreseeable use[56]. However, the relevant guidance document of the *Länderausschuss für Arbeitsschutz und Sicherheitstechnik* (Committee for Occupational Health and Safety; LASI)[57] appears to be perfectly in line with EU law[58].

It was also mentioned that risks to third parties might not be covered. Hoverboards and light electric vehicles were mentioned as problematic in this regard[59]. However, the definition of safety in the GPSD could potentially be interpreted to also include risks posed to third parties. Thus, any danger posed by e.g. a hoverboard to non-users could be taken into account.

Uncertainty regarding the application of the general safety requirement to products utilising new technologies

As already discussed above, there was clearly some uncertainty as to whether products using new technologies fall within the scope of the Directive. This is because the GPSD is limited to products, but new risks are seen as linked to digital content and services supplied with, embedded in, or affecting products. There were different views and clear uncertainty as to how the GPSD applied to goods with software embedded, non-embedded software and products with AI/machine learning capabilities. In Belgium, the interviewed authorities either expressed doubts whether threats related to products utilising new technologies were covered, or were normative in stating that these were not[60]. From Slovenia, it was reported that some emerging threats relating to new technologies are considered to be covered by the existing legislation, such as the malfunctioning of software which is embedded in a product, malfunctioning of non-embedded software in a product (e.g. downloadable as an application), and products with AI/machine learning capabilities that can affect the safety of consumers[61]. These three particular risks are covered by the national implementation legislation of the GPSD as reported by MSAs in Estonia, France, Iceland and Lithuania. From Denmark it was also reported that although market surveillance authorities express some doubts as to whether these emerging risks are adequately covered, it is most likely that the safety of new technologies is subject to the general rule on the definition of safety in the Sec. 4 in the 2019 Consolidation Act on Product Safety. In the case of a cybersecurity/software related risk, the supervisory authorities will contact the police as well[62].

In Austria, software is considered to be part of a product, and emerging threats related to new technologies are therefore covered (see above). But it seems that so far new technologies have not played a major role in practice[63]. In Germany, software is considered to be covered by the GPSD when embedded in a physical product[64]. Whether or not software as such also constitutes a "product" in the terms of product

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56 See Reusch, Pflichtenkreis von Unternehmen im Umgang mit unsicheren Produkten – Thesen zum Produktrückruf, Betriebs-Berater 2017, p. 2248 at p. 2249.

57 LASI, Leitlinien zum Produktsicherheitsgesetz, 3rd ed. 2013, available at https://lasi-info.com/uploads/media/lv_01.pdf, at p. 16 f.

58 See country report Germany.

59 See country report Slovakia.

60 See country report Belgium.

61 See country report Slovenia.

62 See country report Denmark.

63 See country report Austria.

64 See, for example, Klindt and Schucht, in: Klindt (ed.), supra n. 6, § 2 para. 164; Rockstroh and Kunkel, IT-Sicherheit in Produktionsumgebungen, MultiMedia und Recht 2017, p. 77, at p. 81; Wiebe, Produktsicherheitsrechtliche Pflicht zur Bereitstellung sicherheitsrelevanter Software-Updates, Neue Juristische Wochenschrift 2019, p. 625, at p. 626.

safety law is a subject of controversy in Germany[65]. In practice, market surveillance does not deal with software "as such".

Lithuania has a novel approach. Under the Art 13(1), the State Consumer Rights Protection Authority has the power to restrict access to websites selling unsafe products. This is further expanded upon in the Art. 491 of the Republic of Lithuania Law on Consumer Protection (10-11-1994, No 94-1833, as last amended on 01-09-2019), where it is stated that the State Consumer Rights Protection Authority has the right to give binding instructions to internet service providers to disable access to information by blocking an Internet domain name. The State Consumer Rights Protection Authority indicated that such actions are taken if the threats include:

1. Poor cyber security of consumer products that may expose a network to potential attacks;
2. Malfunctioning of software (embedded or non-embedded in a product) that can affect safety of consumers; and
3. Products with AI/machine learning capabilities that affect the safety of consumers[66].

In conclusion, there seems to be no reason why products with software embedded in them or which use AI should not be covered by the GPSD, and some countries have made this explicit or at least consider this to be the case; the position as regards pure software is more debateable.

Practical issues regarding the application of the general safety requirement to products using new technologies

Even if products using new technologies are within the scope of the GPSD, practical issues may arise as to how the general safety requirement is applied to them. Guidance at the European level in this respect seems to be welcomed[67]. Some countries, such as Croatia, took the position that the national implementation legislation of the GPSD does not cover emerging threats related to new technologies (e.g. cyber security/software related threats), but noted there are discussions on the necessity of the introduction of rules covering emerging threats related to new technologies[68]. It may be that this simply means there are no specific rules, as several comments were made to the effect that new technologies were covered or most likely covered, but only by the application of the general safety requirement, and the comment was often made that this might be hard to apply. The Czech country report noted that market surveillance lacks expertise in these issues, and the Polish country report noted there is a feeling amongst provincial inspectors of the Trade Inspectorate that they would not know which risks to look for, as they lack specific know-how about the use of modern technologies in consumer products, and about the risks that such products could bring about[69]. It was noted that one factor to be taken into account within the existing formulation of the general safety requirement was the state of the art and technology[70].

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65 In favour of the classification of software as a product: Runte and Potinecke, Software und GPSG, Computer und Recht 2004, p. 725, at pp. 726 f.; Zscherpe and Lutz, Geräte- und Produktsicherheitsgesetz: Anwendbarkeit auf Hard- und Software, Kommunikation & Recht 2005, p. 499 at p. 500; Gärtner, Die Rolle von Betriebssystemen im Konformitätsbewertungsprozess, Medizinprodukterecht 2014, p. 187 at p. 188. Against: Klindt and Schucht, in: Klindt (ed.), supra n. 6, § 2 para. 164; Wiebe, supra n. 13, at p. 626.

66 See country report Lithuania.

67 Expressed in the country report Czech Republic.

68 See country report Croatia.

69 See country reports of Czech Republic and Poland.

70 See country report Lithuania.

The current definition of 'safety' in the GPSD has therefore given rise to doubts as to how it can be interpreted so as to apply to emerging issues related to new technologies. This does not mean that the general principles cannot be applied to new technologies, though there seems to be a strong demand for providing guidance.

However, there are some aspects of the new technologies that may challenge the existing framework. Academic literature in Poland, for instance, emphasised that focusing on the safety of modern products, which are often interconnected with other products or exposed to new risks e.g. by enabling online connectivity, at the moment of putting these products into circulation, does not guarantee the safety of these products when they continue to be used. This would only be assured if producers continued to monitor the product's safety and introduced necessary technological updates to protect consumers against continuously emerging new risks[71].

Coverage of specific risks

The definition of safety in the GPSD self-evidently focuses on health and personal safety. As regards safety, the lack of an explicit mention of certain risks was a problem indicated by both MSAs and stakeholders. Some of these risks refer to particular vulnerable groups, such as the disabled, or the child-appealing character of some products[72]. These refer to problems that are rather traditional and not necessarily linked to new technologies. However, the scope of the GPSD in relation to new technologies was also considered by many to be uncertain, and it was unclear whether it covered cybersecurity, data protection breaches, and environmental risks. There are certainly arguments that these new/emerging forms of risk are relevant problems that need to be considered in relation to products using new technologies. Consumers will have concerns about privacy breaches consequent on a cyber security breach related to a product; products which affect the environment can also be readily envisaged, particularly in respect of new technology. However, it is not clear that these concerns are best addressed through product safety legislation. Depending on the specific issues, these might be better addressed through different instruments more adapted to the particular non-safety issues raised (i.e. data protection legislation, environmental legislation etc.).

Legal advice sought by authorities in Malta suggested so-called 'connected toys' or 'electronic devices', such as smart watches, which are susceptible to hacking, presented risks related more to 'security' or 'privacy' rather than to 'safety'. Notwithstanding this interpretation, notifications relating to these products, such as in the case of the ENOX Safe-Kid One smartwatch, were followed up as per the procedure applicable in the case of other products and it resulted in no such products being present in the Maltese market[73]. Similarly, from the Netherlands, it was reported that it is uncertain whether risks regarding the loss of data, pure economic loss, lack of privacy and damage to honour and good name are covered by the Commodities Act (the Act implementing the GPSD), though they might be covered by other measures. Unless these threats have some impact on the physical safety of consumers, it is likely that they are not covered by the GPSD. Where, however, the breach also has implications for the physical safety of consumers, it should be captured, of course, depending on the definition of safety applied. For example, there was doubt by some as to whether the Cayla doll (a connected toy using speech recognition technology) could be covered by the GPSD. Given that the child's security was placed at risk due to a security breach - a stranger could speak to the child through a Bluetooth connection - there seems to be no reason why the GPSD could not be used to address this

[71] See country report Poland, which quotes Baranowska, N. & Machnikowski, P., (2017) 'Odpowiedzialność za produkt wobec rozwoju nowych technologii' (Studia Prawa Prywatnego No 2), Legalis.

[72] See country report Portugal.

[73] See country report Malta.

threat[74]. This was also considered to be the case by the Consumer Agency in Iceland, where market surveillance activities also cover products containing new technologies, e.g. as the case of children's safety regarding smart watches illustrates. The Consumer Agency reported to have initiated a recall activity of this product in coordination with other responsible market surveillance authorities in Iceland (namely the post and telecommunications authority and the personal data protection authority). The investigation of the product led to a RAPEX notification and recall of the product due to a lack of security measures[75]. These categories of risk may need to be addressed, though whether the full extent of the issues raised are appropriately considered in a legal instrument focused on safety is a matter for debate.

Linked to this was the issue of which market surveillance authority should be responsible for new smart products. In Germany, for example, as products with embedded software usually use radio communication, the competence for monitoring their safety lies with the *Bundesnetzagentur* (Federal Network Agency). However, this mainly deals with risks related to, for example, radiation. If the *Bundesnetzagentur* instead finds some risk in a smart product that is related to its physical properties, such as sharp edges in a smart washing machine, it will pass the product on to the competent market surveillance authority or a competent laboratory to deal with this issue. Interviewees expressed the criticism that due to the new "smartness" of electrical products, the surveillance of these products have migrated to the *Bundesnetzagentur* although they do not have the experience and the laboratories to deal with risks stemming from the electricity, whereas the market surveillance authorities cannot monitor them any longer themselves. In Germany it is also being currently debated as to which institution should deal with cyber security. A working group of the *Ausschuss für Produktsicherheit* also discusses product safety related issues of cyber security. When it comes to data integrity, the competent authority is the *Bundesamt für Sicherheit in der Informationstechnik* (Federal Office for Information Security; BSI). BSI, however, does not deal with issues of health and safety. Apparently, no authority has yet taken up the physical aspects of cyber security[76]. Similarly, from the Netherlands, it was reported that it was not always clear which authority is competent with regard to these risks. The example was given of a refrigerator which fell under different regulators depending on whether or not it used WiFi[77].

4.2.3. Emerging safety issues

In our country research and through the general stakeholder survey, we asked respondents to identify emerging safety issues (related to both harmonised and non-harmonised products categories). Stakeholders and market surveillance authorities were divided in their views. 23% of MSAs and 25% of stakeholders felt that there are emerging safety issues with consumer products that are currently not addressed. However, no such issues were seen by 25% of market surveillance authorities and 40% of stakeholders. The remainder had no opinion[78]. For more details, refer to Annex V.

[74] The doll 'My Friend Cayla' was removed from the market in countries such as Germany due to security concerns, see e.g. www.bbc.com/news/world-europe-39002142. See also country report Sweden.

[75] See country report Iceland.

[76] See country report Germany

[77] See country report Netherlands.

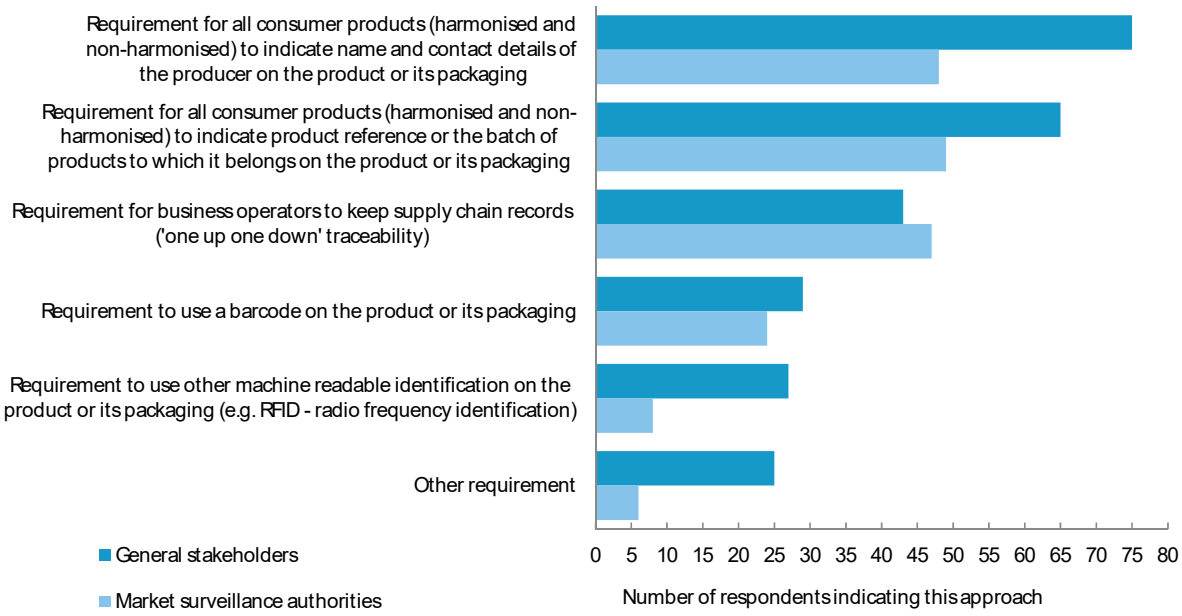
[78] See detailed survey results in the Annex.

4.3. Potential improvements of the legislative framework to make the implementation of the GPSD in Member States more effective

4.3.1. Approaches to improve traceability of consumer products

Improvements as regards traceability requirements came up frequently as an area that warranted attention. Although there were also calls for the requirement to be proportionate and that in particular it may not be necessary for low value products that pose no risk or a relatively low risk, there was a considerable degree of consistency between MSAs and general stakeholders concerning the best approaches to improve traceability. This is illustrated in the following figure, which summarises answers from MSAs and general stakeholders.

Figure 8: Best approaches to improve traceability of consumer products – Assessment of MSAs and general stakeholders (only respondents that have an opinion)



Note: Based on MSA survey Q33, stakeholder survey Q15. See Annex for full details.

Making mandatory aspects mentioned as examples in directive

The figure above shows that the two most called for improvements were to require the name and contact details of the producer to be shown on the product or packaging and to indicate the product reference or the batch to which it belonged on the product of its packaging. However, a theme that came up repeatedly is that traceability is a complex issue and there are no easy solutions. Thus there was a comment that in some cases the model was more important than the batch. There was also a comment that name and contact details were no longer important as with the brand name the internet can be used to find the producer. This may, however, not always be easy when smaller companies are involved. We also already noted that in a considerable number of RAPEX alerts concerning dangerous consumer products the brand name is unknown (see above).

As these two aspects (requiring name contact details and indicating product reference or batch) are already mentioned as possible means of compliance in the Directive and are already found in the implementing legislation in many EU/EEA countries, making

these mandatory requirements would not seem to be unduly challenging. Indeed, greater harmonisation may be beneficial as different national requirements were seen as a barrier to trade. However, it was noted that the contact details were aimed at consumers and might be a registered address. This was not very helpful for market surveillance authorities wanting to know where they could undertake unannounced spot-checks[79]. There were also some comments that providing the contact details was not helpful in cases where in practice they are not made use of as authorities did not reach out beyond their national boundaries. Language requirements were also mentioned as being an issue.

Supply chain records

The third most requested amendment was for businesses to keep supply chain records ('one up one down' traceability), which was especially suggested by MSAs. 58% of MSAs considered this to be one of the best approaches to improve traceability[80]. A similar requirement has been applied for many years in the food safety area (Art. 18 of the General Food law, Regulation 178/2002), which excludes the sale to consumers from this requirement.

Barcodes and other machine readable identification

Digital labelling was cited as providing potential advantages. There were calls for bar codes to be required or other machine readable identification (e.g. QR codes or RFID – radio frequency identification) to be used on the product or packaging. It was suggested that a barcode or a unique product code may drastically improve market surveillance with regard to traceability, but to determine its feasibility and possible effectiveness a further assessment would be required. Also, the possible information that would be linked to this unique product code as well as the persons to whom this information is accessible would need to be determined. An MSA suggested that the unique product code could, for example, lead the market surveillance authorities to a website or a database where all traceability information of a product could be retrieved immediately. Economic operators would store all information/documentation of the products required by the harmonisation legislation in this database, and would not need to provide it with the product. There was even a call for investigation into the use of blockchain technology for better traceability.

However, it was also noted that barcodes and other machine readable identification did not solve all the problems and certain matters would have to be regulated. For example, manufacturers would need to be required to change the barcode once they changed the product. Even now, where barcodes are used voluntarily, it is sometimes difficult to understand whether manufacturers have actually reacted to safety concerns that were raised by the market surveillance authority if they keep the same barcode. Moreover, distributors sometimes replace the manufacturer's barcode with their own, or simply affix their own barcode where the manufacturer had not done so[81]. Bar codes and RFID may be impractical for some products, e.g. clothing that needs to be cleaned. It was also noted that mandatory barcodes do not solve the problems of products from non-EU/EEA countries being assigned false origins[82]. As the country report Poland put it: bar codes do not help when the data available on the bar code does not match the reality[83]. Indeed, taking samples of a certain batch that prove to be unsafe does not mean that other products within the batches of the same product are also unsafe, for even within one and the same batch products can differ[84].

[79] See country report Poland.

[80] 31% of general stakeholders were of the same opinion, see Annex for detailed results.

[81] See country report Germany.

[82] See country report Czech Republic.

[83] See country report Poland.

[84] See country report Netherlands.

Several consumer organisations suggested that the 2013 European Commission proposal for a Consumer Product Safety Regulation contained provisions on the possibility to introduce product authentication technologies. This could be especially relevant for product categories where non-compliance poses a safety risk or for which the rate of non-compliance is high. It was suggested that the use of technologies such as RFID would need to be, however, assessed against potential adverse effects, such as consumer privacy (tracking and profiling of consumers and discrimination) and security (ID theft).

Online platforms and non-EU suppliers

Issues related to online sales have been addressed to some extent by the Commission Notice on the market surveillance of products sold online[85], but problems remain in applying the legal regime to them. The Notice describes how the General Product Safety Directive, as well as Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, apply to online sales. The E-Commerce Directive is also of relevance, but as a host to sellers, an online platform does not have a positive obligation to monitor them, and only has to react to reported activities ("notice and action" obligation). Some of the information rules may assist, such as the requirement that the natural or legal person, on whose behalf a commercial communication is made, shall be clearly identifiable.

Online platforms have posed many difficulties in terms of traceability, because the seller may be established abroad and may not be subject to relevant obligations in their home jurisdiction. There have thus been many issues concerning traceability with respect to products purchased via online platforms. Another related problem is that online platforms are often the entities which hold the most relevant information to be able to organise recalls effectively (e.g. customer names and contact details). In order to respond to this difficulty, the DGCCRF in France has proposed that in case of failure of the original manufacturer/seller to undertake the relevant GPSD obligations such as a recall, then that obligation should fall on the online platform[86]. The Lithuanian rules controlling sales of dangerous goods online have already been discussed, and involve blocking domain names (see above).

Many MSAs and stakeholders therefore suggest that stricter traceability and accountability rules should apply to online marketplaces. For potential improvements of the legislative framework, a recent initiative of the European Law Institute (ELI) could be of interest which has developed model rules on online platforms[87]. They include rules that require a supplier to act when it conducts itself in a way which is likely to injure consumers e.g. through supply of a dangerous product (in Art. 8(2)(b) of the model rules) and the concept of making the platform liable when it exerts a predominant influence (Art. 20).

The problem of non-EU suppliers is not restricted to online suppliers. Although it may be hard to enforce EU traceability rules on non-EU producers directly (beyond education and co-operation with Chinese and other relevant market surveillance authorities in non-EU/EEA countries), this might suggest that the requirement be extended to those who place the goods on the EU market. However, for EU law to be effective there needs to be someone responsible based within the EU. Even an importer might be based outside the EU. Due to problems with products originating from non-EU countries, it was suggested that it was necessary to establish new requirements to indicate the name and contact details of a "reachable" person who

[85] OJ 2017 C250/1.

[86] See country report France.

[87] The ELI Project Team has drawn up a set of Model Rules that is meant as a contribution to the ongoing debate on online marketplaces and provides, according to the initiators, a 'visualisation' of how a balanced approach could look, if regulatory action is considered necessary. See: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Model_Rules_on_Online_Platforms.pdf

would be responsible for placing these products on the EU market, and ideally, this person should be settled in a Member State of the EU[88].

For regulatory purposes, it seems essential to ensure there is always someone within the EU with responsibility for compliance with the product safety regulation, also for non-harmonised products. Regulation (EU) 2019/1020 provides a solution in that it requires an economic operator established in the Union to be responsible for key tasks in relation to some categories of products. This might be a manufacturer, importer, authorised representative, or a fulfilment service provider. However, these provisions are limited to products already subject to harmonisation rules. This is the case for toys, household appliances or mobile phones for instance, for which the name and contact details of the manufacturers will soon have to be displayed on products or their packaging. In our interviews and in the survey responses, several MSAs and general stakeholders suggested that the provisions of Regulation (EU) 2019/1020 could be extended to cover non-harmonised products, such as furniture, shoes, textiles, ladders and childcare articles. As several consumer organisations put it: consumers legitimately expect all products to be safe, no matter if they fall into the harmonised or non-harmonised area.

Extending obligations

It is possible to imagine stricter traceability rules that target the distributor rather than the producer more directly. Thus in the Czech Republic the information and documentation requirements, which focus on traceability, are more detailed and are also included in the Act No. 634/1992 Coll. on Consumer Protection. According to § 10, "the "seller" shall ensure that products are visibly and intelligibly marked, which includes also the designation of the producer, importer or supplier (…)". This obligation requires the name and contact details of the producer, or a responsible person for marketing a consumer product, and loads the information obligation on the seller, in a different way to Art. 5 (1) GPSD[89]. For other examples regarding an extension of specific obligations, see above.

4.3.2. Other potential improvements to the GPSD to make its implementation in Member States more effective

There was overwhelming recognition by stakeholders and market surveillance authorities that reform was possible and necessary. As mentioned above, Regulation (EU) 2019/1020 seems to have potential to improve enforcement for harmonised goods and it was suggested there may be potential to build on that to align the regimes for harmonised and non-harmonised goods. There were also suggestions that the GPSD could be made into a Regulation, and to extend its coverage to services.[90]

Caution must be taken to ensure that criticism of national enforcement is not automatically related to the GPSD – it could be related to poor enforcement structures or a lack of enforcement resources. Several comments did seem to be about weaknesses within national regimes. Many of these concerned internal administrative organisations that are most appropriately addressed at the national level. However, there may also be an EU dimension. There was a suggestion that the EU should have more power to step in and enforce. More European-based enforcement was seen as a

88 See country report Czech Republic.

89 See country report Czech Republic.

90 As is the case in Latvia, where all interviewed stakeholders considered it a success that the transposition legislation covers not only the safety of goods but also of services." As compared with the GPSD, the legislator of Latvia has broadened the scope of the LSGS, covering also services [...] For example, the LSGS shall be applicable also to different entertainment services – paintball, amusements parks, ski runs". See Vītoliņa B. Patērētāju tiesību aizsardzības pamati (Bases of the Consumer Protection Rights). Zvaigzne ABC, 2015, p. 314

means to enhance use of available enforcement resources. For example, it might avoid double testing in laboratories. There were also concerns about fragmented enforcement with multiple agencies being involved (see section 5 for more details). This may be a domestic issue, but as several of these tensions derive from new technologies[91], addressing the risks of new technologies within the context of the GPSD may help ease this problem.

Some matters raised by stakeholders might require legal reform to the GPSD, but in many cases it seemed many were merely seeking greater clarity that might be achieved through guidance or a mix of legal reform and guidance. Based on suggestions made by MSAs in the interviews and by stakeholders in the survey, the following sub-sections discuss some specific areas in which reform might be considered.

Online marketplaces and importers from outside EU

It was evident that a high concern was with how to tackle goods emanating from outside the EU and often this was exacerbated by online marketplaces. We have already noted suggestions to help improve traceability in these contexts.

New technologies

Three distinct issues seem to arise in relation to new technologies:

Are all products using new technology covered? Just because products have software embedded in them or use AI, this should not prevent the products being covered by the GPSD. However, as there is some uncertainty, this could be resolved by either a legislative amendment or guidance to that effect being provided. The position of software alone is more uncertain. The software may itself pose a danger to consumers (by for instance the advice it gives) or it may produce dangers as it interacts with other products (e.g. when a signal giving instructions is sent to another device). There is a general move to apply similar standards to software as to products as seen in the Digital Content Directive.

How does the general safety requirement apply to them? As noted above, there seems a genuine desire for assistance in how the GPSD applies to innovative products. For the most part, the *general safety requirement* is drafted in terms that can be interpreted to apply to products using new technology. Any uncertainty might be addressed through guidance or legal clarifications. There are some issues though that might raise new concerns. Although the GPSD may impose ongoing obligations on producers to be aware of the risks their products pose, the risk of post-marketing defects arising is increased with new technology. Technological bugs are an inherent issue with software and obligations to monitor and fix them might be appropriate. AI devices might alter their operation as they "learn" from the environment. If a product becomes dangerous post-marketing, the market surveillance authorities should still have the power to take appropriate action with regard to the product. Consideration might be given to making the post-marketing obligations of economic operators more explicit.

What risks are covered? There is also concern by some as to the coverage of cyber security and data breaches[92]. These reflect serious consumer concerns; however, it is not clear that they all relate to the physical safety of consumers as protected by the

[91] See country report Germany.

[92] Similar concerns were voiced concerning environmental risks.

GPSD.[93] Security breaches can affect safety – as potentially is the case of the Cayla doll mentioned above – and guidance might make that clear. Otherwise the guidance can point to other relevant legislation and the need to have a clear understanding at the national level about which agencies have competence and how they can co-ordinate actions.

Definition of safety

Some of the calls for reform relate to providing greater clarity to the definition of safety. Many of the issues raised referred to the use of new technologies and have been discussed above. As noted, clarification of the general safety requirement could in some instances be achieved through guidance rather than legislative reform.

Some MSAs and stakeholders suggested legislative changes to the definition of safety. For example, it was suggested to adjust 'conditions of use' in Art. 2(b) GPSD to include expressly foreseeable misuse e.g. in the context of cyber-risks[94]. Mention has already been made of the difficulty applying the GPSD to child-appealing products and its application to people with disabilities. Child-appealing products might be addressed through guidance as children are already noted as a category of consumers at particular risk (Art. 2(b)(iv) GPSD). Consideration might be given to adding the disabled to the categories of consumers at risk.

An MSA suggested making clear that preference should be given to achieving a safer design rather than relying on information such as instructions or warnings[95]. A revised GPSD could therefore include a principle of "safety by design"[96]. If this is considered a sound policy, then this might be achieved through guidance, although mention in the Directive might give it more force.

Safety net function

The GPSD is meant to act as a safety net when other product specific legislation does not exist. Art 1(2) provides that each of its provisions shall apply in so far as there are no specific provisions with the same objective in rules of Community law governing the safety of the products concerned. Where products are subject to specific safety requirements imposed by Community legislation, this Directive shall apply only to the aspects and risks or categories of risks not covered by those requirements.

There is also a Guidance Document on the Relationship between the General Product Safety Directive and Certain Sector Directives with Provisions on Product Safety[97]. Clarity over this safety net function of the GPSD has been raised as a concern. The most obvious issue would be a situation where a sectoral directive contains provisions on product safety that are more limited in scope as those in the GPSD. In these cases the safety net function of the GPSD would need to be clarified[98], and several MSAs

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93 For example, in Belgium an authority adopted the viewpoint that cyber security and data breaches rather bring about security risks (theft, burglary) than safety risks and were therefore considered to fall outside of the GPSD. See country report Belgium.

94 A stakeholder suggested the following wording: "'safe product' shall mean any product which, under normal or reasonably foreseeable conditions of use, as well as foreseeable misuse (attack, hack) ...[, does not present any risk or only the minimum risks....."]

95 See country report Germany.

96 This is done in other areas already. Art 25 of the GDPR enshrines the principle of 'Data protection by design'

97 DG SANCO, 2003.

98 As an academic discussion of the relationship on the national implementation legislation of the GPSD and sectoral legislation shows, see country report Germany.

also suggested clarifying enforcement responsibilities in this case, as often different authorities are responsible for enforcement of the sectoral directive and the GPSD[99].

Recalls

The GPSD provides Member States with the power to order product recalls, though preference is given to voluntary recalls. However, recalls are difficult procedures to implement and there can be uncertainty as to what is required. In some countries, such as the UK, there is guidance on how to conduct product recalls given in a code of practice drawn up between government and the British Standards Institute - PAS7100, Supporting Better Product Recalls. Such guidance is not available across the EU and there were calls for additional guidance to provide greater clarity on how recalls could be carried out (see section 5.5 below for a detailed discussion of recalls and the available guidance). Though certain general requirements regarding the recall process might be introduced in the GPSD, it was suggested that such matters might be best handled through codes of practice. The European Commission could take steps to ensure that relevant procedures, guidelines or codes of practice utilised in Member States are shared with the authorities of other Member States that do not have their own procedures. Also, while the General Data Protection Regulation probably does not preclude direct communication with consumers who are in possession of an unsafe product, as Article 6(1)(d) GDPR legitimises processing of personal data when "necessary in order to protect the vital interests of the data subject or of another natural person", it was felt it could be useful to emphasise this at EU level (probably in a Commission Guidance document) so that there is no doubt or uncertainty[100].

Information obligations

The GPSD contains requirements to provide information about the product. Guidance might be useful to clarify the information obligations. Several comments were made about how information obligations could be fulfilled to take account of both different forms of products and also developments in technology. It was suggested that there should be an obligation to display information about the product, producer, and warnings together with the product on websites. This would allow for a quicker and automated initial screening (by a digital webcrawler) of the products, allowing the authorities to focus on those companies that fail to provide the correct marking of products[101].

There was concern that it should be made clear that information could be given either on the product or the packaging as there are products for which labelling on the product is not possible, such as bulk goods. Also it was suggested that the digital transmission of instructions for use and safety information in combination with information at the point of sale and on the receipt should be considered as fulfilment of the duty to provide instructions. The use of URLs and QR codes was mentioned in this context to access relevant databases (see above). As one business stakeholder put it, the possibilities of digital information transfer should be given due consideration in a digitised society.

Coherence with other EU policies

Comments were made about the need to align the GPSD with other EU policies. We have already noted the issues posed by online sales and the attempts of the Commission to provide clarity in its Commission Notice on the market surveillance of products sold online[102]. However, there may be the need to revisit the roles of online

[99] See also the suggestion to define a market surveillance authority of last resort, see section 5.8 below.

[100] See country report Cyprus.

[101] See country report Denmark.

[102] OJ 2017 C250/1.

intermediaries such as marketplaces and the liability exemption provided under the E-Commerce Directive.

Online trade with non-EU countries is encouraged by trade rules that have *de minimis* thresholds below which customs duties and VAT are not charged. Direct online trade with non-EU countries is also facilitated by rules of the Universal Postal Union agreement that mean some charges for posting from countries including China appear to be below real cost[103]. It needs to be reviewed as to whether these incentives for direct B2C trade between traders in non-EU countries and European consumers should remain in place.

[103] A recent question by a member of the European Parliament to the Commission suggested that "The Universal Postal Union (UPU) Agreement is allowing China to ship packages to Europe and elsewhere at postal rates far below real costs and those applied within or between EU Member States. This has led to unfair competition for European suppliers …". See Question for written answer to the Commission (E-000773/2019).

5. Functioning of market surveillance of consumer products

5.1. Organisation of and setting priorities for market surveillance

5.1.1. Organisation of market surveillance

Market surveillance is inherently complex in light of the large variety of products on the EU market. This is true for products in general, but also for consumer products. For some consumer products EU harmonisation legislation exists, examples being toys, cosmetics and electrical appliances and equipment under the Low Voltage Directive. For other consumer products this is not the case. Non-harmonised consumer products include childcare articles, jewellery, (non-electric) bicycles, furniture, and electrical appliances and equipment outside the scope of the Low Voltage Directive.[104]

A 2017 Commission Communication on the Goods Package noted that in the EU there are "over 500 distinct market surveillance authorities (from 1 to over 200 per Member State) policing one Single Market for specific products"[105]. This fragmentation is caused by two factors: the first factor concerns different sectoral organisations being responsible for different products. Market surveillance in EU/EEA countries is often organised according to the sectoral scope of the harmonisation legislation. A list of national market surveillance authorities by sector compiled by DG GROW differentiates between 32 sectors, of which sector 3 is, for example "toys", and sector 30 is "Other consumer products under GPSD"[106]. Of course, this does not necessarily imply that all 32 sectors are under the responsibility of different authorities. In many countries, authorities have responsibilities concerning the enforcement of several harmonisation directives, so that the number of market surveillance authorities is lower. Still, sectoral fragmentation is considerable in some countries. The second factor contributing to fragmentation is that in close to half of all Member States sub-national (e.g. regional and local) organisations have responsibilities in market surveillance, in line with their administrative structure.

Market surveillance systems for consumer products in each of the 31 countries subject to this study can be categorised by the degree to which market surveillance is conducted by MSAs with broader or narrower sectoral responsibility, and whether responsibility for market surveillance is (partly) delegated to, or is the competence of, sub-national administrations. The following table shows the results of this analysis, which we have conducted on basis of our country research and the national market surveillance programmes submitted to the Commission[107].

[104] Outside the scope of the LVD is equipment with a voltage rating below 50 Volt for alternating current (AC) and below 75 Volt for direct current (DC).

[105] European Commission, COM(2017) 787 final. Communication from the Commission - The Goods Package: Reinforcing trust in the single market.

[106] https://ec.europa.eu/docsroom/documents/40023/attachments/1/translations/en/renditions/native

[107] The national market surveillance programmes include a description of the institutional structure of market surveillance in each country. See https://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation_en

Figure 9: Organisation of market surveillance of consumer products in EU/EEA countries, according to sectoral distributions of responsibilities and involvement of sub-national administrations

	Responsibility for market surveillance is centralised (no sub-national administrations involved)	**Responsibility for market surveillance is (partly) delegated to or competence of sub-national administrations, in line with the administrative structure of the country**
One Market Surveillance Authority for all non-food products	Malta	-
A main Market Surveillance Authority for consumer products, complemented by a small number of other MSAs in specific sectors (e.g. telecommunications, chemicals)	Belgium[c)], Cyprus, Denmark, Estonia, Ireland, Netherlands, Finland, Iceland, Latvia, Luxembourg, Sweden	France[b)], Croatia, Greece, Lithuania, Poland[a)]
Several MSAs with sectoral responsibilities for consumer products	Bulgaria, Liechtenstein, Slovenia, Slovakia, Norway	Austria, Czech Republic, Germany, Hungary, Italy, Portugal, Romania, Spain, (UK)

Source: Civic Consulting. Notes: Considered are market surveillance authorities for harmonised and non-harmonised consumer products, not including medicinal products. For more information, see country reports and the national market surveillance programmes 2019. a) In Poland, responsible at national level is the Office for Competition and Consumer Protection (OCCP), at the provincial level (*voivodship*) the Trade Inspectorate. b) The French DGCCRF is supported by a regional network. c) In Belgium, three Directorate Generals within the Federal Public Service Economy are competent for most harmonised consumer products and the non-harmonised products falling under the GPSD. While these DGs function separately, they work in close collaboration.

The table shows the large variation in the organisation of market surveillance for consumer products in EU/EEA countries.

In a small market such as Malta, a single market surveillance authority can have the responsibility for market surveillance of all non-food products (except medicinal products).

In a group of eleven, mostly small to mid-sized countries (Belgium, Cyprus, Denmark, Estonia, Ireland, Luxembourg, Netherlands, Finland, Iceland, Latvia, Sweden), a main market surveillance authority at the national level has broad responsibilities for consumer products, and is complemented by a small number of other MSAs in specific sectors (e.g. telecommunications, chemicals). In these cases, no sub-national administrations are involved. In contrast, other (often larger) countries that have a main market surveillance authority for consumer products also rely on sub-national administrations or regional networks for enforcement, in line with their overall administrative structure. Examples are France, where the DGCCRF is supported by a regional network, or Poland, where the Office of Competition and Consumer Protection (OCCP) has the general, national competence in the area of market surveillance of consumer products, with some products being excluded from its authority by specific regulations. Locally, the OCCP performs its task through provincial inspectors of the Trade Inspectorate, which report to the President of the OCCP. Other countries in this group are Greece, Lithuania and Croatia.

Finally, there are countries where several MSAs have sectoral responsibilities, without an organisation having a general or broad competence for consumer products. In Bulgaria, Liechtenstein, Slovenia, Slovakia, and Norway, this organisational approach only involves MSAs at the national level. However, in countries such as Austria, the Czech Republic, Germany, Hungary, Italy, Portugal, Romania, Spain, and the UK, there are several MSAs with sectoral responsibilities at national level and responsibility for market surveillance is also (partly) delegated to or is the competence of sub-national administrations. An example is Germany, where the enforcement of market

surveillance is generally the competence of the *Länder*, and the *Bund* (federal level) is only competent for enforcement in certain sectors. Another example is Spain, where the distribution of responsibilities between market surveillance authorities is reported to be complex and involves both authorities at national and regional level. A third example is the UK, where market surveillance is delivered by a range of both national and local authorities.

Due to the large number of authorities that are typically involved in market surveillance, in several countries special coordination bodies exist, and authorities operate on basis of a joint strategy. Approaches for priority setting for market surveillance are discussed in the following sub-section. Cooperation between authorities, including coordination bodies, is discussed below (section 5.3).

5.1.2. Priority setting for market surveillance

All Member States have to prepare National Surveillance Programmes in line with EU requirements[108], which often also include a section on other consumer goods under the GPSD. These annual surveillance programmes are prepared either by the responsible national ministry (as in e.g. Cyprus, Estonia, France, Greece, Ireland, and Slovenia) or by a national Market Surveillance Authority (as in e.g. Lithuania, Malta, the Netherlands, Poland and Iceland). Several Member States indicated that the national surveillance programmes were prepared by the national ministry or authority in coordination with other sector-specific or regional MSAs (as in Cyprus, Latvia, Poland, Slovenia, Spain, and Iceland).

In several countries, there were market surveillance programmes in place at the regional or local level in addition to the national surveillance programmes. In Germany, for example, it was reported that market surveillance priorities are primarily set at the level of the *Länder* (states), with formal and informal cooperation through committees and working groups to coordinate priorities and avoid duplication (see below). In the Czech Republic, market surveillance was reported to follow a tiered structure: "first [following] general control activity plans, then concrete regional control plans, and third, extraordinary circumstances [e.g. based on consumer complaints or information from customs]". In a majority of countries there were also sector-specific programmes in addition to the national and/or regional programmes.

Three Member States (Croatia, Latvia, and Lithuania) indicated that they have multi-year market surveillance programmes. In Latvia, it was reported that the Consumer Rights Protection Centre draws up a broader operational strategy every three years to highlight its 'fundamental values, surveillance policy, lines of action and priorities'. In Croatia, the multi-year 'national programme for consumer protection' covers the period from 2017-20, and defines the further development of product safety policy in Croatia as one of its specific goals. Lithuania reported an even longer-term programme, the 'state consumer development programme', which covers the period from 2019 to 2027.

The most common sources of information used to set priorities for market surveillance of consumer products are previous inspection results, RAPEX notifications, and consumer complaints, which were explicitly mentioned in interviews with authorities in almost all Member States. More than half of MSAs surveyed also indicated that information from customs authorities and coordinated actions on the safety of products organised at the EU level were used to set priorities for market surveillance. Finally, close to half of MSAs indicated that they drew on news/media reports, accident

[108] Art 18 of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products

reports and injury data, and information provided by businesses, business associations, and consumer organisations to set priorities for market surveillance. Other sources of information used to set priorities for market surveillance that were mentioned by MSAs in interviews conducted for this study included social media activity (indicated e.g. by MSAs in Estonia and Malta), signals from international colleagues (the Netherlands and Poland), insurance statistics (Bulgaria), legislative, regulatory, and market developments (the Netherlands, Poland), and studies published by scientific institutes (the Netherlands).

Interviewees in several countries (e.g. Greece, Finland, the Netherlands, Poland, the UK) explicitly indicated that they followed a risk-based approach in developing the national surveillance plans which prioritises the surveillance of product groups and risks that can have the largest impact on consumer welfare. In the Netherlands, for example, this is determined by the product volumes (exposure), the extent of anomalies within the product group (compliance level), the defects that have occurred (serious risk), and the types of suppliers of these products. In Poland and Greece, MSAs also take into account whether the products are targeted towards (or likely to be purchased by) vulnerable consumer groups such as children or the elderly. The Netherlands indicated that as a consequence of its risk-based approach, its active surveillance programme has shifted away from a product-oriented approach towards a more business-oriented approach. In addition to pure product-oriented surveillance, which is still carried out in parallel (although on a lesser scale), it focuses its surveillance efforts on a core group of approximately 3 000 enterprises that are responsible for more than 85% of high-risk products and which have poor compliance records. As follows from previous Dutch reports, the shift towards a risk-based business-oriented approach made surveillance more efficient, and resulted in less sampling, fewer laboratory tests, and more audits and monitoring.

5.1.3. Staffing and number of inspections

Implementation of market surveillance depends on trained staff for conducting inspections and the availability of and resources for testing of consumer products, to assess compliance with the general safety requirement and the requirements provided in specific harmonisation legislation.

Data on current staffing of market surveillance authorities in EU Member States is not readily available. Already a 2017 evaluation of application of the market surveillance provisions of Regulation (EC) No 765/2008 concluded that the "main difficulties encountered while performing the desk research related to the differing levels of detail in the information provided by Member States. Since the countries encountered several difficulties in reporting data on available resources in terms of both budget and staff, information was only partially or not available at all for a large number of Member States…"[109]. Reasons were often related to the administrative structure and reporting systems of the Member States, especially in federally organised countries where numerous (sub-national) administrative units are involved in market surveillance activities (see above for an overview by country). During our country research, in which we conducted interviews with market surveillance authorities in all EU/EEA countries, we collected data on the number of staff working on market surveillance of consumer products (in Full Time Equivalents, FTE)[110], differentiating between staff for surveillance of harmonised consumer products and staff for surveillance of other (non-harmonised) consumer products under the GPSD. The results are included in the following table, which presents data for 23 EU/EEA

[109] European Commission. (2017). Ex-post evaluation of the application of the market surveillance provisions of Regulation (EC) No 765 / 2008. 765, 1–274.

[110] One FTE is equivalent to one employee working full-time. For example, two part-time employees (working 50% each) are counted as 1 FTE.

countries. For the other countries, such data was not available or only to a very limited extent.

Figure 10: Number of staff working on market surveillance of consumer products (Full Time Equivalents, last available year)

Country	Staff for surveillance of harmonised consumer products	Staff for surveillance of other (non-harmonised) consumer products under GPSD	Total staff (all consumer products)	Population in 2018 (million)	Total staff/ million population
Austria		19.0		8.8	
Belgium[a)]	21.4	9.3	30.6	11.4	2.7
Bulgaria[q)]	65.0	69.0	134.0	7.1	19.0
Croatia					
Cyprus[b)]	(96.0)	(40.0)	(96.0)	0.9	(111.1)
Czech Republic[c)]	54.0	227.0	281.0	10.6	26.5
Denmark[d)]	4.3	32.5	36.8	5.8	6.4
Estonia[e)]	49.0		49.0	1.3	37.1
Finland[p)]		2.0		5.5	
France[r)]		57.5		66.9	
Germany					
Greece[s)]		60.0		10.7	
Hungary					
Ireland[f)]			10.0	4.8	2.1
Italy					
Latvia[g)]			27.0	1.9	14.0
Lithuania[h)]	30.0	10.0	40.0	2.8	14.2
Luxembourg[i)]	12.0	1.0	13.0	0.6	21.7
Malta[j)]			8.0	0.5	16.8
Netherlands[k)]			95.0	17.2	5.5
Poland[l)]			470.0	38.0	12.4
Portugal[m)]			73.0	10.3	7.1
Romania[n)]			510.0	19.5	26.1
Slovenia					
Slovakia					
Spain					
Sweden[s)]	2.5	5.0	7.5	10.1	0.7
UK					
Iceland[o)]			4.0	0.3	11.5
Liechtenstein[p)]	0.025	0.0	0.025	0.04	0.7
Norway[t)]	9.0	3.0	12.0	5.3	2.3

Notes: Data provided for last available year (mostly 2018 or 2019). Values in brackets refer to the number of staff involved in market surveillance, not FTE. See country reports for more details. a) 2019 based on the National Market Surveillance Programme. Include the FTE from the Economic Inspection. b) Information in the National Market Surveillance Programme 2019 concerning the year 2018. It is important to note that the numbers concern staff who in many cases do not devote the whole of their time to product safety, or only a small percentage of their time (i.e., 10%) is devoted to product safety. Also, the 40 employees working on non-harmonised consumer products are the same as those 40 working on toys, which have also been included under the harmonised consumer products column. It is for this reason that the total is 96 and not 136. c) 2018, Source: Ministry of Industry and Trade. d) Data is estimated for 2020 for the Danish Safety Technology Authority. e) Source: Ministry of Economic Affairs and Communications (2019), Market Surveillance Programme 2019. f) Within the CCPC, there were 5 FTE for GPSD, Toys, LVD, PPE (recreational & leisure) and Appliances Burning Gaseous Fuel (domestic) at the end of 2018. As of December 2019, the Number of staff (FTE) in the Division has increased to 10 FTE. g) These numbers reflect only staff working at the CRPC. It does not include information from the Health Inspectorate and the Assay Office. h) 2019 data. The same staff might be working in different areas and so the statistics might overlap. i) This information is related to ILNAS. These numbers therefore relate to the GPSD products and harmonised products that fall within the surveillance competences of ILNAS. j) 2019 data. k) Due to the risk-based approach it is not possible to make a distinction between harmonised and

non-harmonised. l) 450 inspectors were allocated to inspections in the field of non-food products in 2018. m) Based on data from 2018 provided by Economic and Food Safety Authority and by the National Authority for Medicines and Health Products. n) The data reflects the situation in the year 2018. o) 2019 data for Consumer Agency. p) 2019 data. q) 2019 data. Staff of Ministry of Economy/Commission for Consumer Protection and State Agency for Metrological and Technical Surveillance only. r) DGCCRF estimation. s) 2018 data. Staff of Consumer Agency only. t) 2019 data. Directorate for Civil Protection (DSB).

To make staff levels better comparable, we also list in the table the population of each country and calculate the staff ratio per million population. When interpreting the resulting figures, it is important to note that the data is not always complete (e.g. not covering all sectoral authorities with responsibilities for some consumer products), and may have been reported according to different standards (see footnotes in the table above and the subsequent tables). For example, the value of more than 100 staff per million population in Cyprus is due to the size of the country (with some smaller countries having higher per capita staffing levels), and also due to the fact that the estimate from Cyprus includes staff who do not devote their whole time to product safety[111]. The influence of outliers can be reduced by focusing on those countries that fall between the 25th and 75th percentile of the distribution (which is called the interquartile range). When considering the interquartile range, the total number of reported MSA staff (combining the figures for the surveillance of harmonised and non-harmonised consumer products) is between 4.1 and 20.3 FTE per million population, with the median being 12.4 FTE[112]. While in a few countries separate data was available regarding market surveillance staff for harmonised and non-harmonised consumer products, no meaningful estimate of the share of either category can be elaborated on this basis.

The following table presents data on the number of inspections conducted in each country in the last year for which data was available, again differentiated between the number of inspections of harmonised consumer products and the number of inspections of other (non-harmonised) consumer products under GPSD. As in the previous table, the data is also provided per million of population.

Figure 11: Number of inspections of consumer products (last available year)

Country	Number of inspections of harmonised consumer products	Number of inspections of other (non-harmonised) consumer products under GPSD	Total number of inspections (all consumer products)	Population (million)	Total number of inspections/ million population
Austria					
Belgium[a)]	552	158	710	11.4	62
Bulgaria[q)]			31132	7.1	4385
Croatia	2254			4.1	
Cyprus[b)]			7105	0.9	8221
Czech Republic[c)]	9951	2276	12227	10.6	1152
Denmark[p)]					
Estonia[e)]	1188		1188	1.3	901
Finland					
France		3980		66.9	
Germany					
Greece		230		10.7	
Hungary					

[111] The data is therefore presented in brackets in the table.

[112] The median is the middle value, or 50th percentile of a data series.

Ireland[f)]			492	4.8	102
Italy					
Latvia[g)]	324	75	399	1.9	206
Lithuania[h)]	1700	800	2500	2.8	890
Luxembourg[i)]	707	160	867	0.6	1440
Malta[j)]			319	0.5	671
Netherlands			7000	17.2	407
Poland[k)]	1454	905	2539	38.0	67
Portugal[l)]	2073	705	2778	10.3	270
Romania[m)]			29539	19.5	1512
Slovenia[n)]	298	309	605	2.1	293
Slovakia					
Spain					
Sweden[o)]	104	220	324	10.1	32
UK					
Iceland					
Liechtenstein[p)]	2	0	2	0.04	52
Norway					

Notes: Data provided for last available year, mostly 2018/2019. See country reports (Part 2) for more details. a) 2018 data. Only GPSD products and following harmonised products: Aerosol, Cableways, Explosives for civil use, Lifts, Machinery, PED, SPVD, PPE, Pyrotechnical Articles, Toys. Source: Activity report of the Directorate General Quality and Safety: https://economie.fgov.be/fr/publications/rapport-dactivites-2018-de-la. These numbers do not include all of the inspections by the Economic Inspection. b) Only toys and non-harmonised products which fall within the authority of the CPS as a competent market surveillance authority. c) 2018 data. Source: Ministry of Industry and Trade. e) Statistical data is available for the first 9 months of 2018. Source: Ministry of Economic Affairs and Communications (2019), Market Surveillance Programme 2019. f) 2018 data. Totals for GPSD, Toys, LVD, PPE (recreational & leisure) and Appliances Burning Gaseous Fuel (domestic). g) 2018 data. h) 2019 data. i) This information is also related to ILNAS. j) 2018 data. k) 2018 data. l) Based on data (from 2018) provided by the Directorate General for Consumers Affairs, by the Economic and Food Safety Authority and by the National Authority for Medicines and Health Products. m) 2018 data. The data provided by the NACP reflects both harmonised and non-harmonised products. n) 2018 data. The figure for 'harmonised products' refers to LVD. o) From 1 Jan 2019 to 12 November 2019. p) 2019 data (until November). q) 2018 data, total of inspections of Ministry of Economy/Commission for Consumer Protection, State Agency for Metrological and Technical Surveillance, Ministry of Health. p) Data available for Danish Environmental Protection Agency only (in total 500 inspections).

According to the available data, the total number of inspections conducted in the Member States varies therefore considerably, with the interquartile range being between 102 and 1152 inspections, and a median of 407 inspections per year and million population.

Finally, the following table presents data on the total number of consumer products inspected and tested by market surveillance authorities, as well as the total number of dangerous consumer products found. On this basis, we calculate the share of tested products and the share of dangerous products found as a percentage of total products inspected.

Figure 12: Share of tested consumer products and share of dangerous products found (last available year)

Country	Total number of consumer products inspected	Total number of consumer products tested in laboratories	Total number of dangerous consumer products found	Share of tested products (of total products inspected)	Share of dangerous products found (of total products inspected)
Austria					
Belgium[a)]	710	100	283	14%	40%
Bulgaria[p)]	4624	28	120	1%	3%
Croatia[q)]	4475	115	47	3%	1%
Cyprus[b)]	7105	106	301	1%	4%

Czech Republic[c)]	17088	920	156	5%	1%
Denmark[d)]	2500	n.a.	520	n.a.	21%
Estonia[e)]	8317	183	46	2%	1%
Finland[r)]	85		31		36%
France[s)]	3980	365	760	9%	19%
Germany[f)]	27541	1234	12715	4%	46%
Greece[g)]	850	122	100	14%	12%
Hungary					
Ireland[t)]	492	1		0.2%	
Italy					
Latvia[h)]	1144	162	64	14%	6%
Lithuania[i)]	2000	700	59	35%	3%
Luxembourg[j)]	867	186	15	21%	2%
Malta[k)]	1313	69	22	5%	2%
Netherlands	6500	4500	n.a.	69%	n.a.
Poland [l)]	8671	657	440	8%	5%
Portugal[u)]					
Romania[m)]	15245	n.a.	41	n.a.	0.3%
Slovenia[n)]	605	n.a.	9	n.a.	1%
Slovakia					
Spain					
Sweden					
UK					
Iceland					
Liechtenstein[o)]	10	0	1	0%	10%
Norway					

Notes: Data provided for last available year, mostly 2018/2019. See country reports (Part 2) for more details. a) 2018 data. Only GPSD products and following harmonised products: Aerosol, Cableways, Explosives for civil use, Lifts, Machinery, PED, SPVD, PPE, Pyrotechnical Articles, Toys. Source: Activity report of the Directorate General Quality and Safety: https://economie.fgov.be/fr/publications/rapport-dactivites-2018-de-la. These numbers do not include all of the inspections by the Economic Inspection. b) Only toys and non-harmonised products which fall within the authority of the CPS as a competent market surveillance authority (first column provides the number of inspections, as the number of products inspected was not provided) c) 2018 data. Source: Ministry of Industry and Trade. d) 2018 data, approximate. Combined figures from Danish Safety Technology Authority and Danish Environmental Protection Agency. e) Statistical data is available for the first 9 months of 2018. Source: Ministry of Economic Affairs and Communications (2019), Market Surveillance Programme 2019. f) 2018 data. The figures refer to all products tested in 13 sectors covered by the German Product Safety Act - there is no distinction between consumer and non-consumer products or between the different sectors. g) 2018 data. Non-harmonised consumer products only. h) 2018 data. i) 2019 data. j) This information is also related to ILNAS. k) 2018 data. l) 2018 data. The last rubric mentions the number of products in which structural irregularities were found. m) 2018 data. The data provided by the NACP reflects both harmonised and non-harmonised products. n) 2018 data (first column provides the number of inspections, as the number of products inspected was not provided). o) 2019 data (until November). p) 2018 data, for Ministry of Economy/Commission for Consumer Protection only (first column provides the number of inspections, as the number of products inspected was not provided). Number of dangerous consumer products refers to types of products (124). q) Data incomplete. r) 2019 data. Finnish Safety and Chemicals Agency only. s) DGCCRF estimate, non-harmonised products only data (first column provides the number of inspections, as the number of products inspected was not provided). t) 2018 data. Investigation totals for GPSD, Toys, LVD, PPE (recreational & leisure) and Appliances Burning Gaseous Fuel (domestic). u) Data provided unclear and therefore not included.

Using again the same values to characterise the distributions presented in the table above, we can conclude that between 2% and 14% of inspected consumer products are tested in laboratories (interquartile range), with the median being 5%. In some countries, this share is, however, considerably higher.

The share of dangerous products found is between 2% and 16% of total consumer products inspected (interquartile range), with the median value being 4%. Again, in some countries this share is much higher. From five countries it was reported that the share of dangerous products of total consumer products inspected is close to 20% or higher. However, as for previous tables, the data has been reported from various sources according to different criteria, so that these figures have to be interpreted

with care. As market surveillance authorities often sample according to risk based criteria (i.e. focusing on risky products, conducting visual inspections to choose products for testing that can potentially be unsafe), this figure is not representative for the incidence of dangerous consumer products on the market. On the other hand, the data illustrates that dangerous products continue to be available on the market, and can be purchased by consumers in all Member States. The statistics presented above therefore confirms the result of the joint and coordinated market surveillance actions, as presented in section 5.4 below.

5.2. Market surveillance regarding new technologies, online sales and C2C products, use of mystery shopping

5.2.1. Products containing new technologies

Market surveillance authorities in roughly half of the 31 countries subject to this study (in 16 countries, see table below) reported to conduct market surveillance activities with respect to the safety of products containing new technologies (such as Internet of Things, connected devices). In countries that conduct market surveillance of products containing new technologies, this was partly due to the fact that they are checked like any other kind of products if they fall in a product group that is targeted by market surveillance activities[113].

Figure 13: Market surveillance regarding new technologies, online sales and C2C products

Countries	Market surveillance regarding …					
	Safety of products containing new technologies (e.g. IoT)	Online sales (trader in own country)	Online sales (trader in other EU/EEA countries)	Online sales (trader in Non-EU/EEA countries)	Online sales through use of mystery shopping	C2C products (sold by consumers to consumers)
Austria		✓	✓	✓		
Belgium	✓	✓[b)]				
Bulgaria		✓	✓	✓	✓	
Croatia		[b)]				
Cyprus	✓	[c)]				
Czech Republic	✓	✓	✓		✓	
Denmark	✓	✓	✓	✓		✓
Estonia		[d)]				✓
Finland	✓	✓	✓	✓		
France	✓	✓				
Germany	✓	✓				
Greece		✓	✓	✓		
Hungary		✓	✓		✓	
Ireland		✓	✓		✓	
Italy	✓	✓				✓
Latvia		✓			✓	
Lithuania	✓	✓	✓	✓	✓(own/EU)	
Luxembourg	✓	✓[c)]				
Malta	✓	✓				

[113] See, e.g. country report Denmark.

Netherlands	✓	✓	✓	✓	✓(own/EU/ Non-EU)	
Poland		[a]				
Portugal						
Romania	✓	✓	✓	✓		
Slovenia		✓	✓	✓		
Slovakia	✓	✓	✓		✓(own/EU)	
Spain		✓	✓	✓	✓	
Sweden		✓	✓	✓	✓	
UK		✓	✓	✓		
Iceland	✓	✓	✓	✓		✓
Liechtenstein		✓	✓	✓	✓(own/EU/ Non-EU)	
Norway	✓	✓				

Notes: ✓= At least indicated by one authority in the country. Frequency of related activities once per year or more often. a) Checks of products sold online occur *ad hoc.* b) Market surveillance of products sold online is conducted only in cases where economic operators are established and they keep traditional shops as well, so that in a case of sampling, a sample of the product can be taken on the premises of the economic operator concerned. c) Conducted very rarely. d) In their statistics of inspections, the authorities do not distinguish between activities concerning products sold online and products sold in traditional shops. The experts of the Consumer Protection and Technical Regulatory Authority estimate that the percentage of inspections regarding online shops is rather low (max 5 %).

While new technologies are considered to be comprehensive problem areas in need of more attention, they also pose specific difficulties: From the Czech Republic, it was reported that *no adequate legal tools* are available, and therefore the right to conduct control activities in this field is not considered to be sufficiently certain. In a similar vein, the Polish country report concludes that there have not yet been reports of any safety issues regarding new technologies and there is *no knowledge on what risks* should be checked for in such products or which national or local authority would be competent to control their safety. From several countries it was reported that products containing new technologies required *clarifications of responsibilities* between the market surveillance authorities in a country (with an example being a connected device such as an Internet enabled refrigerator, which would fall either under the responsibility of e.g. the authority responsible for household appliances, or under the responsibility of the telecommunications authority)[114]. As products containing new technologies may pose different types of risks (e.g. related to safety, privacy and cyber security), clarity is required as to whether a particular modern technology product would then need to be monitored by one or more authorities[115].

Some countries have specifically considered the issue of new technologies. The Dutch Ministry of Economic Affairs and Climate together with the Ministry of Justice and Safety have published a report in April 2018, a Roadmap for Digital Safe Hard– And Software, with measures regarding new technologies. The focus is on new standards and certification at the EU level of connected devices partially through the RED Directive. In addition to this, more monitoring on digital safety of products, better market surveillance and information campaigns and empowerment of consumers are on the agenda. The Dutch government plans to start a pilot on a shared testing

[114] Even where responsibilities are clarified, they may require increased cooperation efforts. An example for this situation are the Netherlands: Because of the revision of the Radio Equipment Directive and ECM Directive, which were implemented in 2016, Low Voltage Directive products (LVD products) with IoT-applications are now under the supervision of AT (Radio Communications Agency Netherlands). This implies that a refrigerator which is connected to WiFi falls under the authority and supervision of AT and a regular fridge falls under the authority of the NVWA (Netherlands Food and Consumer Product Safety Authority). With regard to aspects that are not covered by vertical EU legislation that are covered by the GSPD, the NVWA is the competent authority. This requires a lot of cooperation between these two authorities. The full picture on how this cooperation functions in practice is uncertain.

[115] See country report Poland.

platform, together with business, government and TNO (a Dutch research and advisory organisation). However, market surveillance on products containing new technologies that go beyond the existing vertical directives and regulations appear still to be very limited at the moment in the Netherlands[116]. In Germany, the *Bundesanstalt für Arbeitsschutz und Arbeitsmedizin* (BAuA) is currently conducting research into approaches to deal with this category of products[117]. Moreover, BAuA has finalised a project in 2018 dealing with the question of whether or not, or under what circumstances, 3D printers come into the scope of application of the Product Safety Act[118].

5.2.2. Online market surveillance

In most countries, authorities conduct market surveillance regarding consumer products sold online, at least regarding online sales where the trader is located in its own country (see table above for details). For some authorities, market surveillance activities regarding online sales even account for a large share of their inspections. The Danish Safety Technology Authority (*Sikkerhedsstyrelsen*) reports to conduct more than 50% of the total number of inspections online (the highest share of any of the interviewed authorities). Other authorities with a strong focus on products sold online (more than 20% of the total number of inspections) are located in Greece, Finland, Spain, Hungary, Italy, Lithuania, Latvia, Netherlands, Sweden and Slovakia[119].

Where market surveillance regarding products sold online is conducted with respect to traders located in the own country, the procedure is often not substantially different from market surveillance of products sold in physical stores. This is illustrated by the online market surveillance process followed by the Greek national authority: first, an initial risk assessment is conducted on basis of information from research, complaints, media etc. to allow for targeting specific products, considering both inherent risks of the products (e.g. laser pointers, childcare articles) and frequency of use. After relevant products are identified on online marketplaces and retailer websites, the product description/pictures are checked to detect potential problems (where this is possible). Then, after locating the physical store of the seller, officials proceed to the physical inspection at the premises where they control the actual product and take samples as or if necessary. In case of finding a non-compliant product, all companies selling this product online are controlled either by physical inspection and sampling or by requiring the companies to share technical documents/certification and other technical data. Recent activities in Greece focused e.g. on jewellery without the necessary marking (national legislation), for water filters lacking required certification, for playground floors (EU REACH legislation), etc[120].

In other cases, however, the depth of the online market surveillance activities and/or the procedures involved may differ from 'traditional' market surveillance concerning

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116 See country report Netherlands.

117 See Bleyer, Wie funktioniert Produktsicherheit?, baua Aktuell 3/2018, available at https://www.baua.de/DE/Angebote/Publikationen/Aktuell/3-2018.pdf?__blob=publicationFile&v=5, p. 3, and Kasper, Neue Anforderungen an die Sicherheitsnachweisführung, baua Aktuell 3/2018, p. 6.

118 See BauA, 3-D-Druck: Praxisgrundlagen zu Produktsicherheit und Rechtsrahmen, 2nd ed. 2019, https://www.baua.de/DE/Angebote/Publikationen/Berichte/F2389.pdf?__blob=publicationFile&v=13. See also Wanders, Neue Fragen rund um 3D-Drucker, baua Aktuell 3/2018, p. 5.

119 Dept. General Safety of Products, Quality Policy Directorate, Secretariat General for Industry, Ministry of Development and Investments (Greece); Tukes (Finland); Instituto Gallego de Consumo y de la Competencia (Spain); Budapest Consumer Protection Department (Hungary) Guardia di Finanza - Nucleo Speciale Beni e Servizi - Gruppo Anticontraffazione e Sicurezza Prodotti (Italy); State Consumer Rights Protection Authority (Lithuania); Consumer Rights Protection Center (Latvia), Netherlands Food and Consumer Product Safety Authority (NVWA, Netherlands); Swedish Consumer Agency (Sweden); Slovak Trade Inspection (Slovakia).

120 See country report Greece.

physical shops: market surveillance of products sold online may focus primarily on the (virtual) check of online marketplaces[121] (e.g. to check whether notified products are sold or not). Also, market surveillance of products sold online may be organised and conducted in different ways, as is the case in Latvia. The Consumer Rights Protection Centre (CRPC) takes into account not only information published in RAPEX, but also monitors information on products which is published online, including in social media, and has special internal guidelines on how to detect and sample dangerous and non-compliant products online, also using an e-laboratory available for all departments of the organisation[122].

Market surveillance activities regarding online sales in other countries (EU/EEA or non-EU/EEA countries) are conducted less frequently, but still in about half of the countries (see table above). Where these activities are not conducted or are considered challenging, reported reasons include the lack of staff resources, and difficulties related to enforcement in case products are found to be non-compliant. This includes difficulties where online platforms are not selling the products directly (and are therefore not liable for the product), and practical difficulties in terms of accessing the product, as online controls often require the purchase of the product in question (implying an extra cost)[123], in contrast to market surveillance of physical shops, where samples are typically taken by MSAs free of charge.

Authorities that engage in enforcement activities concerning the sale of non-compliant products sold by traders located in non-EU countries reported using the mechanism provided by the Product Safety Pledge, in which six online marketplaces have voluntarily committed to take action, among other things, in respect to unsafe products notified in RAPEX or when informed by MSAs[124].

5.2.3. Mystery shopping

Only a minority of MSAs (from 11 countries, see table above) conduct mystery shopping regarding products sold online (i.e. they purchase products under a cover identity for subsequent testing), and an even smaller number of authorities do so frequently. Six of the interviewed authorities (from the Czech Republic, Spain, Hungary, Lithuania, Latvia, Slovakia) conduct mystery shopping activities at least once every three months[125]. The interviewed MSAs provided a large variety of reasons why mystery shopping is not possible or not done more frequently. These include an insufficient legal basis for mystery shopping[126], the lack of a credit card of the MSA to conduct online purchases[127], practical difficulties to hide the identity of the purchaser, for example, for creating a new web or postal address[128], financial risks (due to a

121 See country report Germany.

122 See country report Latvia.

123 Reported e.g. from France.

124 See e.g. country report Denmark. For details on the the Product Safety Pledge, see https://ec.europa.eu/info/files/product-safety-pledge_en. In our interviews with market surveillance authorities we specifically asked whether the Product Safety Pledge was considered helpful or not. While close to two thirds of the interviewees did not have an opinion (62%), most of the remaining interviewees considered the Pledge to be at least moderately helpful (32%). Only a minority of 6% had a negative view on the Pledge.

125 Czech Trade Inspection (Czech Republic); Agencia Catalana del Consumo (Spain); Budapest Consumer Protection Department (Hungary); State Consumer Rights Protection Authority (Lithuania); Consumer Rights Protection Center (Latvia); Slovak Trade Inspection (Slovakia).

126 Reported e.g. from Austria, Belgium, Bulgaria, Denmark, Iceland. In Poland, the OCCP can only conduct mystery shopping with judicial permission, which will be obtained only if some evidence already indicates that a given trader is breaching consumer protection rules. In Germany, the power to conduct mystery shopping is not explicitly mentioned in the legal basis (the ProdSG). See relevant country reports.

127 Reported e.g. from Austria, Czech Republic (not all authorities have access to a credit card).

128 Reported e.g. from the Czech Republic.

difficulties in obtaining reimbursement of purchase costs)[129], and a lack of training[130]. In some cases, there are also explicit rules that require officials to disclose their identity when conducting inspections/market surveillance activities[131].

5.2.4. Market surveillance regarding C2C products

The number of countries in which MSAs conduct market surveillance regarding C2C products (products sold by consumers to consumers) is very limited, and includes Denmark, Estonia, Italy and Iceland. For example, the Estonian MSA has monitored consumer-to-consumer sales where the seller's activity is to be considered an economic activity since the products are sold to a large number of consumers. This concerned for example individuals making products such as toys and swings, who sold them via Facebook or through their own websites[132]. Similarly, Icelandic authorities have conducted market surveillance activities in areas where consumers (located in Iceland) sell handcrafted products on Facebook (including to consumers abroad). In the majority of countries where MSAs do not conduct market surveillance of C2C products, the reasons are varied, and include limitations in the mandates of authorities, limitations in the scope of application of product safety legislation, enforcement challenges and budgetary constraints.

5.3. Market surveillance cooperation with other public authorities

5.3.1. Cooperation with public authorities other than customs

In our interviews with market surveillance authorities, we asked through which means they cooperate with other relevant authorities in their country with respect to product safety (e.g. concerning specific cases or common challenges). As the following table shows, most authorities use a wide range of communication tools and channels. In all countries, market surveillance authorities regularly exchange information, conduct meetings and informally cooperate with their counterparts at other authorities (often on basis of a joint national market surveillance programme or plan, and slightly less frequently on basis of a formal agreement). The information systems RAPEX and ICSMS are also very common cooperation channels. Slightly more than half of the countries (17) report having joint training sessions. Cooperation through joint processes and a common use of a national market surveillance IT system is less frequent.

[129] Reported e.g. from the Czech Republic. According to the Czech Control Code, a business entity is required to reimburse the price of the sample if the test shows discrepancies from the requirements (e.g. the product does not comply with the requirements of a safe product). In other countries this law is not enforceable, and this creates a risk of not recovering the costs of the sample.

[130] Reported e.g. from Poland, Iceland.

[131] Reported e.g. from Greece and Spain (Valencia).

[132] Country report Estonia.

Figure 14: MSAs cooperation with other relevant authorities in the country with respect to product safety

	Cooperation with other relevant authorities through …							
	Exchange of information/ meetings/ informal cooperation	Common use of RAPEX	Inclusion in preparing nat. plan or programme	Common use of ICSMS	Joint training sessions	Through formal agreement.	Joint processes	Common use of MS IT system
Austria	✓	✓	✓	✓	✓			
Belgium	✓	✓	✓	✓		✓	✓	
Bulgaria	✓	✓	✓	✓				
Croatia	✓	✓	✓	✓		✓		
Cyprus	✓	✓	✓	✓				
Czech Republic	✓	✓		✓	✓	✓		
Denmark	✓							
Estonia	✓	✓	✓		✓	✓		
Finland	✓	✓	✓	✓				
France	✓		✓		✓	✓	✓	
Germany	✓	✓	✓	✓		✓		✓
Greece	✓		✓			✓	✓	
Hungary	✓	✓	✓	✓				✓
Ireland	✓	✓	✓	✓		✓		
Italy	✓	✓	✓					
Latvia	✓		✓		✓	✓		
Lithuania	✓	✓	✓	✓	✓	✓	✓	✓
Luxembourg	✓	✓	✓	✓	✓	✓	✓	✓
Malta	✓	✓		✓	✓			
Netherlands	✓	✓	✓	✓	✓	✓		
Poland	✓	✓	✓	✓				
Portugal	✓	✓		✓	✓		✓	
Romania	✓	✓	✓	✓	✓	✓	✓	
Slovenia	✓	✓	✓	✓	✓	✓		
Slovakia	✓	✓		✓	✓	✓	✓	
Spain	✓	✓	✓	✓				✓
Sweden	✓	✓		✓	✓			
UK	✓	✓	✓	✓	✓		✓	✓
Iceland	✓	✓	✓	✓	✓		✓	
Liechtenstein	✓							
Norway	✓	✓		✓	✓		✓	✓

Note: ✓= At least indicated by one authority in the country.

While frequency and degree of cooperation differs significantly between authorities and sectors, in most countries at least one of the interviewed authorities reported coordinating with other authorities in their country once per week or more often. In several countries, specific coordination bodies exist to bring all market surveillance authorities together, often also involving customs. For example, in Bulgaria, cooperation between surveillance bodies is institutionalised through a Coordination

Council[133]. Coordination bodies for market surveillance also exist e.g. in Estonia[134], Ireland[135] and Germany[136].

In our interviews, market surveillance authorities typically characterised their cooperation with other authorities as being close and working well. This is true even for large and federally organised countries, such as Germany, where the country report concluded that the fragmentation of market surveillance competencies can be mitigated through cooperation between the competent authorities but also through coordination and support from the federal level. In some cases, however, authorities found that cooperation with other authorities could be more intensive.

5.3.2. Cooperation with customs

Customs has a key role in safeguarding the safety of consumer products on EU/EEA markets, as a large share of dangerous products notified on RAPEX originate in non-EU/EEA countries (accounting in 2018 for 76% of notifications)[137]. Effective cooperation between market surveillance authorities and customs is therefore crucial.

In most EU/EEA countries, customs authorities conduct controls on behalf of the responsible market surveillance authorities, without being market surveillance authorities in their own right. This approach can be illustrated with the examples of Croatia and the Netherlands: In Croatia, if the Customs Administration decides to suspend the release of a product for free circulation on the EU market based on the check of the product's characteristics, it notifies the relevant market surveillance authority. The market surveillance authority performs an inspection within three working days of the suspension and, depending on its findings, takes appropriate measures which may include prohibiting the product from being placed on the market in case of a serious risk or non-conformity. Alternatively, if it finds that the product does not present a risk to human health or the environment, and that it complies with the applicable legislation, the Customs Administration releases the product for free circulation[138]. Similarly, in the Netherlands, the main market surveillance authority for consumer products (the NVWA) has a long-standing working agreement with customs (*het samenwerkingsconvenant NVWA/Douane*). Next to this agreement, a list of priority products, countries of origin and - when possible - economic operators is agreed every year between customs and the NVWA. On the basis of digital loading bills, customs informs the NVWA when a ship or plane carrying cargo that corresponds with the mentioned priority list is coming in. The NVWA then decides whether or not to inspect the goods in question. If yes, the market surveillance authorities inspect the products upon import (i.e. before they are released for free circulation)[139].

In several countries, however, a different approach is chosen. In these countries, customs is designated as a market surveillance authority in its own right (as is the

[133] The Coordination Council in Bulgaria is formed by representatives of market surveillance authorities, but also includes representatives from Customs, the Criminal Police, the Directorate for National Construction Control, the Executive Agency on Vine and Wine, the Executive Agency of Fisheries and Aquaculture and the Executive Agency of Variety Testing, Field Inspection and Seed Control.

[134] In Estonia, each year the Ministry of Economic Affairs and Communications organises a meeting involving all authorities dealing with product safety surveillance (the Market Surveillance Board) with the objective to review the activities that have taken place during the year, to exchange experiences and practices, and to discuss current market surveillance issues.

[135] National Market Surveillance Forum, chaired by the Department of Business Enterprise.

[136] There are several coordination mechanisms in Germany. The most important actors in this regard are the Zentralstelle der Länder für Sicherheit (ZLS) and the Bundesanstalt für Arbeitsschutz und Arbeitsmedizin (see Part II Q 1). See country report Germany for more details.

[137] See RAPEX annual report 2018.

[138] See country report Croatia.

[139] See country report Netherlands.

case in Finland, France and Latvia). In France, while surveillance of consumer products on the French market is mainly carried out by officials of the Directorate-General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF), this responsibility lies with the Directorate-General for Customs and Indirect Taxation (DGDDI) in the case of products imported from non-EU countries. Depending on the applicable rules and where an import prohibition is provided for, customs officials can take samples, have them tested in a laboratory, and, based on the results obtained, decide on how to proceed. Also in Finland, customs has the power to decide on whether the import, export or transit of certain products is allowed. This possibility of customs taking own product safety-related decisions was indicated by the Finnish Safety and Chemicals Agency (Tukes), the main Finnish Market Surveillance Authority for consumer products, to be a major advantage, safeguarding quicker and more efficient decisions.

Cooperation between market surveillance authorities and customs is reported to be often very close, and in most countries takes place once a week or more often[140]. In nearly all countries market surveillance authorities regularly exchange information, conduct meetings and informally cooperate with their counterparts at customs (often on basis of a formal agreement and/or a common strategy, see the following table). Also, the inclusion of customs in preparing a national market surveillance plan or programme, the joint setting of priorities and joint training sessions between market surveillance authorities and customs are relatively common (reported from approximately half of the countries). As was the case regarding the cooperation among market surveillance authorities (previous sub-section), cooperation through joint processes for dangerous products, joint risk assessment and a common use of a national market surveillance IT system is less frequent.

Figure 15: MSAs cooperation with customs authorities with respect to product safety

Country	Cooperation with customs through …								
	Exchange of information/ meetings/ informal cooperation	Formal agreement	Common strategy	Inclusion of customs in preparing nat. plan or programme	Joint setting of priorities	Joint training sessions	Joint processes for dangerous products	Common use of national MS IT system	Joint risk assessment
Austria	✓		✓	✓	✓				
Belgium	✓	✓[a)]	✓	✓	✓	✓	✓		
Bulgaria	✓	✓						✓	
Croatia	✓		✓				✓		
Cyprus	✓		✓						
Czech Republic	✓	✓				✓			
Denmark	✓	✓		✓	✓	✓	✓		
Estonia	✓	✓		✓	✓	✓			
Finland	✓			✓	✓		✓		✓
France	✓	✓	✓	✓	✓			✓	
Germany	✓	✓	✓				✓		✓
Greece		✓							
Hungary	✓	✓	✓	✓	✓		✓		
Ireland	✓	✓				✓[b)]			
Italy	✓		✓						
Latvia	✓	✓	✓	✓	✓	✓	✓	✓	
Lithuania	✓	✓	✓	✓	✓	✓	✓	✓	✓

[140] See results of MSA survey, answer 13.

Luxembourg	✓	✓			✓	✓		✓		
Malta	✓	✓				✓				
Netherlands	✓	✓	✓		✓					
Poland	✓	✓			✓	✓				
Portugal	✓	✓	✓			✓				
Romania	✓	✓	✓	✓	✓					
Slovenia	✓	✓	✓	✓	✓	✓	✓	✓		
Slovakia	✓	✓		✓	✓	✓	✓		✓	
Spain	✓	✓	✓					✓	✓	
Sweden	✓			✓	✓					
UK	✓	✓	✓			✓	✓			
Iceland	✓			✓						
Liechtenstein										
Norway	✓	✓	✓			✓				

Note: ✓= At least indicated by one authority in the country. a) Formal agreement is under development. b) Joint training programme with customs was planned at the time of finalising this report.

Only from two countries was it reported that exchange of information, meetings and informal cooperation with customs does not take place on a frequent basis. In Greece, there is reportedly no actual cooperation or timely provision of information to and from customs with regards to dangerous non-harmonised products. The situation is different with regards to harmonised consumer products (with CE mark), for which customs cooperation is provided for by the EU regulation and the national legislation[141]. In the case of Liechtenstein, the second country with less frequent cooperation, the Swiss Customs Administration is responsible for customs control (on the basis of the customs treaty), with bi-annual coordination meetings taking place in which Liechtenstein authorities are involved[142].

As indicated in the table above, market surveillance authorities from only a few countries report using a common national IT system with customs. An example is Lithuania, where the State Consumer Rights Protection Authority uses a common national market surveillance IT system with customs, in addition to RAPEX[143] and ICSMS[144]. One of the reasons for a limited use of common national IT tools is that customs uses its own system, the EU Common Customs Risk Management System (CRMS), which provides a mechanism to exchange risk-related information directly between Member States' custom authorities[145]. Iceland, which as EEA member has no access to CRMS, considered this to be a major disadvantage, and Icelandic customs has to rely on ICSMS, which serves a different purpose.

[141] For example, see Law 4072/2012, GG A' 86/11.04.2012 for industrial products. More details are provided in the country report Greece.

[142] See country report Liechtenstein.

[143] Safety Gate/RAPEX (the rapid alert system for dangerous non-food products) enables quick exchange of information between EU/EEA member states, the UK and the European Commission about dangerous non-food products posing a risk to health and safety of consumers. See https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm

[144] The Information and Communication System on Market Surveillance (ICSMS) is an IT platform to facilitate communication between market surveillance bodies in the EU and in EFTA countries. It quickly and efficiently shares information on non-compliant products, avoids the duplication of work, and speeds up the removal of unsafe products from the market. See https://ec.europa.eu/growth/single-market/goods/building-blocks/icsms_en

[145] The Common Customs Risk Management System (CRMS) is intended to provide a fast and easy-to-use mechanism to exchange risk-related information directly between operational officials and risk analysis centres in the Member States. It is a key element in the development of a Union risk management framework as it facilitates EU-wide customs intervention for the highest risks at the EU's external frontier and within its borders. See https://ec.europa.eu/taxation_customs/general-information-customs/customs-risk-management/measures-customs-risk-management-framework-crmf_en

Finally, a common obstacle referred to by the interviewed authorities in several countries is the absence of specific tariff codes in the customs nomenclature for products such as children's beds, chairs and childcare articles, which makes identification of consignments from non-EU/EEA countries with potentially notified products, and the related communication between market surveillance and customs authorities, more difficult.

5.4. Joint and coordinated actions of market surveillance authorities

5.4.1. Overview of Joint Actions

Over the last 15 years, the European Commission has co-financed coordinated market surveillance activities (the so-called Joint Actions or, since 2018, Coordinated Activities on the Safety of Products or CASP) carried out by Member State authorities. These coordinated activities aim at promoting and coordinating administrative cooperation for the application of Directive 2001/95/EC and ultimately at ensuring a consistent approach towards the effective enforcement of product safety legislation across the internal market.

Recent Joint Actions typically cover the following aspects of administrative cross-border cooperation activities[146]:

- Joint and coordinated sampling and testing of non-food products found in the EU/EEA markets;
- Assessment of risks posed by non-food consumer products and product testing;
- Market surveillance operations and co-operation with customs authorities;
- Exchange of expertise and best practices;
- Meetings and workshops, implementation of an effective communication strategy and collaboration.

The activities include a number of product oriented, coordinated market surveillance actions. On the basis of a list of products agreed by national authorities, specialised laboratories are selected to test the products and assess whether they comply with the relevant EU safety rules and are considered to be dangerous. These actions often lead to submission of notifications to the Rapid Alert System (RAPEX).

Until 2018, the coordinated actions were funded and implemented by the European Commission's Consumer programme under the category of grant agreements. In 2018, the implementation modality and financing of the coordinated actions was replaced by a procurement framework funded fully by the European Commission, by which an external contractor coordinates all logistical, reporting and communication tasks involved and provides the necessary expertise for each of the activities.

The following table presents the products/product categories covered by all Joint Actions since 2006 until 2018 (the so-called "horizontal activities" are not included); the number of product samples collected for inspection and testing; the countries that participated in the coordinated actions; information on compliance of the tested products; and measures taken as a result of actions (in cases of non-compliance or non-conformity). The year indicated in the first column is the year of the grant agreement (of the co-financing by the EC). It may not be identical with the year of actual implementation or reporting of the coordinated actions.

[146] European Commission, Annex to the Commission implementing decision on the adoption of the work programme for 2017 and on the financing of the Consumer Programme

Figure 16: Overview of Joint Actions

Financial Year	Product category covered	Total number of samples / products	Participating countries	No of countries	Compliance*	No. of RAPEX notifications/measures taken
2015	Power Tools 2 - Handheld electrical circular saws	100	BE, BG, CZ, FR, DE, LV, LU, MT, PT	9	51 samples passed all tests and examinations, while half of the remaining 49 samples (25) failed. 63% of all non-conformities related mostly to lack of essential information in the instruction for use, e.g. safety warnings etc.	8
2015	Playgrounds	357 Playgrounds (91 indoor and 266 outdoor playgrounds) Total number of items of equipment inspected: 1 016	BE, CZ, DE IS, LV, SK, SI, (NO withdrew at a later stage)	8	677 (67%) items of equipment were non-compliant with regard to information 549 (54%) items of equipment were non-compliant with regard to technical requirements	n.a.
2015	Childcare Articles-soothers and soother holders	195 (73 soothers and 122 soother holders)	BE, BG, CY, DK, DE (x 2 MSAs), EL, IS, LV, LT, MT, NL, RO	12	29% of the 73 soothers and 78% of the 122 soother holders considered to be non-compliant	31
2015	Household Electrical Appliances 1	134 (44 blenders, 45 mixers and 45 toasters)	BG, CY, CZ, FI, LV, MT, PT, SE, SK	9	The majority of the samples had multiple non-conformities	24
2015	Plastic toys (chemical risks)	255 toy samples (255 samples tested for phthalates, SCCP, lead, cadmium and organic tin. 96 samples tested for PAH and 30 samples for BPA)	BE, CZ, EE, DE, EL, LV, LT, LU, MT, NO, PL, PT, RO, SK, ES, SE, NL	17	48 out of the 49 toy samples that were non-compliant were determined to present a “serious risk”. The level of non-compliance with regards to phthalates, SCCP and BPA, still needs to be better controlled. With regards to phthalates, DEHP and DINP are the two predominant phthalates which were found in concentrations higher than the respective limits stipulated in legislation. No non-compliances related to migration of lead, cadmium or organic tin in these plasticised toys detected. No non-compliances related to the chemical, polycyclic aromatic hydrocarbon (PAH).	43
2014	Safety barriers	112	BE, BG, HU, CZ, FR, EL, IS, LU, MT, NL, PT, SK	12	77% of the 106 safety barriers failed to meet the requirements of the clauses contained within the current standard. All three playpens failed to meet the current relevant standard. Two of the three multifunctional barriers failed to meet all the tests.	20
2014	Power tools (angle grinders)	60	BG, CZ, HR, DE, FI, LU, LV, MT, PL, PT, SK, SI	12	The overall result of testing and examination of the sampled grinders was that none of the 60 samples passed all of the applicable standard clauses.	34
2014	Acoustic toys	Around 2 190 different models of acoustic toys were inspected, out of which 371 samples were tested	AT, BE, CY, CZ, EE, FI, DE, IS, LV, LT, LU, MT, NO, PT, RO, NL	16	10% of the tested acoustic toys found non-compliant.	26
2014	LED/CFL Light Sources	211 lamps models inspected (117 model lamps tested (96 LED lamps and 21 CFLs)	BE, CZ, EE, DE, EL, LV, LT, LU, MT, NO, PL, PT, RO, SK, ES, SE, NL	17	65% of the lamps had shortcomings concerning the mandatory markings. 39% of the tested lamps had defects that will/may endanger the safety of the users.	12

2013	Cots	50 (31 travel (or folding) cots and 19 traditional (wooden or plastic) cots)	AT, BE, BG, CY, CZ, DK, DE, EL, IS, LV, LT, MT, NL, PL, PT, RO, SK, ES, SE, UK (IS, NO)	20	50% (presenting serious risk to consumers, and many deficiencies in the current standard)	22
2013	Children's kick scooters	69 (49 toy kick scooters and 20 sports kick scooters)	BE, BG, CZ, DK, EL, LV, MT, SK (plus IS)	8	Only 2 toy kick scooters fully complied with the requirements. And 2 (out of 20) models of sports kick scooters passed tests and the documentary checks.	Notification to RAPEX – serious risk: 13 Notification to RAPEX – less than serious risk): 11 Notification to RAPEX for information: 1 Cases still pending: 3
2013	Toys intended for children under 3 years	312 economic operators inspected. (1.850 different models inspected, out of which 604 samples tested)	CY, CZ, DK, EL, LT, MT, NO, PL, PT, NL	10	123 (46,4 %) of the 265 samples tested did not meet the requirements of respective standard clauses. 3 of 200 samples tested (migration of certain elements) were not conforming. Percentage of non-compliance mainly on warnings, markings and instructions for use 243 samples (40% of 604 samples).	80
2013	Fireworks 2	424	BE, BG, EL, IS, LU, NO, PL, SI, NL	9	58%	21
2013	Chemicals in clothing	302 (products)	n.a.	10	30 products were non-compliant	4
2012	Joint Action China	n.a.	AT, CZ, EE, FR, DE, IT, NL, SK, SI, ES	10	n.a	n.a.
2012	Nanotechnology and cosmetics	Inspected product 267, 85 analyses	CY, EE, EL, IE, NL, PT, ES (IS collaborated)	7	For 68 products where the information obtained from chemical analysis allowed the label requirement to be checked, only 3 products did not list [nano]. Nevertheless, it appears that much of the industry has adapted well to the nano requirements, despite the existing uncertainties about definitions and standards.	n.a.
2012	Cords and drawstrings in children's clothing	Number of inspection visits: 1895 Number of garment models checked: 10981	BE, BG, CZ, DK, FR, DE, IE, LV, LT, MT, NL, PL, PT, RO, SI, ES, SE, UK, NO, (BA, FI, IS, LU, TR collaborated)	19	790 non-compliant garment models	No serious risk identified. As a consequence no RAPEX notifications made
2012	Ladders	18 telescopic and multi-hinged ladders	AT, DE, IE, LT, NL, PT, SI (TR collaborated)	7	Non-compliance in 9 telescopic ladders (100%) (lack of an 'incorrect angle indicator'). Non-compliance related to the 'correct angle indicator' with 7 of 9 samples. 'Safety test of the ladder' and the 'Cyclic test on hinges' with similar high rates of failure.	At the time of reporting, notifications to the RAPEX system of those models presenting serious risk were still pending.
2012	CO and smoke detectors	81 (models of CO detectors inspected, 25 of them tested)	AT, BE, BG, CY, CZ, DK, DE, EL, IS, LV, LT, MT, NL, NO, PL, PT, RO, SI, ES, SE, UK (Product specific activity on Chemicals within JA2013: LV, MT, PT, SK, ES, NL)	21	18 models were noncompliant with the relevant requirements	At the time of reporting, notifications to the RAPEX were pending.
2011	Childcare articles (CCA) - Wheeled child conveyances (WCC)	51	BG, CZ, DK, FR, DE, LT, NL, PT, RO, ES, SE, UK (BA, FI, MT, PL took part to a certain degree)	12	Non-conformities: -Hazards relating to moving parts (41%) -Suitability of the vehicle, choking and ingestion hazards, structural integrity, the restraint system and fasteners: all ranging from 24% to 33% respectively.	9

					-Parking and braking devices and durability of marking: both 14%. -All of the other non-conformities: less than 10%. -10 samples (around 20 %) met the mechanical requirements, and the majority of the samples had non-conformances related to product information.	
2011	Lighters II	74 lighter models	AT, CY, CZ, EE, EL, MT, NL, SK, SI, ES, SE, IS, NO	13	A total 5 228 lighter models checked during the 3 years of the Joint Action. 1 500 of these did not comply with the safety requirements. Of the sampled 74 lighters tested no remarks given for 55% of the lighters. 7% of the lighters presented critical non-compliance.	n.a.
2011	Childcare articles-Baby bathtubs	43	BE, BG, the CZ, DK, FR, DE, IE, LV, LT, MT, NL, PL, PT, RO, SI, ES, SE, UK, (plus NO). (BA, FI, IS, LU, TR as collaborating partners)	19	8 cases out of 43 samples (19%) resulted in sales bans or withdrawals, 4 of 8 cases in RAPEX alerts and in 26 cases (60%) in minor measures.	4
2011	Fireworks	135	BE, BG, the CZ, DK, FR, DE, IE, LV, LT, MT, NL, PL, PT, RO, SI, ES, SE, UK (plus NO). (BA, FI, IS, LU, TR as collaborating partners)	19	48% of the samples failed to meet the physical requirements or the product information requirements or both.	n.a.
2011	Battery chargers	77	BG, CZ, MT, NL, NO, PT, SI, SE (LU out of the financial scheme).	8	235 models of battery chargers checked, out of which 77 tested. Various non-compliances in 52 of the chargers	7
2011	Lawn movers	25	CZ, DK, FR, LV, NL, NO, PT, RO	8	17 of the 25 movers and 5 out of 17 ride-on lawn mowers did not comply	2
2011	High chairs	70	AT, BE, CY, CZ, DK, EE, FI, FR, EL, LV, LT, MT, NO, RO, SK, ES	16	17% out of the 70 samples have a serious risk, 13% a high risk, 24% medium risk and 19% low risk	12
2010	Food imitation products	379 (of which 60 cosmetics, 254 decorative items, 43 toys and 22 other products). 113 of the products inspected were sent to a lab for tests.	AT, BE, BG, CY, CZ, DK, DE, EL, HU, IE, LV, LT, LU, MT, NL, NO, PL, PT, SK, SI ,ES (FR, IT, BA, CH, SE, TR, DE as collaborating partners)	21	113 of the 379 products inspected sent to a laboratory for tests. 29 passed the test and 84 failed.	9 products recalled, 19 removed, 6 of them under RAPEX for info, 16 products were removed and destroyed and in 12 cases economic operators were invited to take actions.
2010	Ladders	38 (ladder models were sampled and sent for laboratory testing)	AT, BE, BG, CY, CZ, DK, DE, EL, HU, IE, LV, LT, LU, MT, NL, NO, PL, PT, SK, SI, ES (FR, IT, BA, CH, SE, TR, DE as collaborating partners)	21	Of the 38 models tested, the respective market surveillance authorities took action in respect of 32 of them.	5 RAPEX notifications were made with tested models, and a number of other ladders targeted for removal from the markets
2010	Laser Pointers	88 samples	AT, BE, BG, CY, CZ, DK, DE, EL, HU, IE, LV, LT, LU, MT, NL, NO, PL, PT, SK, SI ,ES (FR, IT, BA, CH, SE, TR, DE as collaborating partners)	21	4% were class 3 which are not to be sold to consumers, and of these 95% were not correctly labelled.	29

2010	Children's Fancy Dresses (chemicals in textiles and flammability of these products)	237 products	AT, BE, BG, CY, CZ, DK, DE, EL, HU, IE, LV, LT, LU, MT, NL, NO, PL, PT, SK, SI ,ES (FR, IT, BA, CH, SE, TR, DE as collaborating partners)	21	29% (68 out of the 237 products sampled) were non-compliant	n.a.
2010	Visibility clothing and accessories	135 products inspected, 39 of these products tested (20 of visibility accessories and 19 of visibility clothing).	AT, BE, BG, CY, CZ, DK, DE, EL, HU, IE, LV, LT, LU, MT, NL, NO, PL, PT, SK, SI ,ES (FR, IT, BA, CH, SE, TR DE as collaborating partners)	21	61 of 135 product samples inspected were non-compliant. 39 samples tested (7 out of 19 pieces of clothing and 20 accessories tested failed retro-reflective performance test and 2 accessories failed photometric test).	n.a.
2009	Child-appealing designs	n.a.	BE, CY, CZ, DK, EE, DE, LV, LT, MT, PL, SE, NL, UK	13	n.a	n.a.
2009	Helmets	367 samples inspected. 40 of these models tested	CY, CZ, DE, IS, LV, LT, NO, SI, ES, SE, NL	11	367 models inspected, 63% did not comply with the standards requirements concerning marking and instruction. Of the 40 models sent for testing, 22 were in compliance and 18 not in compliance.	n.a.
2009	Sunbeds	1 798 inspections at tanning service providers and manufacturers, EU importers or distributors of sunbeds. UV measurements on a total 1 072 sunbeds	BE, CY, CZ, DK, FR, DE, HU, LV, NO, PT, NL, UK	12	The warning was absent in 16% of all the sunbeds checked at first inspection. 22% of the sunbeds did not carry the obligatory CE marking. Technical information was absent or insufficient for 50% of the sunbeds.	n.a
2009	Baby walkers	36	AT, CY, CZ, DK, DE, EL, LV, LT, MT, NL, PT, SE	12	Regarding bearing warnings as well as the obligatory marking a high percentage complied (82%). 17 of the 36 different brands/models of baby walkers were noncompliant.	10
2008	EMARS II project	n.a. "Enhancing Market Surveillance through Best Practices in Europe"	BE, BG, CY, CZ, DK, EE, FI, FR, DE, EL, IS, IE, LV, LT, MT, NLs, NO, PL, SI, SE, UK	21	n.a	n.a.
2008	Sunbeds & Solarium Services	n.a.	n.a.	n.a.	n.a	n.a
2008	Cords and drawstrings in children's clothing	16 381 garments checked. 75 clothes were tested at a laboratory.	AT, BG, CZ, DK, EE, FR, EL, IE, LT, NL, PT (ES, TR followed the action actively)	11	2 188 garments did not comply with the safety requirements. They were removed from the market by recall, withdrawal or mending the non-compliance.	400
2008	Toys	14 000 toys checked. Around 580 were chosen for testing	BG, CZ, DK, EE, FR, DE, EL, IT, LV, LT, NO, SK, NL	13	Out of the approximately 580 samples tested 204 have failed. It is important to note that this does not mean that the remaining 13 700 which were not sent for testing were all considered to be fully compliant.	n.a
2006	EMARS 1 project	n.a. "Enhancing Market Surveillance through Best Practices in Europe"	n.a.	n.a	n.a	n.a.

n.a. = not available or not applicable. * Wording follows closely the original information provided in the publicly available Joint Action reports.

The table below summarises the number of Joint Actions conducted according to the corresponding product categories of the RAPEX system. In total, 40 Joint Actions covering 14 different RAPEX product categories have taken place. Three of them concerned cooperation projects in general and were not related to a specific product category (EMARS 1, EMARS 2, and a cooperation project with China), and are therefore not included in the following table.

Figure 17: Number of Joint Actions by RAPEX product categories

Product category	Number of Joint Actions by year								
	2008	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**Total**
Childcare articles and Children's equipment		1		3		1		1	**6**
Toys	1					2	2	1	**6**
Clothing, Textiles and Fashion items	1		2		1	1			**5**
Electrical appliances and equipment	1	1		1				1	**4**
Other			1[a)]		1[a)]			1[b)]	**3**
Machinery				1			1	1	**3**
Pyrotechnic articles				1		1			**2**
Lighters		1		1					**2**
Lighting equipment							1		**1**
Cosmetics					1				**1**
Construction products					1				**1**
Protective equipment		1							**1**
Food-imitating products			1						**1**
Laser pointers			1						**1**
Total	***3***	***4***	***5***	***7***	***4***	***5***	***4***	**5**	**37**

Note: Product categories are defined in line with Safety Gate/RAPEX categories. The year of the joint action mentioned above refers to the year of the grant agreement. a) Ladders, b) Playgrounds.

Looking at the table above, the first row concerns the number of Joint Actions belonging to the category of childcare articles and children's equipment (in total six). Similarly, six Joint Actions took place in the product category of toys, 5 in the category of clothing, textiles and fashion items, and 4 in the category of electrical appliances and equipment. The following categories were other and machinery (3 JAs, each) followed by Joint Actions in the categories of pyrotechnic articles, lighters, construction products, with 2 Joint Actions in each category. The remaining six Joint Actions concerned the categories of lighting equipment, cosmetics, construction products, protective equipment, food-imitating products, and laser pointers, accounting for another fifth of all Joint Actions that took place within the above mentioned timeframe.

Joint Actions of the category of childcare articles and children's equipment are more or less evenly distributed over the years, indicating the persistent need for action within this category of products. The same is true for the Joint Actions in the category of products of toys, which were, however, largely clustered into the (financial) years 2013 to 2015. The most recent Joint Actions that took place concerned electrical appliances and equipment, the categories of other and machinery, in addition to childcare articles and children's equipment and toys.

To consider how the choice of product categories for Joint Actions compares to the frequency to which these products led to a RAPEX notification, the following table provides the total number of notifications concerning dangerous consumer products in RAPEX in the period 2013 to 2019, and the above listed data on Joint Actions per product category (not including the three joint Actions that did not relate to a specific product category).

Figure 18: Total number notifications and of Joint Actions by RAPEX product categories

Product category	RAPEX notifications		Joint Actions	
	Number	% of total	Number	% of total
Toys	3686	28%	6	16%
Clothing, textiles and fashion items	2280	17%	5	14%
Motor vehicles	2139	16%	0	0%
Electrical appliances and equipment	1080	8%	4	11%
Cosmetics	554	4%	1	3%
Childcare articles and children's equipment	444	3%	6	16%
Lighting equipment	400	3%	1	3%
Chemical products	347	3%	0	0%
Jewellery	309	2%	0	0%
Lighting chains	269	2%	0	0%
Hobby/sports equipment	268	2%	0	0%
Other	206	2%	3	8%
Protective equipment	186	1%	1	3%
Decorative articles	119	1%	0	0%
Lighters	119	1%	2	5%
Pyrotechnic articles	110	1%	2	5%
Machinery	98	1%	3	8%
Construction products	91	1%	1	3%
Laser pointers	91	1%	1	3%
Communication and media equipment	87	1%	0	0%
Kitchen/cooking accessories	69	1%	0	0%
Furniture	62	0%	0	0%
Food-imitating products	45	0%	1	3%
Gas appliances and components	40	0%	0	0%
Stationery	18	0%	0	0%
Recreational crafts	16	0%	0	0%
Gadgets	13	0%	0	0%
Hand tools	8	0%	0	0%
Pressure equipment/vessels	5	0%	0	0%
Measuring instruments	4	0%	0	0%
Total	***13163***	***100%***	***37***	***100%***

Note: Product categories are defined in line with Safety Gate/RAPEX categories. The number of RAPEX notifications refers to the number of alerts concerning consumer products with serious risks (2013-2019). RAPEX data retrieved in January 2020 (calculation on basis of full dataset). The number of Joint Actions refers to the total in the period 2008 to 2015 (year of the grant agreement). A subsequent Joint Action started in 2017 and finished in 2019, without the final report being available at the time of writing this study. Ongoing CASP are also not included in the table.

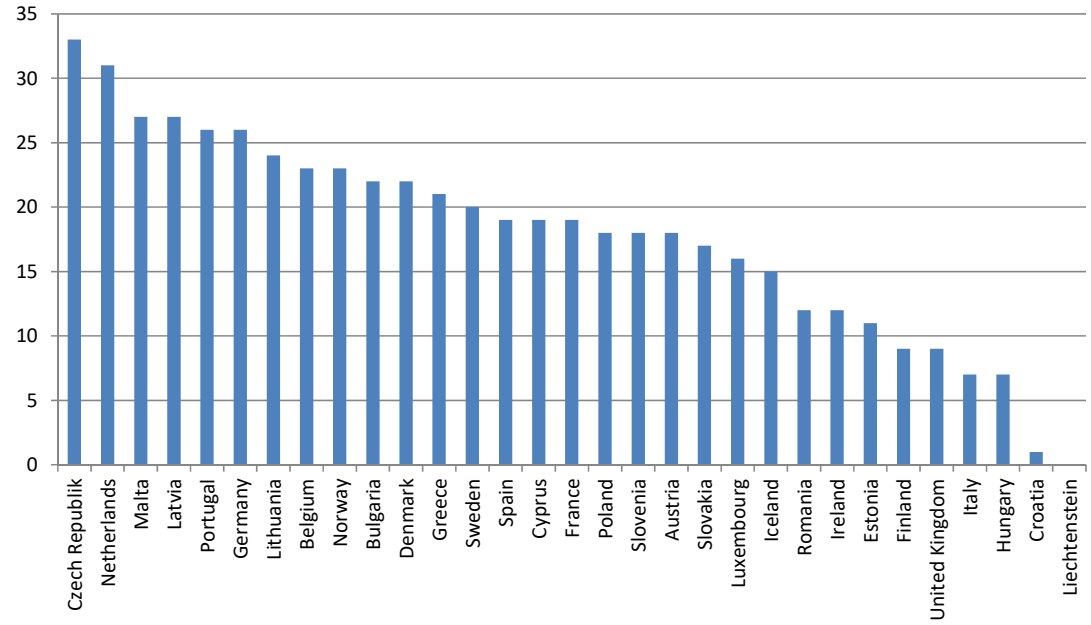
As the table illustrates, most product categories that account for 3% or more of RAPEX notifications were covered by Joint Actions. An exception is motor vehicles, a highly regulated product sector in which different rules and surveillance approaches apply

compared to most other product categories. Product categories that were accounting for 2-3% of notifications but were not covered by any Joint Action are chemical products, jewellery, lighting chains and hobby/sports equipment. Note that RAPEX notifications and Joint Actions are not independent variables, as the number of notifications influences the choice of subjects for Joint Actions, and in turn Joint Actions often lead to additional notifications.

5.4.2. Participation of countries in Joint Actions

As seen on the graph below, countries participate in the Joint Actions to varying degrees. The Czech Republic, the Netherland, Malta, Latvia, Portugal and Germany have participated most frequently in the Joint Actions (over 25 times). A second group of countries participated 20 times or more and consists of Lithuania, Belgium Norway, Bulgaria, Denmark, Greece, and Sweden. The least frequently participating countries were Liechtenstein, Croatia, Hungary, Italy, the UK, Finland, Estonia, Ireland and Romania (all below 15 times).

Figure 19: MS participation in Joint Actions (2006-2015)



5.4.3. Results of Joint Actions

Most Joint Actions resulted in the identification of a significant number of non-compliant and/or dangerous products. While non-compliance rates were often 20% or more, the Joint Action reports repeatedly indicate that these high rates of non-compliance were not necessarily representative for the market, as non-random samples were taken and often samples were tested where a visual inspection had suggested possible deficiencies[147]. Most Joint Actions led to RAPEX notifications and related measures, such as recalls, withdrawals, etc.

[147] Joint Action reports typically include a disclaimer such as the following: "The ... results are based on products that were sampled from the markets in the participating countries by experienced market surveillance inspectors that were looking for non-compliant and potentially unsafe products. As in any routine market surveillance activity, the results represent the targeted efforts that authorities

For detailed summaries of the Joint Actions, see Part 3 of this report.

5.5. Recalls and other corrective measures

The GPSD establishes a general obligation for economic operators to place only safe products on the market. Once a product is placed on the market, producers must observe the performance of their products. Producers and distributors are required to immediately notify respective authorities in EU Member States in case they know or ought to know, on the basis of the information in their possession and as professionals, that a product that they have placed on the market poses risks to the consumer that are incompatible with the general safety requirement. Also producers shall withdraw unsafe products from the market, publish warnings of unsafe products or recall products from consumers on a voluntary basis or at the request of the competent authorities[148].

These duties on businesses are complemented through a requirement for Member States to perform effective market surveillance (see Section 3 above). When products are found to be dangerous, Member States have to ensure that they are recalled, withdrawn or that their being made available on their market is prohibited, and that the Commission is informed without delay through RAPEX. In the notification, Member States provide information on the product and the measures adopted. Measures include, for example:

- Recall of the product from end users;
- Withdrawal of the product from the market;
- Ban on the marketing of the product and any accompanying measures;
- Rejection of imports at border;
- Destruction of the product;
- Warning consumers of the risks.

The difference between a recall and a withdrawal of products is that a recall aims at achieving the return of a product that has already been made available to the end user, whereas a withdrawal aims at preventing a product in the supply chain from being made available on the market[149]. As in practice often more than one measure is taken, the differentiation between recalls and withdrawals is not always clear-cut. Data directly retrieved from RAPEX allows to specifically filter for recalls, and shows a total of 5983 recalls from 2013 to 2019 in the EU/EEA[150]. When plotted by year, the data shows an increase in recalls between 2013 and 2019 (see following figure).

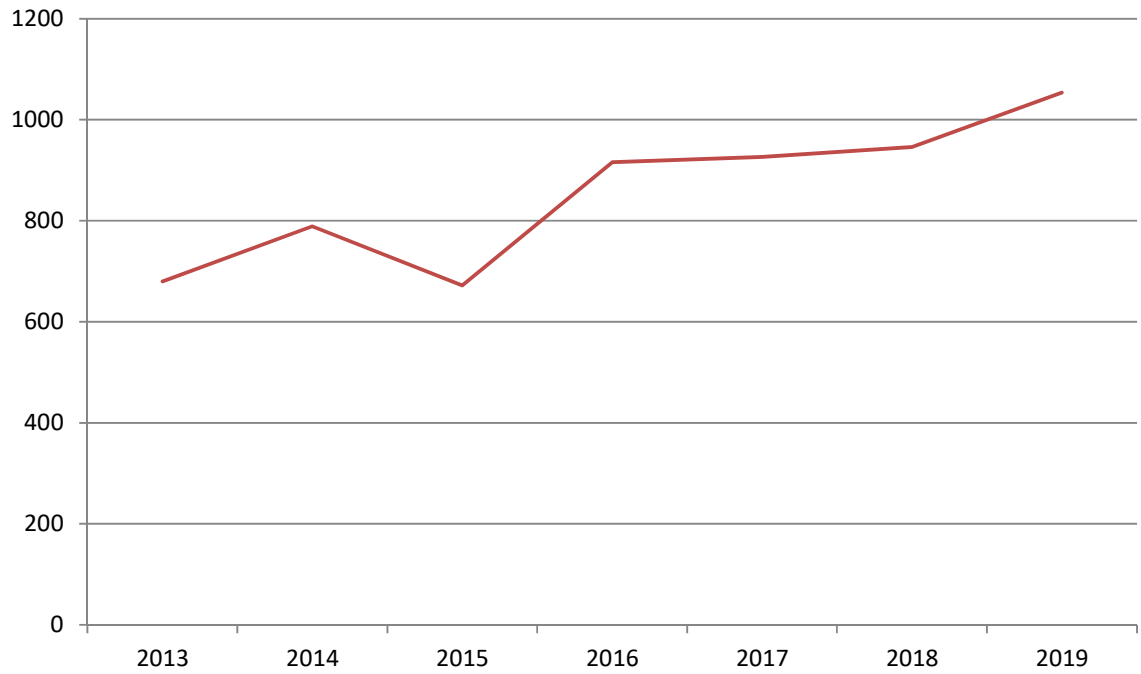
undertake to identify unsafe products. They do not give a statistically valid picture of the market situation."

148 Art 5 GPSD, see section 3 (Background).

149 See the definitions provided in: European Commission (2017) Commission Staff Working Document - IA - accompanying the Proposal for a Regulation laying down rules and procedures for compliance with Union harmonisation legislation.

150 This and the following calculations are based on the analysis of RAPEX data for the period 2013 to 2019 retrieved from the EU Safety Gate in Excel format. Considered are all notifications concerning products with serious risks and products with other risk levels, where at least one of the measures included a recall (as indicated in the Column 'Measures adopted by notifying country').

Figure 20: Number of recalls registered in the EU Safety Gate 2013-2019 (total, by year)

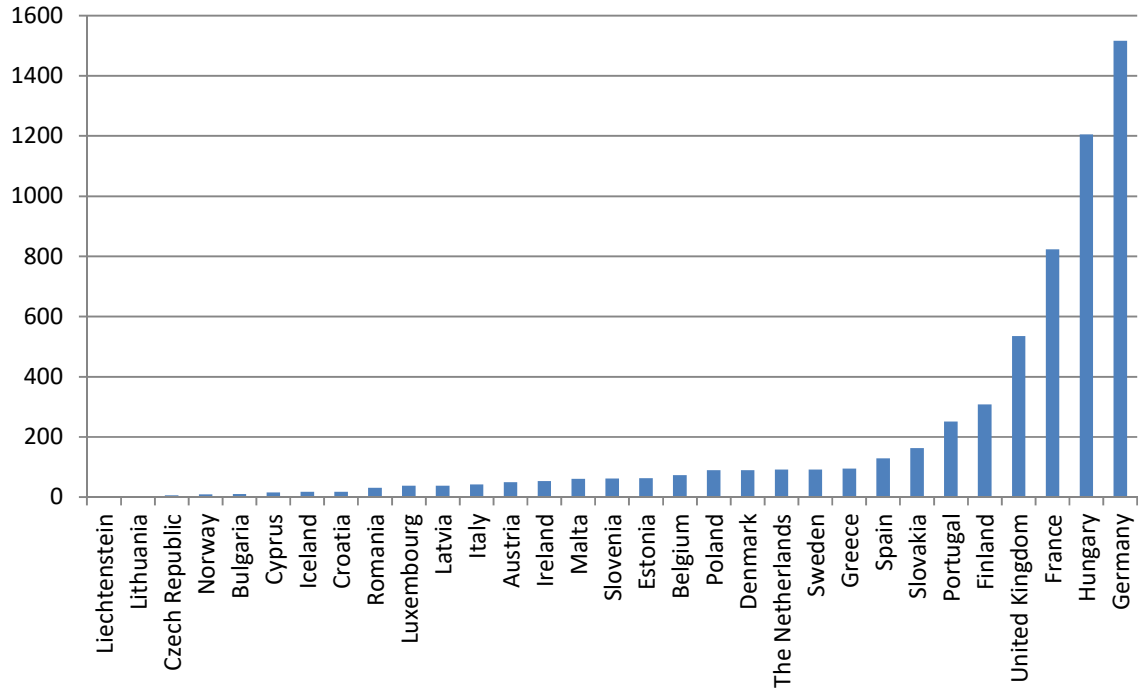


Note: RAPEX data for the period 2013 to 2019 (retrieved from the EU Safety Gate in January 2020). Considered are all notifications concerning products with serious risks and products with other risk levels, where at least one of the measures included a recall.

This increasing trend, however, is mostly due to a strong increase in the number of recalls concerning motor vehicles. Recalls related to this category increased from 159 in 2013 to 507 in 2019 (i.e. by a factor of more than 3).

Recalls are not evenly distributed across the EU/EEA, with some countries notifying a much larger number of recalls than others. In the 2013 to 2019 period, the countries with the highest number of notified recalls were Germany, Hungary, France, and the UK.

Figure 21: Number of recalls registered in the EU Safety Gate portal 2013-2019 (EU/EEA countries, by country)



Note: RAPEX data for the period 2013 to 2019 (retrieved from the EU Safety Gate in January 2020). Considered are all notifications concerning products with serious risks and products with other risk levels, where at least one of the measures included a recall.

The data provided on recalls in the previous figures is not necessarily complete. Under the GPSD, if a Member State considers that the effects of the risk do not or cannot go beyond its territory, it shall notify the measures concerned insofar as they involve information likely to be of interest to Member States from the product safety standpoint[151]. These provisions of the GPSD imply that not all recalls in a country are necessarily notified at the EU or international level. In our country research, we therefore collected data on recalls conducted in each country in 2018, or the last year for which data was available. The following table provides the number of recalls for countries where such data was available, differentiating between mandatory and voluntary recalls, and whether the recall concerned harmonised or non-harmonised products.

[151] Art 11 GPSD

Figure 22: Number of recalls of consumer goods (last available year, mostly 2018)

Country	Number of voluntary recalls reported		Number of mandatory recalls reported		Most common type of recall (according the data presented)	Most common type of recalled product (according the data presented)
	Harmonised (e.g. toys, cosmetics etc)	Non-harmonised products under GPSD	Harmonised (e.g. toys, cosmetics etc)	Non-harmoni-sed products under GPSD		
Austria						
Belgium	62	54	0	0	Voluntary	Harmonised
Bulgaria						
Croatia[a)]	173	22	10	18	Voluntary	Harmonised
Cyprus					Voluntary	
Czech Republic[e)]	130	2	23	4	Voluntary	Harmonised
Denmark[c)]	44	18	3	0	Voluntary	Harmonised
Estonia[d)]			10			
Finland		17[o)]		17[o)]		
France[f)]		100			Voluntary	
Germany[g)]	119	49			Voluntary	Harmonised
Greece[h)]		130		0	Voluntary	
Hungary						
Ireland	122					
Italy						
Latvia[i)]	9	2	14	2	Mandatory	Harmonised
Lithuania	5	0	59	0	Mandatory	Harmonised
Luxembourg						
Malta[k)]	44		0		Voluntary	
Netherlands						
Poland[l)]	234		37		Voluntary	
Portugal[m)]	895	26	71	10	Voluntary	Harmonised
Romania[n)]	31/4	0/24	0/n.a.	0/n.a.	Voluntary	Harmonised
Slovenia	18	7				
Slovakia						
Spain						
Sweden[b)]	7	15	0	1	Voluntary	Non-harmonised
UK						
Iceland						
Liechtenstein						
Norway						

Notes: Data provided for last available year, mostly 2018. See country reports for more details. a) Data for 2018-2019 (until July 2019). b) From 1 Jan 2019 to 12 November 2019. c) Figures for the Danish Safety Technology Authority only d) Ministry of Economic Affairs and Communications (2019), Market Surveillance Programme 2019. Estonia. Statistical data is available for the first 9 months of 2018. e) Ministry of Industry and Trade f) Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes. It stated in an interview that voluntary measures are prioritised, see country report. g) The statistic does not distinguish between voluntary and mandatory recalls. The figures relate to recalls that have been made public. BAuA, Gefährliche Produkte 2018 h) Ministry of Development and Investments i) Consumer Rights Protection Center k) Malta Competition and Consumer Affairs Authority l) Office of Competition and Consumer Protection (OCCP) m) Based on data provided by the Directorate-General for Consumers Affairs, by the Economic and Food Safety Authority and by the National Authority for Medicines and Health Products. n) The first figure refers to the National Authority for Consumer Protection, the second to the National Environmental Guard. o) The total number of product recalls based on GPSD was 17. p) There were 122 Recall Notices published by the CCPC in 2018. This figure relates to total number of Recall Notices posted on the CCPC website in 2018 including voluntary, mandatory and RAPEX for GPSD, Toys , LVD, PPE (recreational & leisure) and Appliances Burning Gaseous Fuel (domestic).

While the data is not available for all countries and is not necessarily complete for those countries that are listed, it shows that a majority of recalls in most countries concern harmonised products (although the number of recalls of non-harmonised products is considerable). Also, according to the data provided by the authorities, the most common type of recall is voluntary. This conclusion is in line with the results of previous studies. For example, in a recent background report the OECD concluded that "while most agencies worldwide have today the authority to mandate a product recall if a company does not take action on its own, a large majority of recalls are conducted by businesses on a voluntary basis"[152].

Voluntary recalls may be initiated by the responsible operator, but can also be requested by market surveillance authorities on basis of notifications of dangerous products from other countries or the results of their own market surveillance activities. Often the recall process is as follows: Businesses are firstly asked to conduct voluntary recalls, which includes the informing of consumers. If this step is not successful, a mandatory recall is ordered. Businesses are required to use all their available customer information for recalls and other corrective measures. The competent inspectorate checks the information given to the consumers. A set of information is required from the business: about information activities targeted at consumers, about information activities along the distribution chain, about the timeline of the recall process and the effectiveness of recalls and about destruction/disposal of products collected. Traditional media channels would be used to inform the public in case of imminent danger[153]. While this process may differ in details between Member States (e.g. regarding to which degree the MSA is actively leading or supervising the process, the information requested from businesses etc.), our country reports indicate that there is a degree of consistency in the overall approach. In our research, we collected data on how recalls and other corrective measures are organised, differentiating whether the Market Surveillance Authority applies both voluntary and mandatory recalls and other corrective measures, as well as asking whether:

- Businesses and Market Surveillance Authority agree on the information channels to inform consumers on a recall;
- Businesses are required to use all their available customer information for recalls and other corrective measures (including from customer databases, loyalty card information etc.);
- Recalls and other corrective measures are organised by authorities if no responsible business operator can be found; and whether
- Online marketplaces are involved in the recall process.

The results of the research are presented in the following table. It shows that recalls and other corrective measures are organised in practically all countries on both a voluntary and mandatory basis. The other listed measures are also widely used, with the involvement of online marketplaces being least common (but still indicated by authorities in twelve countries).

[152] See OECD, Enhancing Product Recall Effectiveness Globally, 17 December 2018.

[153] See e.g. country report Slovenia.

Figure 23: Organisation of recalls and other corrective measures[154]

Country	Types of measures used					
	Businesses are asked to conduct voluntary recalls and other corrective measures	Businesses are asked to conduct mandatory recalls and other corrective measures	Businesses and MSA agree on information channels to inform consumers on a recall	Businesses required to use all available information for recalls and other measures	Recalls and other measures organised by MSA if no operator can be found	Online market places are involved in the recall process
Austria	✓	✓	✓		✓	
Belgium	✓	✓	✓	✓		✓
Bulgaria	✓	✓	✓		✓	
Croatia	✓	✓	✓	✓	✓	
Cyprus	✓	✓	✓	✓		
Czech Republic	✓	✓	✓			
Denmark	✓	✓	✓	✓	✓	✓
Estonia	✓	✓	✓	✓	✓	
Finland	✓	✓		✓	✓	
France	✓	✓		✓	✓	✓
Germany	✓	✓	✓	✓	✓	✓
Greece	✓	✓	✓	✓		
Hungary	✓	✓		✓		✓
Ireland	✓	✓		✓		✓
Italy	✓	✓		✓		
Latvia	✓	✓	✓			
Lithuania	✓	✓	✓	✓	✓	✓
Luxembourg	✓	✓	✓	✓	✓	✓
Malta	✓		✓	✓	✓	✓
Netherlands	✓	✓	✓	✓	✓	✓
Poland	✓	✓		✓		
Portugal	✓	✓		✓	✓	
Romania	✓	✓	✓	✓	✓	
Slovenia	✓	✓	✓	✓	✓	
Slovakia	✓	✓	✓	✓	✓	✓
Spain	✓	✓	✓	✓	✓	✓
Sweden	✓	✓	✓		✓	
UK	✓	✓	✓	✓	✓	✓
Iceland	✓	✓	✓	✓	✓	
Liechtenstein	✓	✓	✓	✓	✓	
Norway	✓	✓	✓	✓		

Source: Country reports/MSA survey. Note: ✓= At least indicated by one authority in the country.

MSAs may provide advice to or instruct businesses regarding the details of the recall process, and in several countries written guidance is provided, mostly in the form of short descriptions of the recall process. An overview is provided in the following table (which includes, for reference purpose, also relevant guidance documents from Australia, Canada and the US). The most detailed European guidance documents

[154] Other measures include restrictions for placing products on the market or bringing products into compliance, stopping products being placed on the market, withdrawal of products etc.

identified in our research are the 2018 UK Code of practice on consumer product safety related recalls and other corrective actions (BSI PAS 7100), and the 2011 Prosafe Corrective Action Guide.

Figure 24: Guidance provided by MSAs on recalls

Country	Good practice guide or information relevant for recalls provided by MSAs	Website
Austria	Provides e.g. that information has to be published on a public recall website	https://www.ages.at/produktwarnungen/
Belgium	Two guidance documents are available: One for economic operators who are selling products directly to end-users and one for those who do not	https://economie.fgov.be/fr/themes/qualite-securite/securite-des-produits-et/rappel-dun-produit-ou-autre
Denmark	The Danish Safety Technology Authority has a section on its website about recalls and how to conduct them. The Authority refers to the Blue Guide and the website has links to the Prosafe Corrective Action Guide. Moreover, the Authority links to the Business Alert Gateway and runs campaigns for businesses on how to recall an unsafe product	https://www.sik.dk/erhverv/produkter/vejledninger/generelle-vejledninger-om-produkter/tilbagetraekning-og-tilbagekaldelse-produkter
Finland	The Finnish Safety and Chemicals Agency provides information on its website	https://tukes.fi/en/products-and-services/dangerous-products
France	A guide to product recalls for professionals is being developed by the DGCCRF	
Germany	The Federal Institute for Occupational Safety and Health (BAuA) has a recommendations on its website on how to organise recalls, which summarises the key points of the Prosafe Corrective Action Guide	https://www.baua.de/DE/Themen/Anwendungssichere-Chemikalien-und-Produkte/Produktsicherheit/Rueckrufmanagement/Handlungsempfehlungen.html
Ireland	The authority provides economic operators with a copy of the Prosafe Corrective Action Guide	http://www.prosafe.org/index.php/best-practice/item/corrective-action-guide
Luxembourg	The CRPC has developed and translated different guidelines for businesses and businesses consult them	
Spain	There are no codes of good conduct as such, but agreements with certain distribution associations to prevent dangerous products from reaching consumers and to inform final consumers about recalls (informational posters, social networks, etc.)	
UK	There is a Code of practice on consumer product safety related recalls and other corrective actions (BSI PAS 7100:2018)	https://www.bsigroup.com/en-GB/pas7100-supporting-better-product-recalls/
The Netherlands	An internal working document on recalls (*werkvoorschrift*) is available at the NVWA, but it is not publicly available. A reference is also made in the country report to a corrective action guide from 2005 which is still available on the EU website and provides some guidance for industry. It was produced by Intertek Research and Testing Centre on behalf of the UK Consumers Association, and its production was supported by the EC	https://ec.europa.eu/consumers/archive/cons_safe/action_guide_nl.pdf (in Dutch) https://ec.europa.eu/consumers/archive/cons_safe/action_guide_en.pdf (in English)
Norway	National Guideline on recalls (*Veileder om meldeplikt ved farlige produkter*)	https://www.dsb.no/lover/produkter-og-forbrukertjenester/veiledning-til-

		forskrift/veileder-om-meldeplikt-ved-farlige-produkter/
*Australia**	*Consumer product safety recall guidelines*	*https://www.productsafety.gov.au/publication/consumer-product-safety-recall-guidelines*
*Canada**	*A guide for voluntary recall of consumer products or cosmetics in Canada*	*https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/industry-professionals/recalling-consumer-products-guide-industry.html#a1.*
*US**	*Recall Handbook- A Guide for Manufacturers, Importers, Distributors and Retailers*	*https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_8002.pdf*

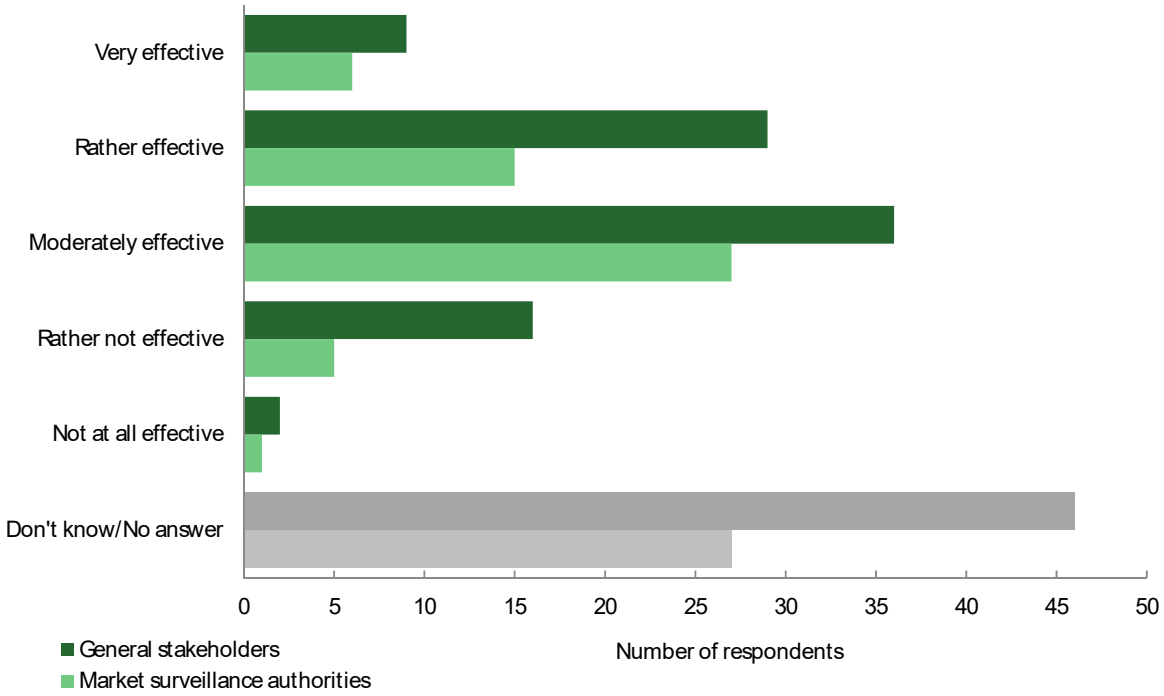
Note: *Included for reference purposes from: OECD, Enhancing Product Recall Effectiveness Globally, 17 December 2018

When organising recalls, effectiveness is of key importance. The above mentioned OECD report concludes that in spite of recent efforts to enhance the impact of product recalls, "some data suggest that a large proportion of products that have been the subject of one or several recalls over the past decade remain in the homes of consumers, exposing them to threats of injury or even death". In our interviews we asked market surveillance authorities to estimate recall effectiveness in terms of the percentage of recalled consumer products that were actually collected (average across all recalled products in 2018). Few authorities provided estimates, and these ranged mostly between 10% and 80% (although estimates of 0% and 100% were also provided). Several MSAs suggested that even though they collect related data, in reality it was difficult to determine the effectiveness of product recalls.

In our surveys of MSAs and general stakeholders we asked both groups to assess recall effectiveness with respect to their own country on a qualitative basis. The most frequent answer in both stakeholder groups of those that had an opinion was that recalls are 'moderately effective' in their country[155]. The detailed results are presented in the following figure.

[155] In the group of consumer organisations/NGO (which are included in the general stakeholder category), this percentage was slightly lower at 20%.

Figure 25: How effective are product recalls in your country? - Assessment of MSAs and general stakeholders (on a scale of 1 'not at all effective' to 5 'very effective)



Note: Survey of MSAs and general stakeholders. The general stakeholder survey includes businesses/business organisations, and other stakeholders (such as consumer organisations/NGOs). Detailed results by sub-group are provided in the Annex.

Market surveillance authorities suggested that recall effectiveness depended on a variety of factors, including price and type of product (with more consumers returning expensive products, especially cars), the quality of an economic operators' traceability system, its willingness to cooperate, the sales channel used (with typically more tracing information being available for online purchases), etc. Recalls were reported to be very ineffective regarding low priced products from Asia, which were distributed on open-air markets, Asian shops and online marketplaces, and where distributors were reported to be in some cases not willing to cooperate, or where inaccurate information was printed on the product about the producer or distributor, or even false barcodes were used.

Several MSAs also pointed to a lack of responsiveness from consumers. They stated that many consumers do not respond to recalls, and even when consumers are aware that a product they have is unsafe and is recalled, they still do not return the product. In Portugal, according to the information obtained, a large part of consumers do not return recalled products, due to either a lack of information or of due diligence[156]. So, many products that are considered unsafe stay on the market, with the obvious risks that this situation entails. The Maltese MSA noted that the problem was particularly evident in the case of vehicle recalls, with the consumer choosing to retain the vehicle in question on the basis of other considerations e.g. aesthetics and/or vehicle engine power[157]. They therefore concluded that it is a challenge both to reach consumers but

[156] See country report Portugal.

[157] See country report Malta.

also to make them more responsive to the recalls. These problems are confirmed by a recent survey on recall effectiveness by the European Commission, which also found that "over a third of consumers continue using the product even after seeing a recall"[158].

5.6. Trends related to the level of product safety

The analysis of trends related to product safety in the EU is hampered by the lack of reliable data. While the number of notifications in Safety Gate/RAPEX and related trends are important indicators, the interpretation of these figures is not straightforward. A recent evaluation of the application of the market surveillance provisions of Regulation (EC) 765/2008, noted that an "increase in the number of notifications may not only represent more products posing a safety risk, but also an increase in the effectiveness of MSAs in identifying these products" or be due to "various external factors"[159].

Another potential indicator for product safety trends is the number of accidents/injuries related to consumer products. In the EU, such data is available in the European Injury Database (IDB)[160]. While this data source has been used in the past to evaluate the impact of EU consumer safety actions, e.g. on baby walkers and bicycle helmets, an updated analysis of consumer injury data was not available at the time of finalising this study[161].

In our surveys we therefore asked MSAs and other stakeholders to assess at a qualitative level how the level of safety improved in their country since 2013 (the beginning of the reference period chosen for this study). The following figure shows that the largest group of respondents (about 42% of MSAs and 39% of other stakeholders) considered the trend to be positive, i.e. suggested that safety of consumer products improved over this period. Only a small minority saw a negative trend (1%/7%)[162]. Roughly of equal size were the groups of respondents that either saw no clear general trend (level of safety largely unchanged, 15%/20%) or found that the trend depends on the product type or sales channel (16%/26%). Stakeholders that considered the safety trend to depend on product type or sales channel mostly referred to sales from online platforms, products directly sold from non-EU/EEA countries and products with new technologies as being more problematic in terms of product safety.

[158] European Commission. (2019). Survey on consumer behaviour and product recalls effectiveness, 1–30.

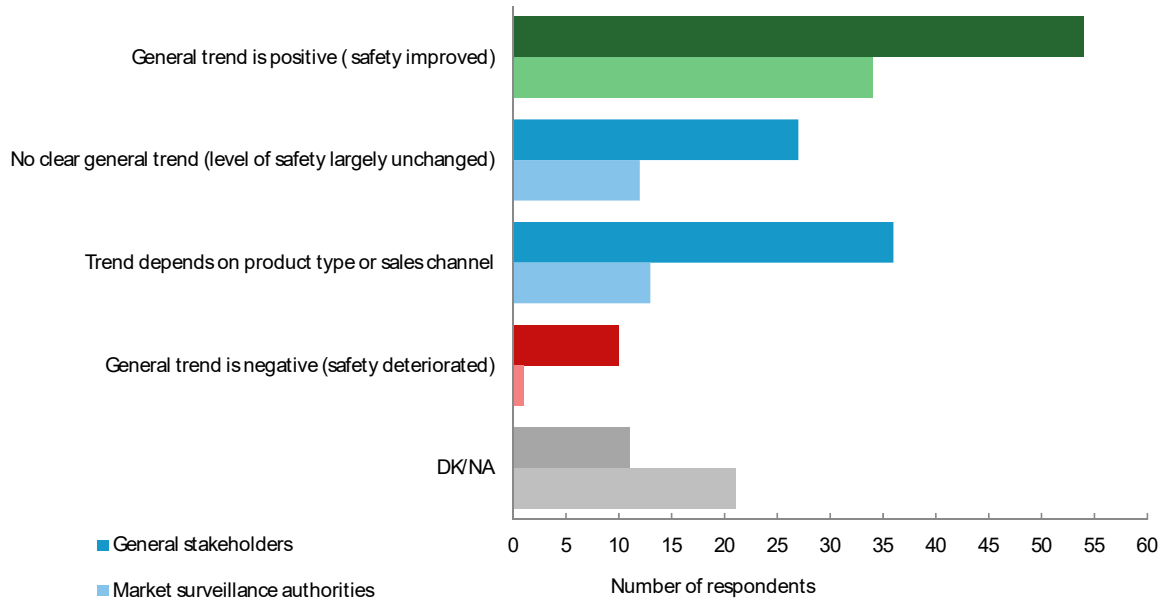
[159] See European Commission, Ex-post evaluation of the application of the market surveillance provisions of Regulation (EC) No 765/2008, Final Report, May 2017, pp. 18, 77-80.

[160] See also European Commission JRC. (n.d.). Injury and accident data collection in support of consumer product safety and market surveillance (CPS-IAData project), Final report.

[161] A detailed analysis of injury data from the IDB has been conducted in the framework of a subsequent study, see Civic Consulting (2021), Study to support the preparation of an evaluation of the General Product Safety Directive as well as of an impact assessment on its potential revision, Final report Part 1: Evaluation of the General Product Safety Directive.

[162] In the sub-category of consumer organisations/NGOs, the assessment was slightly more negative, with 20% of respondents seeing a negative trend. However, the percentage of respondents that saw a positive trend was similar to the overall group (at 40%). See Annex for detailed results by stakeholder group.

Figure 26: How has the level of safety of consumer products improved in your country since 2013? - Assessment of MSAs and general stakeholders



Note: N=81 (MSAs); 138 (general stakeholders). Based on MSA survey Q45, stakeholder survey Q21. See Annex for full details.

Typically, market surveillance authorities were very cautious with their assessment. For example, Greece elaborates that the lack of systematic statistical data on product safety does not allow for providing a substantiated answer in this respect. However, the overall impression of the Greek interviewees was that the level of product safety has improved. This is supported by the fact that the number of consumer complaints about product safety has decreased and inspections in the market indicate that the number of unsafe products circulating has also been reduced. However, additional evidence would be needed to make a definite conclusion with regards to an improvement[163].

Other countries such as Malta reported an increased awareness of both importers and the consumers, which translated into more 'compliant' and safer products entering the market. This heightened level of awareness is evidenced in the number of queries that the Maltese MSA received from economic operators prior to importation in the last few years. The MSA viewed this as a very positive development which stems predominantly from the fear of economic operators of incurring potential losses or delays resulting from non-compliance with the GPSD and the relative national legislation[164].

In other countries such as Sweden, however, authorities were more sceptical, and noted that there were no clear trends and safety was largely unchanged[165]. Sometimes, different authorities in the same country came to different conclusions. For example, in France the national customs considered that the overall trend was positive (safety improved), and the sub-national customs authorities confirmed this

[163] See country report Greece.

[164] See country report Malta.

[165] See country report Sweden.

trend, whereas the DGCCRF considered that safety had deteriorated. While its view was more positive with respect to traditional distribution channels (due to the effect of standardisation, etc.) the negative trend was considered to derive principally from e-commerce offerings with products originating from third parties without an EU importer and sent directly to individuals in France[166].

5.7. Problems or impediments to effective market surveillance

More than two thirds of MSAs (70%) and a considerable majority of general stakeholders (57%) report having encountered problems affecting the functioning of market surveillance in their country[167]. We asked those respondents that had encountered relevant problems to indicate the five most important ones on a list that consisted of 21 items (general stakeholders, 20 for MSAs), which we had identified on basis of previous studies and our exploratory research. The results are presented in the following figure.

Figure 27: Have you encountered problems affecting the functioning of market surveillance in your country? If YES: Please mark up to five most relevant problems – Assessment of MSAs and general stakeholders

Note: N=57 (MSAs); 78 (general stakeholders) that had encountered problems affecting the functioning of market surveillance. 'Lack of cooperation between auth. from diff. EU countries' only asked to general stakeholders. Based on MSA survey Q29, stakeholder survey Q12. See Annex for full details.

[166] See country report France.

[167] See Q29 MSA survey and Q12 general stakeholder survey. EU level stakeholders responded with respect to the EU as a whole.

The first observation is the large degree of consistency between MSAs and general stakeholders, with the ranking being quite similar for most items. Items where the views are different include: 'Lack of cooperation of online actors', 'Lack of coordination at the national level' and 'Ineffective control of product safety at the borders', which are considered more important by general stakeholders than by MSAs. In contrast, 'Lack of awareness of businesses with respect to product safety requirements', 'Lack of expertise in new technologies' and 'Lack of suitable product testing laboratories' are all indicated considerably more often by MSAs to be a problem than by general stakeholders, reflecting their different perspectives and needs.

In the following sub-sections, the key problems as identified in our country research, the interviews with and survey of market surveillance authorities and the general stakeholder survey are discussed in more detail.

5.7.1. Lack of staff and financial resources

Both MSAs and general stakeholders agree that two of the three top problems affecting the functioning of market surveillance relate to **a lack of resources**: limited staff resources of market surveillance authorities in general, and in addition, a specific lack of financial resources for product testing.

Limited resources of MSAs have been identified as a key concern already in previous studies. In a recent evaluation of the product safety related actions funded under the EU Consumer Programmes, interviewees indicated limited staff/financial resources for market surveillance and enforcement most frequently as a factor influencing negatively the level of achievement[168]. A previous study concluded that the total budget available to MSAs in 18 EU Member States for which data was available declined annually between 2010 and 2013 in nominal terms, and the total staff resources available to MSAs (in FTE units) also showed a negative trend[169]. Our country reports provide many examples of how the functioning of MSAs is directly affected by these limitations of financial and staff resources. For example, in the UK, there are concerns about the impact of the significant reduction in public sector resources for product safety related issues, particularly at a local level. One interviewee indicated that there are simply no longer enough Trading Standards officers to actually do the market surveillance e.g. in sensitive product areas such as fireworks or toys[170]. The Consumer Protection Service (CPS) in Cyprus, which is responsible for coordinating all market surveillance authorities in the country and acts as the competent market surveillance authority for products not covered by specific safety legislation, as well as toys, has available a budget of approximately 5 000 Euro for sampling and laboratory testing[171]. In Sweden, market surveillance operations are also considered to be understaffed, as new types of consumer goods, an increased amount of goods, new ways of shopping and a number of new players have constantly increased the need for control[172]. Several market surveillance authorities also note that the lack of personnel impacted the workload and thus the capacity of the existing staff to effectively monitor the safety of all product groups, with the result that not all consumer product types could be controlled, no attention to emerging issues related

[168] See Civic Consulting (2018), Ex-post evaluation of the Consumer Programme 2007-2013 and mid-term evaluation of the Consumer Programme 2014-2020, Part 1 – Mid-term evaluation of the Consumer Programme 2014-2020 and European Commission

[169] The figures refer to 18 EU Member States, excluding Austria, Cyprus, Estonia, Greece, Croatia, Luxembourg, Slovenia and the United Kingdom which have not included these data in their national reports. Note, however, that the trend was not the same in all countries, and some countries increased budget and staff resources. European Commission, Ex-post evaluation of the application of the market surveillance provisions of Regulation (EC) No 765/2008, Final Report, May 2017, p 35-39.

[170] See country report UK.

[171] See country report Cyprus.

[172] See country report Sweden.

to new technologies could be paid, and specific activities such as online market surveillance or mystery shopping could not be conducted.

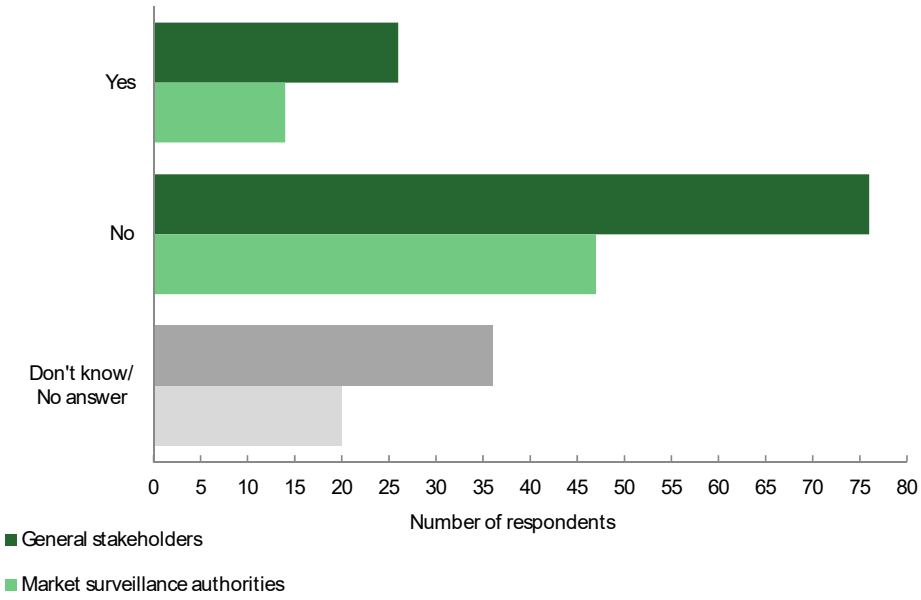
The lack of staff and financial resources of MSAs is recognised by all groups of stakeholders responding to our general stakeholder survey, who often complained about what they experienced as result: No reaction of MSAs when they provide information about an unsafe product (EU level business association); Poor/ineffective controls (EU level business association/company); Scarce inspections (national business association); [MSAs] cannot handle special requests (company); [As it is simpler, MSAs] focus on formal non-compliance (EU level business association).

5.7.2. Problems related to online markets and online market surveillance, including availability of related tools

The second most important cluster of problems for market surveillance identified by MSAs and general stakeholders concerns **online markets**, and in this context specifically **B2C transactions with operators in non-EU/EEA countries**, in which products from those countries are delivered on an individual basis. These problems relate to issues of jurisdiction and practical difficulties in establishing the identity and the location of a trader in non-EU/EEA countries (see section 4 on traceability, above). Frequently mentioned in this context was the role of online marketplaces, which an EU business association called "the blind spot of market surveillance" in the EU. A national business association agreed and added that "even when [unsafe products are] identified, they are withdrawn and then listed again almost immediately under another seller name". Both general stakeholders and MSAs agree that online sales remain the biggest challenge for market surveillance at this moment, also because it is not possible to check each package/shipment at the border. The lack of effective control of product safety at the borders was emphasised by several MSAs and business and consumer stakeholders in interviews and written comments in the survey.

In Denmark, market surveillance authorities noted that the emergence of online trade has disrupted the whole market surveillance process and left the authorities with some challenges when it comes to methods and tools that can be used to intervene in the sales process. In a follow-up question, we therefore asked both MSAs and other stakeholders whether authorities have the necessary tools to address new challenges (e.g. related to e-commerce, C2C sales, platform economy, new technologies etc). Again the answers are remarkably consistent between the two groups, with a large majority of 58% of MSAs and 55% of other stakeholders concluding that this is not the case. Less than one in five respondents (17% of MSAs and 19% of other stakeholders) indicated otherwise.

Figure 28: Do you/Do MSAs have the tools to address new challenges in your country (e.g. related to e-commerce, C2C sales, platform economy, new technologies etc.)? - Assessment of MSAs and other stakeholders



Note: N=81 (MSAs); 138 (general stakeholders). Based on MSA survey Q46, stakeholder survey Q22. See Annex for full details.

Often, market surveillance authorities reasoned that limited human and financial resources combined with the absence of specific tools meant that they were in a **weak position vis-à-vis new challenges** related to e-commerce, the platform economy and new technologies. This concerned both legal tools (such as mystery shopping or the blocking of websites, which is not possible for all MSAs) and technical tools, such as IT tools for the screening of websites (e.g. webcrawlers) with the aim to detect dangerous products sold online, or new products which should be inspected. Sometimes even basic infrastructure is missing. For example, in Cyprus the MSA (CPS) has very limited access to the Internet, and no access to Facebook or online platforms[173]. And, as mentioned before, in some countries MSAs lack a credit card to conduct online purchases[174]. In Latvia, our country report concludes that while MSAs have basic tools, there is an urgent need for more advanced ones. According to interviewees, a lot of work is done manually and using very basic databases. It was also considered that there is a lack of special knowledge and expertise in using new tools[175]. A **lack of expertise** in online market surveillance is a highly ranked issue in Figure 27 (above) and was reported as being a problem from multiple countries (not only with respect to online surveillance, but also regarding other aspects, such as issues related to new technologies and an insufficient understanding of standards).

In contrast, MSAs in a small group of countries indicated that sufficient tools were available or under development. These included, for example, Denmark and the Netherlands, where more advanced technologies like webcrawlers, web scraping and data miners are already being used or being developed, including in the context of EU

[173] See country report Cyprus.

[174] See country reports Austria and Czech Republic.

[175] See country report Latvia.

funded projects[176]. Authorities from Germany also reported the use of webcrawlers that search, for example, rating platforms for relevant combinations of words (such as a particular product and "fire"). According to a market surveillance authority, this has already led to the detection of safety risks in products that would not have been on the agenda otherwise. The German BAuA is conducting research on how this can be used more effectively to detect product risks online[177].

5.7.3. Institutional problems, such as fragmentation of responsibilities and lack of cooperation

Section 5.1 (above) describes the different institutional models for market surveillance at the national level, which are often characterised by a high degree of **fragmentation of responsibilities**. While this may sometimes be unavoidable to some degree (especially in large and federally organised countries), our country research found many examples that indicated how fragmentation, and unclear distribution of responsibilities and other institutional issues (such as a lack of communication/coordination between authorities) can affect the effectiveness and efficiency of market surveillance. For example, in Spain each authority at the national level is responsible for the application of certain legislation. It may also happen that several national authorities have responsibilities under the same legislation (for instance, harmonisation legislation whose scope of application covers both industrial/professional products and consumer products). In these cases, market surveillance is carried out in a centralised or decentralised manner depending on the distribution of responsibilities. Finally, in some regulations, market surveillance responsibilities remain at the central level, while in others (mostly) the implementation of market surveillance activities is transferred to the regions[178]. In the UK, the highly localised organisation of market surveillance activities could lead to inconsistencies of approach and/or prioritisation. While the recent establishment of the Office for Product Safety and Standards has mitigated this to a degree, these issues remain an ongoing challenge for the effective enforcement of product safety law in the UK[179]. In Germany, most actors agree that the fragmentation of market surveillance in Germany between the *Länder* but also between the *Länder* and the federal level causes problem. This is, however, a problem that is caused by the constitutional setting of Germany and that therefore cannot be solved entirely but only mitigated through coordination, working groups, meetings and so on, and a lot has been done to achieve coordination. An interviewee argued that the fragmentation of market surveillance over about 70 market surveillance authorities not only leads to scarce resources for each authority but also to small case numbers and therefore a lack of routine in each individual market surveillance authority. As an example for an area where centralisation led to better coordination and more routine, that interviewee mentioned the *Bundesnetzagentur* with its responsibility for the enforcement of the Radio Equipment Directive[180].

Stakeholders in our survey noted that institutional fragmentation may lead to significant problems for the companies affected by market surveillance, as this may lead to different practical interpretation of legal requirements; diverging working

[176] See country reports Denmark and Netherlands. In Denmark, the Danish Safety Technology Authority is developing a webcrawler solution that shall help identify online sellers of products notified via RAPEX or subject to a safeguard clause. The idea is that the webcrawler shall deliver a list every week with addresses of websites that sell the concerned products. The project application was recently approved by the European Commission that will support the project financially. Currently 14 Member States participate in the project.

[177] See Bleyer, Mehr Aufklärung gefragt, supra n. 58, p. 4.

[178] See country report Spain.

[179] See country report UK.

[180] See country report Germany.

methods; diverging levels of effectiveness and result in a lack of a level playing field for companies. This reportedly affects the producers of both non-harmonised and harmonised consumer products. A major producer of toys described its experience as follows: "In some countries, market surveillance is structured in a de-centralised way. Local authorities have to inspect all types of products, and therefore they are lacking expertise in the respective product categories. As a manufacturer, we are very often faced with the same wrong interpretation of the Toy Safety Directive even with basic things, and having to explain the same question with each individual authority requires a lot of efforts and resources."

5.7.4. Lack of suitable testing laboratories

A frequently noted problem in the perspective of MSAs which affects the functioning of market surveillance is the lack of suitable testing laboratories. In Romania, this is considered to be a "major issue"[181]. From Spain, a whole bundle of related problems were reported: They included a lack of accredited laboratories for some EN standards in some countries; language barriers to be able to consult websites of accredited laboratories in EU Member States; and tests from non-EU/EEA countries that have been proven false[182]. In Germany, an interviewee from an MSA noted that far more products need to be tested in the authorities' own laboratories rather than having to rely on test documentation produced by manufacturers or in privately run laboratories, at least in cases where the privately run laboratories' tests are commissioned and paid for by the manufacturer, which may create adverse incentives"[183]. From Ireland, a lack of suitable testing laboratories in the country was reported, along with the possible loss of access to laboratories in the UK after Brexit[184].

5.7.5. Lack of awareness/cooperation of businesses and consumers

The lack of awareness of businesses with respect to product safety was more often noted by MSAs than by other stakeholders, which is likely a consequence of the inherently different perspective. MSAs complained about some businesses that lacked knowledge on safety requirements[185], delayed submission of requested information or submitted even false or incomplete relevant information[186]. From Malta it was reported that the majority of businesses the MSA dealt with were SMEs. While the MSA noted an overall lack of awareness of economic operators as to product safety requirements, this was said to be even more evident in the case of small businesses, which often do not carry out the necessary research prior to investing in particular products and which do not have the necessary support in terms of the legal and technical aspects of their business. These economic operators were considered to be driven solely by the perceived profit margins and to have little or no awareness of the applicable requirements and the repercussions of non-compliance when choosing suppliers. The authority also referred to the fact that there have been instances where it encountered difficulties in getting the required information from business and believed that this was in part due to the lack of prior knowledge by the operators of their obligations and of the authority's role[187]. The Dutch authorities also consider SMEs to remain a challenge for market surveillance, with 90% of the economic operators having less than nine employees. Due to its complexity, EU legislation is reported to be a challenge for

[181] See country report Romania.
[182] See country report Spain.
[183] See country report Germany.
[184] See country report Ireland.
[185] See country report Belgium.
[186] Reported e.g. from Cyprus, see country report.
[187] See country report Malta.

companies that have no quality or legal units, especially when they have a wide assortment of product groups.

This lack of awareness was also noted with respect to consumers. Portuguese and Maltese authorities provided recalls as an example, with many consumers not returning recalled products due to either lack of information or due diligence[188] (see Section 5.5). According to one of our interviewees in the Netherlands, consumers are still unaware of the fact that products on sale could be unsafe and the seriousness of the consequences. They are under the assumption that if products are unsafe, they would not be for sale ("somebody checks this"). They are also often convinced that an unsafe product cannot really do serious harm. In combination with the extremely low prices of Chinese webshops and platforms, these assumptions were said to result in dangerous scenarios.

5.7.6. Limitations with respect to setting of priorities and lack of data

Several respondents to the general stakeholder survey considered that market surveillance activities were often focusing on formal compliance, and was not sufficiently risk-based. A related problem, which was emphasised by businesses, consumer organisations and MSAs in some countries, was the lack of centralised collection of data relevant to setting priorities for markets surveillance, including the lack of a pan-European injury data collection system. As one of the MSAs put it, having accurate injury data could be extremely beneficial in guiding its market surveillance efforts in the case of potentially unsafe products.

5.7.7. Problems related to the legal framework

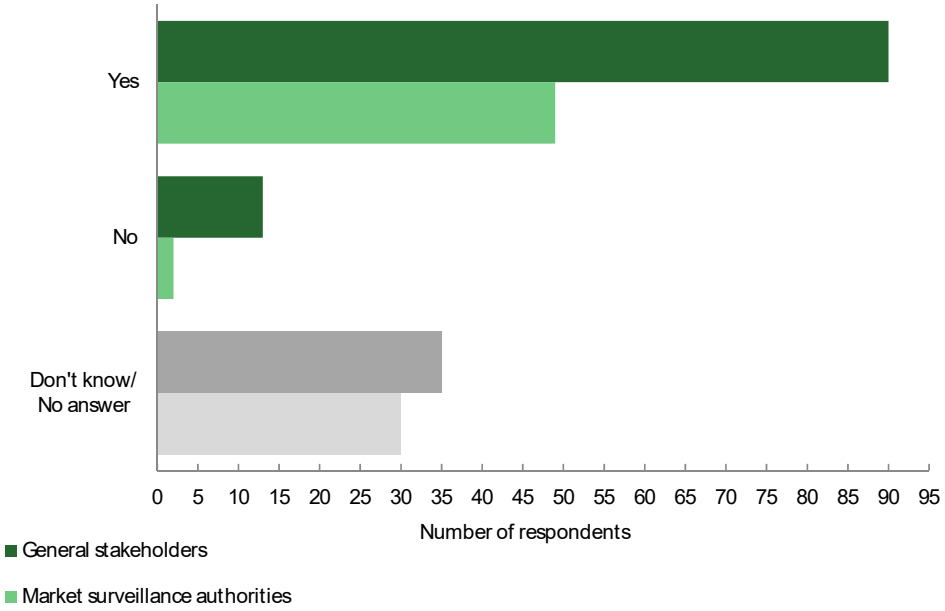
Problems related to the legal framework were also noted frequently, and related either to the overall framework or to the absence of specific legal tools. Problems experienced with respect to the overall framework related to differences in the implementation of the GPSD across countries, to the complexity of regulation in the different product sectors, to the different legislative requirements for harmonised and non-harmonised products, and to a perceived legislative gap regarding online marketplaces and other new actors in the online environment. More specific impediments related to the lack of coverage of C2C products in the current legal framework, and the absence of specific competences or enforcement powers of MSAs in certain countries, e.g. with respect to mystery shopping and the blocking of websites (see also section 4 above).

5.8. Possible improvements of market surveillance

In line with the large number of problems identified by MSAs and stakeholders as affecting the functioning of market surveillance in the EU, close to two thirds of respondents from both groups see possible areas to make market surveillance of consumer products in the own country/in the EU more effective (60% of MSAs and 65% of general stakeholders, see following figure).

[188] See country report Malta.

Figure 29: In your view, would there be any possible area to make market surveillance of consumer products in your country/the EU more effective? – Assessment of MSAs and general stakeholders



Note: N=81 (MSAs); 138 (general stakeholders). Based on MSA survey Q30, stakeholder survey Q13. See Annex for full details.

Possible improvements of market surveillance suggested in interviews with MSAs and commented upon by stakeholders are summarised in the following paragraphs, without the order implying any priority or assessment of feasibility by the authors. Some of these suggested improvements overlap with, or are complimentary to, measures taken by the European Commission in its recent overhaul of the legislative framework for harmonised products. Possible improvements are largely grouped according to the problem areas identified before. Where available, we have referred to relevant practical experiences with suggested improvements or related best practices from the country reports in footnotes.

5.8.1. Staff and financial resources

Proposed improvements regarding the lack of staff and financial resources of MSAs mostly revolved around the provision of "more staff, more budget, more training, more powers", as one stakeholder put it, to allow for improved market surveillance, more spot checks and better controls in certain areas. Potential sources of funding that were suggested included EU funds/projects for market surveillance, but also the allocation of funds originating from sanctions imposed by MSAs. It was suggested that the European Commission needs to enforce Member States' obligations when it comes to market surveillance, including by developing comparable ways to measure the resources used in the Member States for this purpose, or by specifying the intensity of sampling[189]. It was also suggested that the Commission should follow up on national

[189] This type of approach is taken in Germany, where the legislator has specified that the market surveillance authorities must use 0.5 samples per 1 000 inhabitants and per year as an indicative target for each Land. This means, for example, at least 800 samples per year in Hamburg and 8 500 samples in North Rhine-Westphalia. See country report Germany.

market surveillance strategies and national information obligations more than is currently the case. Other suggestions referred to the need for more risk-based and efficient market surveillance activities (see below)[190].

5.8.2. Improved online market surveillance

Possible improvements with respect to online markets and online market surveillance that were frequently mentioned refer to the need for more internet market surveillance (also targeting rogue sellers) and better trained inspectors. Efficient cooperation with online marketplaces was considered important in this regard, and in several countries the existing Product Safety Pledge was considered helpful in this respect[191]. An important role was seen for the European Commission, both with respect to strengthening the needed cooperation among EU Member States and with international organisations, as well as for training and the sharing of best practices of market surveillance authorities.[192] Suggestions for improvements were in some cases far reaching, such as the suggestion to close the access for online traders/marketplaces to European consumers when online traders do not cooperate or repeatedly sell illegal products not complying with EC legislation. It was also suggested to centralise online market surveillance at EU level, either through a joint action or through a central forum responsible for online inspections for the whole EU/EEA market, focusing on online sites that market products across the EU. Several MSAs stressed that help with regard to developing technological approaches and tools in their market surveillance activities (e.g. data collection and mining of social media to identify safety issues with products, a webcrawler to identify new products) would be very welcome[193].

5.8.3. More centralised organisation of market surveillance

A large number of MSAs and stakeholders suggested improvements concerning institutional problems related to market surveillance, such as fragmentation of responsibilities and lack of cooperation. In general, there was a tendency to suggest a more centralised organisation of market surveillance for consumer products. Stakeholders and MSAs considered that a better coordination between market surveillance authorities is needed with a clear role for the leading authority, and that in federal states more competences should be at federal level rather than at regional level. For countries where local authorities conduct market surveillance, it was suggested to have competence centres per product category on a national or regional level. Suggestions also included setting up a central (single) national market

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[190] An example for possible efficiency gains are provided in the country report Denmark. The Danish Safety Technology Authority has developed an approach called "Strakskontrol" ("immediate inspection"). The idea is that the inspector can settle a case immediately after inspection and submit the conclusion in an electronic letter to the economic operator. It is applied in the company-driven surveillance approach. The way that it works is that the inspector brings an iPad tool to the company and checks markings on products on the spot. It is also possible to check technical documentation on site and immediately decide whether it is necessary to sample products for testing. The iPad tool is linked to the Authority's document management system, meaning that all records are updated automatically. It also means that requests for e.g. more documentation can be delivered immediately to the economic operator.

[191] See footnote 124. Also the MSA in Luxembourg reported regular cooperation activities with an online marketplace which go beyond the Product Safety Pledge.

[192] Existing EU training measures include the E-enforcement Academy, managed by CHAFEA (the EU Consumers, Health, Agriculture and Food Executive Agency). It is likely that not all respondents were aware of the existing training measures. Even market surveillance authorities responding to our survey often had no view on whether the E-enforcement Academy was helpful or not, indicating the challenges faced in creating awareness for the training measures offered, and in reaching the wide range of authorities involved in market surveillance.

[193] The country research showed that there is a significant potential for the exchange of relevant IT tools, and that related activities involving multiple Member States are already ongoing. See footnote 176.

surveillance authority, or a European surveillance authority[194]. Often, better coordination at country level was suggested, through coordination bodies of the relevant MSAs and customs[195], or through single liaison offices (as required under Regulation (EU) 2019/1020)[196]. It was also proposed to define an "umbrella" or "last resort" market surveillance authority in each country that is responsible for new areas which are not in the scope of other market surveillance authorities[197].

Other concrete suggestions for operational improvements of market surveillance referred to more harmonisation in the interpretations (of rules, risk assessment, action to be taken) between authorities in EU countries, and/or the provision of related guidance to Member States[198].

5.8.4. More pro-active role of customs

The role of customs for improved product safety in the Single Market was highlighted frequently, and related suggestions referred to several aspects: these included joint setting of priorities with the neighbouring countries' customs to facilitate more efficient market surveillance; the presence of product safety officials at the border on a permanent basis, and the designation of customs as a market surveillance authority in its own right, to allow for a more pro-active role of customs[199]. One of the interviewed market surveillance authorities signalled the need for support from the European Commission in creating a forum for bringing together the representatives of the Commission, of Member State customs and of national consumer protection authorities in order to discuss good practices, to analyse the specific problems at the Member State level and "to identify solutions and timely cooperation procedures".

5.8.5. Better setting of priorities through improved data availability

Several suggestions for improvements referred to the setting of priorities for market surveillance and to the need to address the lack of data needed for this purpose. At a practical level, these suggestions mostly concerned the creation of online databases, comprising data related to statistics on dangerous products and injuries, risk assessment, market surveillance history, findings, fines imposed etc. It was suggested that such databases could provide better information for businesses, may have a deterrent effect on non-compliant companies and may enhance consumer warnings for

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194 This suggestion is not far-fetched, as the following example illustrates. DG SANTE carries out audits, inspections and related non-audit activities aimed at ensuring that EU legislation on food and feed safety, animal health, animal welfare, plant health and in the area of medical devices is properly implemented and enforced. A team of some 170 professionals from most EU countries conduct audits or inspections to ensure the national authorities are fulfilling their legal obligations. This can be done during on-the-spot audits, or by desk based exercises or collation of EU countries data. The audit focuses on the control system rather than individual premises and it culminates in a published report. See https://ec.europa.eu/food/audits_analysis_en.

195 As exist in many countries, including Germany and Latvia.

196 The practical benefit of having a central coordination/single liaison office was confirmed by the MSA in Iceland, which has already had this function for many years.

197 This was reported to already exist in the Czech Republic.

198 Suggested needs for guidance included: A set of guidelines on recalls and other administrative measures for the economic operators that would enable them to go through the process step by step without violating any of the requirements and risking the imposition of penalties due to their ignorance of the procedure; guidelines for the safety of specific goods that are practical and can be used by businesses; codes of conduct or good practices for the officials working in market surveillance, to guide and facilitate officials in the correct and systematic implementation of market surveillance activities, including recalls and other administrative measures; guidance on how to recognise injuries resulting from the use of dangerous products, which could harmonise and increase their reporting to the relevant authorities in each Member State; guidance on how databases of injuries, consumer complaints, etc. should look like, and what data should be included in them.

199 As is already the case e.g. in Finland and France.

unsafe products. This data would also allow for more intelligent and risk-based approaches, which were requested by several stakeholders. Information entered into intelligence databases would allow the generation of profiles, which "enables risk-based targeting of products, economic operators and supply chains by agencies working at ports and borders as well as inland market surveillance authorities, both at the local and national levels" (as one stakeholder put it)[200].

5.8.6. More resources for testing

Possible improvements to address the lack of suitable testing laboratories and resources for testing were mostly made by MSAs. These included the suggestion to provide more resources to fund a national testing laboratory, increased capacity for testing through joint tests in EU designated laboratories, the designation of a European institution that could refund national testing laboratories, as well as establishing a methodology for new materials, or the setting up of a European laboratory[201]. Other proposals for improvements include the preparation of a database to search EU laboratories accredited for an EN norm and the accrediting entity; an e-mail address for each accredited laboratory, both within and outside the EU/EEA, through which the market surveillance authorities can request confirmation of the veracity of documents; the obligation to give an answer to requests made by authorities, and the possibility that laboratories can be sanctioned in some way, even losing accreditation, if they do not respond.

5.8.7. Improved cooperation with businesses and consumers

With respect to possible improvements to address the lack of awareness/cooperation of businesses and consumers, suggestions were often general in nature, such as to ensure effective/proactive/interactive dialogues and engagement, to educate businesses and to improve consumer awareness and knowledge about product safety and recalls. This could have the form of general and targeted information campaigns aimed both at consumers and businesses, as one MSA suggested, or the creation of partnerships with businesses, or the provision of related guidance for them[202]. Several authorities underlined the importance of informing consumers of their rights regarding returning and getting refunds for dangerous products, including in cases where the distributor fails to fulfil its obligations.

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200 In several countries, risk-based approaches are used by MSAs, an example being the Netherlands, see country report. However, an important need for more data for the construction of (more) efficient risk profiles was reported by e.g. the customs authority in Belgium.

201 In several policy areas, the EU designates national laboratories as EU reference laboratories (e.g. in the area of food safety, animal health and animal welfare).

202 Several countries reported relevant approaches/experiences in this respect. From Malta it was reported that the MSA has in recent years built up its social media presence and even issued a mobile application, named "Konsumaturi", targeted specifically at consumers. This app is predominantly an information tool for consumers but is also a means for the latter to lodge complaints (https://mccaa.org.mt/Section/Content?contentId=3005). As the app was made available as from March 2018, the authority considered it to be too early to assess whether the app and more generally the new social platforms being utilised have been effective. The Estonian Consumer Protection Board (now the Consumer Protection and Technical Regulatory Authority) has good experiences with projects which target certain product groups. Such projects aim to raise the awareness of both businesses and consumers, and improve the level of the safety of products. At the beginning of a project, the information on it is shared with the public; the businesses dealing with the products in question are checked and individual feedback of the deficiencies found are given along with recommendations. At the end of the project, findings are summarised and introduced to the businesses and to the public. For example, in 2019, information was published on the safety of public playgrounds. In Latvia, the CRPC has developed guidelines for businesses, and it trains and consults the representatives of businesses. Guidelines relate to the safety of specific goods, for example, guidelines for safety of children's clothes. Guidelines are reported to be very practical and therefore often used by businesses.

5.8.8. Improvement of the legal framework

Suggestions for possible improvements of the legal framework frequently referred to the improvements brought by the Regulation (EU) 2019/1020 on product compliance and market surveillance, which according to a broad range of stakeholders should be expanded and cover products whether or not they are already subject to harmonised EU rules. As an EU-level consumer organisation put it: "We see no reason why a bed for a doll [subject to the Toy Safety Directive] would for instance benefit from stricter safety requirements than a bed for a child [under the General Product Safety Directive]". An MSA suggested that updating the GPSD to align with the obligations and enforcement powers currently detailed in the harmonised market surveillance legislation would enable it to take more appropriate enforcement actions.

Several more specific suggestions directly related to the issues discussed above, especially the obligations of online marketplaces: These included to oblige online marketplaces to have similar responsibilities as distributors in assuring compliance of the products sold on their websites, to inform authorities of what measures the seller has taken in terms of product safety and to undertake recalls where the original seller fails to do this.

To facilitate the control of recall effectiveness by authorities and to improve consumer information, it was also suggested to require an indication on a product or its packaging if a product has been improved following a recall, so that MSAs and consumers can differentiate between the original, dangerous product and a modified and safe version of the same product.[203]

For a more detailed discussion of possible improvements of the GPSD, see section 4 above.

[203] As elaborated in section 4.1 above, a similar rule already exists in Spanish product safety legislation (Article 10 of Royal Decree n. 1801/2003), which states that after the competent authorities prohibited marketing of a product and ordered relevant measures, and the product was subsequently marketed again after modifying the product, the producer was required to "add some external element to differentiate" the modified product's packaging from the product that was originally prohibited.

6. Functioning of RAPEX and cross-border cooperation

The EU Rapid Alert System for dangerous non-food products (Safety Gate/RAPEX) was established in 2003 in accordance with Article 12 GPSD and is a cornerstone of the EU market surveillance and product safety framework (see also Figure 2 in section 3, above). The Safety Gate/RAPEX ensures that information about dangerous products withdrawn from the market and/or recalled from consumers anywhere in Europe is quickly circulated between Member States and the European Commission, so that appropriate action can be taken in the EU and the EEA countries of Iceland, Liechtenstein and Norway. The IT tools include the RAPEX application for indicating notifications and reactions, and the Risk Assessment Guidelines (RAG) tool, which assists authorities in applying the risk assessment guidelines for non-food consumer products. Over the years, RAPEX has also become an important source of information for businesses. The Business Application for manufacturers and distributors is a specific IT tool to voluntarily report dangerous products and the measures that have been taken to eliminate the risks they pose. In the previously mentioned Product Safety Pledge[204], online marketplaces have committed to consult information on recalled/dangerous products available on RAPEX, and to take action based on this information. The Safety Gate/RAPEX is a comprehensive system with a large number of features and stakeholder groups.

In this section we focus on the functioning of RAPEX in the Member States, considering the views of both market surveillance authorities and general stakeholders. For a better understanding of the overall framework, we first describe the role of RAPEX in cross-border cooperation with authorities in other EU/EEA countries, and with non-EU/EEA countries. We then elaborate the coordination between RAPEX and national market surveillance systems at the Member State level, including with respect to non-safety risks notified through the system, and finally discuss impediments encountered and potential improvements to the functioning of Safety Gate/RAPEX.

6.1. Cross-border cooperation with authorities in other EU/EEA countries

RAPEX is the key channel for market surveillance authorities when communicating and cooperating with other relevant authorities in the EU/EEA. This is indicated in the following table, which summarises the responses provided by the authorities when we asked them in our interviews how they cooperate with MSAs and with other relevant authorities located in other EU/EEA countries. RAPEX is the rapid alert system for dangerous non-food products, and because of this limitation in scope it is complemented by two other IT tools that are used by MSAs in nearly all countries, namely ICSMS and Wiki confluence platform[205]. As mentioned in section 5, the ICSMS (Information and Communication System on Market Surveillance) is an IT platform that is complementary to RAPEX and aims at facilitating communication between market surveillance bodies in the different countries, including for information sharing on non-compliant products (which is a broader concept than 'dangerous products', as there are many non-compliant products that are not necessarily dangerous). The respective roles of both systems are described in Regulation (EC) 765/2008. Whereas Article 22 refers to Article 12 of the GPSD (RAPEX) and concerns products presenting a

[204] See footnote 124 above.

[205] These are the main EU IT tools used by MSAs. In certain areas, e.g. with respect to chemicals, other EU IT tools are also relevant. For example, the European chemical Agency (ECHA) provides enforcement authorities with the Portal Dashboard for National Enforcement Authorities (PD-NEA) that allows them to access the subset of REACH and CLP data submitted by the industry to ECHA.

serious risk, Article 23 of the Regulation provides for a general archiving and exchange of information system "on issues relating to market surveillance activities, programmes and related information on non-compliance with Community harmonisation legislation". The Regulation also provides that this system (the ICSMS) "shall appropriately reflect notifications and information provided under Article 22" (i.e. RAPEX notifications). The third common IT tool is the Wiki confluence platform (or Confluence Wiki), which is a collaborative online platform made available by the Commission, to make accessible practical information, such as templates that are relevant for MSAs, and to facilitate communication[206].

MSAs use these tools frequently, with authorities from 22 countries indicating that they cooperate with relevant authorities in other EU/EEA countries once a month or more often. How this communication takes place in practice can be illustrated by the following example from the country report from Greece, which elaborates the steps taken if the national Market Surveillance Authority identifies or is notified by regional authorities of a dangerous product that has been manufactured outside Greece, depending on whether the economic operator is located in the EU/EEA or outside the EU/EEA:

- If the dangerous product originates from another EU/EEA country, the national Market Surveillance Authority communicates with the respective national Market Surveillance Authority of the other Member State where the operator is located, and provides all the relevant information that has been collected with regards to the product.
- If the dangerous product has been manufactured outside the EU and is imported into the EU for the first time by an economic operator in another Member State, the responsibility for the product lies with the importer of the product. In this case, the national Market Surveillance Authority contacts the authorities of the Member State in which the product was initially imported and provides all the information that has been collected with regards to the product.
- If Greece is the first country importing the dangerous product, the national Market Surveillance Authority would search for the importer of the product. At the same time it would notify the European Commission through RAPEX[207].

The details of the procedures followed, however, depend on the Member State. For example, from the Netherlands it was reported that in cases where an economic operator is from another Member State, the MSA gets in contact with the economic operator by mail or letter pointing out that it is offering a product that does not comply with EU legislation/national legislation and urging it to alter or stop offering the product. If there is no adequate reaction from the economic operator, the authority contacts the relevant MSA in the country of the economic operator and asks them to intervene[208].

Apart from RAPEX and ICSMS, cooperation with other EU/EEA authorities may take place through the Wiki confluence platform and through coordinated actions on the safety of products organised at the EU level. The following table presents a detailed overview of the use of these and other cooperation tools in the 31 countries subject to this study.

[206] For example, the template to be used for reporting dangerous products to the online marketplaces that have signed the Product Safety Pledge is available on the Confluence wiki.

[207] According to the interviewed authority, such a case has not been encountered so far.

[208] See country report Netherlands.

Figure 30: Cooperation of MSAs with other relevant authorities located in other EU/EEA countries

Country	Cooperation with relevant authorities located in other EU/EEA countries through …							
	RAPEX	ICSMS	Wiki con-fluence platform	Coordinated actions organised at EU level	Mutual assistance outside of RAPEX	Exchange of information/ meetings/ informal cooperation[a)]	Joint training sessions outside EU programmes	Formal coope-ration agreement
Austria	✓	✓	✓	✓	✓	✓	✓	
Belgium	✓	✓	✓	✓	✓			
Bulgaria	✓	✓	✓	✓	✓	✓		
Croatia	✓	✓	✓	✓				
Cyprus	✓	✓	✓	✓				
Czech Republic	✓	✓	✓	✓	✓			
Denmark	✓	✓	✓	✓	✓	✓	✓	
Estonia	✓	✓	✓	✓	✓	✓		
Finland	✓	✓	✓	✓	✓	✓	✓	
France	✓	✓	✓	✓	✓			
Germany	✓	✓	✓	✓	✓	✓		
Greece	✓	✓	✓	✓		✓		
Hungary	✓	✓	✓	✓	✓	✓		
Ireland	✓	✓	✓	✓	✓	✓		
Italy	✓	✓	✓					
Latvia	✓	✓	✓	✓		✓		✓
Lithuania	✓	✓	✓	✓	✓			[b)]
Luxembourg	✓	✓	✓	✓	✓	✓		
Malta	✓	✓	✓	✓	✓	✓		
Netherlands	✓	✓	✓	✓	✓	✓	✓	
Poland	✓	✓	✓	✓				
Portugal	✓	✓	✓	✓	✓	✓		
Romania	✓	✓	✓	✓	✓	✓	✓	
Slovenia	✓	✓	✓	✓	✓	[c)]		
Slovakia	✓	✓	✓	✓	✓	✓		
Spain	✓	✓	✓	✓				
Sweden	✓		✓			✓		
UK	✓	✓	✓			✓		
Iceland	✓	✓		✓	✓	✓		
Liechten-stein	✓	✓				✓		
Norway	✓		✓	✓		✓		

Notes: ✓= At least indicated by one authority in the country. a) Outside EU fora. b) Co-operation agreements on consumer rights, product safety and market surveillance activities. c) Cooperation in EU fora.

Note that the table above does not list the large number of regular expert meetings at EU level, including in the framework of the Consumer Safety Network, and EU training measures[209]. Indicated in the table are 'Coordinated actions organised at EU level',

[209] The consumer safety network (CSN), regulated under Article 10 of the GPSD, is a consultative expert group chaired by the European Commission and composed of national experts from all EU countries, as well as Norway, Iceland and Liechtenstein. The safety of consumer products and data collection are the main areas of discussion. The network meets on average 3 times a year, usually in conjunction with the general product safety committee meetings.

which concern project-based coordinated enforcement activities. These were previously called Joint Actions (see Section 4 above), and from 2018 continued as Coordinated Activities on the Safety of Products (CASP) projects.

The table also illustrates that MSAs often make and receive mutual assistance requests outside of RAPEX and regularly exchange information, conduct meetings and informally cooperate with their counterparts at other authorities outside EU fora. In some cases, this cooperation concerns countries that are particularly close to each other, such as the cooperation between the Nordic countries, the Baltic states, and the Visegrad Group (Czech Republic, Hungary, Poland and Slovakia), or bilateral cooperation between Greece and Cyprus, Slovakia and the Czech Republic, and Austria with Germany and with Slovenia, to provide some examples. In contrast, formal agreements and joint training sessions outside EU fora are rare.

6.2. Cross-border cooperation with authorities in non-EU/EEA countries

RAPEX also has a role in cross-border cooperation with authorities in non-EU/EEA countries. A specific module of RAPEX has been created to allow for swift flagging of notifications concerning unsafe products from China. The Chinese authorities investigate these cases in order to trace back the manufacturers, exporters and businesses concerned with the aim of making them aware of product safety rules in Europe. Where necessary, they take further measures to ensure that those products are no longer produced and shipped to Europe. More recently, Canada has also received a partial and indirect access to RAPEX data.

The following table shows that tools for direct cooperation of market surveillance authorities with other relevant authorities in non-EU/EEA countries are only used by a minority of countries. And only authorities from five countries (Germany, France, Ireland, Lithuania, United Kingdom) reported cooperating once every three months or more often with non-EU/EEA country authorities.

Seehttps://ec.europa.eu/info/policies/consumers/consumer-protection/our-partners-consumer-issues/consumer-expert-groups_en. EU training measures include the E-enforcement Academy, managed by CHAFEA (the EU Consumers, Health, Agriculture and Food Executive Agency). EU cooperation in the area of market surveillance also takes place through multiple other expert fora, including the ECHA (European Chemicals Agency) Forum, the PEMSAC group (Platform of European market surveillance authorities in Cosmetics) and the relevant ADCO (Administrative Cooperation) groups.

Figure 31: Cooperation of MSAs with other relevant authorities located in non-EU/EEA countries

Country	Cooperation with relevant authorities located in non-EU/EEA countries through …			
	Regular exchange of Information/ meetings/cooperation outside EU fora/informal cooperation	Mutual assistance requests	Formal cooperation agreements outside EU mechanisms/structure	Joint training sessions
Austria				
Belgium	✓			
Bulgaria				
Croatia	✓	✓		
Cyprus				
Czech Republic				
Denmark	✓[c]			
Estonia				
Finland		✓		
France		✓		
Germany	[b]			
Greece				
Hungary				
Ireland	✓			
Italy				
Latvia			✓[d]	
Lithuania			✓	✓
Luxembourg			✓	✓
Malta				
Netherlands	✓			
Poland				
Portugal		✓		✓
Romania	✓		✓	
Slovenia			✓	
Slovakia	✓	✓		
Spain				
Sweden		✓		
UK	✓			
Iceland	✓		✓	
Liechtenstein	✓	✓	[a]	
Norway				

Note: ✓= At least indicated by one authority in the country. a) Due to the customs union treaty, most consumer products enter the Liechtenstein market via Switzerland. In some sectors there is an administrative agreement with the market surveillance authorities responsible in Switzerland regarding market surveillance in Liechtenstein. b) In specific cases, direct contact is maintained. c) The Danish Safety Technology Authority has regular meetings with a Chinese delegation that wants to discuss market surveillance, accreditation and related topics. d) There are agreements on cooperation with relevant institutions in Belarus and Ukraine; joint training and meetings are held.

As the table above shows, a majority of countries do not have any cooperation with non-EU/EEA countries. This is partly due to a lack of resources, and also due to a lack of clear contact points in non-EU/EEA countries. In several cases MSAs tried to get in contact with authorities in non-EU/EEA countries, but found the result unsatisfactory. The Dutch NVWA contacts authorities outside the EU/EEA in cases where a specific product that it found was manufactured in that country. In general, no action is taken against economic operators outside the EU/EEA or action is taken knowing that the

success rate will be very low. The NVWA communicates with economic operators outside the EU/EEA only in cases where economic operator asks them for contact[210]. Even if a country has concluded formal agreements with non-EU/EEA countries, there are reports that cooperation is far from easy: Iceland signed a Memorandum of Understanding with the Ministry of the Interior and the General Administration for quality, supervision, inspection and quarantine of the People's Republic of China (AQSIQ) in 2015 to establish cooperation on product safety issues. However, due to the changes in institutional structure in China, the Consumer Agency in Iceland is no longer able to cooperate directly with the relevant authority in China. The Agency currently sends its requests/inquiries to its Chinese counterparts through the Chinese Embassy in Iceland if needed (which occurs less than once a year). The intention is to renew the Memorandum of Understanding with the SAMR (State Administration for Marketing and Regulations in China), which would now be the new responsible counterpart in the field of product safety.

In addition to these specific instances of cooperation, some interviewees reported informal contacts, including through study visits, TAIEX[211], and workshops organised by the European Commission (e.g. during the International Product Safety Week and a recent EU Workshop on Recall Effectiveness). Other fora of international cooperation mentioned by interviewees are the International Consumer Product Health and Safety Organization (ICPHSO)[212], the OECD Working Party on Consumer Product Safety[213], and the International Consumer Protection Enforcement Network (ICPEN)[214].

6.3. Functioning of RAPEX and coordination with national market surveillance systems

The previous section illustrates the benefits of a functioning alert system for dangerous products such as RAPEX, which not only allows market surveillance authorities to notify dangerous products rapidly, but also ensures that this information reaches the appropriate contact point in the partner country. To understand to which degree the system is in line with the needs of the participating countries, we asked market surveillance authorities how well RAPEX is functioning. As RAPEX is also open to stakeholders (which can retrieve the public part of notifications) through the Safety Gate portal, we asked the same question also in our survey of general stakeholders. The following figure presents the results.

[210] See country report Netherlands.

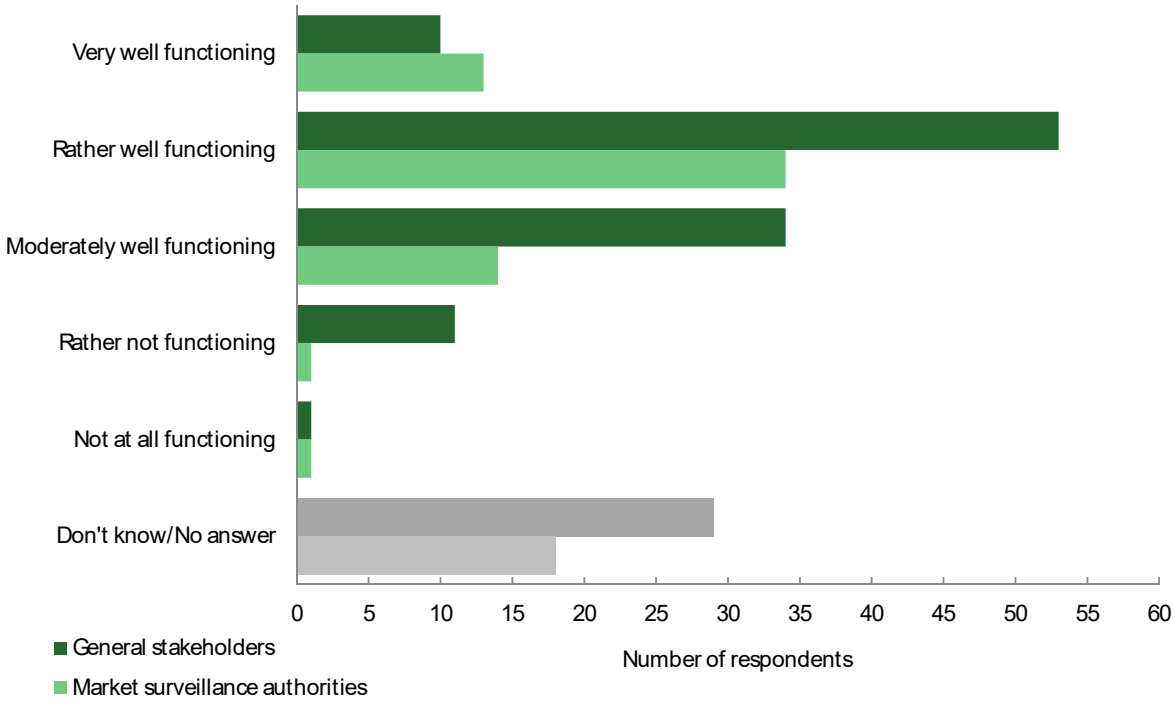
[211] TAIEX is the Technical Assistance and Information Exchange instrument of the European Commission.

[212] ICPHSO is an organisation of health and safety professionals which meets annually to exchange ideas, share information, and address health and safety concerns affecting all consumers. See https://icphso.org/

[213] OECD activities in this area aims at improving information sharing and promoting greater co-operation among product safety market surveillance, enforcement, and regulatory authorities worldwide. See www.oecd.org/internet/consumer/consumer-product-safety.htm

[214] ICPEN is a membership organisation consisting of consumer protection law enforcement authorities from across the globe. See https://icpen.org/

Figure 32: In your view, how well is RAPEX functioning, considering the needs of your country/your organisation/your members? – Assessment of MSAs and general stakeholders



Note: N=81 (MSAs); 138 (general stakeholders). Based on MSA survey Q9, stakeholder survey Q3. The question for MSAs referred to the "needs of your country", the question to stakeholders to the "need of your organisation/members)".

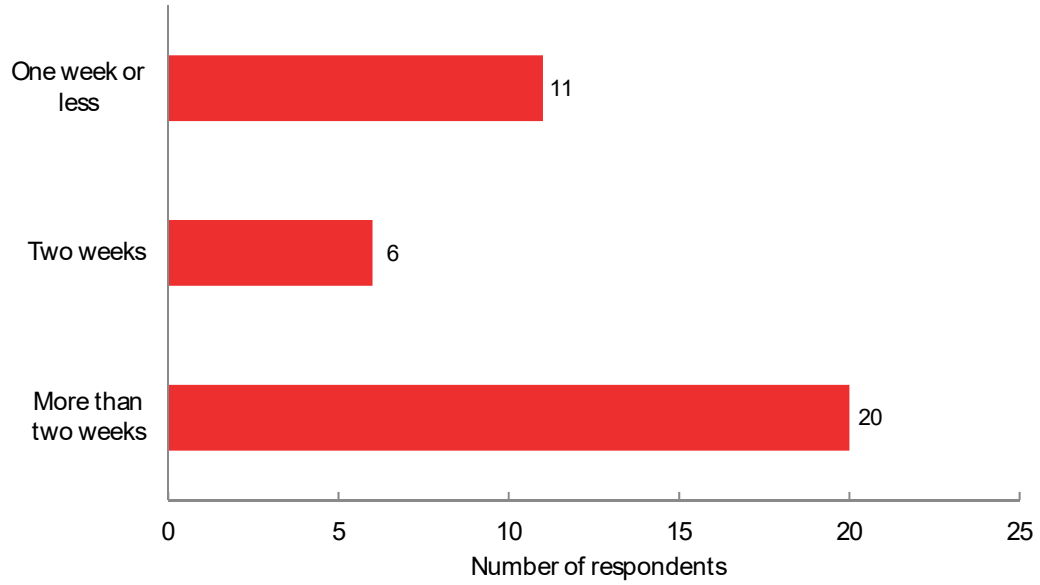
The figure above shows that MSAs to a large extent appreciate the functioning of RAPEX, with 65% considering the system to function at least 'moderately well' (48% considered it to be 'rather' or 'very well' functioning). General stakeholders were even more positive, with 70% finding the system at least 'moderately well' functioning (46% considered it to be 'rather' or 'very well' functioning). Only a small minority provided a negative assessment ('rather not' or 'not at all' functioning)[215].

While RAPEX is therefore functioning largely in line with needs of most MSAs and stakeholders, our interviews also revealed that there are certain issues that currently impede its operation. While these are discussed in more detail in section 6.5 below, a key aspect that we analysed in our country research was the coordination between RAPEX and the national market surveillance systems, and more specifically, the duration between the detection of a dangerous product and its notification to RAPEX.

As the following figure indicates, in most cases this duration is two weeks or more.

[215] No major differences were noted between consumer stakeholders/NGOs and businesses and their associations in terms of positive assessments. However, the limited number of negative assessments came mostly from businesses (see the subsequent section on impediments reported).

Figure 33: What is the average duration between the detection of a dangerous product and its notification to RAPEX? (reported by MSAs, in calendar days)



Note: N=37 (MSAs). Based on MSA survey Q8. Not included are MSAs that indicated Don't know/No answer.

Where market surveillance authorities indicated shorter durations than two weeks, these were often authorities that elaborate notifications and then send them to their national RAPEX contact point. This means that even in some of these cases the duration was likely longer than indicated, as the RAPEX contact point also needs time for its validation.

Several authorities emphasised that the duration between detection of a dangerous product and its notification to RAPEX depended on the type of product, the risk, the required testing and the behaviour of the economic operator (objections by the relevant economic operator is in some cases reported to lead to significant delays)[216].

A typical description of the notification process is the following: In Latvia, the CRPC uses the RAPEX system actively in accordance with the developed internal procedures providing for step-by-step guidelines on how to evaluate and submit information. The CRPC notifies about a dangerous product when all information has been assessed and the case has been investigated; in many cases the economic operators do not cooperate, therefore the procedure is rather time consuming and it takes approximately two weeks between the detection of a dangerous product and the notification to RAPEX. According to the interviewee, the CRPC has not had any emergency cases so far.

In Sweden, section 32 in the Product Safety Act provides that where measures must be implemented in order to avoid injury to a person caused by a product or service, the supervisory authority shall commence negotiations with the undertaking in order to ensure that the latter shall voluntarily undertake the measures required. The

[216] An example is Greece. On average, the duration between the detection of a dangerous product and its notification to RAPEX was reported to be one week. However, it was also noted that cases exist for which this time period may be much longer due to objections submitted by the economic operators or due to objective difficulties stemming from the legislative system in order to finalise the actions required. For instance, there has been a case for which the time that elapsed between the detection of the dangerous product and the notification to RAPEX was 1.5 years. See country report Greece.

aforesaid shall not apply, however, where the matter is urgent or where the circumstances otherwise do not allow for the commencing of negotiations. In most circumstances, however, the authority needs to negotiate with the company regarding the necessary measures. If the authority deems the risk to be serious, the authority then must file a decision on compulsory measures. Because of the timeframes involved for the negotiation, the notification is not sent directly to RAPEX, and the average duration between the detection of a dangerous product and its notification to RAPEX is more than two weeks. As shown in the previous figure, this seems to be a rather typical situation. Some of the MSAs that indicated they needed more than two weeks provided more details: for example, the average duration in Cyprus is reportedly 20 days, and in another country an authority estimated it to be 60 days.

From Poland, it was reported that there is a specific administrative procedure in place which is supposed to guarantee a timely notification; however, in practice, it can be quite prolonged. Namely, the administrative procedure of declaring a good dangerous may take approximately four weeks, as the trader is given a chance to question the test results, and even after the conclusion of this procedure, the trader may still appeal the decision. Unfortunately, only the final decision in the procedure would be notified to RAPEX. The MSA (OCCP) would appreciate a possibility to make notifications earlier, before the administrative decision becomes final, but in order for them to be able to do so, they would need to be indemnified from any potential harm occurring to the trader as a result of an earlier notification[217]. Liability concerns were also noted in the German country report. Incorrect notifications, for example notifications that are based on insufficient risk assessment, may lead to state liability, which is often emphasised in academic literature[218]. In Germany, in the famous *Birkle* noodles case that was decided in 1990[219], the warning of the public by a public authority had led to state liability which cost the Land Baden-Württemberg 6.5 million Euro. While this case related to food safety, the report considers that it might still have a chilling effect on market surveillance authorities, not least due to their lack of financial resources.

Other issues that were reported from Germany that affected the timely notification in RAPEX included the scarcity of (public) testing laboratories. Before a RAPEX notification can be made, testing in a laboratory may be necessary, and due to a scarcity of laboratories – some *Länder* do not have any themselves – it may take a while until the tests can be conducted and a 'serious risk' can be ascertained, which is required for the use of the Article 12 procedure under RAPEX. Another source of failure to notify, according to several interviewees, is the situation in which a safety risk concerns the GPSD and sector-specific legislation at the same time. Here, market surveillance authorities may only report the sector-specific issue in the safeguard clause procedure but may not make a RAPEX notification, in particular if the competencies for the sector-specific legislation and for the GPSD lie with different market surveillance authorities. A further complication lies in the fact that a market surveillance authority that has prematurely notified a serious risk and then, after further investigations, finds out that there is no risk or it is not serious, or is actually overturned by a court[220], cannot easily withdraw the notification, as only the RAPEX

[217] See country report Poland.

[218] See, for example, Tremml and Luber, supra n. 20. Concerning public warnings, see Schieble, Öffentliche Warnungen vor unsicheren Verbraucherprodukten: Behördliche Befugnisse und Haftungsrecht, Verbraucher und Recht 2007, p. 401, at pp. 406 ff.

[219] OLG Stuttgart, 21/3/1990, 1 U 132/89, Neue Juristische Wochenschrift 1990, p. 2690. For a claim related to a warning of drinking water that failed, see LG Göttingen, 29/11/1990, 2 O 320/90, Neue Zeitschrift für Verwaltungsrecht 1992, p. 98; see also LG Wiesbaden, 22/6/2001, 9 O 18/01, Neue Juristische Wochenschrift 2001, p. 2977 (on BSE). Normally, state liability claims will be rejected due to the lack of (proven) causation if the media report the case at the same time; see, e.g., OLG Düsseldorf, 11/3/1993, 18 U 166/92, Neue Juristische Wochenschrift – Rechtsprechungsreport 1993, p. 1184.

[220] The risk evaluation can be controlled by the court, see VG Sigmaringen, 27/11/2008, 8 K 1828/06. See also Schucht, supra n. 20, at pp. 458 f.

National Contact Point (NCP, in Germany the BAuA) can require this; this may make market surveillance authorities even more cautious to notify a product to BAuA for notification in RAPEX. One interviewee reported that it was nearly impossible to get a notification deleted even if it has proven to be incorrect. Most importantly, however, market surveillance authorities often do not even get to the stage where a serious risk is ascertained that could be reported because most economic actors voluntarily and immediately react once they are confronted by the market surveillance authority with the suspicion of a risk, and do not put the product into circulation (in Germany) in the first place. Thus, voluntary reactions including recalls often never reach the RAPEX database of serious risks, as the seriousness of the risk has not yet been ascertained. BAuA as the RAPEX contact point is notified of voluntary recalls but cannot produce RAPEX notifications on serious risks itself, as it only has the competency to feed the notifications of the market surveillance authorities into RAPEX.

The complexity of the coordination process between RAPEX and the national market surveillance system is also illustrated by the example of the Czech Republic. Coordination between Czech market surveillance authorities and RAPEX is clarified by the Czech Government Regulation No. 396/2004[221]. According to this procedure, the national authorities have to comply with the format in the RAPEX application and submit notifications to the RAPEX National Contact Point, which is located at the Ministry of Industry and Trade, in due time, in about two weeks, maximum one month. The procedure mainly consists of two steps: first the national market authority enters the information into the system of the National Contact Point, and then the NCP will enter the dangerous product into the RAPEX system without delay, within 48 hours. However, depending on the internal organisation of the national authority, the notification in the NCP system can require further steps. In the case of Regional Hygiene Stations, there is a four-step system: first an RHS informs the Main Hygiene Station at the Ministry of Health, which informs the RAPEX contact point at the Ministry of Health, which finally contacts the National Contact Point at the Ministry of Industry and Trade. The duration of the notification to the RAPEX system depends on several factors, e.g. time needed for testing, type of risk and difficulties with risk assessment, e.g. in case of laboratory testing it could last even longer, just because of the duration of microbiological tests. Experts from Czech authorities added that the current legal framework sets a relatively high investigative burden on these authorities, because before entering a dangerous product in RAPEX, they should be absolutely certain of a violation of a legal requirement; the laboratory tests must therefore be positive, and these tests take approximately a month to be confirmed. The CEI reported that they also take the cross-border effect into account and only if a dangerous product is distributed in other Member States will they deliver the product notification to the RAPEX NCP.

It would appear plausible that smaller countries and/or countries with one main Market Surveillance Authority for consumer products (which typically hosts the RAPEX National Contact Point) have simpler procedures and might therefore have more rapid notification procedures. For example, as market surveillance responsibilities are centralised in Malta under the MSD-TRD, all RAPEX notifications are initiated, submitted and notified by the same directorate. MSD-TRD has indicated that it takes on average one week from detection to notification of a dangerous product to RAPEX. This notification period varies predominantly due to the availability of officers to conduct the necessary assessment. Notification is carried out as soon as MSD-TRD determines that the product is likely to pose serious risk. In the more serious cases

[221] The Czech Government Regulation No. 396/2004 on Procedures, Content and Form of Information on the Occurrence of Dangerous Non-Food Products follows the administrative procedure of the new Guideline for the National RAPEX Network, which was updated by Commission Implementing Decision (EU) 2019/417 of 8 November 2018 laying down guidelines for the management of the European Union Rapid Information System RAPEX.

notification is carried out in a matter of hours[222]. While some countries therefore seem to have notification procedures that are simpler and shorter than in other countries, on basis of the available data it is not possible to draw general conclusions with respect to the influence of the institutional model for market surveillance on the procedures for and duration of the RAPEX notification process. Legal and liability aspects, as well as the specific circumstances of each case in which a potentially dangerous product is identified, appear to be additional key factors affecting the duration of the notification process.

6.4. Addressing non-safety risks notified to RAPEX

In case non-safety risks (e.g. environmental and security risks) are notified to RAPEX, the most common approaches of MSAs are to inform the relevant market surveillance authorities or other responsible authorities (e.g. environmental protection authorities) that then take actions, where needed. This is shown in the following table.

Authorities that indicated 'other' mostly indicated that these risks were always or sometimes handled by themselves, or outside their remit.

Figure 34: How MSAs deal with non-safety risks (e.g. environmental and security risks) notified to RAPEX

Country	In case non-safety risks (e.g. environmental and security risks) are notified to RAPEX …		
	Relevant MSAs are informed and take actions, where needed	Other responsible authorities (e.g. environmental authorities) are informed and take actions	Other
Austria	✓	✓	
Belgium	✓		a)
Bulgaria	✓	✓	
Croatia	✓		
Cyprus	✓		
Czech Republic	✓	✓	
Denmark	✓		✓b)
Estonia		✓	✓c)
Finland	✓	✓	
France	✓		
Germany	✓		
Greece		✓	✓d)
Hungary	✓	✓	
Ireland			✓e)
Italy		✓	
Latvia			✓f)
Lithuania	✓	✓	
Luxembourg	✓	✓	
Malta			✓g)
Netherlands	✓	✓	
Poland	✓	✓	
Portugal	✓	✓	
Romania	✓		
Slovenia	✓	✓	
Slovakia	✓		✓h)

[222] Country report Malta and interview questionnaire from MSD-TRD.

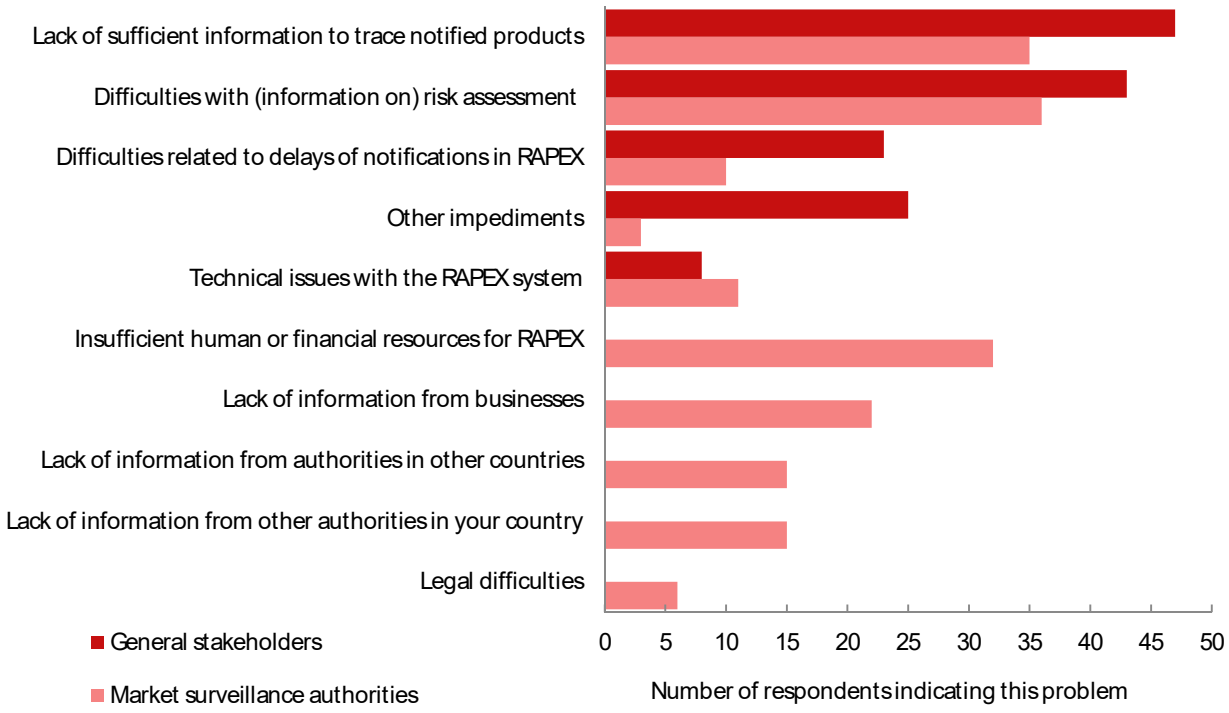
Spain	✓	✓
Sweden	✓	✓
UK	✓	✓
Iceland	✓	✓
Liechtenstein	✓	✓
Norway	✓	✓

Notes: ✓= At least indicated by one authority in the country. a) There is no distinction made between environmental and safety risks b) Safety risks and environmental risks are handled the same way c) If non-safety risks are notified to RAPEX, the Consumer Protection and Technical Regulatory Authority either deals with the issue itself (for example in cases of environmental risks) or notifies another authority which has the competence to proceed with the matter. d) No special actions are taken. e) The CCPC can only enforce and take action under the legislation under its remit and currently this does not include environmental or security risks. f) The CRPC deals also with non-safety risks, including environmental risks. g) Environmental risks are handled by the same directorate and the same actions are taken. h) If the product under the competence of STI is notified by other MS in RAPEX system according to Art. 12 Directive 2001/95/EC on general product safety and Art. 22 Regulation No 765/2008/EC, the STI ensure adequate measures, regardless of the risk category.

6.5. Impediments encountered when using RAPEX

In the surveys of MSAs and general stakeholders, we asked respondents whether they had encountered impediments when using RAPEX. The following figures summarises the results.

Figure 35: Have you encountered one or more of the following impediments when using RAPEX? – Assessment of MSAs and general stakeholders



Note: Based on MSA survey Q11, stakeholder survey Q4. The question for stakeholders was worded slightly different and referred to impediments when "using the information from Safety Gate/RAPEX".

The issues listed in the figure above and additional problems identified by MSAs and stakeholders in their comments and through our country research are discussed in detail in the following sub-sections. Note that several stakeholders pointed out that

while they had encountered certain impediments, they consider the RAPEX system to function well (see section 5.3 above) and to have been already improved over the last years, e.g. through the subscription to and personalisation of weekly reports, the search function, the statistical tools and the availability in different languages.

6.5.1. Lack of sufficient information to trace notified products

The lack of sufficient information to trace notified products was one of the highest ranking problems. Many authorities and stakeholders experienced that notifications sometimes do not contain enough information to identify the products; for example, no information about the brand, manufacturer/importer/distributor, type/model, batch number, sales channel are indicated, and pictures of products are sometimes missing or of poor quality[223]. A large online retailer explained its perspective: "More granular information is required for recall notifications. This would ensure that a positive identification of relevant items can be made, which ensures prompt action and that consumers are not misinformed on the risk of the products they have bought, nor what action is required on their part. Lack of details reduces the likelihood of incorrect products being identified or potentially recalling products that are not subject to the recall. It will also increase our ability to act quickly."

6.5.2. Lack of (information on) measures taken and other information

MSAs noted a lack of information about measures taken by other EU/EEA authorities in relation to RAPEX notifications, and/or the failure of other national authorities to take action. As the latter in some cases was reported to be the national authority in which the company responsible for the notified product was headquartered, this led to the "paradoxical situation ... that a product has been withdrawn from the market in some EU countries, except in the country where the company has its headquarters", as one MSA expressed it. In a similar vein, consumer organisations reported that in some cases where they had provided information to market surveillance authorities, insufficient action was taken[224].

6.5.3. Inaccuracy of information

Several authorities and stakeholders complained about inaccurate information. Industry associations found that sometimes the notification was not accurate and the failure against the standard incorrect, that the notifying body had misinterpreted the safety standard, or that product category or standard reference were not correct. In some cases the overall information provided was considered to be too vague to be actionable, and that it was not easy to understand what to do for retailers.

6.5.4. Notification overload

Also seen as an impediment were repeated notifications for the same risk, or the notification of far more products than those that pose a 'serious risk', which contributed to a notification overload. An MSA explained that it had received many

[223] Our analysis of RAPEX data confirmed that information regarding brand, type/number of model, batch number or barcode is often not available (see section 4.1.2 above).

[224] Consumer organisations provided the example of slime toys, of which many were tested and found dangerous not only by national authorities but also by consumer organisations like Forbrugerradet Taenk (Denmark), UFC–Que Choisir (France), Stiftung Warentest (Germany), Altroconsumo (Italy), OCU (Spain) Consumentenbond (The Netherlands) and Which? (United Kingdom). Some of these consumer organisations alerted their national authorities on how much the products were exceeding the EU limit values for the migration of boron. According to the organisations, very few products were notified, even though the tests had reportedly been performed according to EU standards and a serious risk had been identified.

notifications that listed its country and/or all Member States as countries of destination. As a result, the MSA had to commit considerable resources into investigating and verifying such notifications. In a related comment it was noted that different practices among authorities in other Member States existed, which paid less attention to the identification of a 'real cross-border effect'. These differences led to the result that some authorities notify very different numbers of dangerous products.

6.5.5. Difficulties with risk assessment

Many comments made by MSAs and stakeholders concerned the risk assessment. Often this referred to a perceived lack of information on the risk/hazard. Stakeholders suggested that the description of the hazards was not always clear and lacked context, or that based on the information provided it was not always possible to fully understand the technical reasons which have led to the notification, or to assess the problem in detail. As one stakeholder put it, "when a product is classified as a 'serious risk', there should also be sufficient information to explain how and why this serious risk occurs", including information regarding accidents/injuries caused by the products, if relevant.

More specific comments related to problems experienced with risk assessment by MSAs are linked to the following aspects:

- The assessment of chemical risks was reported to be difficult, mainly for new compounds that have not been tested before, although the Guide published by the European Commission on chemicals was considered to be very helpful for authorities. Also, Safety Gate/RAPEX was said to be of limited use for long-term risks stemming from the toxicity of products where there is a breach of the Restriction of certain Hazardous Substances Directive 2011/65/EU but no imminent risk for health and safety;
- Risk assessments were considered to vary considerably from one Member State to another, partly due to cultural differences. For example, when it comes to the assessment of risks for children, some Member States were seen as being more protective than others;
- More technical comments referred to the difficulties with risk assessment because it was carried out through hypothetical assumptions on most products, and the assessment of risk probability with the help of the RAG tool was not always very helpful.

Largely similar comments were made by other stakeholders, which referred to inconsistencies across the EU in the risk assessment approach and noted that the RAG tool risk assessments are too coarse and that there appeared to be lack of understanding of what constitutes a serious risk amongst notifying bodies.

6.5.6. Difficulties related to delays of notifications appearing in RAPEX

The considerable duration between the detection of a dangerous product and its notification to RAPEX has been analysed in detail in section 6.3 above, which not always seems to be in line with the character of RAPEX as rapid alert system. Reasons for this are manifold and have been discussed in detail above.

6.5.7. Procedural issues

Procedural issues were noted by MSAs only to a limited extent. One MSA emphasised that it would appreciate being consulted by default before the notification is amended by the EC RAPEX team, which was reportedly not always the case. Another indicated that it was extremely difficult to delete an incorrect notification from RAPEX, which was said to have repercussions on the preparedness to rapidly notify a risk, the seriousness of which has not yet been confirmed, for example, through extensive

testing. As mentioned above, an important concern is that an incorrect notification may trigger state liability.

Several business stakeholders reported that manufacturers were not always informed in case notifications are made, in spite of this information being available to the MSAs, depriving them from an opportunity to provide their point of view, and leading sometimes to incorrect notifications. It was also noted that it required a lot of time and efforts for businesses (in some cases including legal procedures) to remove an unjustified notification.

6.5.8. Insufficient human or financial resources for RAPEX

The considerable difficulties of MSAs in terms of human and financial resources have been discussed in section 5 above. They were also reported to affect the operation of RAPEX. Several MSAs reported that they could only dedicate a part-time staff member to RAPEX, which was reported to impede the authority and all relevant stakeholders from deriving further benefits from the system.

6.5.9. Language issues

Several MSAs reported to suffer from language barriers, in spite of the (automated) translation provided by the system. The reasons were accompanying documents to the notifications in the national language of the notifying authority, which therefore were often not accessible.

6.5.10. Technical issues with the RAPEX system

Only minor technical issues with the system were reported, and many stakeholders suggested that Safety Gate/RAPEX had improved considerably over the years. Remaining issues concerned the absence of certain advanced search features (see below, improvements), insufficient links between the ICSMS and RAPEX systems (which was hoped to be remedied soon), and problems that were said to have occasionally occurred in creating public versions for the transmission of information to the competent supervisory authority.

6.5.11. Difficulties related to data protection legislation and other legal difficulties

Several authorities experienced problems related to data protection legislation. It was reported by an authority that the control of the recall process was hampered by data protection laws and that in some cases removing personal data from the notification as required by EU legislation was not helpful. In the case of a notification regarding tattoo ink, for example, the personal data of tattoo artists were removed from the notification where the same persons were the supplier of this product.

6.6. Potential improvements to the functioning of RAPEX

Suggestions for improvement of RAPEX, based on the comments provided in the survey of MSAs and stakeholders, on the interviews and on the analysis presented above, are elaborated in the following paragraphs. As indicated in a previous section, the order in which potential improvements are presented does not imply any priority or assessment of feasibility by the authors.

6.6.1. Provision of essential information

In line with the functioning of the RAPEX system, notifications should provide the essential information needed to trace a dangerous product, to understand the risks involved and to allow MSAs and third parties to take targeted action. Information items suggested to be included in notifications are[225]:

- Detailed information about the notified product, including manufacturer/ supplier/importer, EAN (European Article Number), batch number/bar code[226];
- High quality pictures of the product taken from different angles, ideally according to pre-defined standards to ease their use for image recognition software by MSAs;
- Information on sales channels ("online"/"offline", and differentiation between "platform" and "e-retailers");
- Information on where the product was put on the market, and ideally a list of the companies involved, or distribution data;
- Systematic information about the risk assessment and the nature of the risk, to allow for a complete understanding why a product has been notified. It was also suggested to provide a photographic illustration of the hazard, where possible, and to include information on the injury scenarios that haven been considered during the risk assessment process;
- Information on accidents/injuries that led to the notification, where relevant (ideally providing details of the accidents that happened with the product, such as age of the user, injury, circumstances, etc.);
- Nature of materials in which chemical substances are found over the regulated limits, where relevant;
- Information on the dates and countries where corrective measures were taken, including by the notifying country.

6.6.2. Risk assessment

In line with the reported inconsistencies of risk assessments, additional efforts to harmonise and improve risk assessment approaches of MSAs could be made, building on the existing guidelines and tools.

6.6.3. Technical improvements

Technical improvements proposed concerned a variety of areas, including search functions and the interoperability of RAPEX with IT tools used by or envisaged by MSAs (or retailers).

Suggestions related to advanced search functionalities include:

- Search by sales channel;
- Search by 'recalled' or 'withdrawn from market';

[225] Note that the internal RAPEX system that is only accessible to Member States' authorities contains data elements related to the listed items, e.g. with respect to risk assessment, test reports and traceability information, which are, however, not publicly accessible.

[226] Consumer organisations suggested to bring the system in line with the new information requirements brought by Regulation (EU) 2019/1020, and provide in all notifications (for harmonised and non-harmonised products) the full name and address of a product's manufacturer/importer/contact person present in the EU who can act on behalf of a manufacturer if a product breaches EU safety laws.

- Search by number of accidents by type of product in a specified time period;
- Combined search function where companies could do searches on product types and risks combined.

Several MSAs suggested to allow automated access to RAPEX data, to enable them to use webcrawlers and other IT tools for checking websites. Similar techniques are used in other areas, such as datafeeds that are provided by e-commerce sites to price comparison websites. If these RAPEX datafeeds were also available to third parties, this could facilitate automated checking of the inventories of retailers and online marketplaces. As mentioned in Section 5, there is ongoing work by MSAs on using webcrawlers for online market surveillance, and if these were interoperable with RAPEX, time consuming manual work would become obsolete or at least reduced. A related suggestion was to improve access of consumers to RAPEX data (e.g. through an app).

Other technical suggestions related to the need for improvements in the auto translation, which was said to be of poor quality; increasing the limit of the size of documents uploaded to RAPEX platform; re-introducing the functionality for MSAs to sort notifications by country of origin/delivery, improved interconnectivity between RAPEX and ICSMS in order to share the entered information, and introducing the functionality for MSAs to directly communicate with other relevant authorities via the RAPEX system while being able to limit these communications to only the relevant authority, where needed.

6.6.4. Procedural improvements

MSAs and stakeholders made a large number of suggestions for procedural improvements related to the notification process and other aspects[227]. These include:

- Streamlining the process from identification of risk to notification to ensure that more rapid action can be taken;
- Providing better templates for improving the quality of notifications;
- More training to MSAs by the EC RAPEX team, e.g. on how to complete the notification templates and how to decide whether a product should be notified or not to ensure a consistent approach throughout the EU, including with respect to questions of cross-border effects[228];
- Informing manufacturers/authorised representatives in the EU in all cases, without delay, in case of an upcoming notification;
- Improving the review process by the European Commission exercises, before a RAPEX notification is made public (e.g. by ensuring full coordination with the notifying authority regarding changes to the notification, checking completeness of the information on the product – including traceability information – and the quality of the pictures provided);
- Ensuring that national authorities take the necessary measures when products are notified or they are informed about dangerous products by third parties;
- Improving and easing procedures for updating alerts (e.g. to include the information that the notified product is counterfeit), or for retracting inaccurate notifications.

[227] Note that the following text provides suggestions for improvements made by consultees, which have not been subject to further detailed assessment of their feasibility and justification.

[228] 'Cross-border effects' refers to the effects of a serious risk posed by a product. If these effects do or can go beyond the territory of a Member State, a notification under Art. 12 of the GPSD is justified.

6.6.5. Language of attachments to notifications

Several MSAs suggested that test reports submitted with notifications should be submitted in English.

6.6.6. Improved international cooperation

Consumer organisations suggested improvements in international cooperation. The evidence presented in this section underlines the benefits of having responsible contact points in the countries where economic operators are located, and therefore involvement of non-EU/EEA countries in RAPEX through a limited access of competent authorities (as is the case for China and Canada) could be expanded to include other main trading partners of the EU.

6.6.7. Legal improvements

Possible improvements of the legal framework have been discussed in section 4 above. Additional legal improvements related to the functioning of RAPEX could include addressing the liability concerns of MSAs that often seem to prevent an early notification of dangerous products. Our country research has indicated that market surveillance authorities may be hesitant to submit a notification before a final conclusion with respect to the dangerous character of the product is reached, e.g. based on a preliminary risk assessment. However, the duration until a risk assessment and the related administrative decision regarding the notification becomes final can be long, as indicated above. Notifications that are based on insufficient risk assessment are feared to lead to state liability,[229] although the very limited national case law regarding RAPEX notifications does not seem to support this concern (see section 8). Explicitly excluding or limiting state liability in case a preliminary risk assessment has to be revised based on new information could, however, prevent these concerns and thereby enable authorities to provide notifications at an earlier stage in the administrative process.

6.6.8. Improving staff and financial resources

As has been elaborated in section 5, improvements are generally considered to be necessary to address the lack of staff and financial resources of MSAs, which also affects the functioning of RAPEX.

[229] See country reports Germany and Poland.

7. Standardisation work under the GPSD

The GPSD requirement for producers to put "only safe products" on the market is often difficult to apply for businesses and national authorities because of the lack of a common benchmark on what constitutes a "safe" product. Therefore, the European Commission can make use of European Standards to make this general safety requirement more operational. European Standards are voluntary and market driven, and their advantage is not only that they replace corresponding national standards in all Member States, making the life of businesses, notably SMEs, easier, but in particular that products are presumed safe if they conform to voluntary European Standards when referenced in the EU Official Journal. Standards therefore serve a double purpose: they facilitate market access and they ensure the safety of products.

Article 4 of the GPSD provides for a standardisation process which differs from the process for harmonised consumer products. Following the recognition of a need for a European Standard under the GPSD, the standardisation process consists of four steps, which are:

1. The Commission issues a Decision to set safety requirements to be met by the standard;

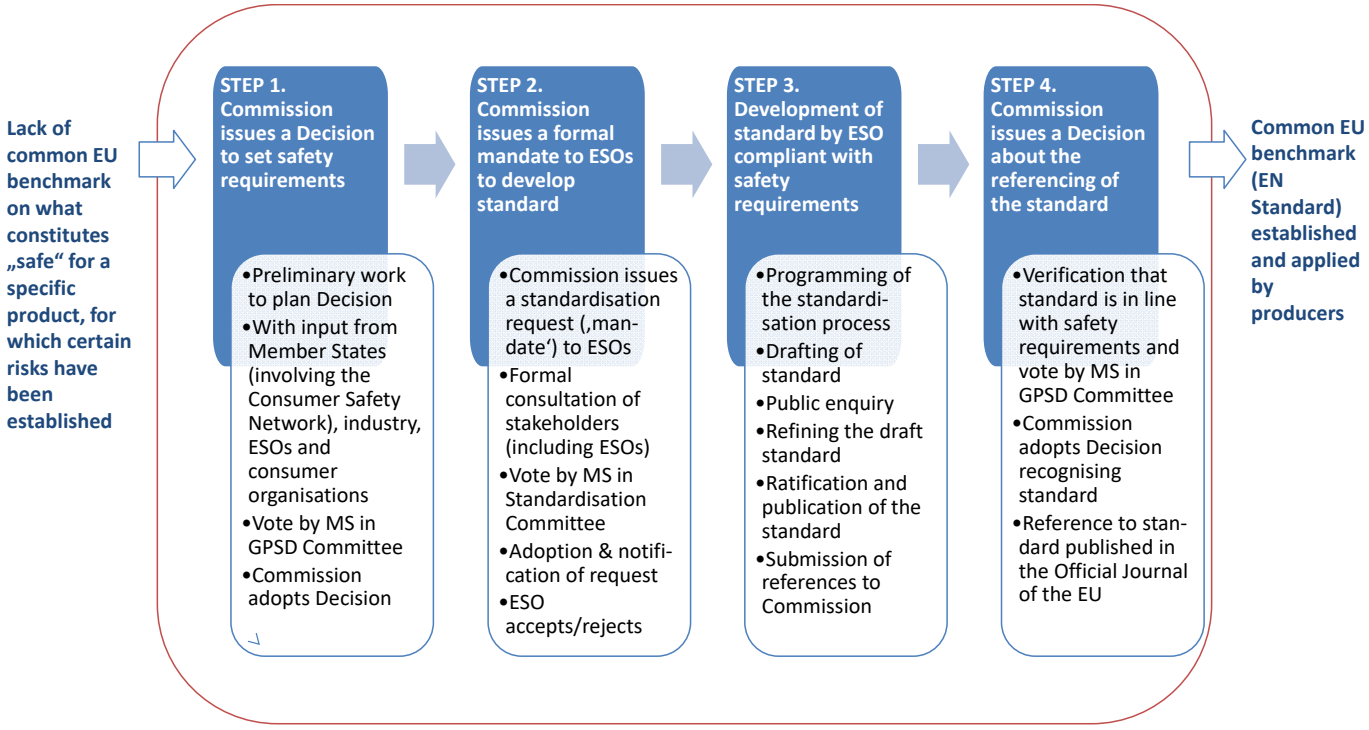
2. The Commission issues a formal mandate to ESOs to develop the standard;

3. The ESOs develop a standard compliant with safety requirements;

4. The Commission issues a Decision about the referencing of the standard in the OJ EU.

The following figure describes the process in more detail, also indicating the intended outcome of the process, namely a European Standard which serves as benchmark, and is intended to lead to a reduction of the identified risks to the minimum compatible with the product's use.

Figure 36. Steps of the standardisation process established under the GPSD



Source: Civic Consulting

In the following sub-sections, we first provide an overview of the standards referenced under the GPSD since 2013, before providing evidence on the functioning of the standardisation process and related problems. We finally discuss potential improvements in this respect.

7.1. Overview of standards referenced under the GPSD

Between 2013 and 2018, a total of 45 standards were referenced under the GPSD by the European Commission. These standards concern the following product types:

- Gymnastics equipment
- Stationary training equipment
- Child use and care articles
- Bicycles
- Internal blinds
- Lighters
- Children's clothing
- Floating leisure articles
- Cigarettes (ignition propensity)
- Child protective products
- Audio, video and similar (safety requirements)
- Information technology equipment (safety - general requirements)

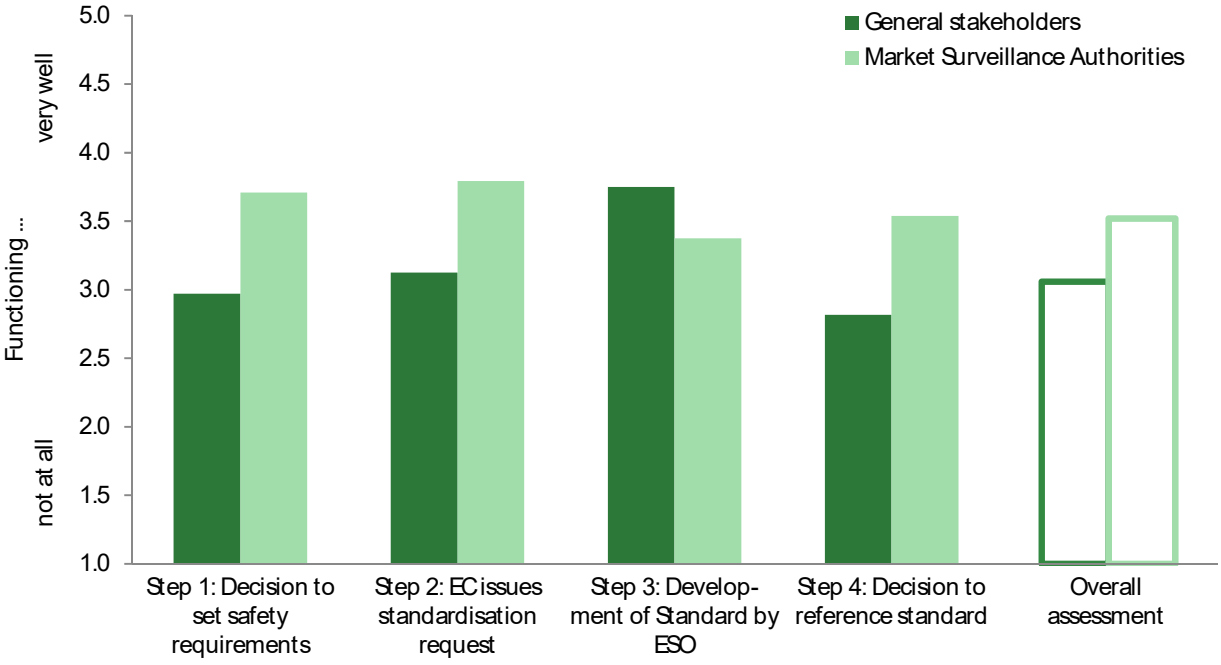
The complete overview of the standards referenced in the period 2013-2018 is provided in the table in Annex III. In a recent Commission Implementing Decision (EU) 2019/1698 of 9 October 2019, a total of 17 standards were withdrawn and replaced by revised standards. The withdrawn standards have been indicated in the Annex table. All remaining standards were re-referenced, but included in the new Decision, to "create a complete list of references" (according to recital 26 of the

Implementing Decision). In addition to the standards referenced, a number of standardisation requests under the GPSD are active, of which some have already been issued before 2013, but have not yet led to a standard.

7.2. Functioning of the standardisation process under the GPSD and related problems

In our survey of market surveillance authorities and general stakeholders, respondents that have been involved in the standardisation process established under the GPSD were asked to assess how well each of the above described four steps is functioning, as well as the overall standardisation process. Respondents were given a scale from 1 (Not at all functioning), to 5 (Very well-functioning), with the midpoint of 3 indicating a moderately well-functioning standardisation process. The following figure presents the average assessments, differentiating between MSAs and general stakeholders.

Figure 37. Functioning of the standardisation process established under the GPSD – Assessment of MSAs and general stakeholders



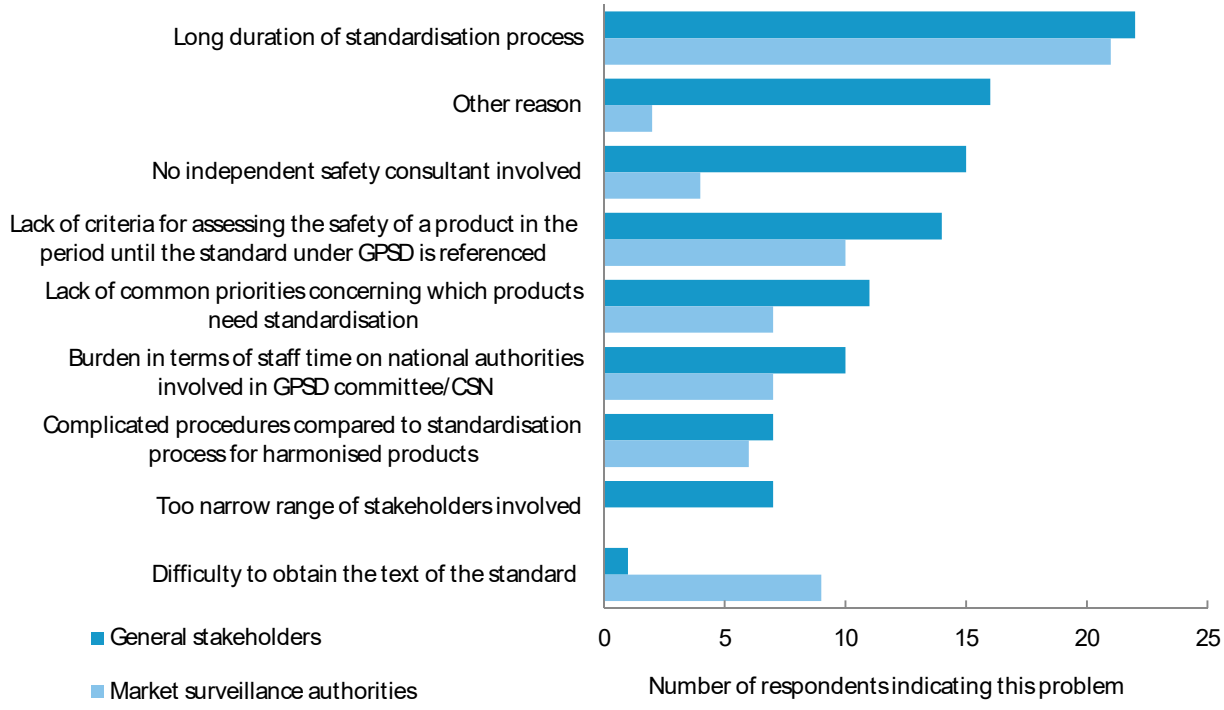
Source: Civic Consulting, based on stakeholder and MSA survey. Note: The figure presents average assessments and only includes those respondents that have been involved in the standardisation process and that provided an assessment. N= 38 to 45, depending on item (General stakeholders), N=24 to 26 (MSAs).

As the figure indicates, market surveillance authorities involved in the standardisation process under the GPSD assess it on average considerably more positively than general stakeholders. MSAs consider the process to be functioning on average close to 'rather well-functioning', whereas general stakeholders assess the process as 'moderately well-functioning'. An exception is Step 3 – Development of Standard by ESO–, where the assessment of general stakeholders is more positive than the assessment of MSAs. When looking at the results of the general stakeholder survey in more detail by differentiating between businesses and other stakeholders, such as consumer organisations and standardisation bodies, it becomes clear that the less positive assessment of general stakeholders largely reflects the views of businesses and their organisations. Consumer organisations and standardisation bodies were

more positive regarding the standardisation process, and provided largely similar assessments as MSAs (except with respect to Step 3, where they share the more positive assessment of businesses)[230].

All market surveillance authorities and general stakeholders were then asked to indicate reasons if they had considered the standardisation process under the GPSD to not function well or to have certain weaknesses[231]. Those that indicated an issue answered as follows:

Figure 38: If you consider the standardisation process to not function well or to have certain weaknesses: What are the reasons? – Assessment of MSAs and stakeholders



Note: Based on MSA survey Q43b, stakeholder survey Q19b. See Annex for full details. Note that the item 'Too narrow range of stakeholders involved' were only asked to general stakeholders, not to MSAs.

In the following, we discuss the key issues identified in the figure above separately

7.2.1. Long duration and complicated procedures

The long duration of the standardisation process was the most commented-upon weakness. As noted above, GPSD standardisation involves four steps, and whilst delay may occur within any or all of the four steps, the fact that there is a multi-stage procedure inevitably risks building up delays. Hence the delay and complicated

[230] The detailed results for the overall assessment of the standardisation process by stakeholder group are as follows: Consumer organisation/NGO (4.00), Standardisation body/organisation (3.67), MSAs (3.52), Organisation involved in product testing (e.g. test laboratory; 3.40), Business association (2.90), Company (2.82). Note that in two stakeholder categories, the number of respondents to this question was less than 3 respondents, and they are not listed here ('Product safety experts' and 'other').

[231] See detailed results of the stakeholder survey in the annex.

procedures may be seen as intertwined to some extent and are considered here together.

An important difference between the standardisation process under the GPSD and standardisation in harmonised areas is that the harmonisation directives contain essential safety requirements on which the standards can be based. There is therefore no need for the first step required under the GPSD procedure of establishing a Commission Decision to set safety requirements. There is always a tension between simplifying procedures and the desire to produce a more refined standard that has been widely consulted upon. Thus while Step 1 adds an extra layer to the procedure, it provides some concretisation of the safety principle, in consultation with Member States and other key stakeholders. It is clear that due to the wide range of products for which no harmonisation legislation exists and that fall therefore under the GPSD – reaching from jewellery and furniture to ladders and bicycles – concretisation of essential safety requirements (as required in Article 4 of the GPSD) is needed as guidance for the standardisation process. This is also the view of a wide range of stakeholders, including consumer organisations, who suggested that safety requirements could not or should not be left to the European Standardisation Organisations alone. On the other hand, a criticism by business stakeholders was that the Commission standardisation request to ESOs (the mandate, Step 2) in some cases already prescribed specific methods, which was considered to hinder the development of state of the art standards based on the best methods available[232].

The GPSD also brings into play a parallel EU committee regime. The GPSD Committee is involved in the front and back end of the process establishing the safety requirements in a Decision (Step 1) and ensuring that the standard formulated complies with the Decision (Step 4). The Standardisation Committee is, however, the one responsible for taking the decision with respect to the standardisation request to ESOs. This means that two separate EU committees are involved in the process and that requires time for both committees to become familiar with and work through the issues, as often different people work in the committees. Whether this structure can be simplified is discussed below.

It was also mentioned that the ESOs are not obliged to accept a Commission standardisation request, which is a precondition to start with the elaboration of the standard (Step 3). As the elaboration of a standard is always voluntary, there is no guarantee that the standard will be developed, and even if it is, there is no certainty that it will reflect what the mandate requires. However, this may be a more academic concern as the ESOs have not been known to refuse a mandate and if the eventual standard does not comply with the mandate, the Commission is free not to make a decision referencing it.

In terms of delay, Step 3 came under particular criticism. The procedure of elaborating a European standard was said to take too long. The elaboration of a standard is usually lengthy, although there are also examples where the revision of a European Standard has been carried out in a relatively short time. The elaboration of a standard by the ESOs is subject to a number of requirements, principles and commitments, such as the participation of all interested parties (for example manufacturers, including SMEs, consumer associations, environmental stakeholders and trade unions), and the application of the consensus principle, which aims at unanimous agreement on

[232] Note that this issue was considered relevant for mandates in the harmonised area. It was suggested to avoid limiting the margins of discretion regarding the methods chosen in standards in all areas, including in those elaborated under the GPSD.

the draft standard[233]. The elaboration of a European Standard follows several steps, which include[234]:

- *Acceptance of the proposal:* Once a project to develop an European Standard (EN) is accepted, the national members of the ESOs (national standardisation bodies) shall put all national activity within the scope of the project on hold;
- *Drafting:* The EN is developed by experts within a Technical Body;
- *Enquiry*: Once the draft of an EN is prepared, it is released for public comment and vote. During this stage, everyone who has an interest (e.g. manufacturers, public authorities, consumers, etc.) may comment on the draft. If the results of the Enquiry show unanimous approval for the EN, then the European Standard will be published.
- *Adoption by weighted Formal Vote:* If the results of the Enquiry show that the draft EN requires technical reworking, and the results of the Enquiry are not unanimous approval, then the Technical Body updates the draft and resubmits it for another weighted vote, called the Formal Vote.
- *Publication of the EN:* Following the approval of the EN, it is then published. A published European Standard must be given the status of national standard in all member countries, which also have the obligation to withdraw any national standards that conflict with it.

This process of elaborating a European Standard is inherently complex, and does not differ for standards elaborated under harmonisation directives and for standards under the GPSD. Some stakeholders therefore suggested that in practical terms there is not much difference, and saw a need for improving the process of elaborating a European Standard in general, including by streamlining procedures and by safeguarding a better representation of stakeholders other than large manufacturers (see below). Another general issue raised with respect to Step 3 was that the procedure does not adapt to technical and scientific progress as fast as it should, while at the same time being excessively rigid, since the elaboration of a European Standard is based on a mandate (as described above). Once this mandate is established, it may be overtaken by technical innovation rather quickly and this may become a problem if a long time is needed to develop the standard. This may lead to the standard becoming obsolete and therefore condemned to obsolescence before being even referenced, as one MSA put it. There is of course always the risk that if not framed carefully, any standard will be difficult to apply to new innovations.

Finally, issues were raised regarding the final Step 4 of the process, the decision by the GPSD Committee to reference the new European Standard, after it has been published. Only after being referenced in the EU Official Journal are products presumed safe if they conform to the standard. A market surveillance authority that is frequently involved in the standardisation process emphasised the need for the Committee to meet in person (rather than using a written procedure) so that Committee members could understand other members' views, and to vote separately on each standard, rather than voting on packages of four to five standards at the same time, as reportedly had sometimes been the case.

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[233] According to this principle, every effort shall be made to reach a unanimous agreement on the drafts for submission. If unanimity is not possible, the chair shall seek consensus. The chair is responsible for assessing whether consensus has been reached, or whether there is any sustained opposition. If consensus cannot be achieved despite all efforts and in case of doubt, a decision can be made in the Technical Committee by majority of the CEN/CENELEC national members, while duly recording any possible sustained opposition from CEN/CENELEC national members and/or participating partner organizations. See CEN/CENELEC, Internal Regulations-Part 2 - Common Rules For Standardization Work, July 2018, p. 34.

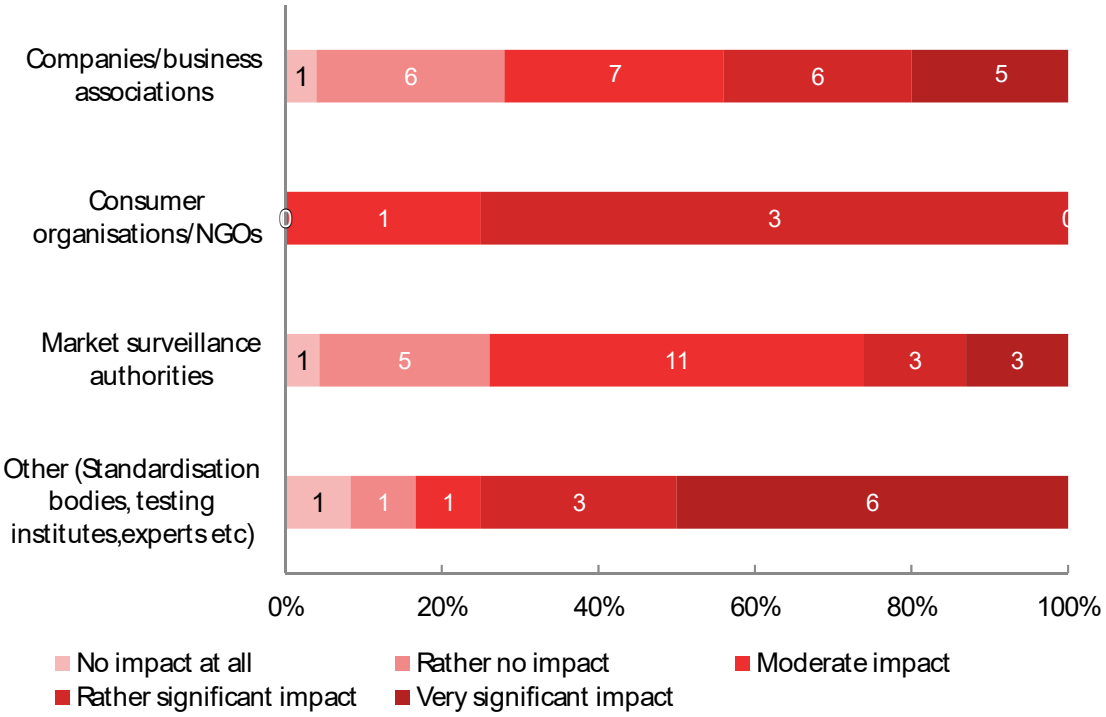
[234] See www.cenelec.eu/aboutcenelec/whatwedo/standardsmakingprocess/index.html.

A further shortcoming of the current standardisation process under the GPSD suggested by consumer organisations was the lack of a procedure that allows Member States to express a formal objection to a standard (for example, as found in Article 14 of the Toy Safety Directive, 2009/48/EC). The organisations suggested that the use of a formal objection should be possible even before a standard is referenced in the Official Journal of the EU. The issue of acoustics in toys was cited as an example, where two MS expressed a formal objection to a standard that resulted in the absence of presumption of conformity.

7.2.2. Stakeholders' involvement and related burdens

The standardisation process established under the GPSD not only needs a long time, but also demands considerable efforts of participants. In our surveys of MSAs and general stakeholders, we asked respondents that have been involved in the standardisation process to assess the impact of the standardisation process under the GPSD on their organisation in terms of resources used (e.g. staff time etc). The results are presented in the following figure.

Figure 39. Please assess the impact of the standardisation process under the GPSD on your organisation in terms of resources used (e.g. staff time etc) – Assessment of MSAs and other stakeholder groups (only respondents that have been involved in the standardisation process)



Source: Civic Consulting. Based on MSA survey Q43c, stakeholder survey Q19c. See Annex for full details.

The figure above illustrates that the impact of the standardisation process established under the GPSD (i.e. Steps 1 to 4 in Figure 36 above) in terms of resources used is considered quite differently in each of the stakeholder groups, indicating that the impacts depend on the level of involvement of each organisation, rather than on the type of organisation. In most groups there are organisations that consider the impact to be negligible, and others that find it 'significant' or even 'very significant'. Even for industry, the extent of involvement varied between companies and trade associations. The point was made that the impact was higher where a company made a range of products covered by different standards than if it specialised in one type of product.

Involvement in the elaboration of a European Standard is considered to be burdensome. Time spent attending meetings, travel time and money and time reviewing and commenting on documents is all unpaid and impacts on day-to-day workload. The lack of funding not only affects who can participate, but also was said to contribute to a lack of continuity derived from the lack of funding to participate in the working group meetings.

The group of 'other' stakeholders had the highest share of respondents who considered the process to have a 'very significant' impact. This group consists of standardisation bodies, testing institutes and product safety experts etc., who are by their nature more intensively involved in the elaboration of a standard by ESOs. Respondents from this group emphasised that there is a lack of funding to support standard development, especially for laboratory trials to underpin test methods.

Most respondents in the category consumer organisations/NGOs noted having experienced at least 'moderate' or 'rather significant' impacts. While consumer organisations/NGOs are not necessarily involved in all technical intricacies that are relevant when developing a standard, demands on them are high when compared to their limited resources. ANEC, which represents the European consumer interest in the creation of technical standards, noted in their response to the stakeholder survey that the standardisation of products falling under the GPSD is a priority and that apart from being active in the standardisation work itself (Step 3), the organisation is also consulted as stakeholder during the three other steps. A national consumer organisation with a long track record in standardisation noted that as the GPSD covers a lot of products, they had identified many areas where the presence of consumer representatives is important. Even with prioritisation, they could, however, not participate in all cases.

While in principle the standardisation process is open to all interested parties, several comments suggested that meetings for the elaboration of a standard by ESOs were not balanced and equal. An example was given of a group which was comprised of one market surveillance authority staff member and eight representatives from manufacturers. There were other comments about there being a low presence of market surveillance authorities in the development of standards with usually only manufacturers and test laboratories participating. Others considered it was mainly industry-dominated with a need for greater involvement of laboratories as well market surveillance authorities to help improve safety standards while further building the foundations for effective implementation of standards from the start. More participation of SMEs, consumer organisations and other NGOs, as well as universities, was also called for.

7.2.3. Standards in line with evidence and technical progress

There were several comments about the absence of EU accident data that was said to be needed to develop a good standard. Knowing what accidents have happened with a particular product could help, among other things, to define the dangers of foreseeable use. There was also criticism that the current process of standardisations cannot keep up to date with the speed of product development and innovation (see also above).

7.2.4. Transitional confusion

There is a considerable time period between the beginning and end of the standardisation process under the GPSD. i.e. from the beginning of Step 1 (identification of a need to develop a standard) to the end of Step 4 (publication of the reference of the adopted standard in the Official Journal of the EU). During this period, there continues to be a lack of criteria for assessing the safety of a product and a resulting uncertainty for economic operators and market surveillance authorities.

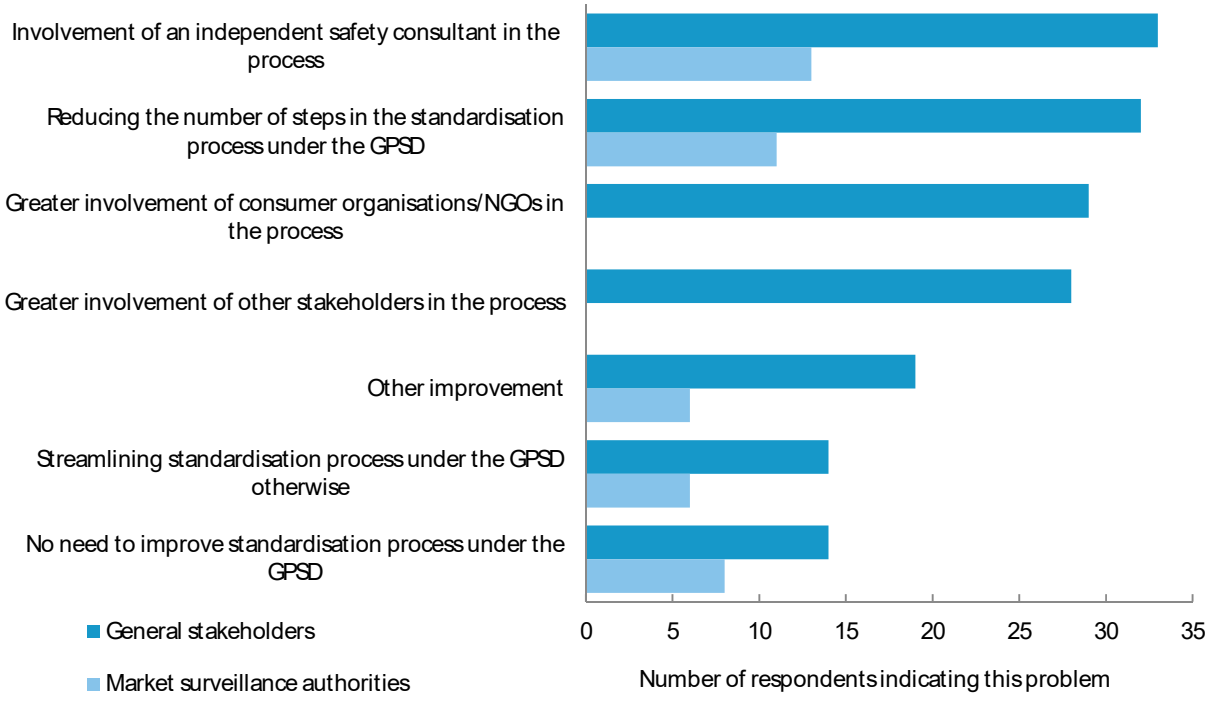
7.2.5. Other issues

Several respondents indicated that there was a need for the clarification of priorities concerning which products need standardisation, without further elaborating. Others noted that no independent safety consultant was involved in assessing the compliance of the standard with the safety requirements (see below). Finally, an issue that was frequently raised related to the fact that standards can be difficult to obtain and are expensive, and not immediately available in national languages. Where an agreement to improve access to technical standards has been achieved (as is the case in Spain), an MSA reported that the standards can only be consulted on the computer screen, without the possibility of printing, saving or copying part of the content, e.g. for reports, which was said to imply an additional burden in their use.

7.3. Potential improvements of the standardisation process

We finally asked MSAs and stakeholders to suggest possible improvements to the standardisation process under the GPSD. The answers are summarised in the following figure:

Figure 40: In your view, what would be possible improvements of the standardisation process under the GPSD? – Assessment of MSAs and stakeholders



Note: Based on MSA survey Q44, stakeholder survey Q20, only respondents that provide an answer. See Annex for full details. Note that the items related to greater involvement of consumer organisations/NGOs and other stakeholders were only asked to general stakeholders, not to MSAs.

The most frequent suggestions were to involve an independent safety consultant in the standardisation process under the GPSD (suggested by 24% of general stakeholders/16% of MSAs), to reduce the number of steps in this process (23%/14%) and to improve the involvement of consumer organisations/NGOs and other stakeholders in the process (about 20% of stakeholders). It is interesting that MSAs also suggested an increased involvement of stakeholders in their written

comments and the interviews. Only 10% of MSAs and general stakeholders did not see a need to improve the standardisation process under the GPSD. A considerable number of respondents had no opinion and skipped this question (23% of stakeholders and 59% of MSAs), largely respondents that had no involvement in the process.

Suggestions are further elaborated in the following paragraphs, without the order implying any priority or assessment of feasibility by the authors.

7.3.1. Reducing the number of steps and streamlining the standardisation process

Proposals to reduce the number of steps and otherwise streamlining the standardisation process under the GPSD suggest that the system could benefit from enhanced efficiency. This is also confirmed by the number of problems identified in the previous section, and the fact that certain consumer products that appear to be essential for consumer safety (such as ladders, which are involved in a considerable number of accidents), have so far not been subject to a European Standard referenced in the OJ EU in spite of an existing standardisation mandate. There were several calls to align with the standardisation process for harmonised products under the New Legislative Framework (NLF), but there are differences due to the need to specify essential safety requirements that may make this difficult. Consideration might be given to whether the standardisation processes under the GPSD can be streamlined. One delaying factor is consensus decision-making during the elaboration of the standard by the ESOs (Step 3), which lies at the core of the standardisation approach (both for harmonised and non-harmonised products). It seems unlikely that the standardisation bodies would be willing to move away from the consensus principle. Another possibility for streamlining the standardisation process under the GPSD would be to reduce time needed for the other steps of the process, e.g. by reducing the number of Commission Decisions involved, and/or by taking other appropriate measures for reducing the time until a mandate is adopted (Steps 1 and 2), and between the publication of a standard and its referencing in the Official Journal (Step 4). As one industry stakeholder expressed it, the process overall needs to be sped up by making "constructive use of time constraints".

7.3.2. Appointing an independent product safety consultant and other support

A possible improvement for the standardisation process under the GPSD could be the involvement of an independent consultant for the assessment of standards during Steps 3 and 4, who would be knowledgeable with respect to the product involved, and independent from industry. It was suggested by consumer organisations that this consultant could provide independent assessments of the standard in terms of the safety requirements. The importance of involving independent experts (such as experts from public testing laboratories involved in market surveillance) in the assessment of standards was emphasised by several stakeholders, including for the role of Chair[235].

[235] In a related comment, an independent product safety expert suggested for CEN to provide an editor at the first draft stage. The expert argued that currently the convenor of a working group is expected to chair the meeting with experts in the room and anybody who might join remotely, has to ensure that all have their say, while also actively revising the document under preparation. This was inherently a difficult task, and according to the expert, "few have the skills and concentration needed".

7.3.3. Stakeholder involvement

A frequently suggested improvement was the greater involvement of consumer organisations and other stakeholders in the elaboration of standards by the ESOs. This would likely require the allocation of additional funding to support their involvement, as they often have limited resources. An MSA that was already involved in the standardisation process also implied that better involvement of market surveillance agencies in the elaboration of standards by the ESOs would increase their competency to read and understand standards fully, and thereby lead to an improved quality of RAPEX notifications, which were said to sometimes show a lack of understanding of standards' requirements.

7.3.4. Improved transparency

In line with the suggestion by several business stakeholders that mandates were too prescriptive (see above), they proposed to have mandates that are open enough to allow for the latest state of the technology, and thereby avoid limiting innovation. They also suggested more involvement and transparency when the mandates are developed. In a related comments, an MSA proposed to introduce a mechanism allowing for the revision of a mandate in cases where excessive time has elapsed since the mandate was adopted and this was justified in light of the technical progress.

7.3.5. Other improvements

Additional suggestions included a EU-funded accident database which would be useful for the development of better safety standards, and a related proposal to ensure that hospitals in Member States are required to indicate in their patient databases whether products were involved in or suspected of being the cause of harm[236].

[236] Such data (especially regarding fatal accidents involving consumer products) could be reported on anonymous basis to a competent authority in each country, that aggregates the data and provides it to a suitable EU institution. Similar approaches are taken, for example, in the area of notifiable infectious diseases. Decision No 1082/2013/EU on serious cross-border threats to health lays down rules on the data and information that national competent authorities should communicate to the European Centre for Disease Prevention and Control (ECDC).

8. Jurisprudence at EU and national level on issues related to the GPSD

This section first discusses the jurisprudence at national level, before discussing relevant EU jurisprudence, and drawing conclusions on this basis.

8.1. Jurisprudence at national level

Most country reports noted no or limited national case law. Recent case law with respect to or relevant for the GPSD or its national implementation legislation was only reported from about half of the EU/EEA countries, including Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, Spain and the United Kingdom. This is perhaps not surprising as product safety often involves administrative procedures that provide means to handle differences within their structures. Market surveillance authorities often work with economic operators to resolve problems, and producers and distributors often have incentives to be co-operative. Also, enforcement is often carefully targeted towards clear cases posing serious risks. The incentives to challenge enforcement in court may therefore be limited. There were some instances of litigation that often involved mere application of the rules or challenges to their application. In this section we concentrate on case law that adds to our understanding of the application of the law, covering the following aspects:

- Who can be responsible?
- Information duties
- Concept of safety
- Who has standing to engage with enforcement authorities?
- Recall
- Enforcement
- Interaction with other legislation

Case law regarding each of these aspects is discussed in the following sub-sections.

8.1.1. Who can be responsible?

In a case reported from Cyprus (*Limassol Police Director v Nicolettos Textiles Industry Ltd and others, case no. 13703/14, 2/5/2017),* the defendants were found guilty for breach of Sections 5 (as producers) and 8(1) of the Law (as distributors) (transposing Articles 3(1) and 5(1) GPSD respectively) in relation to children's clothing which were found not to comply with the European Standard EN 14682:2007. The court found that the defendants were producers in relation to clothes they imported into Cyprus from Egypt (a non-EU country), but not in relation to those imported from Greece. It also interpreted the term 'distributor' to cover the seller of a product. An interesting question arises as to whether the same party can be *both* a producer and a distributor in relation to the same product. Despite the definitions of 'producer' and 'distributor' seeming to be mutually exclusive, this is what the court seems to have found, as the defendants were found guilty for a violation of Section 8(1) referring to distributors not only in relation to the clothing products, to which they were not found to be producers, but also in relation to the clothing product from Egypt, in relation to which they were recognised as producers. This seems incorrect as the definition of "distributor" shall mean any professional in the supply chain whose activity does not affect the safety properties of a product and a producer clearly does affect the safety

properties. A third defendant, an employee of the company, was acquitted because he was not a party who could be prosecuted under the Law.

Italy has had some interesting case law on the notions of "producer" (the mere importer does not qualify as producer [Trib. La Spezia, No. 189 of 23/2/2010]; a reseller whose activity affects the safety of the product put on sale does qualify as producer [Cass. pen., sez. III, No. 6787 of 4/12/2007; Cass. pen., No. 8679 of 13/11/2013]), "placing on the market" (the mere storing for the purpose of selling does suffice [Cass. pen., sez. III, No. 15235 of 11/11/2014; Trib. Firenze, No. 2386 of 26/7/2017; Trib. Genova, No. 6284 of 6/12/2016; Trib. Torino, 7/3/2012 in Dejure.it], and the conveying of goods to the courier for delivery to the final consumer [Trib. Foggia, 30/10/2017 in Dejure.it]).

8.1.2. Information duties

There are two interesting decisions concerning the provisions of information from the Hungarian highest court, the Kúria.

Decision of the Kúria, Kfv. II. 37.050/2017/6 of December 13, 2017 concerned whether the business entity is bound under the standard applicable to the product concerned to attach separate instructions on use to the product's accessory, which contain safety information on use time and degrees of speed. The business entity challenged the delimitation and definition by the market surveillance authority of the accessory as distinct from the product, a cardinal question for establishing its obligation to attach separate instructions to the accessory. Upon request by the first instance court, the International Technical Committee, which established the standard, delivered its opinion and found that those accessories that are attached to the product, and thus delivered together with the product (as in the case before the court), do not need separate instructions. Based on this opinion, the Kúria established that the international expert opinion was equivalent to an official interpretation of the standard in question and found that the business entity was not infringing the safety requirements.

Decision of the Kúria, Kfv. II. 37.020./2016/7 of November 9, 2017 concerned products originating from China, inspected through mystery shopping, which only indicated the EU importer and not the producer from China. The market surveillance authority fined the business entity for not complying with the requirement of Article 2 (11) of Law LXXXVIII of 2012 to indicate on the product both the distributor and the producer. The business entity challenged in court both the obligation and the decision of the market surveillance authority by invoking Article 5 (1) of Directive 2001/95/EC. The Kúria found that Article 2 (11) of Law LXXXVIII did not correctly transpose Article 2 (e) of Directive 2001/95/EC into Hungarian law and since in such cases the EU law prevails over the conflicting implementing rules by virtue of the principle of supremacy of EU law, the private entities may invoke the directly applicable EU law (Directive 2001/95/EC) before the domestic courts. The Kúria established that based on Article 2 (e) of Directive 2001/95/EC, the lower courts should have first clarified who qualifies as the producer of the product, whether the producer has a representative in the EU with a company seat registered within the EU, and whether in the absence of such a representative the importer of the product into the EU qualifies as a producer in the meaning of the Directive. In the absence of such an assessment it cannot be established whether the business entity infringed its obligation under Article 2 (e) of Directive 2001/95/EC. The Kúria referred the case back to the court of first instance.

8.1.3. Concept of safety

The only Danish case known in connection with the Product Safety regulation, reported in the Danish Weekly Law Journal U.2000.679S, provides for an interesting application of the safety standard in connection with a tealight lamp and the failure to warn consumers that only short tealights with a height of not more than 17 millimetres

could be used (usually bags of such tealights are sold in supermarkets, etc.). One consumer had complained that the lamp had fallen down because a solder in the lamp's suspension had melted as a result of the use of a light stub of approx. 50 mm in height. The surveillance authority issued an injunction and prohibited the sale until adequate information was given. This injunction was upheld by the court as a proportionate measure in light of the need for a high level of protection, and that the risk could be easily avoided by correct information (markings on products or packaging or signs in the shops). Consumers had to be warned about the risk as consumers could reasonably expect that the concept of a tealight lamp would encompass all other types of lights, and because the ordinary consumer does not think too deeply about the risks of lit candles and is in fact able to put all possible lights into the lamp, which created a risk of heating the solder such that the lamp could fall down and cause a fire. This shows a protective attitude that in the field of safety does not assume the consumer is too circumspect.

In Poland, a judgment of the Court of Appeals of Katowice (I Civil Department of 24 October 2016, I Aca 354/16, Legalis No. 1546700) elaborated on the notion of product safety. It stated that any product which requires detonation of an explosive material for its use creates a risk to consumers and should be considered as potentially dangerous, both when it is improperly used and when it is properly used but is defective. The fact that a battery used for a fireworks display belonged to a batch of products allowed on the market, as they complied with the necessary norms, does not make that particular battery safe, as the battery at hand was likely not tested for its compliance with the norms, but rather another battery in the batch might have been tested.

The German BGH has made the important statement that the information about the name and address of the manufacturer forms part of the safety of consumer products and that therefore the distributor, who has to contribute to making only safe consumer products available on the market, also must make sure that the name and address of the manufacturer are affixed to the product or its packaging (BGH, 12/1/2017, I ZR 258/15, Neue Juristische Wochenschrift – Rechtsprechungsreport 2017, p. 745, at pp. 746 f., and BGH, 11/5/2017, I ZR 59/16, Multi-Media und Recht 2018, p. 239, at p. 241).

In Lithuania, the courts have found that instructions on the use of the product should be received by the buyer in a fashion they can understand, which requires the instructions to be in the national language (*judgment of the Vilnius Regional Court, civil case No. e2A-302-262/2019*). They have also held that the market surveillance authorities can presume that the composition of a product matches that which is indicated in the instructions given with the product. The duty of rebutting the presumption lies with the economic operator (*judgment of the Supreme Administrative Court of Lithuania, case No. A492-14/2012*). The Lithuanian courts have also held that the consequences of placing a dangerous product on the market do not need to be determined as it is enough to determine that a dangerous product was placed on the market or that the subject did not act in accordance with the orders of the market surveillance authorities. However, if the consequences are also identified (damage to the health of the consumer, death of the consumer), a more severe sanction can be applied (*judgment of the Supreme Administrative Court of Lithuania, case No. A[146]-778/2010*). The Lithuanian court have also emphasised that the concept of safety provided in the Law on Product Safety does not include the possible threat of damaging the property of a consumer (*19-11-2010 Supreme Court of Lithuania case review*).

In Estonia, a Tallinn Circuit Court in its decision in administrative matter no 3-16-861 found that if the product is in conformity with the requirements arising from an EU directive (Directive 2014/35/EU in that case), its safety can be assumed. In that case the national standards cannot be regarded as additional requirements but merely

alternative requirements which are to be applied only in the case of the absence of EU standards.

A Dutch case (Rb. 05-11-2018, ECLI: NL: RBROT: 2018: 8990) provides an interesting example of how the courts assess whether the Market Surveillance Authority (NVWA) has properly determined whether the manufacturer has classified toys correctly. It held that it may rely on documents that are not generally binding regulations, just as so-called NEN standards are not binding regulations. The relevant documents, including CR 14379: 2002 (E) "Classification of toys - Guidelines", may provide a guide for explaining legal standards. That document lacked specific guidelines for the age classification of toy music boxes and toy parking garages so NVWA could therefore reasonably use the document CEN-ISO / TR 8124-8 "Age determination guidelines".

Another Dutch case (Rb. Rotterdam 24-11-2016, ECLI: NL: RBROT: 2016: 9046) shows a preference for determining safety in a harmonised manner across Europe. The case concerned imitation products and the assessment of the risk of (among other things) suffocation, poisoning, perforation or blockage of the digestive tract. Neither the Directive nor the Commodities Act Decree on Imitation Products prescribed how that danger must be determined. According to the court, it is desirable that the differences in assessment by EU countries do not differ because the Decree is the implementation of a directive. Because a PROSAFE report, in which 21 countries participated, expressed a preference for the bite test of NEN-EN 716-2, the court considered it reasonable that the NVWA apply that standard in its tests. The court ignored the test results submitted by the plaintiff, which would indicate that that standard is unsuitable, because this test does not show that this is the case. The fact that the choking hazard for children when eating certain cookies, sweets and apples is greater, is not considered relevant. The risk of putting, sucking or swallowing imitation products in the mouth cannot be compared with the danger of putting, sucking or swallowing food.

The Polish Supreme Administrative Court of 22 November 2016 (II GSK 935/15, Legalis No. 1555039) also decided that when Polish or EU legal rules determine which tests and how these tests should be conducted on the product samples during inspections, it is not allowed for inspectors to conduct other tests, as this would undermine the objective of the inspection.

One of the highest Dutch Administrative courts (ABRvS 28 October 2015, ECLI:NL:RVS:2015:3295) has confirmed that a Market Surveillance Authority may not issue a measure on the sole violation of a harmonised standard. Measures always need to be based on a legally binding provision. Another of the highest Dutch administrative courts (CBB 17-05-2016, ECLI: NL: CBB: 2016: 136) has also pointed out that harmonised standards are not binding and that alternative ways of demonstrating conformity with essential requirements must be accepted.

By contrast, in the Czech Republic, Highest Court confirmed that in the context of non-compliance with Czech technical standards leading to a dangerous product notice, a single reference by Government Regulation on the Czech Technical Standard can result in a binding effect for a technical standard, without the special authorisation of an Act (see: Decision of the Highest Administrative Court No. 5 As 69/2009-86 of 16.11.2010), although technical norms are not binding in general according to § 4 *Act No. 22/1997 Coll. on Technical Requirements for Products*. Later decisions also dealt with whether a product that does not fulfil the requirements of the Czech Technical Norms should be considered a dangerous product. As can be seen in the Decision of the Prague City Court No. 9 A 131/2010- 34 of 27.11.2013, the court clearly gave an affirmative answer. Later legislative amendments of 22/1997 Coll. on Technical Requirements for Products, see Act. 265/2017 Coll., solved these problems following the noted case law.

A Bulgarian court found that a test report for a baby carriage for conformity with Australian standards did not invalidate the findings of the administrative authority concerning the product's lack of safety, as the product did not comply with European safety standards (Decision № 841/26.01.2015, Adm. Case № 6125/2014 the Supreme Administrative Court, VII Division).

A UK decision considered a defence to the breaching of a safety requirement through demonstrating that reasonable steps had been taken to avoid non-compliance. In *Havering LBC v Masters* [2017] EWHC 848, it was held that the due diligence defence applied where a person charged with contravening the general safety requirement, a safety regulation, prohibition order, notice to warn, or a suspension notice proved, *inter alia*, that "he took all reasonable steps and exercised all due diligence to avoid committing the offence." Certain procedural requirements as to the giving of notice must usually be observed before relying on this defence, which is frequently to be found in consumer protection legislation.

There have also been a number of decisions from Italy on what amounts to "unsafe" (non-compliance with the legal obligation to put the CE marking on the product is not equivalent to placing an unsafe product on the market [Trib. La Spezia, No. 300 of 26/3/2009]; a non-child-resistant lighter is not per se considered to be unsafe for children, since its unsafety has to be proved by the relevant authority in the specific case at hand [Cass. pen., sez. fer., No. 40609 of 9/9/2014]; a product intended only for professional use may qualify as unsafe when it is sold directly to final consumers [Trib. Padova, No. 768 of 1/8/2018; Trib. Padova, No. 204 of 14/11/2017]).

8.1.4. Who has standing to engage with the enforcement authorities?

The Estonian courts have considered the matter of who has standing to request the regulatory authority to check the safety of a product and challenge the outcome of that process. It has favoured allowing competitors to be granted standing. In 18.12.2017, the Tallinn Administrative Court in the administrative matter no 3-17-990 stipulated that it is important to refer to the relevant EU legislation, since it recognised that the Estonian law was based on EU law, and to assess more broadly the general objectives of establishing conditions for the marketing of products (and hence market surveillance) in the European Union. The court referred to Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products which states that "products that are placed on the Community market should comply with the relevant applicable Community legislation, and economic operators should be responsible for the compliance of products, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of public interests, such as health and safety, and the protection of consumers and of the environment, and to guarantee fair competition on the Community market". The Court concluded that the tasks of the Technical Regulatory Board in its capacity as a Market Surveillance Authority include both protection of the public interests and protection of the market operators against unfair competition. This means that an entrepreneur may challenge the findings of the Market Surveillance Authority with the purpose of preventing dangerous (and cheaper) products being imported by a competing entrepreneur. Likewise, the decision of 21.06.2017 of the administrative chamber of the Tallinn Circuit Court in its decision in administrative matter no 3-16-861 decided that an entrepreneur who imports and sells certain products (electrical cables) has the right to demand that the supervisory authorities investigate the safety of a product imported by a competing entrepreneur.

8.1.5. Recall

The Judgement of the Prague City Court (No 9A 74/2016 – 68 of 31. 5. 2018) concerns the interactions between the power of the authority to recall products and the voluntary recall and withdrawal by the producer. Interestingly, this court decision

states that recall as a corrective measure can be ordered by the national competent authority according to § 7 (2) of the *Czech Product Safety Act* only if the producer or distributor fails to fulfil its legal obligations on a voluntary basis, and it is necessary to withdraw the dangerous product from the market as *ultima ratio*. According to the court, the Czech Trade Inspectorate failed to verify the statements of the producer on the voluntary recall and whether the recall was satisfactory. § 7 (2) h of the *Czech Product Safety Act* delivers the right to order a recall from consumers only if the producer or distributor did not recall the dangerous product voluntarily, or the recall was incomplete. The court therefore overruled the decision of the CTI and returned the case to it for a further procedure. The decision shows that although the producer tried to conduct a constructive dialogue with the Market Surveillance Authority, such dialogue is not satisfactory in every case.

The Dutch court (Rb. Rotterdam 14 August 2013, ROT 13 / 4577 BC WILD (not published)) also found a recall of table fireplaces disproportionate because a warning together with an adjustment to the fireplace involving a metal ring to be put in place by the consumer would take away the risk. This alternative solution had been put forward by the importer of the fireplace. They substantiated their argument with reference to a test performed by KIWA in accordance with DIN 4734. The order to recall subject to a penalty payment was adjusted accordingly by the judge.

An Estonian case upheld a recall notice issued by the Consumer Protection and Technical Regulatory Board in 2018 based on RAPEX notification no A12/0861/16 concerning children's car seats with the fastening mechanism type E8 04 44596 when the same fastening mechanism was sold under a different trade mark. In 29.04.2019 Tallinn Administrative Court decided in the administrative matter no 3-18-1801 that both types of car seats did not differ significantly and the product sold in Estonia must therefore be recalled. It also found that the measures requested by the Consumer Protection and Technical Regulatory Board were appropriate and enough time (3 weeks) was given for taking the measures, and the amount of penalty payment (8000 euros) imposed on the addressee was reasonable and justified.

In a Bulgarian case involving skateboards (Decision № 837/26.01.2015, Adm. Case № 5738/2014 the Supreme Administrative Court, VII Division), an order for withdrawal from the market of the dangerous goods meant that holding them and placing them on the market was not allowed as they were dangerous due to non-compliance with technical standards. It was irrelevant that subsequent to the order there had been a change of ownership of the business, legal and organisational changes of the company, as well as re-labelling of the goods with the indication that it is intended for persons of a lower age and lower weight.

The extent of the recall obligation was explained by the Polish Supreme Administrative Court in a decision of 14 January 2014 (II OSK 1879/12, Legalis No. 951912) which confirmed that a recall of products from the market obliges producers to remove all such products from their distributors and to ban their distributors from presenting and offering this product to consumers.

8.1.6. Enforcement

In a Bulgarian case it was found that enforcement was possible even though the use of the playground in respect of which the orders were made was free and there had been no record of accidents (Decision № 14415/29.12.2016, Adm. Case № 3747/2016 the Supreme Administrative Court, VII Division).

The Polish Supreme Administrative Court (*Naczelny Sąd Administracyjny*) decision of 15 March 2017 (II GSK 1663/16, Legalis No. 1605586) decided that upon conducting an inspection and finding a product unsafe, the Trade Inspectorate may claim the costs of any laboratory and other tests that have been used to determine the lack of

product safety from the trader who was being inspected. There is no need to identify the producer of the unsafe product to claim the costs from them instead.

In a case reported from Cyprus (A*ndreas Chryostomou General Trading Limited v. Ministry of Commerce and others, administrative case no. 621/2014, 24/11/201*), the applicant-distributor in Cyprus of mechanical pencils sought the annulment of the communication to RAPEX of the relevant products which had previously been withdrawn from the market for not complying with the safety requirements of EU Regulation 1907/2006 by the Department of Labour Inspection (the relevant competent authority). The Administrative court found that the inclusion of products and relevant communications in RAPEX did not constitute administrative acts or decisions subject to judicial review; the administrative act that could be subjected to judicial review application was the decision of the Department of Labour Inspection regarding the withdrawal of the products from the market. The judicial review application was accordingly dismissed. This ruling seems correct and in line with Section 43 of the Law (transposing Article 18 GSPD) which refers to remedies at the disposal of economic operators in relation to measures taken by the competent authority entailing "restrictions on the placing of a product on the market or requiring its withdrawal or recall"; clearly, RAPEX notifications do not impose such restrictions. The second administrative law case from Cyprus, *STAEDTLER Mars GmbH & Co. KG v. Ministry of Commerce and others, administrative case no. 622/2014, 31/8/2018,* concerned a judicial review application against the same RAPEX notification which was brought by the German producers of the mechanical pencils referred to in the previous administrative case. Unsurprisingly, the outcome of the case was the same as the one just discussed.

In the Netherlands, it has been held that mere warnings by authorities do not qualify as decisions as defined in the General Administrative Act because they do not in themselves have any legal effects. A case that did not reach court concerned a product that was assessed on the basis of NEN-EN 14988-1;2006+A1:2012 and was found to be in violation of art. 18 under the Commodities Act. Because it concerned a low risk, the violation was classified by the NVWA as a C violation, after which a warning was issued and the economic operator was pointed to their existing obligations to take corrective measures. In any event, the objection to the warning was also held to be unfounded because the norm was applicable, applied correctly and had been violated. The decision of the authorities to publish the findings regarding the product was also not considered unlawful. In Belgium, the Council of State, which is the highest administrative court, ruled in an identical manner regarding a warning issued by the Belgian market surveillance authority. However, while objection to the warning was held to be unfounded in the Netherlands, the Belgian Council of State regarded the objection as 'inadmissible' since "warnings do not produce any legal effects for the concerned party"[237].

Likewise, in Estonia, by a decision of 29.06.2018 the administrative chamber of the Tallinn Circuit Court made a decision in the administrative matter no 3-16-1698. In 2013, the Technical Regulatory Board had issued an order requiring temporary withdrawal and prohibition of sale of certain polystyrene foam boards for a period of assessment of their safety. The Board published this information on its website and sent letters to professional unions informing them of the prohibition. The entrepreneur demanded compensation for damages suffered because of the decrease in turnover. The court found that temporary withdrawal of a product was not unlawful and therefore publishing information concerning that measure cannot cause a damage which should be compensated under the State Liability Act.

[237] See country report Belgium.

8.1.7. Interaction with other legislation

It should be noted that the general product safety rules can also interact with other rules. For instance, in Germany, it is noted that there can be an interaction with unfair commercial practices law. German courts have consistently held that the requirements of product safety law are market practices, and that their breach is an unfair commercial practice. This is not barred by the Unfair Commercial Practices Directive 2005/29/EC, whose Article 3(3) and recital (9) exempt health and safety from its total harmonisation approach[238]. This opened up the opportunity for competitors[239] as well as for consumer organisations and for business organisations to challenge unsafe products or products that did not indicate the name and address of the manufacturer under the unfair commercial practices law of the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act; UWG). The main remedy available there is an injunction, but the law also offers the remedy of damages to competitors who have suffered (economic) damage. The German country report also note that the ProdSG occasionally plays a role in tort law. § 823 para. 2 BGB imposes liability on a person who has breached a law that is 'meant to protect the victim' (*Schutzgesetz*), thereby causing harm to the victim. The ProdSG is such a law[240], and therefore civil courts sometimes come to interpret its provisions so as to establish a breach of a law that is meant to protect the victim[241].

In a similar vein, a Dutch lower court case (Rb. Middelburg 13-04-2005, ECLI:NL:RBMID:2005:AT4286) explicitly mentioned the Decree on General Product Safety to support a conviction of a manufacturer for criminally negligent homicide/involuntary manslaughter. The case involved a manufacturer of play houses that had a cavity between the house and a connected slide. A child had died using this slide because the string of their hoody became trapped in the cavity causing him to choke. The manufacturer had received earlier complaints regarding the slide, but had not followed up on them.

In Greece, there are a series of cases dealing with the issue of interaction between the general product safety rules and other rules. Illustrative of this is a decision of the Athens Administrative Court of Appeal (4670/2013), which gives priority to the sectoral legislation. The Administrative Court of First Instance had accepted the appeal of a gas station owner against a decision of the Secretary General for Consumer Affairs of the Ministry of Development imposing a fine for placing unsafe diesel in the market based on the provisions of general product safety. According to its decision, for violations that relate to the quality of petroleum products, the applicable provisions are the provisions of Law 3054/2002, which prevail as being more specific to those of law 2251/1994, which establish a general obligation to comply with all Community and national consumer protection provisions. The Administrative Court of Appeal rejected the State's appeal and ruled that the provisions of the most specific law are valid and should be the basis of the imposed penalty. Other similar decisions are decision 207/2013 Council of State (StE) and decision 208/2013 Council of State (StE).

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238 See, e.g., BGH, 12/1/2017, I ZR 258/15, Neue Juristische Wochenschrift –Rechtsprechungsreport 2017, p. 745; BGH, 11/5/2017, I ZR 59/16, Mulit-Media und Recht 2018, p. 239; OLG Düsseldorf, 11/2/2014, I-20 U 188/13, Beck-Rechtsprechung 2014, 17560. See also H. Köhler, in: H. Köhler, J. Bornkamm and J. Feddersen, Gesetz gegen den unlauteren Wettbewerb, 37th ed. (Munich: C.H. Beck, 2019), § 3a para. 1.25.

239 See also Reusch, supra n. 11, at p. 2253.

240 See only Wagner, in: Münchener Kommentar zum Bürgerlichen Gesetzbuch, vol. 6, 7th ed. (Munich, C.H. Beck, 2017), § 823 para. 870. For case law on predecessor norms, see BGH, 11/12/1979, VI ZR 141/78, Neue Juristische Wochenschrift 1980, p. 1219 (on §§ 3, 3a GSG); LG Stuttgart, 10/4/2012, 26 O 466/10, Neue Juristische Wochenschrift – Rechtsprechungsreport 2012, p. 1169.

241 See, e.g., LG Bonn, 10/2/2005, 6 S 242/04, Beck-Rechtsprechung 2011, 9538.

8.2. Jurisprudence at EU level

8.2.1. GPSD litigation

There has been little case law of the CJEU on the GPSD. In Case C-359/92 *Federal Republic of Germany v Council of the European Union* Art. 9 was upheld against a legal challenge[242]. This allows the Commission to take temporary action where Member States have reacted in different ways to a safety risk and Community action is necessary and no other procedures are suitable due to the nature of the safety issue and the urgency of the situation. In Case C-132-08 Lidl *Magyarország Kereskedelmi bt v Nemzeti Hírközlési Hatóság Tanácsa* it was held that under Directive 1999/5 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, a state could not require a retailer to provide declaration of conformity under national law for a product imported form another Member State bearing the CE marking and such an obligation could not be required in the circumstances under the General Product Safety Directive[243].

8.2.2. Free circulation

More broadly, product safety is interrelated with the free circulation of goods. Products should be able to circulate freely in the internal market[244]; which means, for example, that Member States cannot make the marketing of the products subject to a prior approval procedure and they also cannot ask for additional certification from the person who puts the product into circulation[245].

8.2.3. Standardisation

European Standards are voluntary and market driven, and their advantage is not only that they replace corresponding national standards in all Member States, making the life of businesses, notably SMEs, easier, but in particular that products are presumed to be safe if they conform to voluntary European Standards when referenced in the EU Official Journal. Standards therefore serve a double purpose: they facilitate market access and they ensure the safety of products. The legal nature of harmonised standards was clarified in the landmark judgment of Case C-613/14 *James Elliott Construction Limited v Irish Asphalt Limited*, where the Court of Justice held them to be part of EU law, allowing the Court to give a preliminary ruling concerning their interpretation under Article 267 TFEU[246]. The Court reached this conclusion by emphasising that 'while the development of such a harmonised standard is indeed entrusted to an organisation governed by private law, it is nevertheless a necessary implementation measure which is strictly governed by the essential requirements defined by that directive, initiated, managed and monitored by the Commission, and its legal effects are subject to prior publication by the Commission of its references in the 'C' series of the *Official Journal of the European Union*.' Moreover, the Court

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242 Judgment of the Court of 9 August 1994. - *Federal Republic of Germany v Council of the European Union*. Case C-359/92. European Court Reports 1994 I-03681. ECLI:EU:C:1994:306

243 Judgment of the Court of 30 April 2009. *Lidl Magyarország Kereskedelmi bt v Nemzeti Hírközlési Hatóság Tanácsa*. Case C-132/08. European Court Reports 2009 I-03841. ECLI:EU:C:2009:281

244 See also ECJ, 19 March 2009, C-489/06 Commission v. Greece, ECLI:EU:C:2009:165. For the relevant point in time, see GC, 26 January 2017, T-474/15 Global Garden Products Italy SpA v. Commission, ECLI:EU:T:2017:36.

245 See ECJ, 17 April 2007, C-470/03 A.G.M.-COS.MET Srl v Suomen valtio and Tarmo Lehtinen, ECLI:EU:C:2007:213; . ECJ, 8 May 2003, C-14/02 ATRAL SA v Belgium, ECLI:EU:C:2003:265; GGP Italy v Commission (Case T-474/15) ECLI:EU:T:2017:36.

246 CJEU. 27 October 2016, Case C-613/14 *James Elliott Construction Limited v Irish Asphalt Limited*, ECLI:EU:C:2016:821

pointed at the role of the European Commission in monitoring the European Standardisation Organisations (ESOs) and in ensuring the effectiveness of standards[247]. This new classification of harmonised standards as EU law triggered a number of modifications to the internal processes at the level of the Commission, but also to the assessment of the standards that are elaborated by the ESOs. One visible consequence is that harmonised standards are now adopted by formal Commission Implementing Decisions that are published in the 'L' series of the Official Journal.

Certification bodies, although private law bodies, have also been held to be subject to EU law. It was also held that their decision to withdraw a certification could de facto affect access to the market so the certification bodies, although private bodies, were subject to EU law relating to the free movement of goods in Case C-171/11 *Fra.bo SpA v Deutsche Vereinigung des Gas- und Wasserfaches eV (DVGW)*. The case concerned copper fittings that had their certification cancelled by the national body, as almost all German consumers bought fittings certified by the defendant the lack of certification placed a considerable restriction on the marketing of the products concerned on the German market[248].

8.2.4. Liability for statements of officials

Although decided under the Machinery Directive, Case C-470/03 *A.G.M.-COS.MET Srl v Suomen valtio and Tarmo Lehtinen* is potentially relevant to liability under the GPSD. In this case, the state was found to be potentially liable for statement made by an official about the safety of lifts (in relation to which no action was eventually taken) that made them more difficult to market in Finland and affected turnover[249]. One could foresee that similar circumstances might arise under the GPSD.

8.3. Conclusions

The most striking aspect of the case law is that it is limited both at the European and Member State level. This is explainable by the administrative character of the rules and modern regulatory practice which treats bringing cases to court as a matter of last resort. Normally traders will try to come to an agreement with the authorities if a safety issue arises with consumer products. There is relatively little litigation concerning the concepts contained in the Directive. One interesting point in the case law was whether someone can be both a producer and distributor as seemingly held by the Cypriot courts – though this does not seem to be in accordance with the Directive. As might be expected, there is some discussion of how to apply the general safety requirement of the GPSD. There is debate about which standards to apply and how to apply them, underlining the complexity of the relationship between standardisation and the regulation of safety in EU law. There is also discussion of whose protection product safety law is for, and in particular the standing of competing producers. In practice, they may have more incentive than individual consumers to monitor safety. As already noted, recalls are complex procedures. They also affect the autonomy of producers and it is not surprising they have been subject to litigation. Several cases have been built regarding the use of enforcement powers. It is worth noting that RAPEX notifications and mere warnings have not been held to be justiciable. There has also been discussion of how the GPSD interacts with other legislation, such as unfair commercial practices law.

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247 ibid., paras 43 and 45 f.

248 Judgment of the Court (Fourth Chamber), 12 July 2012. *Fra.bo SpA v Deutsche Vereinigung des Gas- und Wasserfaches eV (DVGW)*. Case C-171/11. ECLI:EU:C:2012:453

249 Case C-470/03 *A.G.M.-COS.MET Srl v Suomen valtio and Tarmo Lehtinen*, ECLI:EU:C:2007:213; on which see Reich, A.G.M. COS.MET oder: Wem dient das EU-Produktsicherheitsrecht?, Verbraucher und Recht 2007, pp. 410 ff.

9. Main conclusions and overview of potential improvements

9.1. Main conclusions

Based on the evidence presented in the previous sections, the study arrives at the following main conclusions:

9.1.1. Traceability requirements

Article 5(1) of the GPSD contains general obligations for producers. Among other matters, producers must provide necessary information for tracing the origin of a product, including, for example, an indication of the identity and details of the producer and the product reference or, where applicable, the batch of products to which it belongs, except where it would be justified not to give such indication. The purpose of this indication is that in the event of a safety problem, dangerous products present on the market can be traced and swiftly removed if necessary to avoid putting consumers at risk. The GPSD does not specify the traceability requirement further, and it is up to the Member States to adopt concrete measures to implement such obligations.

The following table indicates which traceability requirements are implemented in the national legislation of each EU/EEA country.

Figure 41: Overview of transposition of Art 5 (1) GPSD regarding traceability

	Requirements to indicate on the product or its packaging			***Product-specific and other***	
	Name and contact details of the producer	Product reference or, where applicable, the batch of products to which it belongs	Barcode or use other machine readable identification	Product-specific traceability requirements	Other requirement related to traceability
Austria					g)
Belgium	✓	✓			
Bulgaria	✓	✓a)			✓a)
Croatia	✓	✓			
Cyprus	✓	✓			
Czech Republic	✓	✓			
Denmark	✓	✓			
Estonia	✓	✓			
Finland	h)				✓h)
France	b)	b)			
Germany	✓	✓n)			
Greece	✓c)				
Hungary	✓i)	i)			i)
Ireland	✓l)	✓l)			
Italy	✓	✓			
Latvia	✓d)	✓d)			
Lithuania	✓	✓			
Luxembourg	✓	✓			
Malta					m)
Netherlands	✓	✓			
Poland	✓	✓			
Portugal	✓e)	✓e)			
Romania	✓	✓			
Slovenia	✓	✓			
Slovakia	✓	✓			

Spain	✓	✓				
Sweden	✓	✓				
UK	k)	k)				
Iceland	✓	✓				
Liechtenstein	✓					
Norway					✓f)	✓f)

Notes: ✓= mandatory requirement. For notes a) to n), see full table in section 4.1.1.

The most common method of implementing the traceability requirement is to require an indication of the name and contact details of the producer and the product reference, or where applicable the batch of products to which it belongs. This is true for Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and Iceland. These countries either follow the Directive verbatim or at least come to the same result. There are, however, some national differences in detail as to how the rules are applied. While other requirements do exist in some countries, this is clearly a minority. For example, several countries (including Norway and Austria) rely on very broad general obligations without detailing that there should be a product reference or mark. Barcodes have not been mandated in any country.

Considerable numbers of market surveillance authorities and stakeholders reported having encountered practical problems related to the requirements of Art 5(1) regarding traceability[250]. The problems identified related largely to the following issues: non-compliance with traceability requirements; problems with traceability information on packaging only; problems related to rogue traders; and difficulties related to lack of or incorrect supply chain records.

Lack of information to trace products and producers remains a practical problem for enforcement authorities and stakeholders and is a particular problem for certain categories of products and sales channels (including online sales and online marketplaces, but also – in some countries – low priced products from Asia, distributed on open-air markets). The analysis of RAPEX data confirms that certain product categories are over-represented regarding the lack of at least *two* of three key information items relevant for traceability (brand, type/number of product, batch number/barcode). These are laser pointers, lighters, jewellery, decorative articles and lighting chains, which are all not subject to sector-specific harmonisation rules[251]. In other words: alerts concerning these five products categories falling under the GPSD are more likely to lack relevant information items that are essential to trace notified products. However, some harmonised products such as toys are also over-represented regarding the lack of *one* specific information item (for details, see table in section 4.1.2). Other factors than the legal framework are likely to contribute to this picture. For example, the top listed products in terms of absence of specific information items are mostly low value products.

9.1.2. Definition of safety

The definition of safety in Art. 2(b) GPSD does not explicitly cover cyber-security risks and other safety issues related to new technologies. The country research therefore specifically inquired as to whether or not any specific definition of safety was used for the application of the national implementation legislation of the GPSD in the area of new technologies. In none of the countries was such a specific definition reported to exist. There was a general concern about a lack of clarity over the definition of safety

[250] 42% of market surveillance authorities and 22% of general stakeholders.

[251] Note that some lighting chains can fall under the scope of the LVD.

in the GPSD. However, whilst some felt the definition was too general, others felt it was too narrow. There was also uncertainty about how the GPSD applied to products taking advantage of new technology. Part of the uncertainty was as to whether the GPSD applied to software[252]. On the other hand, products were giving rise to new risks that often did not fall under the GSPD's definition of safety, but rather covered factors such as cyber-security, and privacy.

9.1.3. Functioning of market surveillance of consumer products

Market surveillance systems for consumer products in the countries subject to this study can be categorised by the degree to which market surveillance is conducted by MSAs with broader or narrower sectoral responsibility, and whether responsibility for market surveillance is (partly) delegated to or is the competence of sub-national administrations, in line with the administrative structure of the country. The following table shows the results of this analysis.

Figure 42: Organisation of market surveillance of consumer products in EU/EEA countries, according to sectoral distributions of responsibilities and involvement of sub-national administrations

	Responsibility for market surveillance is centralised (no sub-national administrations involved)	**Responsibility for market surveillance is (partly) delegated to or competence of sub-national administrations, in line with the administrative structure of the country**
One Market Surveillance Authority for all non-food products	Malta	-
A main Market Surveillance Authority for consumer products, complemented by a small number of other MSAs in specific sectors (e.g. telecommunications, chemicals)	Belgium[c)], Cyprus, Denmark, Estonia, Ireland, Netherlands, Finland, Iceland, Latvia, Luxembourg, Sweden	France[b)], Croatia, Greece, Lithuania, Poland[a)]
Several MSAs with sectoral responsibilities for consumer products	Bulgaria, Liechtenstein, Slovenia, Slovakia, Norway	Austria, Czech Republic, Germany, Hungary, Italy, Portugal, Romania, Spain, (UK)

Source: Civic Consulting. Notes: Considered are market surveillance authorities for harmonised and non-harmonised consumer products, not including medicinal products. Notes a) to c), see full table in section 5.1.

The table shows the large variation in the organisation of market surveillance for consumer products in EU/EEA countries. In a small market such as Malta, a single market surveillance authority can have responsibility for market surveillance of all non-food products (except medicinal products). In a second group of countries, a main market surveillance authority at national level has broad responsibilities for consumer products, and is complemented by a small number of other MSAs in specific sectors (e.g. telecommunications, chemicals). Some (often larger) countries that have a main market surveillance authority for consumer products also rely on sub-national administrations or regional networks for enforcement, in line with their overall administrative structure. Finally, there are countries where several MSAs have sectoral responsibilities, without an organisation having a general or broad competence for consumer products. While in several countries this organisational approach only involves MSAs at the national level, in other countries following this approach,

[252] Only from Austria it was reported that according to the Product Safety Act (PSA) "product" means "all moveables including energy". According to the explanatory remarks of the legislator, software is therefore part of a product.

responsibility for market surveillance is also (partly) delegated to or is the competence of sub-national administrations.

All Member States have to prepare National Surveillance Programmes in line with EU requirements[253]. These annual surveillance programmes are prepared either by the responsible national ministry (as in e.g. Cyprus, Estonia, France, Greece, Ireland, and Slovenia) or by a national Market Surveillance Authority (as in e.g. Lithuania, Malta, the Netherlands, Poland and Iceland)[254]. Several Member States indicated that the national surveillance programmes were prepared by the national ministry or authority in coordination with other sector-specific or regional MSAs (as in Cyprus, Latvia, Poland, Slovenia, Spain, and Iceland). In several countries there were market surveillance programmes in place at the regional or local level in addition to the national surveillance programmes.

In most countries, authorities conduct market surveillance regarding consumer products sold online (which was a specific focus of this study), at least regarding online sales where the trader is located within the same country. For some authorities, market surveillance activities regarding online sales even account for a large share of their inspections (in the case of a Danish authority more than 50% of the total number of inspections). In roughly half of the 31 countries subject to this study (16 countries), market surveillance authorities reported conducting market surveillance activities with respect to the safety of products containing new technologies (such as Internet of Things, connected devices). Only a minority of MSAs (from 12 countries) conduct mystery shopping regarding products sold online (i.e. purchasing products under a cover identity for subsequent testing), and an even smaller number of authorities do so frequently. Finally, a small number of authorities also conduct market surveillance regarding C2C products (products sold by consumers to consumers), including authorities from Denmark, Estonia, Italy and Iceland.

The goal of market surveillance is to ensure that businesses comply with their obligations in such a way that products placed on the market are safe. However, the analysis of trends related to product safety in the EU is hampered by the lack of reliable data. While the number of notifications in Safety Gate/RAPEX and related trends are important indicators, the interpretation of these figures is not straightforward, as an increase in the number of notifications may not only represent more products posing a safety risk, but also an increase in the number of inspections or other factors. Another potential indicator for product safety trends is the number of accidents/injuries related to consumer products. However, in the EU such data is not consistently available. MSAs and general stakeholders were therefore asked to assess at a qualitative level how the level of safety improved in their country since 2013 (the beginning of the reference period of this study). The largest group of respondents considered the trend to be positive, i.e. suggested that safety of consumer products improved over this period. Only a small minority saw a negative trend. Other respondents either saw no clear general trend or found that the trend depends on the product type or sales channel[255]. Stakeholders that considered the safety trend to depend on product type or sales channel mostly referred to sales from online platforms, products directly sold from non-EU/EEA countries and products with new technologies as being more problematic in terms of product safety.

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[253] Art 18 of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products.

[254] While National Surveillance Programmes mostly focus on harmonised products, they include an optional section on 'Other consumer products under GPSD'.

[255] About 42% of MSAs and 39% of general stakeholders considered the trend to be positive, i.e. suggested that safety of consumer products improved over this period. Only 1%/7% saw a negative trend. No clear general trend (level of safety largely unchanged) was indicated by 15%/20% respondents, and 16%/26% found that the trend depends on the product type or sales channel.

Clear majorities of MSAs and general stakeholders have encountered problems affecting the functioning of market surveillance in their country[256]. According to their assessment, two of the three top problems affecting the functioning of market surveillance relate to a lack of resources: Limited staff resources of market surveillance authorities in general, and more specifically, a lack of financial resources for product testing. Limited resources of MSAs have already been identified as a key concern in previous studies. The second most important cluster of problems for market surveillance identified by MSAs and general stakeholders concerns online markets, and in this context specifically B2C transactions with operators in non-EU/EEA countries in which products from those countries are delivered on an individual basis. These problems relate to issues of jurisdiction and practical difficulties in establishing the identity and the location of a trader in non-EU/EEA countries (see section 4 on traceability). Frequently mentioned in this context was the role of online marketplaces, which an EU business association called "the blind spot of market surveillance" in the EU. Both general stakeholders and MSAs agree that online sales remain the biggest challenge for market surveillance at this moment, also because it is not possible to check each package/shipment at the border.

Often, market surveillance authorities reasoned that limited human and financial resources combined with the absence of specific tools meant that they were in a weak position vis-à-vis new challenges related to e-commerce, the platform economy and new technologies. This concerned, for example, technical tools, such as IT tools for the screening of websites (e.g. webcrawlers) which aim to detect dangerous products sold online. Sometimes even basic infrastructure is missing[257]. Even where MSAs have basic tools, there is considered to be an urgent need for more advanced ones, and a lack of special knowledge and expertise in using new tools. In contrast, MSAs in a small group of countries indicated that sufficient tools were available or under development, including technologies like webcrawlers, web scraping and data miners[258].

The country research also confirms that the different institutional models for market surveillance at the national level (see above) are often characterised by a high degree of fragmentation of responsibilities. While this may sometimes be unavoidable to some degree (especially in large and federally-organised countries), many examples show how fragmentation and unclear distribution of responsibilities and other institutional issues (such as a lack of communication/coordination between authorities) can affect the effectiveness and efficiency of market surveillance. Stakeholders noted that institutional fragmentation may also lead to significant problems for the companies affected by market surveillance, as this may lead to different practical interpretation of legal requirements; diverging working methods; diverging levels of effectiveness; and as a result, a lack of a level playing field for companies. This reportedly affects both the producers of non-harmonised and harmonised consumer products.

Problems related to the legal framework for market surveillance either related to the overall framework or to the absence of specific legal tools. Problems experienced with respect to the overall framework concerned differences in the implementation of the GPSD across countries, the complexity of regulation in the different product sectors, the different legislative requirements for harmonised and non-harmonised products,

[256] 70% of MSAs and 57% general stakeholders report to have encountered problems affecting the functioning of market surveillance in their country.

[257] For example, an MSA reported to have very limited access to the Internet, and no access to Facebook or online platforms. In other countries, MSAs lack a credit card to conduct online purchases.

[258] For example, in Denmark and the Netherlands, more advanced technologies like webcrawlers, web scraping and data miners are already being used or being developed, including in the context of EU funded projects. Germany also reported the use of webcrawlers that search, for example, rating platforms for relevant combinations of words (such as a particular product and “fire”). This has already led to the detection of safety risks in products that would not have been on the agenda otherwise.

and a perceived legislative gap regarding online marketplaces and other new actors in the online environment. More specific problems related to the lack of coverage of C2C products in the current legal framework, and the absence of specific competences or enforcement powers of MSAs in certain countries, e.g. with respect to mystery shopping and the blocking of websites.

9.1.4. Functioning of RAPEX

RAPEX is the key channel for market surveillance authorities when communicating and cooperating with other relevant authorities in the EU/EEA. RAPEX not only allows market surveillance authorities to notify dangerous products rapidly, but also ensures that this information reaches the appropriate contact point in all EU/EEA countries. MSAs and general stakeholders to a large extent appreciate the functioning of RAPEX, and find the system to function well considering their needs. Still, certain issues currently impede its operation, such as delays between the detection of a dangerous product in a Member State and its notification to RAPEX. In most cases, this duration is two weeks or more. Several authorities emphasised that the duration between detection of a dangerous product and its notification to RAPEX depended on the type of product, the risk, the required testing and the behaviour of the economic operator (objections by the relevant economic operator is in some cases reported to lead to significant delays). Institutional factors also seem to be relevant, with some countries having notification procedures that are simpler and shorter than in other countries. Legal and liability aspects, as well as the specific circumstances of each case in which a potentially dangerous product is identified, appear to be additional key factors affecting the duration of the notification process.

Other impediments encountered by RAPEX users include the lack of sufficient information to trace notified products (which was one of the highest ranked problems, see above). Notifications published on the EU Safety Gate in its public version sometimes do not contain enough information to identify the products, and provide, for example, no information about the brand, manufacturer/importer/distributor, type/model, batch number, or sales channel (at least in the public version of the system)[259]. Also, pictures of products are sometimes missing or of poor quality. Stakeholders also suggested that the description of the hazards in the risk assessment was not always clear and lacked context, or that based on the information provided it was not always possible to fully understand the technical reasons which have led to the notification, or to assess the problem in detail.

9.1.5. Standardisation work under the GPSD

The GPSD requirement on producers to put "only safe products" on the market is often difficult to apply for businesses and national authorities because of the lack of a common benchmark on what constitutes a "safe" product. Therefore, the European Commission can make use of European Standards to make this general safety requirement more operational. Article 4 of the GPSD provides for a standardisation process which differs from the process for harmonised consumer products. Following the recognition of a need for a European Standard under the GPSD, the standardisation process consists of four steps, which are:

1. The Commission issues a Decision to set safety requirements to be met by the standard;

[259] The internal RAPEX system for Member States' authorities may contain contain additional data, e.g. with respect to risk assessment, test reports and traceability information, which are, however, not publicly accessible.

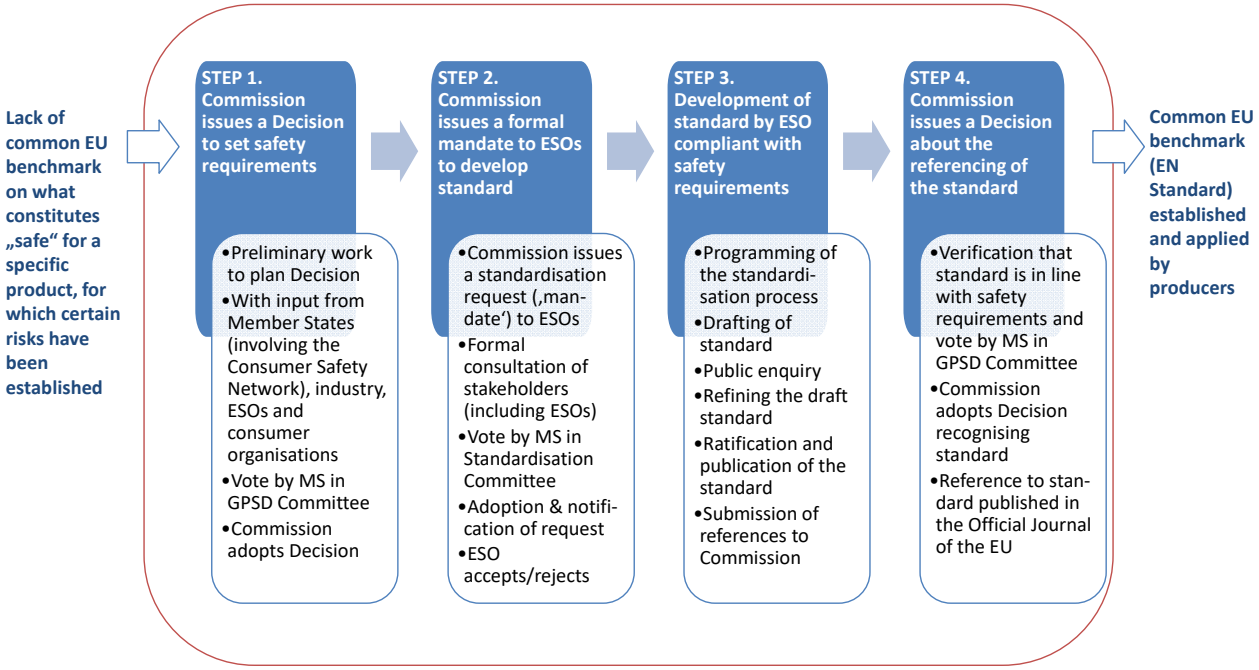
2. The Commission issues a formal mandate to European Standardisation Organisations (ESOs) to develop the standard;

3. The ESOs develop a standard compliant with safety requirements;

4. The Commission issues a Decision about the referencing of the standard in the OJ EU.

The following figure describes the process in more detail, also indicating the intended outcome of the process, namely a European Standard which serves as benchmark, and is intended to lead to a reduction of the identified risks to the minimum compatible with the product's use.

Figure 43. Steps of the standardisation process established under the GPSD



Source: Civic Consulting

Both market surveillance authorities and general stakeholders were asked to assess how well each of the above described four steps is functioning in their perspective, as well as the overall standardisation process. Market surveillance authorities, consumer organisations and standardisation bodies involved in the standardisation process under the GPSD assessed it on average considerably more positively than business stakeholders[260]. An exception is Step 3 – Development of the Standard by ESO –, where the assessment of general stakeholders was more positive than the assessment of MSAs.

The long duration of the standardisation process was the most commented-upon weakness. One of the factors contributing to this is that the GPSD brings into play a

[260] In our survey of market surveillance authorities and general stakeholders, respondents that have been involved in the standardisation process established under the GPSD were asked to assess how well each of the above described four steps is functioning, as well as the overall standardisation process. Respondents were given a scale from 1 (Not at all functioning), to 5 (Very well-functioning), with the midpoint of 3 indicating a moderately well-functioning standardisation process. The detailed results for the overall assessment of the standardisation process by stakeholder group are as follows: Consumer organisation/NGO (4.00), Standardisation body/organisation (3.67), MSAs (3.52), Organisation involved in product testing (e.g. test laboratory, 3.40), Business association (2.90), Company (2.82).

parallel EU committee regime. The GPSD Committee is involved in the front and back end of the process establishing the safety requirements in a Decision (Step 1) and ensuring the standard formulated complies with the Decision (Step 4). The Standardisation Committee is, however, the one responsible for taking the decision with respect to the standardisation request to ESOs (Step 2). This means that two separate EU committees are involved in the process, which inevitably increases its duration. In terms of delay, Step 3 came in for particular criticism. The procedure of elaborating a European Standard was considered to take too long. The elaboration of a standard by the European Standardisation Organisations is subject to a number of requirements, principles and commitments, such as the participation of all interested parties, and the application of the consensus principle, which aims at unanimous agreement on the draft standard. As a result, there is a considerable time period between the begin and end of the standardisation process under the GPSD, i.e. from the beginning of Step 1 (identification of a need to develop a standard) to the end of Step 4 (publication of the reference of the adopted standard in the Official Journal of the EU). During this period, there continues to be lack of criteria for assessing the safety of a product and a resulting uncertainty for economic operators and market surveillance authorities.

9.1.6. Jurisprudence on issues related to the GPSD

Recent case law with respect to or relevant for the GPSD or its national implementation legislation was only reported from about half of the EU/EEA countries, including Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, Spain and the United Kingdom. Product safety often involves administrative procedures that provide means to handle differences within their structures. Market surveillance authorities often work with economic operators to resolve problems and producers and distributors often have incentives to be co-operative. Also, enforcement is often carefully targeted towards clear cases posing serious risks. The incentives to challenge enforcement in court may therefore be limited. There were some instances of litigation that often involved mere application of the rules or challenges to their application. There is relatively little litigation about the concepts contained in the GPSD. As might be expected, there is some discussion of how to apply the general safety requirement of the GPSD. There is debate about which standards to apply and how to apply them, underlining the complexity of the relationship between standardisation and the regulation of safety in EU law. There is also discussion of whose protection product safety law is for and in particular the standing of competing producers. In practice, they may have more incentive than individual consumers to monitor safety. Several cases have been built concerning the use of enforcement powers. This includes cases concerning RAPEX notifications and the issuance of product-related warnings by authorities, which have not been held to be justiciable. There has also been discussion of how the GPSD interacts with other legislation, such as unfair commercial practices law. The national and EU case law is presented in detail in Section 8 of this report.

9.2. Potential improvements

Suggestions for improvements elaborated in previous sections of this report are summarised in the following sub-sections. The order in which potential improvements are presented does not imply any priority or assessment of feasibility by the authors. For more details, refer to the relevant sections of the report.

9.2.1. Mandatory traceability requirements

Improvements as regards traceability requirements could include requiring the name and contact details of the producer to be shown on the product or packaging and to indicate the product reference or the batch to which it belongs on the product or its

packaging. These two aspects are already mentioned as possible means of compliance in the Directive and are already found in the implementing legislation in many EU/EEA countries. The third most suggested amendment was for businesses to keep supply chain records. A similar requirement is applied since many years in the food safety area (Art. 18 of the General Food law, Regulation 178/2002, which requires food and feed business operators to identify their suppliers and other businesses that are their customers).

9.2.2. Increased responsibility of online marketplaces and related measures

Many MSAs and stakeholders suggested that stricter accountability rules should apply to online marketplaces. Although it may be hard to enforce EU traceability rules on non-EU producers directly, this might suggest that the requirement be extended to those who place the goods on the EU market. However, for EU law to be effective, there needs to be someone responsible based within the EU. Regulation (EU) 2019/1020 provides a solution in that it requires an economic operator established in the Union to be responsible for key tasks in relation to some categories of products. This might be a manufacturer, importer, authorised representative, or a fulfilment service provider. However, these provisions are limited to products subject to harmonisation legislation. It was therefore suggested by MSAs and some other stakeholders to extend the provisions of Regulation (EU) 2019/1020 to cover non-harmonised products, such as furniture, shoes, textiles, ladders and childcare articles. It is also possible to introduce stricter obligations regarding traceability on distributors[261].

9.2.3. Clarification of the definition of safety with respect to products containing new technologies

For the most part, the general safety requirement of the GPSD is drafted in terms that can be interpreted to apply to products using new technology. Any uncertainty might be addressed through guidance or legal clarifications. There are some issues though that might raise new concerns. Although the GPSD may impose ongoing obligations on producers to be aware of the risks their products pose, the risk of post-marketing defects arising is increased with new technology. Technological bugs are an inherent issue with software, and therefore obligations to monitor and fix them might be appropriate. AI devices might alter their operation as they "learn" from the environment. If a product becomes dangerous post-marketing, the market surveillance authorities should still have the power to take appropriate action with regard to the product. Consideration might be given to making the post-marketing obligations of economic operators more explicit, and to provide greater clarity to the definition of safety, including regarding the extent to which coverage of cyber security and data breaches are covered. These reflect serious consumer concerns; however, it is not clear that they all relate to the physical safety of consumers as protected by the GPSD. Security breaches can affect safety and guidance could make that clear.

9.2.4. Covering standalone software

The position of standalone software is uncertain with respect to the general safety requirement. Software may itself pose a danger to consumers (for instance through the advice it gives) or it may produce dangers as it interacts with other products (e.g. when a signal giving instructions is sent to another device). There is a general move

[261] For example, in the Czech Republic, the information and documentation requirements which focus on traceability are more detailed and require that the "seller" shall ensure that products are visibly and intelligibly marked, which includes also the designation of the producer, importer or supplier.

to apply similar rules to software as to products as seen in the Digital Content Directive.

9.2.5. Updated guidance on recalls

The GPSD provides Member States with the power to order product recalls, though preference is given to voluntary recalls. However, recalls are difficult procedures to implement and there can be uncertainty as to what is required. In some countries, such as the UK, there is recent guidance on how to conduct product recalls given in a code of practice. Such guidance is not available across the EU and there were calls for additional guidance to provide greater clarity on how recalls could be carried out (see section 5.5 above for a detailed discussion on recalls and the available guidance).

9.2.6. Improved resources for market surveillance

Proposed improvements regarding the lack of staff and financial resources of MSAs mostly revolve around the provision of more staff, more budget, more training, more powers, more spot checks and better controls in certain areas. Potential sources of funding that were suggested included EU funds/projects for market surveillance, but also the allocation of funds originating from sanctions imposed by MSAs. It was suggested that the European Commission needs to enforce Member States' obligations when it comes to market surveillance, including by developing comparable ways to measure the resources used in the Member States for this purpose, or by specifying the intensity of sampling. Other suggestions referred to the need for more risk-based and efficient market surveillance activities.

9.2.7. More centralised market surveillance

A large number of MSAs and stakeholders supported improvements concerning institutional problems related to market surveillance, such as fragmentation of responsibilities and lack of cooperation. In general, there was a tendency to suggest a more centralised organisation of market surveillance for consumer products. A better coordination between market surveillance authorities is needed with a clear role for the leading authority. It was also a common view that in federal states more competences should be at the federal level rather than at the regional/local level. It was also proposed to define an "umbrella" or "last resort" market surveillance authority in each country that is responsible for new areas which are not in the scope of other market surveillance authorities. The role of customs for improved product safety in the Single Market was highlighted frequently, and related suggestions referred to the joint setting of priorities with the neighbouring countries' customs to facilitate more efficient market surveillance; the presence of product safety officials at the border on a permanent basis; and the designation of customs as a market surveillance authority in its own right, to allow for a more pro-active role of customs.

9.2.8. Continued improvements of Safety Gate/RAPEX

In line with the function of the RAPEX system, published notifications should always provide the essential information needed to trace a dangerous product, to understand the risks involved and to allow MSAs and third parties to take targeted action (which was currently not considered to be the case). In line with the reported inconsistencies of risk assessments, additional efforts to harmonise and improve risk assessment approaches of MSAs could be made, building on the existing guidelines and tools. Technical improvements proposed by stakeholders and MSAs concerned a variety of areas, including search functions and the interoperability of RAPEX with IT tools used by or envisaged by MSAs (or retailers). Several MSAs suggested to allow automated access to RAPEX data, to enable them to use webcrawlers and other IT tools for checking websites. Similar techniques are used in other areas, such as datafeeds that

are provided by e-commerce sites to price comparison websites. If these RAPEX datafeeds were also available to third parties, this could facilitate automated checking of the inventories of retailers and online marketplaces. MSAs and stakeholders also made a large number of suggestions for procedural improvements related to the notification process, including: streamlining the process from identification of risk to notification to ensure more rapid action can be taken; providing better templates for improving the quality of notifications; and informing manufacturers/authorised representatives in the EU in case of an upcoming notification.

9.2.9. Streamlined standardisation process

Possible improvements for the standardisation process under the GPSD favoured by stakeholders and MSAs include the involvement of an independent consultant for the assessment of standards during Steps 3 and 4 of the process (elaboration of the standard by ESO and referencing). It was also suggested to make the standardisation process under the GPSD more efficient by reducing the time needed for the elaboration of the standard by ESO (Step 3), or by streamlining the other steps of the process, e.g. by reducing the number of Commission Decisions involved, and/or by taking other appropriate measures.

Annex I: Results of general stakeholder survey

Overview of results – all stakeholders

Statistics:

Study for the preparation of an Implementation Report of the General Product Safety Directive (GPSD)

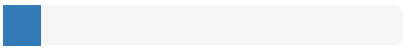
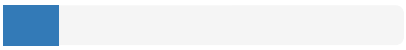
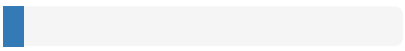
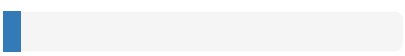
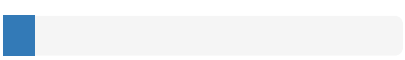
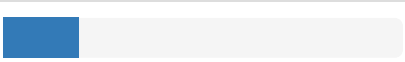
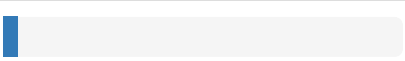
Survey of stakeholders

b. Type of organisation:

		Answers	Ratio
Business association		40	28.99 %
Company		51	36.96 %
Consumer organisation/NGO		19	13.77 %
Standardisation body/organisation		6	4.35 %
Organisation involved in product testing (e. g. test laboratory)		11	7.97 %
Independent product safety expert (consultant, academic etc.)		5	3.62 %
Other		6	4.35 %
No Answer		0	0 %

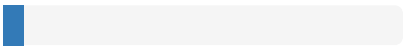
c. Please specify your country. In case of EU level associations, please indicate "EU".

		Answers	Ratio
Austria		2	1.45 %
Belgium		7	5.07 %
Bulgaria		0	0 %
Croatia		2	1.45 %
Cyprus		1	0.72 %
Czech Republic		1	0.72 %
Denmark		8	5.8 %

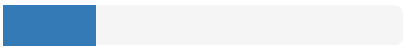
Estonia		0	0 %
Finland		2	1.45 %
France		13	9.42 %
Germany		19	13.77 %
Greece		7	5.07 %
Hungary		0	0 %
Ireland		1	0.72 %
Italy		2	1.45 %
Latvia		1	0.72 %
Lithuania		2	1.45 %
Luxembourg		2	1.45 %
Malta		3	2.17 %
Netherlands		6	4.35 %
Poland		2	1.45 %
Portugal		3	2.17 %
Romania		2	1.45 %
Slovak Republic		1	0.72 %
Slovenia		2	1.45 %
Spain		2	1.45 %
Sweden		3	2.17 %
United Kingdom		11	7.97 %
Iceland		1	0.72 %
Liechtenstein		0	0 %
Norway		0	0 %
EU		26	18.84 %
Other country		5	3.62 %

No Answer		1	0.72 %

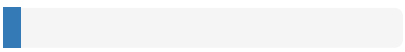
1. How regularly do you check the RAPEX/Safety Gate website?

		Answers	Ratio
More than once a week		7	5.07 %
Once a week		56	40.58 %
Once a month		27	19.57 %
Once every three months		11	7.97 %
Once every six months		2	1.45 %
Once a year		6	4.35 %
Less than once a year		5	3.62 %
Never		17	12.32 %
Don't know		3	2.17 %
No Answer		4	2.9 %

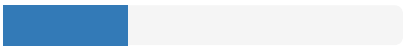
2. For what purposes do you use RAPEX/Safety Gate? Please mark all that apply

		Answers	Ratio
Check whether specific products/product categories are subject to notifications		97	70.29 %
Monitor the countries of origin of products subject to notifications		32	23.19 %
Monitor in which countries products subject to notifications were detected		39	28.26 %
Monitor if certain business operators have been subject to notifications		41	29.71 %
Monitor types of non-compliances and which safety legislation were applicable to the non-compliance		77	55.8 %
Monitor what types of hazards are notified		84	60.87 %
Monitor what types of measures were taken regarding notified products		61	44.2 %
Other (please specify in comments field below)		12	8.7 %
No Answer		22	15.94 %

3. In your view, how well is RAPEX/Safety Gate functioning, considering the needs of your organisation /your members?

		Answers	Ratio
Not at all functioning (1)		1	0.72 %
Rather not functioning (2)		11	7.97 %
Moderately well functioning (3)		34	24.64 %
Rather well functioning (4)		53	38.41 %
Very well functioning (5)		10	7.25 %
Don't know		6	4.35 %
No Answer		23	16.67 %

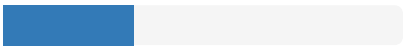
4. Have you encountered one or more of the following impediments when using the information from RAPEX/Safety Gate? Please mark all that apply

		Answers	Ratio
Difficulties with information on risk assessment		43	31.16 %
Technical issues with the RAPEX/Safety Gate system		8	5.8 %
Lack of sufficient information to trace notified products		47	34.06 %
Difficulties related to delays of notifications appearing in RAPEX/Safety Gate		23	16.67 %
Other impediments (please specify below)		25	18.12 %
No Answer		58	42.03 %

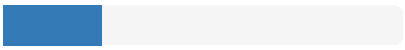
6. How frequently do you cooperate with market surveillance authorities in your country with respect to product safety? (other than in the context of corrective actions, such as recalls)

		Answers	Ratio
More than once a week		9	6.52 %
Once a week		6	4.35 %
Once a month		24	17.39 %
Once every three months		28	20.29 %
Once every six months		17	12.32 %
Once a year		10	7.25 %
Less than once a year		11	7.97 %
Never		15	10.87 %
Don't know		9	6.52 %
No Answer		9	6.52 %

6a. If you cooperate: How do you cooperate with market surveillance authorities with respect to product safety? Please mark all that apply

		Answers	Ratio
Cooperation to create awareness for product safety among businesses		45	32.61 %
Cooperation to create awareness for product safety among consumers		44	31.88 %
Partnership agreements with market surveillance authorities		21	15.22 %
Regular exchange of information with market surveillance authorities		54	39.13 %
Regular meetings with market surveillance authorities		43	31.16 %
Informal cooperation with market surveillance authorities		52	37.68 %
Inclusion in preparing national market surveillance plan/programme		14	10.14 %
Receiving advice from market surveillance authorities, where needed		56	40.58 %
Other cooperation method (please specify below)		19	13.77 %
No Answer		30	21.74 %

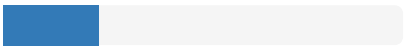
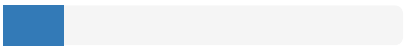
7. How do you cooperate with market surveillance authorities regarding a specific recall? Please mark all that apply

		Answers	Ratio
Cooperate regarding the messages given to consumers (information flow, contact sharing)		34	24.64 %
Cooperate regarding the recall strategy		30	21.74 %
Cooperate regarding the recall process		31	22.46 %
Other area of cooperation (please specify)		15	10.87 %
We do not cooperate with market surveillance authorities regarding a specific recall		31	22.46 %
No Answer		57	41.3 %

8. With regard to recalls, which of the following statements describes best your (members) practices? Please mark all that apply

		Answers	Ratio
We operate a Product Registration Scheme for consumers that can be used for safety alerts		13	9.42 %
We use loyalty programmes to reach out to consumers in case of product recalls		18	13.04 %
We use incentives (monetary, other) for consumers to return recalled products		13	9.42 %
We monitor the effectiveness of product recalls (for example percentage of recalled consumer products actually collected)		39	28.26 %
No Answer		91	65.94 %

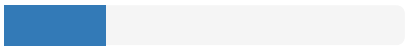
9. In case of a recall of a consumer product, which type of information do you provide to the responsible market surveillance authority? Please mark all information that you provide

		Answers	Ratio
Information activities targeted at consumers		33	23.91 %
Information activities targeted at /cooperation with other businesses involved in the supply chain (e.g. distributors, online marketplaces)		38	27.54 %
List of other businesses involved in the supply chain (e.g. distributors, online marketplaces)		21	15.22 %
Timeline of the recall process		28	20.29 %
Recall effectiveness (i.e. percentage of recalled consumer products actually collected)		18	13.04 %
Destruction/disposal of products collected		22	15.94 %
Other information (please specify)		15	10.87 %
We do not provide any information		18	13.04 %
No Answer		69	50 %

10. In your view, how effective are product recalls in your country?

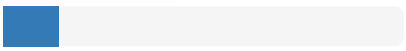
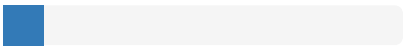
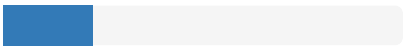
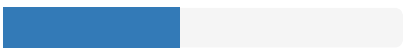
		Answers	Ratio
Not at all effective (1)		2	1.45 %
Rather not effective (2)		16	11.59 %
Moderately effective (3)		36	26.09 %
Rather effective (4)		29	21.01 %
Very effective (5)		9	6.52 %
Don't know		35	25.36 %
No Answer		11	7.97 %

12. Have you encountered problems affecting the functioning of market surveillance in your country?

		Answers	Ratio
Yes		78	56.52 %
No		35	25.36 %
Don't know		21	15.22 %
No Answer		4	2.9 %

12a. If YES in Question 12: Please mark up to five most relevant problems you have encountered

		Answers	Ratio
Limited staff resources of market surveillance authorities		55	39.86 %
Lack of expertise of market surveillance authorities in new technologies		18	13.04 %
Lack of expertise of market surveillance authorities in online market surveillance		32	23.19 %
Lack of expertise of market surveillance authorities for testing of consumer products		19	13.77 %
Lack of financial resources of market surveillance authorities for testing of consumer products		37	26.81 %
Unclear distribution of competences for market surveillance at the national level		23	16.67 %
Lack of coordination of market surveillance authorities at the national level		30	21.74 %
Lack of coordination of market surveillance authorities with customs authorities		10	7.25 %
Lack of cooperation between market surveillance authorities from different Member States (e.g. differences in the risk assessment)		25	18.12 %
Ineffective control of product safety at the borders		19	13.77 %

Lack of suitable product testing laboratories		10	7.25 %
Lack of statistics/data to set priorities for market surveillance		21	15.22 %
Lack of awareness of businesses with respect to product safety requirements		19	13.77 %
Lack of cooperation of businesses /business organisations with market surveillance authorities		14	10.14 %
Lack of cooperation of consumer organisations with market surveillance authorities		8	5.8 %
Lack of awareness of consumers with respect to product safety		26	18.84 %
Lack of cooperation of online actors with market surveillance authorities		31	22.46 %
Problems for market surveillance authorities to take effective action when the responsible economic operator is in another EU/EEA country		15	10.87 %
Problem for market surveillance authorities to take effective action when the responsible economic operator is outside the EU/EEA		33	23.91 %
Problem to control products from third countries directly reaching consumers		43	31.16 %
Other problem (please specify below)		3	2.17 %
No Answer		61	44.2 %

13. In your view, would there be any possible area to make market surveillance of consumer products in your country/the EU more effective?

		Answers	Ratio
Yes		90	65.22 %
No		13	9.42 %
Don't know		29	21.01 %
No Answer		6	4.35 %

14. Have you encountered any practical problems with respect to the requirements of Art 5(1) GPSD regarding traceability in your country (as applied in your national implementation legislation of the GPSD)?

		Answers	Ratio
Yes		31	22.46 %
No		68	49.28 %
Don't know		32	23.19 %
No Answer		7	5.07 %

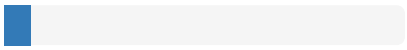
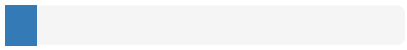
15. In your view, what would be the best approach(es) to improve traceability of consumer products? Please mark all that apply

		Answers	Ratio
Requirement for all consumer products (harmonised and non-harmonised) to indicate name and contact details of the producer on the product or its packaging		75	54.35 %
Requirement for all consumer products (harmonised and non-harmonised) to indicate product reference or, where applicable, the batch of products to which it belongs on the product or its packaging		65	47.1 %
Requirement for business operators to keep supply chain records ('one up one down' traceability)		43	31.16 %
Requirement to use a barcode on the product or its packaging		29	21.01 %
Requirement to use other machine readable identification on the product or its packaging (e.g. RFID - radio frequency identification)		27	19.57 %
Other requirement (please specify below)		25	18.12 %
No Answer		21	15.22 %

16. Have you experienced practical problems with the definition of safety in the GPSD (Art 2(b))?

		Answers	Ratio
Yes		34	24.64 %
No		86	62.32 %
Don't know		15	10.87 %
No Answer		3	2.17 %

16a. If YES in Question 16: In your view, and in light of your experiences, which problems exist with respect to the definition of safety in the GPSD? Please mark all that apply

		Answers	Ratio
Definition too narrow/too specific		9	6.52 %
Definition too wide/too general		9	6.52 %
Lack of clarity of the definition		18	13.04 %
Definition does not explicitly cover environmental risks		11	7.97 %
Definition does not explicitly cover cyber-security risks		11	7.97 %
Definition does not explicitly cover safety risks for persons with disabilities		8	5.8 %
Definition does not explicitly cover safety risks due to the child-appealing character of products		8	5.8 %
Definition does not explicitly cover other risks (please specify below)		3	2.17 %
Other problems (please specify below)		9	6.52 %
No Answer		105	76.09 %

17. Are there any emerging safety issues with particular categories of consumer products in your country that are not addressed by current safety legislation?

		Answers	Ratio
Yes		37	26.81 %
No		55	39.86 %
Don't know		43	31.16 %
No Answer		3	2.17 %

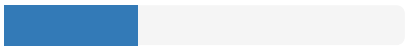
17a. If YES in Question 17: Please indicate for which of the following categories of non-harmonised consumer products you have identified emerging safety issues? Please mark all that apply

		Answers	Ratio
Childcare articles		16	11.59 %
Jewellery		11	7.97 %
Bicycles (non-electric)		4	2.9 %
Furniture		8	5.8 %
Button batteries		8	5.8 %
Electrical appliances and equipment outside the scope of the Low Voltage Directive		19	13.77 %
Other non-harmonised consumer products (please specify below)		14	10.14 %
No Answer		106	76.81 %

17b. If YES in Question 17: Please indicate for which of the following categories of harmonised consumer products you have identified emerging safety issues? Please mark all that apply

		Answers	Ratio
Toys		22	15.94 %
Cosmetics		10	7.25 %
Electrical appliances and equipment under the Low Voltage Directive		20	14.49 %
Other harmonised consumer products (please specify below)		4	2.9 %
No Answer		108	78.26 %

19. Have you been involved in the standardisation process established under the GPSD (see Article 4 GPSD)?

		Answers	Ratio
Yes		46	33.33 %
No		78	56.52 %
Don't know		9	6.52 %
No Answer		5	3.62 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 1. Preparation of Commission Decision to set safety requirements

		Answers	Ratio
Not at all functioning (1)		3	2.17 %
Rather not functioning (2)		10	7.25 %
Moderately well functioning (3)		10	7.25 %
Rather well functioning (4)		9	6.52 %
Very well functioning (5)		3	2.17 %
Don't know		10	7.25 %
No Answer		93	67.39 %

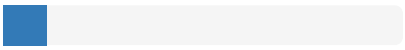
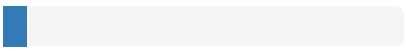
19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 2. Commission issues a formal mandate /standardisation request to European Standardisation Organisations to develop standar

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		12	8.7 %
Moderately well functioning (3)		13	9.42 %
Rather well functioning (4)		13	9.42 %
Very well functioning (5)		2	1.45 %
Don't know		5	3.62 %
No Answer		93	67.39 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 3. Development of standard by European Standardisation Organisations compliant with safety requirements

		Answers	Ratio
Not at all functioning (1)		1	0.72 %
Rather not functioning (2)		3	2.17 %
Moderately well functioning (3)		10	7.25 %
Rather well functioning (4)		22	15.94 %
Very well functioning (5)		8	5.8 %
Don't know		1	0.72 %
No Answer		93	67.39 %

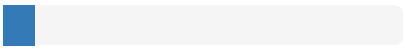
19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 4. Preparation of Commission Decision referencing standard

		Answers	Ratio
Not at all functioning (1)		2	1.45 %
Rather not functioning (2)		15	10.87 %
Moderately well functioning (3)		11	7.97 %
Rather well functioning (4)		8	5.8 %
Very well functioning (5)		2	1.45 %
Don't know		7	5.07 %
No Answer		93	67.39 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : ***Conclusion: Overall process of the standardisation process under the GPSD***

		Answers	Ratio
Not at all functioning (1)		1	0.72 %
Rather not functioning (2)		7	5.07 %
Moderately well functioning (3)		16	11.59 %
Rather well functioning (4)		9	6.52 %
Very well functioning (5)		1	0.72 %
Don't know		4	2.9 %
No Answer		100	72.46 %

19b. If you consider the process to not function well or to have certain weaknesses: What are the reasons? Mark all that apply

		Answers	Ratio
Lack of common priorities concerning which products need standardisation		11	7.97 %
Long duration of standardisation process		22	15.94 %
Complicated procedures compared to standardisation process for harmonised products (i.e. those under the 'New Legislative Framework')		7	5.07 %
Too narrow range of stakeholders involved		7	5.07 %
No independent safety consultant involved		15	10.87 %
Burden in terms of staff time on national authorities involved in GPSD committee /CSN		10	7.25 %
Lack of criteria for assessing the safety of a product in the period until the standard under GPSD is referenced in the EU Official Journal		14	10.14 %
Difficulty to obtain the text of the standard		1	0.72 %
Other reasons (please specify below)		16	11.59 %
No Answer		97	70.29 %

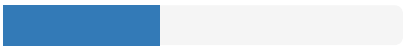
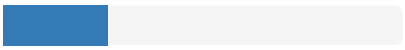
19c. Please assess the impact of the standardisation process under the GPSD on your organisation in terms of resources used (e.g. staff time etc)? (Please only answer if your organisation is involved in the process)

		Answers	Ratio
No impact at all (1)		2	1.45 %
Rather no impact (2)		7	5.07 %
Moderate impact (3)		9	6.52 %
Rather significant impact (4)		12	8.7 %
Very significant impact (5)		11	7.97 %
Don't know		3	2.17 %
No Answer		94	68.12 %

20. In your view, what would be possible improvements of the standardisation process under the GPSD? Please mark all that apply

		Answers	Ratio
Reducing the number of steps in the standardisation process under the GPSD		32	23.19 %
Streamlining standardisation process under the GPSD otherwise (please specify below)		14	10.14 %
Greater involvement of consumers organisations/NGOs in the process		29	21.01 %
Greater involvement of other stakeholders in the process (please specify below)		28	20.29 %
Involvement of an independent safety consultant in the process		33	23.91 %
Other improvement (please specify below)		19	13.77 %
No need to improve standardisation process under the GPSD		14	10.14 %
No Answer		32	23.19 %

21. In your view, how has the level of safety of consumer products developed in your country since 2013?

		Answers	Ratio
General trend is positive (safety improved)		54	39.13 %
No clear general trend (level of safety largely unchanged)		27	19.57 %
General trend is negative (safety deteriorated)		10	7.25 %
Trend depends on product type or sales channel		36	26.09 %
Don't know		8	5.8 %
No Answer		3	2.17 %

22. Do you think that market surveillance authorities have the tools at their disposal to address new challenges in your country (e.g. related to e-commerce, C2C sales, platform economy, new technologies etc)?

		Answers	Ratio
Yes		26	18.84 %
No		76	55.07 %
Don't know		33	23.91 %
No Answer		3	2.17 %

23. Do you consider certain market surveillance approaches in your country to be best practice implementation of the GPSD, which could be of interest to other countries?

		Answers	Ratio
Yes		20	14.49 %
No		20	14.49 %
Don't know		94	68.12 %
No Answer		4	2.9 %

Results – business organisations and companies only

Statistics:

Study for the preparation of an Implementation Report of the General Product Safety Directive (GPSD)

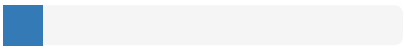
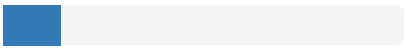
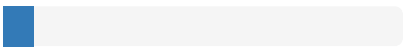
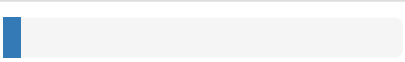
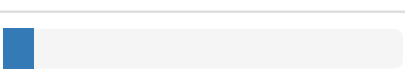
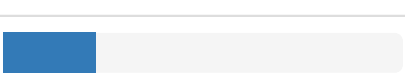
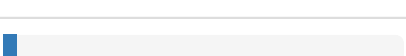
Survey of stakeholders

b. Type of organisation:

		Answers	Ratio
Business association		40	43.96 %
Company		51	56.04 %
Consumer organisation/NGO		0	0 %
Standardisation body/organisation		0	0 %
Organisation involved in product testing (e. g. test laboratory)		0	0 %
Independent product safety expert (consultant, academic etc.)		0	0 %
Other		0	0 %
No Answer		0	0 %

c. Please specify your country. In case of EU level associations, please indicate "EU".

		Answers	Ratio
Austria		2	2.2 %
Belgium		4	4.4 %
Bulgaria		0	0 %
Croatia		0	0 %
Cyprus		1	1.1 %
Czech Republic		0	0 %
Denmark		6	6.59 %

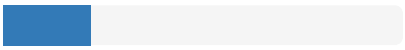
Estonia		0	0 %
Finland		2	2.2 %
France		9	9.89 %
Germany		13	14.29 %
Greece		7	7.69 %
Hungary		0	0 %
Ireland		1	1.1 %
Italy		2	2.2 %
Latvia		1	1.1 %
Lithuania		1	1.1 %
Luxembourg		1	1.1 %
Malta		0	0 %
Netherlands		4	4.4 %
Poland		1	1.1 %
Portugal		2	2.2 %
Romania		0	0 %
Slovak Republic		0	0 %
Slovenia		0	0 %
Spain		1	1.1 %
Sweden		2	2.2 %
United Kingdom		7	7.69 %
Iceland		0	0 %
Liechtenstein		0	0 %
Norway		0	0 %
EU		21	23.08 %
Other country		3	3.3 %

No Answer		0	0 %

1. How regularly do you check the RAPEX/Safety Gate website?

		Answers	Ratio
More than once a week		1	1.1 %
Once a week		47	51.65 %
Once a month		14	15.38 %
Once every three months		8	8.79 %
Once every six months		1	1.1 %
Once a year		5	5.49 %
Less than once a year		3	3.3 %
Never		10	10.99 %
Don't know		1	1.1 %
No Answer		1	1.1 %

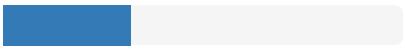
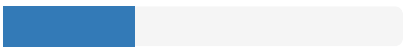
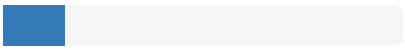
2. For what purposes do you use RAPEX/Safety Gate? Please mark all that apply

		Answers	Ratio
Check whether specific products/product categories are subject to notifications		70	76.92 %
Monitor the countries of origin of products subject to notifications		20	21.98 %
Monitor in which countries products subject to notifications were detected		25	27.47 %
Monitor if certain business operators have been subject to notifications		30	32.97 %
Monitor types of non-compliances and which safety legislation were applicable to the non-compliance		52	57.14 %
Monitor what types of hazards are notified		56	61.54 %
Monitor what types of measures were taken regarding notified products		36	39.56 %
Other (please specify in comments field below)		7	7.69 %
No Answer		11	12.09 %

3. In your view, how well is RAPEX/Safety Gate functioning, considering the needs of your organisation /your members?

		Answers	Ratio
Not at all functioning (1)		1	1.1 %
Rather not functioning (2)		9	9.89 %
Moderately well functioning (3)		26	28.57 %
Rather well functioning (4)		36	39.56 %
Very well functioning (5)		5	5.49 %
Don't know		2	2.2 %
No Answer		12	13.19 %

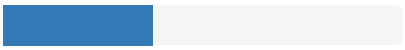
4. Have you encountered one or more of the following impediments when using the information from RAPEX/Safety Gate? Please mark all that apply

		Answers	Ratio
Difficulties with information on risk assessment		29	31.87 %
Technical issues with the RAPEX/Safety Gate system		4	4.4 %
Lack of sufficient information to trace notified products		30	32.97 %
Difficulties related to delays of notifications appearing in RAPEX/Safety Gate		14	15.38 %
Other impediments (please specify below)		14	15.38 %
No Answer		38	41.76 %

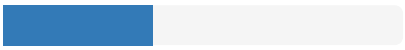
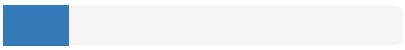
6. How frequently do you cooperate with market surveillance authorities in your country with respect to product safety? (other than in the context of corrective actions, such as recalls)

		Answers	Ratio
More than once a week		2	2.2 %
Once a week		2	2.2 %
Once a month		15	16.48 %
Once every three months		21	23.08 %
Once every six months		16	17.58 %
Once a year		9	9.89 %
Less than once a year		9	9.89 %
Never		9	9.89 %
Don't know		5	5.49 %
No Answer		3	3.3 %

6a. If you cooperate: How do you cooperate with market surveillance authorities with respect to product safety? Please mark all that apply

		Answers	Ratio
Cooperation to create awareness for product safety among businesses		34	37.36 %
Cooperation to create awareness for product safety among consumers		29	31.87 %
Partnership agreements with market surveillance authorities		9	9.89 %
Regular exchange of information with market surveillance authorities		39	42.86 %
Regular meetings with market surveillance authorities		28	30.77 %
Informal cooperation with market surveillance authorities		35	38.46 %
Inclusion in preparing national market surveillance plan/programme		5	5.49 %
Receiving advice from market surveillance authorities, where needed		41	45.05 %
Other cooperation method (please specify below)		13	14.29 %
No Answer		16	17.58 %

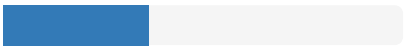
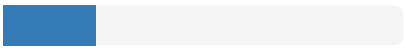
7. How do you cooperate with market surveillance authorities regarding a specific recall? Please mark all that apply

		Answers	Ratio
Cooperate regarding the messages given to consumers (information flow, contact sharing)		34	37.36 %
Cooperate regarding the recall strategy		30	32.97 %
Cooperate regarding the recall process		31	34.07 %
Other area of cooperation (please specify)		15	16.48 %
We do not cooperate with market surveillance authorities regarding a specific recall		31	34.07 %
No Answer		10	10.99 %

8. With regard to recalls, which of the following statements describes best your (members) practices? Please mark all that apply

		Answers	Ratio
We operate a Product Registration Scheme for consumers that can be used for safety alerts		13	14.29 %
We use loyalty programmes to reach out to consumers in case of product recalls		18	19.78 %
We use incentives (monetary, other) for consumers to return recalled products		13	14.29 %
We monitor the effectiveness of product recalls (for example percentage of recalled consumer products actually collected)		39	42.86 %
No Answer		44	48.35 %

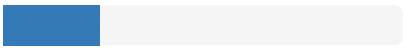
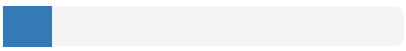
9. In case of a recall of a consumer product, which type of information do you provide to the responsible market surveillance authority? Please mark all information that you provide

		Answers	Ratio
Information activities targeted at consumers		33	36.26 %
Information activities targeted at /cooperation with other businesses involved in the supply chain (e.g. distributors, online marketplaces)		38	41.76 %
List of other businesses involved in the supply chain (e.g. distributors, online marketplaces)		21	23.08 %
Timeline of the recall process		28	30.77 %
Recall effectiveness (i.e. percentage of recalled consumer products actually collected)		18	19.78 %
Destruction/disposal of products collected		22	24.18 %
Other information (please specify)		15	16.48 %
We do not provide any information		18	19.78 %
No Answer		22	24.18 %

10. In your view, how effective are product recalls in your country?

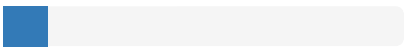
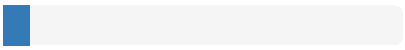
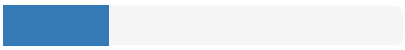
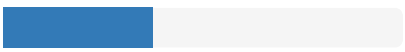
		Answers	Ratio
Not at all effective (1)		1	1.1 %
Rather not effective (2)		6	6.59 %
Moderately effective (3)		21	23.08 %
Rather effective (4)		25	27.47 %
Very effective (5)		5	5.49 %
Don't know		25	27.47 %
No Answer		8	8.79 %

12. Have you encountered problems affecting the functioning of market surveillance in your country?

		Answers	Ratio
Yes		57	62.64 %
No		22	24.18 %
Don't know		11	12.09 %
No Answer		1	1.1 %

12a. If YES in Question 12: Please mark up to five most relevant problems you have encountered

		Answers	Ratio
Limited staff resources of market surveillance authorities		37	40.66 %
Lack of expertise of market surveillance authorities in new technologies		9	9.89 %
Lack of expertise of market surveillance authorities in online market surveillance		22	24.18 %
Lack of expertise of market surveillance authorities for testing of consumer products		14	15.38 %
Lack of financial resources of market surveillance authorities for testing of consumer products		24	26.37 %
Unclear distribution of competences for market surveillance at the national level		20	21.98 %
Lack of coordination of market surveillance authorities at the national level		25	27.47 %
Lack of coordination of market surveillance authorities with customs authorities		8	8.79 %
Lack of cooperation between market surveillance authorities from different Member States (e.g. differences in the risk assessment)		21	23.08 %
Ineffective control of product safety at the borders		11	12.09 %

Lack of suitable product testing laboratories		4	4.4 %
Lack of statistics/data to set priorities for market surveillance		12	13.19 %
Lack of awareness of businesses with respect to product safety requirements		10	10.99 %
Lack of cooperation of businesses /business organisations with market surveillance authorities		6	6.59 %
Lack of cooperation of consumer organisations with market surveillance authorities		3	3.3 %
Lack of awareness of consumers with respect to product safety		15	16.48 %
Lack of cooperation of online actors with market surveillance authorities		24	26.37 %
Problems for market surveillance authorities to take effective action when the responsible economic operator is in another EU/EEA country		8	8.79 %
Problem for market surveillance authorities to take effective action when the responsible economic operator is outside the EU/EEA		25	27.47 %
Problem to control products from third countries directly reaching consumers		31	34.07 %
Other problem (please specify below)		3	3.3 %
No Answer		34	37.36 %

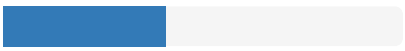
13. In your view, would there be any possible area to make market surveillance of consumer products in your country/the EU more effective?

		Answers	Ratio
Yes		58	63.74 %
No		10	10.99 %
Don't know		20	21.98 %
No Answer		3	3.3 %

14. Have you encountered any practical problems with respect to the requirements of Art 5(1) GPSD regarding traceability in your country (as applied in your national implementation legislation of the GPSD)?

		Answers	Ratio
Yes		18	19.78 %
No		54	59.34 %
Don't know		16	17.58 %
No Answer		3	3.3 %

15. In your view, what would be the best approach(es) to improve traceability of consumer products? Please mark all that apply

		Answers	Ratio
Requirement for all consumer products (harmonised and non-harmonised) to indicate name and contact details of the producer on the product or its packaging		42	46.15 %
Requirement for all consumer products (harmonised and non-harmonised) to indicate product reference or, where applicable, the batch of products to which it belongs on the product or its packaging		37	40.66 %
Requirement for business operators to keep supply chain records ('one up one down' traceability)		25	27.47 %
Requirement to use a barcode on the product or its packaging		17	18.68 %
Requirement to use other machine readable identification on the product or its packaging (e.g. RFID - radio frequency identification)		13	14.29 %
Other requirement (please specify below)		20	21.98 %
No Answer		15	16.48 %

16. Have you experienced practical problems with the definition of safety in the GPSD (Art 2(b))?

		Answers	Ratio
Yes		19	20.88 %
No		64	70.33 %
Don't know		6	6.59 %
No Answer		2	2.2 %

16a. If YES in Question 16: In your view, and in light of your experiences, which problems exist with respect to the definition of safety in the GPSD? Please mark all that apply

		Answers	Ratio
Definition too narrow/too specific		0	0 %
Definition too wide/too general		7	7.69 %
Lack of clarity of the definition		8	8.79 %
Definition does not explicitly cover environmental risks		3	3.3 %
Definition does not explicitly cover cyber-security risks		0	0 %
Definition does not explicitly cover safety risks for persons with disabilities		1	1.1 %
Definition does not explicitly cover safety risks due to the child-appealing character of products		0	0 %
Definition does not explicitly cover other risks (please specify below)		1	1.1 %
Other problems (please specify below)		3	3.3 %
No Answer		73	80.22 %

17. Are there any emerging safety issues with particular categories of consumer products in your country that are not addressed by current safety legislation?

		Answers	Ratio
Yes		13	14.29 %
No		50	54.95 %
Don't know		26	28.57 %
No Answer		2	2.2 %

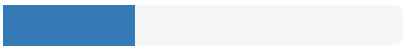
17a. If YES in Question 17: Please indicate for which of the following categories of non-harmonised consumer products you have identified emerging safety issues? Please mark all that apply

		Answers	Ratio
Childcare articles		4	4.4 %
Jewellery		4	4.4 %
Bicycles (non-electric)		2	2.2 %
Furniture		3	3.3 %
Button batteries		3	3.3 %
Electrical appliances and equipment outside the scope of the Low Voltage Directive		4	4.4 %
Other non-harmonised consumer products (please specify below)		4	4.4 %
No Answer		81	89.01 %

17b. If YES in Question 17: Please indicate for which of the following categories of harmonised consumer products you have identified emerging safety issues? Please mark all that apply

		Answers	Ratio
Toys		5	5.49 %
Cosmetics		3	3.3 %
Electrical appliances and equipment under the Low Voltage Directive		6	6.59 %
Other harmonised consumer products (please specify below)		2	2.2 %
No Answer		82	90.11 %

19. Have you been involved in the standardisation process established under the GPSD (see Article 4 GPSD)?

		Answers	Ratio
Yes		30	32.97 %
No		54	59.34 %
Don't know		3	3.3 %
No Answer		4	4.4 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 1. Preparation of Commission Decision to set safety requirements

		Answers	Ratio
Not at all functioning (1)		1	1.1 %
Rather not functioning (2)		10	10.99 %
Moderately well functioning (3)		7	7.69 %
Rather well functioning (4)		2	2.2 %
Very well functioning (5)		2	2.2 %
Don't know		7	7.69 %
No Answer		62	68.13 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 2. Commission issues a formal mandate /standardisation request to European Standardisation Organisations to develop standar

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		10	10.99 %
Moderately well functioning (3)		7	7.69 %
Rather well functioning (4)		8	8.79 %
Very well functioning (5)		2	2.2 %
Don't know		2	2.2 %
No Answer		62	68.13 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 3. Development of standard by European Standardisation Organisations compliant with safety requirements

		Answers	Ratio
Not at all functioning (1)		1	1.1 %
Rather not functioning (2)		2	2.2 %
Moderately well functioning (3)		5	5.49 %
Rather well functioning (4)		15	16.48 %
Very well functioning (5)		6	6.59 %
Don't know		0	0 %
No Answer		62	68.13 %

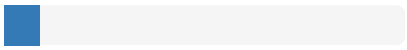
19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 4. Preparation of Commission Decision referencing standard

		Answers	Ratio
Not at all functioning (1)		1	1.1 %
Rather not functioning (2)		13	14.29 %
Moderately well functioning (3)		6	6.59 %
Rather well functioning (4)		3	3.3 %
Very well functioning (5)		1	1.1 %
Don't know		5	5.49 %
No Answer		62	68.13 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : ***Conclusion: Overall process of the standardisation process under the GPSD***

		Answers	Ratio
Not at all functioning (1)		1	1.1 %
Rather not functioning (2)		5	5.49 %
Moderately well functioning (3)		12	13.19 %
Rather well functioning (4)		2	2.2 %
Very well functioning (5)		1	1.1 %
Don't know		4	4.4 %
No Answer		66	72.53 %

19b. If you consider the process to not function well or to have certain weaknesses: What are the reasons? Mark all that apply

		Answers	Ratio
Lack of common priorities concerning which products need standardisation		8	8.79 %
Long duration of standardisation process		17	18.68 %
Complicated procedures compared to standardisation process for harmonised products (i.e. those under the 'New Legislative Framework')		4	4.4 %
Too narrow range of stakeholders involved		4	4.4 %
No independent safety consultant involved		6	6.59 %
Burden in terms of staff time on national authorities involved in GPSD committee /CSN		7	7.69 %
Lack of criteria for assessing the safety of a product in the period until the standard under GPSD is referenced in the EU Official Journal		6	6.59 %
Difficulty to obtain the text of the standard		0	0 %
Other reasons (please specify below)		10	10.99 %
No Answer		66	72.53 %

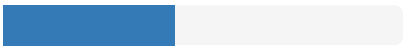
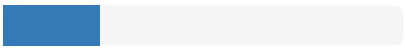
19c. Please assess the impact of the standardisation process under the GPSD on your organisation in terms of resources used (e.g. staff time etc)? (Please only answer if your organisation is involved in the process)

		Answers	Ratio
No impact at all (1)		1	1.1 %
Rather no impact (2)		6	6.59 %
Moderate impact (3)		7	7.69 %
Rather significant impact (4)		6	6.59 %
Very significant impact (5)		5	5.49 %
Don't know		3	3.3 %
No Answer		63	69.23 %

20. In your view, what would be possible improvements of the standardisation process under the GPSD? Please mark all that apply

		Answers	Ratio
Reducing the number of steps in the standardisation process under the GPSD		22	24.18 %
Streamlining standardisation process under the GPSD otherwise (please specify below)		8	8.79 %
Greater involvement of consumers organisations/NGOs in the process		11	12.09 %
Greater involvement of other stakeholders in the process (please specify below)		16	17.58 %
Involvement of an independent safety consultant in the process		17	18.68 %
Other improvement (please specify below)		14	15.38 %
No need to improve standardisation process under the GPSD		12	13.19 %
No Answer		24	26.37 %

21. In your view, how has the level of safety of consumer products developed in your country since 2013?

		Answers	Ratio
General trend is positive (safety improved)		39	42.86 %
No clear general trend (level of safety largely unchanged)		19	20.88 %
General trend is negative (safety deteriorated)		5	5.49 %
Trend depends on product type or sales channel		22	24.18 %
Don't know		4	4.4 %
No Answer		2	2.2 %

22. Do you think that market surveillance authorities have the tools at their disposal to address new challenges in your country (e.g. related to e-commerce, C2C sales, platform economy, new technologies etc)?

		Answers	Ratio
Yes		20	21.98 %
No		51	56.04 %
Don't know		18	19.78 %
No Answer		2	2.2 %

23. Do you consider certain market surveillance approaches in your country to be best practice implementation of the GPSD, which could be of interest to other countries?

		Answers	Ratio
Yes		12	13.19 %
No		14	15.38 %
Don't know		62	68.13 %
No Answer		3	3.3 %

Results – consumer organisations/NGOs only

Statistics:

Study for the preparation of an Implementation Report of the General Product Safety Directive (GPSD)

Survey of stakeholders

b. Type of organisation:

		Answers	Ratio
Business association		0	0 %
Company		0	0 %
Consumer organisation/NGO		19	76 %
Standardisation body/organisation		0	0 %
Organisation involved in product testing (e. g. test laboratory)		0	0 %
Independent product safety expert (consultant, academic etc.)		0	0 %
Other		6	24 %
No Answer		0	0 %

c. Please specify your country. In case of EU level associations, please indicate "EU".

		Answers	Ratio
Austria		0	0 %
Belgium		1	4 %
Bulgaria		0	0 %
Croatia		1	4 %
Cyprus		0	0 %
Czech Republic		0	0 %
Denmark		1	4 %

Estonia	0	0 %
Finland	0	0 %
France	4	16 %
Germany	2	8 %
Greece	0	0 %
Hungary	0	0 %
Ireland	0	0 %
Italy	0	0 %
Latvia	0	0 %
Lithuania	0	0 %
Luxembourg	1	4 %
Malta	2	8 %
Netherlands	1	4 %
Poland	0	0 %
Portugal	1	4 %
Romania	1	4 %
Slovak Republic	1	4 %
Slovenia	1	4 %
Spain	0	0 %
Sweden	1	4 %
United Kingdom	2	8 %
Iceland	1	4 %
Liechtenstein	0	0 %
Norway	0	0 %
EU	3	12 %
Other country	1	4 %

No Answer		0	0 %

1. How regularly do you check the RAPEX/Safety Gate website?

		Answers	Ratio
More than once a week		5	20 %
Once a week		6	24 %
Once a month		6	24 %
Once every three months		1	4 %
Once every six months		1	4 %
Once a year		0	0 %
Less than once a year		1	4 %
Never		3	12 %
Don't know		2	8 %
No Answer		0	0 %

2. For what purposes do you use RAPEX/Safety Gate? Please mark all that apply

		Answers	Ratio
Check whether specific products/product categories are subject to notifications		17	68 %
Monitor the countries of origin of products subject to notifications		10	40 %
Monitor in which countries products subject to notifications were detected		10	40 %
Monitor if certain business operators have been subject to notifications		8	32 %
Monitor types of non-compliances and which safety legislation were applicable to the non-compliance		14	56 %
Monitor what types of hazards are notified		15	60 %
Monitor what types of measures were taken regarding notified products		15	60 %
Other (please specify in comments field below)		4	16 %
No Answer		4	16 %

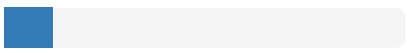
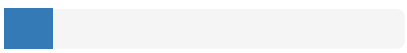
3. In your view, how well is RAPEX/Safety Gate functioning, considering the needs of your organisation /your members?

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		0	0 %
Moderately well functioning (3)		7	28 %
Rather well functioning (4)		9	36 %
Very well functioning (5)		3	12 %
Don't know		2	8 %
No Answer		4	16 %

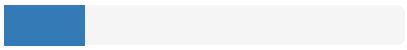
4. Have you encountered one or more of the following impediments when using the information from RAPEX/Safety Gate? Please mark all that apply

		Answers	Ratio
Difficulties with information on risk assessment		11	44 %
Technical issues with the RAPEX/Safety Gate system		1	4 %
Lack of sufficient information to trace notified products		12	48 %
Difficulties related to delays of notifications appearing in RAPEX/Safety Gate		8	32 %
Other impediments (please specify below)		7	28 %
No Answer		8	32 %

6. How frequently do you cooperate with market surveillance authorities in your country with respect to product safety? (other than in the context of corrective actions, such as recalls)

		Answers	Ratio
More than once a week		4	16 %
Once a week		1	4 %
Once a month		6	24 %
Once every three months		3	12 %
Once every six months		1	4 %
Once a year		0	0 %
Less than once a year		1	4 %
Never		3	12 %
Don't know		3	12 %
No Answer		3	12 %

6a. If you cooperate: How do you cooperate with market surveillance authorities with respect to product safety? Please mark all that apply

		Answers	Ratio
Cooperation to create awareness for product safety among businesses		5	20 %
Cooperation to create awareness for product safety among consumers		12	48 %
Partnership agreements with market surveillance authorities		10	40 %
Regular exchange of information with market surveillance authorities		10	40 %
Regular meetings with market surveillance authorities		12	48 %
Informal cooperation with market surveillance authorities		11	44 %
Inclusion in preparing national market surveillance plan/programme		6	24 %
Receiving advice from market surveillance authorities, where needed		9	36 %
Other cooperation method (please specify below)		1	4 %
No Answer		7	28 %

7. How do you cooperate with market surveillance authorities regarding a specific recall? Please mark all that apply

		Answers	Ratio
Cooperate regarding the messages given to consumers (information flow, contact sharing)		0	0 %
Cooperate regarding the recall strategy		0	0 %
Cooperate regarding the recall process		0	0 %
Other area of cooperation (please specify)		0	0 %
We do not cooperate with market surveillance authorities regarding a specific recall		0	0 %
No Answer		25	100 %

8. With regard to recalls, which of the following statements describes best your (members) practices? Please mark all that apply

		Answers	Ratio
We operate a Product Registration Scheme for consumers that can be used for safety alerts		0	0 %
We use loyalty programmes to reach out to consumers in case of product recalls		0	0 %
We use incentives (monetary, other) for consumers to return recalled products		0	0 %
We monitor the effectiveness of product recalls (for example percentage of recalled consumer products actually collected)		0	0 %
No Answer		25	100 %

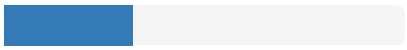
9. In case of a recall of a consumer product, which type of information do you provide to the responsible market surveillance authority? Please mark all information that you provide

		Answers	Ratio
Information activities targeted at consumers		0	0 %
Information activities targeted at /cooperation with other businesses involved in the supply chain (e.g. distributors, online marketplaces)		0	0 %
List of other businesses involved in the supply chain (e.g. distributors, online marketplaces)		0	0 %
Timeline of the recall process		0	0 %
Recall effectiveness (i.e. percentage of recalled consumer products actually collected)		0	0 %
Destruction/disposal of products collected		0	0 %
Other information (please specify)		0	0 %
We do not provide any information		0	0 %
No Answer		25	100 %

10. In your view, how effective are product recalls in your country?

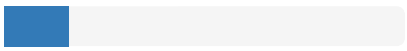
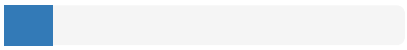
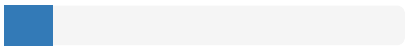
		Answers	Ratio
Not at all effective (1)		1	4 %
Rather not effective (2)		7	28 %
Moderately effective (3)		9	36 %
Rather effective (4)		3	12 %
Very effective (5)		2	8 %
Don't know		3	12 %
No Answer		0	0 %

12. Have you encountered problems affecting the functioning of market surveillance in your country?

		Answers	Ratio
Yes		12	48 %
No		8	32 %
Don't know		5	20 %
No Answer		0	0 %

12a. If YES in Question 12: Please mark up to five most relevant problems you have encountered

		Answers	Ratio
Limited staff resources of market surveillance authorities		11	44 %
Lack of expertise of market surveillance authorities in new technologies		7	28 %
Lack of expertise of market surveillance authorities in online market surveillance		6	24 %
Lack of expertise of market surveillance authorities for testing of consumer products		3	12 %
Lack of financial resources of market surveillance authorities for testing of consumer products		7	28 %
Unclear distribution of competences for market surveillance at the national level		3	12 %
Lack of coordination of market surveillance authorities at the national level		4	16 %
Lack of coordination of market surveillance authorities with customs authorities		2	8 %
Lack of cooperation between market surveillance authorities from different Member States (e.g. differences in the risk assessment)		2	8 %
Ineffective control of product safety at the borders		4	16 %

Lack of suitable product testing laboratories		4	16 %
Lack of statistics/data to set priorities for market surveillance		5	20 %
Lack of awareness of businesses with respect to product safety requirements		4	16 %
Lack of cooperation of businesses /business organisations with market surveillance authorities		3	12 %
Lack of cooperation of consumer organisations with market surveillance authorities		3	12 %
Lack of awareness of consumers with respect to product safety		4	16 %
Lack of cooperation of online actors with market surveillance authorities		3	12 %
Problems for market surveillance authorities to take effective action when the responsible economic operator is in another EU/EEA country		3	12 %
Problem for market surveillance authorities to take effective action when the responsible economic operator is outside the EU/EEA		5	20 %
Problem to control products from third countries directly reaching consumers		7	28 %
Other problem (please specify below)		0	0 %
No Answer		14	56 %

13. In your view, would there be any possible area to make market surveillance of consumer products in your country/the EU more effective?

		Answers	Ratio
Yes		20	80 %
No		2	8 %
Don't know		3	12 %
No Answer		0	0 %

14. Have you encountered any practical problems with respect to the requirements of Art 5(1) GPSD regarding traceability in your country (as applied in your national implementation legislation of the GPSD)?

		Answers	Ratio
Yes		6	24 %
No		9	36 %
Don't know		10	40 %
No Answer		0	0 %

15. In your view, what would be the best approach(es) to improve traceability of consumer products? Please mark all that apply

		Answers	Ratio
Requirement for all consumer products (harmonised and non-harmonised) to indicate name and contact details of the producer on the product or its packaging		18	72 %
Requirement for all consumer products (harmonised and non-harmonised) to indicate product reference or, where applicable, the batch of products to which it belongs on the product or its packaging		15	60 %
Requirement for business operators to keep supply chain records ('one up one down' traceability)		8	32 %
Requirement to use a barcode on the product or its packaging		9	36 %
Requirement to use other machine readable identification on the product or its packaging (e.g. RFID - radio frequency identification)		13	52 %
Other requirement (please specify below)		3	12 %
No Answer		1	4 %

16. Have you experienced practical problems with the definition of safety in the GPSD (Art 2(b))?

		Answers	Ratio
Yes		9	36 %
No		10	40 %
Don't know		6	24 %
No Answer		0	0 %

16a. If YES in Question 16: In your view, and in light of your experiences, which problems exist with respect to the definition of safety in the GPSD? Please mark all that apply

		Answers	Ratio
Definition too narrow/too specific		8	32 %
Definition too wide/too general		0	0 %
Lack of clarity of the definition		9	36 %
Definition does not explicitly cover environmental risks		8	32 %
Definition does not explicitly cover cyber-security risks		8	32 %
Definition does not explicitly cover safety risks for persons with disabilities		7	28 %
Definition does not explicitly cover safety risks due to the child-appealing character of products		8	32 %
Definition does not explicitly cover other risks (please specify below)		1	4 %
Other problems (please specify below)		5	20 %
No Answer		16	64 %

17. Are there any emerging safety issues with particular categories of consumer products in your country that are not addressed by current safety legislation?

		Answers	Ratio
Yes		16	64 %
No		3	12 %
Don't know		6	24 %
No Answer		0	0 %

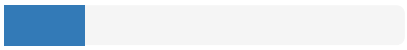
17a. If YES in Question 17: Please indicate for which of the following categories of non-harmonised consumer products you have identified emerging safety issues? Please mark all that apply

		Answers	Ratio
Childcare articles		11	44 %
Jewellery		7	28 %
Bicycles (non-electric)		2	8 %
Furniture		3	12 %
Button batteries		4	16 %
Electrical appliances and equipment outside the scope of the Low Voltage Directive		10	40 %
Other non-harmonised consumer products (please specify below)		7	28 %
No Answer		10	40 %

17b. If YES in Question 17: Please indicate for which of the following categories of harmonised consumer products you have identified emerging safety issues? Please mark all that apply

		Answers	Ratio
Toys		12	48 %
Cosmetics		7	28 %
Electrical appliances and equipment under the Low Voltage Directive		10	40 %
Other harmonised consumer products (please specify below)		1	4 %
No Answer		10	40 %

19. Have you been involved in the standardisation process established under the GPSD (see Article 4 GPSD)?

		Answers	Ratio
Yes		5	20 %
No		14	56 %
Don't know		5	20 %
No Answer		1	4 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 1. Preparation of Commission Decision to set safety requirements

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		0	0 %
Moderately well functioning (3)		2	8 %
Rather well functioning (4)		2	8 %
Very well functioning (5)		0	0 %
Don't know		1	4 %
No Answer		20	80 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 2. Commission issues a formal mandate /standardisation request to European Standardisation Organisations to develop standar

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		1	4 %
Moderately well functioning (3)		1	4 %
Rather well functioning (4)		3	12 %
Very well functioning (5)		0	0 %
Don't know		0	0 %
No Answer		20	80 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 3. Development of standard by European Standardisation Organisations compliant with safety requirements

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		1	4 %
Moderately well functioning (3)		1	4 %
Rather well functioning (4)		3	12 %
Very well functioning (5)		0	0 %
Don't know		0	0 %
No Answer		20	80 %

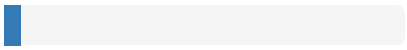
19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 4. Preparation of Commission Decision referencing standard

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		1	4 %
Moderately well functioning (3)		1	4 %
Rather well functioning (4)		3	12 %
Very well functioning (5)		0	0 %
Don't know		0	0 %
No Answer		20	80 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : ***Conclusion: Overall process of the standardisation process under the GPSD***

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		1	4 %
Moderately well functioning (3)		0	0 %
Rather well functioning (4)		3	12 %
Very well functioning (5)		0	0 %
Don't know		0	0 %
No Answer		21	84 %

19b. If you consider the process to not function well or to have certain weaknesses: What are the reasons? Mark all that apply

		Answers	Ratio
Lack of common priorities concerning which products need standardisation		1	4 %
Long duration of standardisation process		2	8 %
Complicated procedures compared to standardisation process for harmonised products (i.e. those under the 'New Legislative Framework')		0	0 %
Too narrow range of stakeholders involved		1	4 %
No independent safety consultant involved		3	12 %
Burden in terms of staff time on national authorities involved in GPSD committee /CSN		0	0 %
Lack of criteria for assessing the safety of a product in the period until the standard under GPSD is referenced in the EU Official Journal		3	12 %
Difficulty to obtain the text of the standard		1	4 %
Other reasons (please specify below)		3	12 %
No Answer		20	80 %

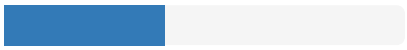
19c. Please assess the impact of the standardisation process under the GPSD on your organisation in terms of resources used (e.g. staff time etc)? (Please only answer if your organisation is involved in the process)

		Answers	Ratio
No impact at all (1)		0	0 %
Rather no impact (2)		0	0 %
Moderate impact (3)		1	4 %
Rather significant impact (4)		3	12 %
Very significant impact (5)		1	4 %
Don't know		0	0 %
No Answer		20	80 %

20. In your view, what would be possible improvements of the standardisation process under the GPSD? Please mark all that apply

		Answers	Ratio
Reducing the number of steps in the standardisation process under the GPSD		4	16 %
Streamlining standardisation process under the GPSD otherwise (please specify below)		1	4 %
Greater involvement of consumers organisations/NGOs in the process		13	52 %
Greater involvement of other stakeholders in the process (please specify below)		9	36 %
Involvement of an independent safety consultant in the process		10	40 %
Other improvement (please specify below)		1	4 %
No need to improve standardisation process under the GPSD		1	4 %
No Answer		6	24 %

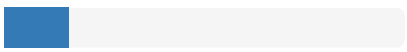
21. In your view, how has the level of safety of consumer products developed in your country since 2013?

		Answers	Ratio
General trend is positive (safety improved)		10	40 %
No clear general trend (level of safety largely unchanged)		2	8 %
General trend is negative (safety deteriorated)		5	20 %
Trend depends on product type or sales channel		7	28 %
Don't know		1	4 %
No Answer		0	0 %

22. Do you think that market surveillance authorities have the tools at their disposal to address new challenges in your country (e.g. related to e-commerce, C2C sales, platform economy, new technologies etc)?

		Answers	Ratio
Yes		3	12 %
No		14	56 %
Don't know		8	32 %
No Answer		0	0 %

23. Do you consider certain market surveillance approaches in your country to be best practice implementation of the GPSD, which could be of interest to other countries?

		Answers	Ratio
Yes		4	16 %
No		2	8 %
Don't know		19	76 %
No Answer		0	0 %

Results – other stakeholders only (standardisation bodies, testing laboratories, product safety experts etc)

Statistics:

Study for the preparation of an Implementation Report of the General Product Safety Directive (GPSD)

Survey of stakeholders

b. Type of organisation:

		Answers	Ratio
Business association		0	0 %
Company		0	0 %
Consumer organisation/NGO		0	0 %
Standardisation body/organisation		6	27.27 %
Organisation involved in product testing (e. g. test laboratory)		11	50 %
Independent product safety expert (consultant, academic etc.)		5	22.73 %
Other		0	0 %
No Answer		0	0 %

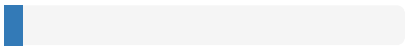
c. Please specify your country. In case of EU level associations, please indicate "EU".

		Answers	Ratio
Austria		0	0 %
Belgium		2	9.09 %
Bulgaria		0	0 %
Croatia		1	4.55 %
Cyprus		0	0 %
Czech Republic		1	4.55 %
Denmark		1	4.55 %

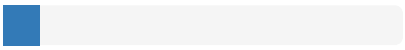
Estonia	0	0 %
Finland	0	0 %
France	0	0 %
Germany	4	18.18 %
Greece	0	0 %
Hungary	0	0 %
Ireland	0	0 %
Italy	0	0 %
Latvia	0	0 %
Lithuania	1	4.55 %
Luxembourg	0	0 %
Malta	1	4.55 %
Netherlands	1	4.55 %
Poland	1	4.55 %
Portugal	0	0 %
Romania	1	4.55 %
Slovak Republic	0	0 %
Slovenia	1	4.55 %
Spain	1	4.55 %
Sweden	0	0 %
United Kingdom	2	9.09 %
Iceland	0	0 %
Liechtenstein	0	0 %
Norway	0	0 %
EU	2	9.09 %
Other country	1	4.55 %

No Answer		1	4.55 %

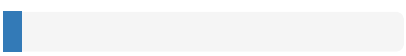
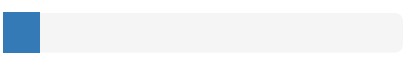
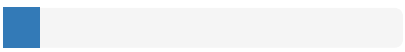
1. How regularly do you check the RAPEX/Safety Gate website?

		Answers	Ratio
More than once a week		1	4.55 %
Once a week		3	13.64 %
Once a month		7	31.82 %
Once every three months		2	9.09 %
Once every six months		0	0 %
Once a year		1	4.55 %
Less than once a year		1	4.55 %
Never		4	18.18 %
Don't know		0	0 %
No Answer		3	13.64 %

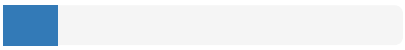
2. For what purposes do you use RAPEX/Safety Gate? Please mark all that apply

		Answers	Ratio
Check whether specific products/product categories are subject to notifications		10	45.45 %
Monitor the countries of origin of products subject to notifications		2	9.09 %
Monitor in which countries products subject to notifications were detected		4	18.18 %
Monitor if certain business operators have been subject to notifications		3	13.64 %
Monitor types of non-compliances and which safety legislation were applicable to the non-compliance		11	50 %
Monitor what types of hazards are notified		13	59.09 %
Monitor what types of measures were taken regarding notified products		10	45.45 %
Other (please specify in comments field below)		1	4.55 %
No Answer		7	31.82 %

3. In your view, how well is RAPEX/Safety Gate functioning, considering the needs of your organisation /your members?

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		2	9.09 %
Moderately well functioning (3)		1	4.55 %
Rather well functioning (4)		8	36.36 %
Very well functioning (5)		2	9.09 %
Don't know		2	9.09 %
No Answer		7	31.82 %

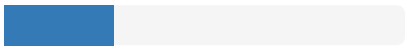
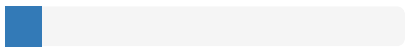
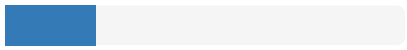
4. Have you encountered one or more of the following impediments when using the information from RAPEX/Safety Gate? Please mark all that apply

		Answers	Ratio
Difficulties with information on risk assessment		3	13.64 %
Technical issues with the RAPEX/Safety Gate system		3	13.64 %
Lack of sufficient information to trace notified products		5	22.73 %
Difficulties related to delays of notifications appearing in RAPEX/Safety Gate		1	4.55 %
Other impediments (please specify below)		4	18.18 %
No Answer		12	54.55 %

6. How frequently do you cooperate with market surveillance authorities in your country with respect to product safety? (other than in the context of corrective actions, such as recalls)

		Answers	Ratio
More than once a week		3	13.64 %
Once a week		3	13.64 %
Once a month		3	13.64 %
Once every three months		4	18.18 %
Once every six months		0	0 %
Once a year		1	4.55 %
Less than once a year		1	4.55 %
Never		3	13.64 %
Don't know		1	4.55 %
No Answer		3	13.64 %

6a. If you cooperate: How do you cooperate with market surveillance authorities with respect to product safety? Please mark all that apply

		Answers	Ratio
Cooperation to create awareness for product safety among businesses		6	27.27 %
Cooperation to create awareness for product safety among consumers		3	13.64 %
Partnership agreements with market surveillance authorities		2	9.09 %
Regular exchange of information with market surveillance authorities		5	22.73 %
Regular meetings with market surveillance authorities		3	13.64 %
Informal cooperation with market surveillance authorities		6	27.27 %
Inclusion in preparing national market surveillance plan/programme		3	13.64 %
Receiving advice from market surveillance authorities, where needed		6	27.27 %
Other cooperation method (please specify below)		5	22.73 %
No Answer		7	31.82 %

7. How do you cooperate with market surveillance authorities regarding a specific recall? Please mark all that apply

		Answers	Ratio
Cooperate regarding the messages given to consumers (information flow, contact sharing)		0	0 %
Cooperate regarding the recall strategy		0	0 %
Cooperate regarding the recall process		0	0 %
Other area of cooperation (please specify)		0	0 %
We do not cooperate with market surveillance authorities regarding a specific recall		0	0 %
No Answer		22	100 %

8. With regard to recalls, which of the following statements describes best your (members) practices? Please mark all that apply

		Answers	Ratio
We operate a Product Registration Scheme for consumers that can be used for safety alerts		0	0 %
We use loyalty programmes to reach out to consumers in case of product recalls		0	0 %
We use incentives (monetary, other) for consumers to return recalled products		0	0 %
We monitor the effectiveness of product recalls (for example percentage of recalled consumer products actually collected)		0	0 %
No Answer		22	100 %

9. In case of a recall of a consumer product, which type of information do you provide to the responsible market surveillance authority? Please mark all information that you provide

		Answers	Ratio
Information activities targeted at consumers		0	0 %
Information activities targeted at /cooperation with other businesses involved in the supply chain (e.g. distributors, online marketplaces)		0	0 %
List of other businesses involved in the supply chain (e.g. distributors, online marketplaces)		0	0 %
Timeline of the recall process		0	0 %
Recall effectiveness (i.e. percentage of recalled consumer products actually collected)		0	0 %
Destruction/disposal of products collected		0	0 %
Other information (please specify)		0	0 %
We do not provide any information		0	0 %
No Answer		22	100 %

10. In your view, how effective are product recalls in your country?

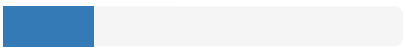
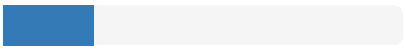
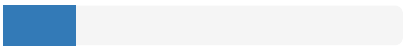
		Answers	Ratio
Not at all effective (1)		0	0 %
Rather not effective (2)		3	13.64 %
Moderately effective (3)		6	27.27 %
Rather effective (4)		1	4.55 %
Very effective (5)		2	9.09 %
Don't know		7	31.82 %
No Answer		3	13.64 %

12. Have you encountered problems affecting the functioning of market surveillance in your country?

		Answers	Ratio
Yes		9	40.91 %
No		5	22.73 %
Don't know		5	22.73 %
No Answer		3	13.64 %

12a. If YES in Question 12: Please mark up to five most relevant problems you have encountered

		Answers	Ratio
Limited staff resources of market surveillance authorities		7	31.82 %
Lack of expertise of market surveillance authorities in new technologies		2	9.09 %
Lack of expertise of market surveillance authorities in online market surveillance		4	18.18 %
Lack of expertise of market surveillance authorities for testing of consumer products		2	9.09 %
Lack of financial resources of market surveillance authorities for testing of consumer products		6	27.27 %
Unclear distribution of competences for market surveillance at the national level		0	0 %
Lack of coordination of market surveillance authorities at the national level		1	4.55 %
Lack of coordination of market surveillance authorities with customs authorities		0	0 %
Lack of cooperation between market surveillance authorities from different Member States (e.g. differences in the risk assessment)		2	9.09 %
Ineffective control of product safety at the borders		4	18.18 %

Lack of suitable product testing laboratories		2	9.09 %
Lack of statistics/data to set priorities for market surveillance		4	18.18 %
Lack of awareness of businesses with respect to product safety requirements		5	22.73 %
Lack of cooperation of businesses /business organisations with market surveillance authorities		5	22.73 %
Lack of cooperation of consumer organisations with market surveillance authorities		2	9.09 %
Lack of awareness of consumers with respect to product safety		7	31.82 %
Lack of cooperation of online actors with market surveillance authorities		4	18.18 %
Problems for market surveillance authorities to take effective action when the responsible economic operator is in another EU/EEA country		4	18.18 %
Problem for market surveillance authorities to take effective action when the responsible economic operator is outside the EU/EEA		3	13.64 %
Problem to control products from third countries directly reaching consumers		5	22.73 %
Other problem (please specify below)		0	0 %
No Answer		13	59.09 %

13. In your view, would there be any possible area to make market surveillance of consumer products in your country/the EU more effective?

		Answers	Ratio
Yes		12	54.55 %
No		1	4.55 %
Don't know		6	27.27 %
No Answer		3	13.64 %

14. Have you encountered any practical problems with respect to the requirements of Art 5(1) GPSD regarding traceability in your country (as applied in your national implementation legislation of the GPSD)?

		Answers	Ratio
Yes		7	31.82 %
No		5	22.73 %
Don't know		6	27.27 %
No Answer		4	18.18 %

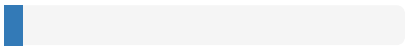
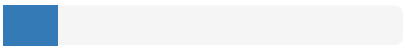
15. In your view, what would be the best approach(es) to improve traceability of consumer products? Please mark all that apply

		Answers	Ratio
Requirement for all consumer products (harmonised and non-harmonised) to indicate name and contact details of the producer on the product or its packaging		15	68.18 %
Requirement for all consumer products (harmonised and non-harmonised) to indicate product reference or, where applicable, the batch of products to which it belongs on the product or its packaging		13	59.09 %
Requirement for business operators to keep supply chain records ('one up one down' traceability)		10	45.45 %
Requirement to use a barcode on the product or its packaging		3	13.64 %
Requirement to use other machine readable identification on the product or its packaging (e.g. RFID - radio frequency identification)		1	4.55 %
Other requirement (please specify below)		2	9.09 %
No Answer		5	22.73 %

16. Have you experienced practical problems with the definition of safety in the GPSD (Art 2(b))?

		Answers	Ratio
Yes		6	27.27 %
No		12	54.55 %
Don't know		3	13.64 %
No Answer		1	4.55 %

16a. If YES in Question 16: In your view, and in light of your experiences, which problems exist with respect to the definition of safety in the GPSD? Please mark all that apply

		Answers	Ratio
Definition too narrow/too specific		1	4.55 %
Definition too wide/too general		2	9.09 %
Lack of clarity of the definition		1	4.55 %
Definition does not explicitly cover environmental risks		0	0 %
Definition does not explicitly cover cyber-security risks		3	13.64 %
Definition does not explicitly cover safety risks for persons with disabilities		0	0 %
Definition does not explicitly cover safety risks due to the child-appealing character of products		0	0 %
Definition does not explicitly cover other risks (please specify below)		1	4.55 %
Other problems (please specify below)		1	4.55 %
No Answer		16	72.73 %

17. Are there any emerging safety issues with particular categories of consumer products in your country that are not addressed by current safety legislation?

		Answers	Ratio
Yes		8	36.36 %
No		2	9.09 %
Don't know		11	50 %
No Answer		1	4.55 %

17a. If YES in Question 17: Please indicate for which of the following categories of non-harmonised consumer products you have identified emerging safety issues? Please mark all that apply

		Answers	Ratio
Childcare articles		1	4.55 %
Jewellery		0	0 %
Bicycles (non-electric)		0	0 %
Furniture		2	9.09 %
Button batteries		1	4.55 %
Electrical appliances and equipment outside the scope of the Low Voltage Directive		5	22.73 %
Other non-harmonised consumer products (please specify below)		3	13.64 %
No Answer		15	68.18 %

17b. If YES in Question 17: Please indicate for which of the following categories of harmonised consumer products you have identified emerging safety issues? Please mark all that apply

		Answers	Ratio
Toys		5	22.73 %
Cosmetics		0	0 %
Electrical appliances and equipment under the Low Voltage Directive		4	18.18 %
Other harmonised consumer products (please specify below)		1	4.55 %
No Answer		16	72.73 %

19. Have you been involved in the standardisation process established under the GPSD (see Article 4 GPSD)?

		Answers	Ratio
Yes		11	50 %
No		10	45.45 %
Don't know		1	4.55 %
No Answer		0	0 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 1. Preparation of Commission Decision to set safety requirements

		Answers	Ratio
Not at all functioning (1)		2	9.09 %
Rather not functioning (2)		0	0 %
Moderately well functioning (3)		1	4.55 %
Rather well functioning (4)		5	22.73 %
Very well functioning (5)		1	4.55 %
Don't know		2	9.09 %
No Answer		11	50 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 2. Commission issues a formal mandate /standardisation request to European Standardisation Organisations to develop standar

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		1	4.55 %
Moderately well functioning (3)		5	22.73 %
Rather well functioning (4)		2	9.09 %
Very well functioning (5)		0	0 %
Don't know		3	13.64 %
No Answer		11	50 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 3. Development of standard by European Standardisation Organisations compliant with safety requirements

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		0	0 %
Moderately well functioning (3)		4	18.18 %
Rather well functioning (4)		4	18.18 %
Very well functioning (5)		2	9.09 %
Don't know		1	4.55 %
No Answer		11	50 %

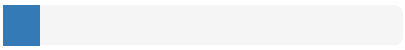
19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : STEP 4. Preparation of Commission Decision referencing standard

		Answers	Ratio
Not at all functioning (1)		1	4.55 %
Rather not functioning (2)		1	4.55 %
Moderately well functioning (3)		4	18.18 %
Rather well functioning (4)		2	9.09 %
Very well functioning (5)		1	4.55 %
Don't know		2	9.09 %
No Answer		11	50 %

19a. In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process : ***Conclusion: Overall process of the standardisation process under the GPSD***

		Answers	Ratio
Not at all functioning (1)		0	0 %
Rather not functioning (2)		1	4.55 %
Moderately well functioning (3)		4	18.18 %
Rather well functioning (4)		4	18.18 %
Very well functioning (5)		0	0 %
Don't know		0	0 %
No Answer		13	59.09 %

19b. If you consider the process to not function well or to have certain weaknesses: What are the reasons? Mark all that apply

		Answers	Ratio
Lack of common priorities concerning which products need standardisation		2	9.09 %
Long duration of standardisation process		3	13.64 %
Complicated procedures compared to standardisation process for harmonised products (i.e. those under the 'New Legislative Framework')		3	13.64 %
Too narrow range of stakeholders involved		2	9.09 %
No independent safety consultant involved		6	27.27 %
Burden in terms of staff time on national authorities involved in GPSD committee /CSN		3	13.64 %
Lack of criteria for assessing the safety of a product in the period until the standard under GPSD is referenced in the EU Official Journal		5	22.73 %
Difficulty to obtain the text of the standard		0	0 %
Other reasons (please specify below)		3	13.64 %
No Answer		11	50 %

19c. Please assess the impact of the standardisation process under the GPSD on your organisation in terms of resources used (e.g. staff time etc)? (Please only answer if your organisation is involved in the process)

		Answers	Ratio
No impact at all (1)		1	4.55 %
Rather no impact (2)		1	4.55 %
Moderate impact (3)		1	4.55 %
Rather significant impact (4)		3	13.64 %
Very significant impact (5)		5	22.73 %
Don't know		0	0 %
No Answer		11	50 %

20. In your view, what would be possible improvements of the standardisation process under the GPSD? Please mark all that apply

		Answers	Ratio
Reducing the number of steps in the standardisation process under the GPSD		6	27.27 %
Streamlining standardisation process under the GPSD otherwise (please specify below)		5	22.73 %
Greater involvement of consumers organisations/NGOs in the process		5	22.73 %
Greater involvement of other stakeholders in the process (please specify below)		3	13.64 %
Involvement of an independent safety consultant in the process		6	27.27 %
Other improvement (please specify below)		4	18.18 %
No need to improve standardisation process under the GPSD		1	4.55 %
No Answer		2	9.09 %

21. In your view, how has the level of safety of consumer products developed in your country since 2013?

		Answers	Ratio
General trend is positive (safety improved)		5	22.73 %
No clear general trend (level of safety largely unchanged)		6	27.27 %
General trend is negative (safety deteriorated)		0	0 %
Trend depends on product type or sales channel		7	31.82 %
Don't know		3	13.64 %
No Answer		1	4.55 %

22. Do you think that market surveillance authorities have the tools at their disposal to address new challenges in your country (e.g. related to e-commerce, C2C sales, platform economy, new technologies etc)?

		Answers	Ratio
Yes		3	13.64 %
No		11	50 %
Don't know		7	31.82 %
No Answer		1	4.55 %

23. Do you consider certain market surveillance approaches in your country to be best practice implementation of the GPSD, which could be of interest to other countries?

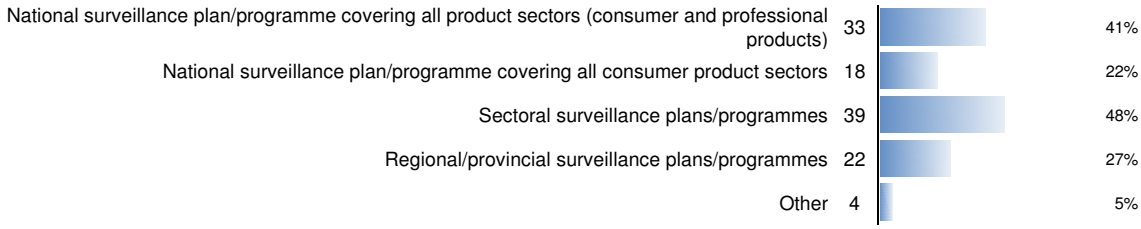
		Answers	Ratio
Yes		4	18.18 %
No		4	18.18 %
Don't know		13	59.09 %
No Answer		1	4.55 %

Annex II: Results of survey of market surveillance authorities

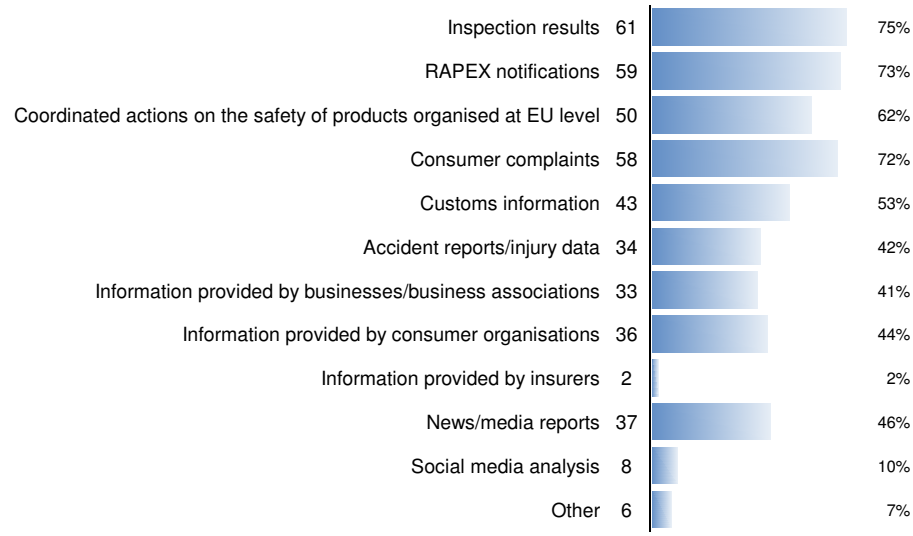
RESULTS OF SURVEY OF MARKET SURVEILLANCE AUTHORITIES (as of 21.2.2020, results from 31 countries/81 QR)

1. Do you have plans/programmes in place which define priorities for market surveillance of consumer products in your country?

If YES: Mark all that apply



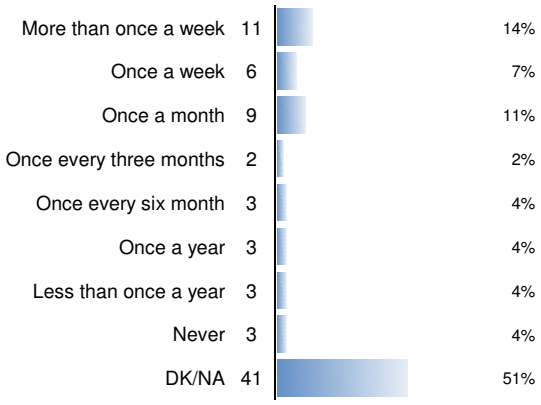
On basis of which sources of information do you set priorities for market surveillance of consumer products in your country? Mark all that apply:



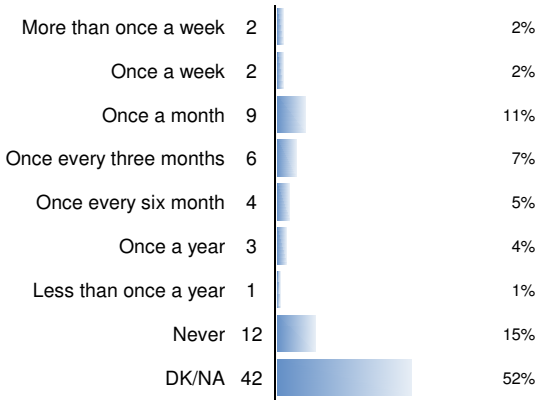
2. Do you conduct market surveillance activities with respect to the safety of products containing new technologies (such as Internet of Things, connected devices)?

3. Do you conduct market surveillance regarding products sold online?

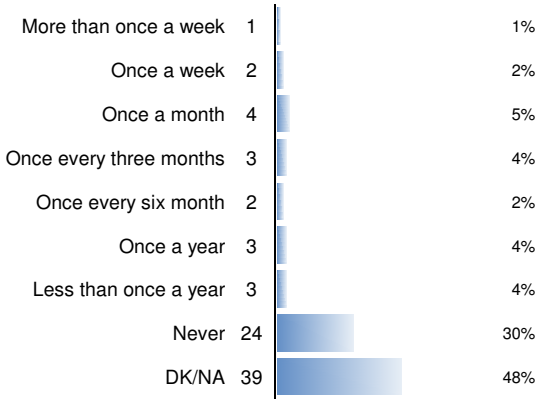
a) How frequently do you conduct market surveillance regarding products sold online?
Products sold online from sellers established in your country



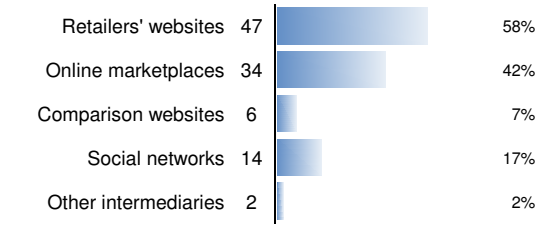
Products sold online from sellers established in the EU/EEA



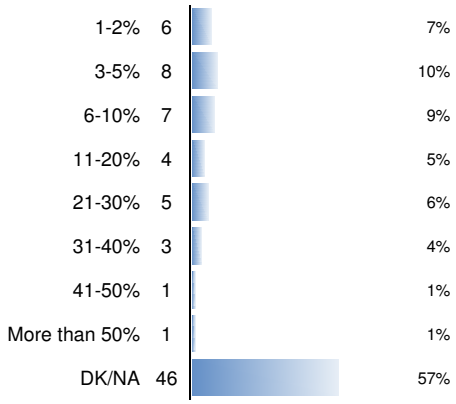
Products sold online from sellers established in non-EU/EEA countries



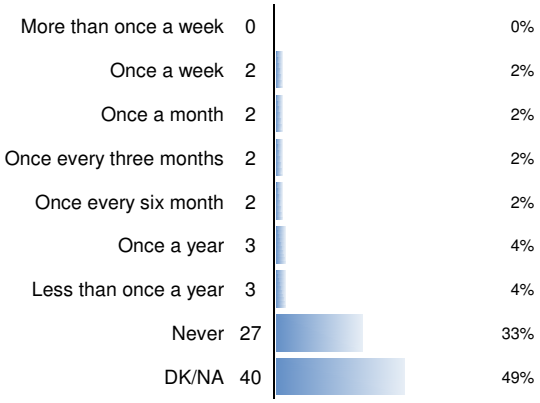
b) Please indicate the online sales channels covered by your market surveillance activities that focus on products sold online:



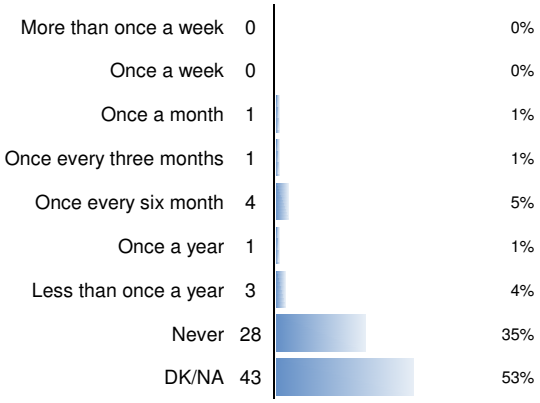
c) Please estimate the percentage of your market surveillance activities that focus on products sold online (as share of the total number of inspections conducted by your organisation)?



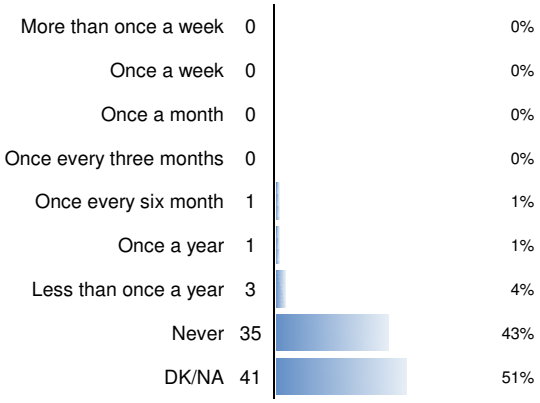
e) How frequently do you conduct mystery shopping regarding products sold online (i.e. purchasing of products under a cover identity and - where relevant - subsequent testing)?
Products sold online from sellers established in your country



Products sold online from sellers established in the EU/EEA

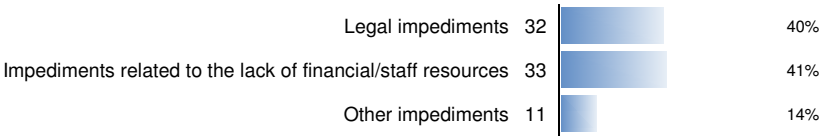


Products sold online from sellers established in non-EU/EEA countries

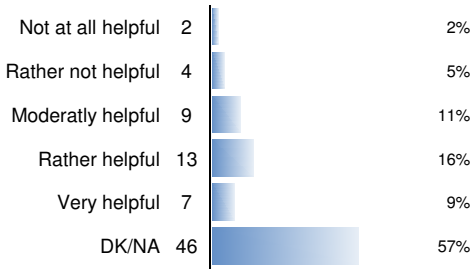


f) Please indicate the online sales channels covered by your mystery shopping activities that focus on products sold online:

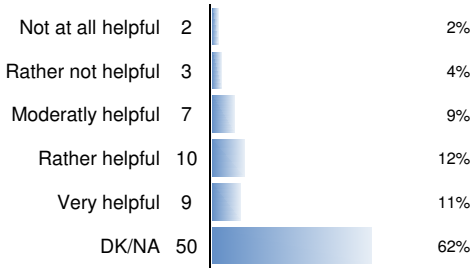
g) What are the impediments to effective surveillance online that you have encountered? Please mark all that apply:



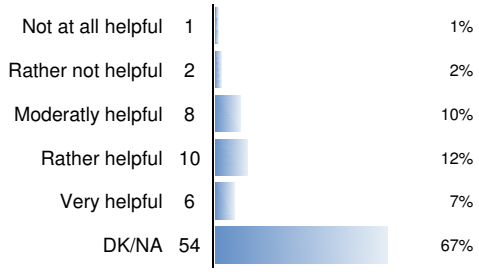
h) Have the EC Notice on market surveillance of online products, the Product Safety Pledge and the e-Enforcement Academy of the European Commission been helpful for your online market surveillance activities? EC Notice on market surveillance of online products



Product Safety Pledge



E-Enforcement Academy



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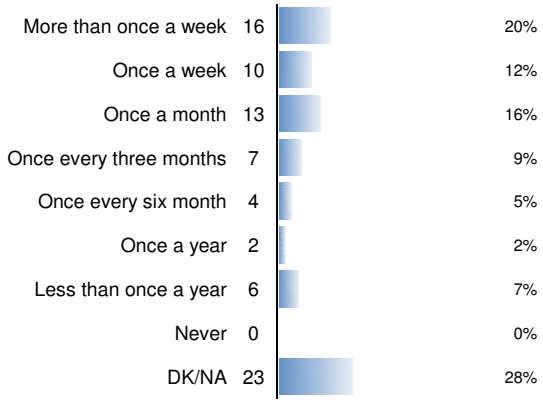
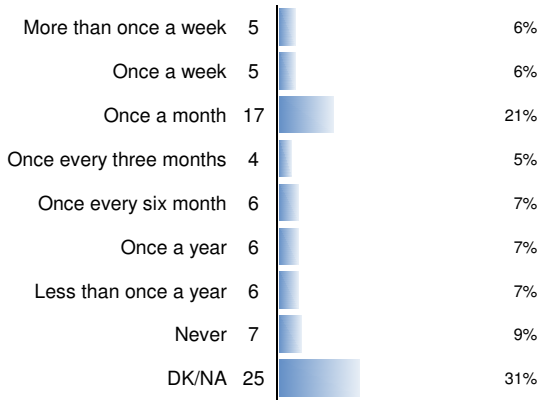
4. Do you conduct market surveillance regarding C2C products (e.g. products sold by consumers to consumers)?

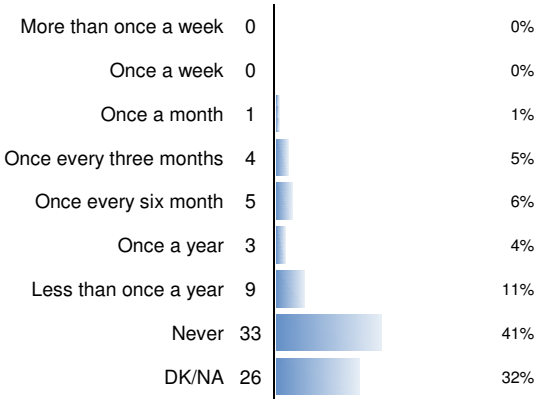
6. How often do you cooperate with other relevant authorities with respect to product safety?
With other relevant authorities in your country



With other relevant authorities located in other EU/EEA countries

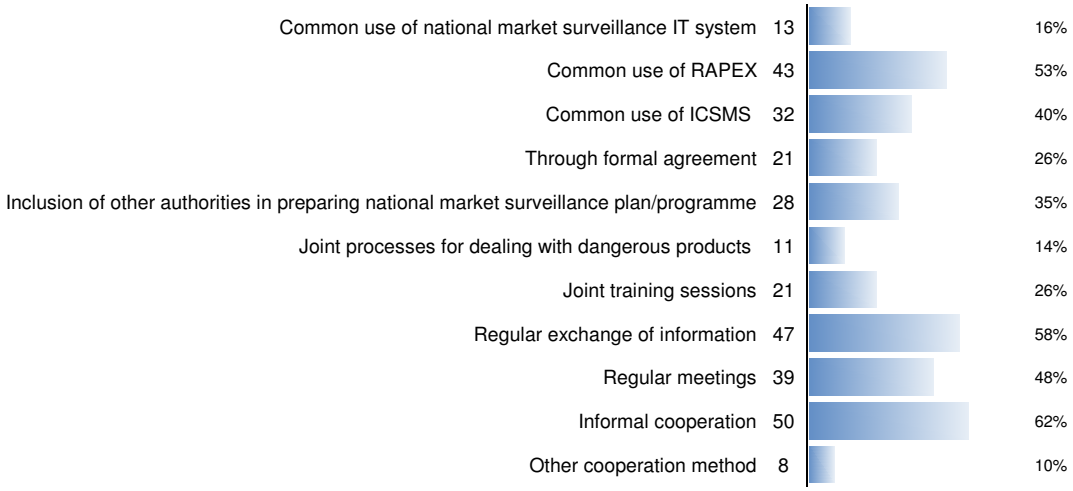


With other relevant authorities located in non-EU/EEA countries

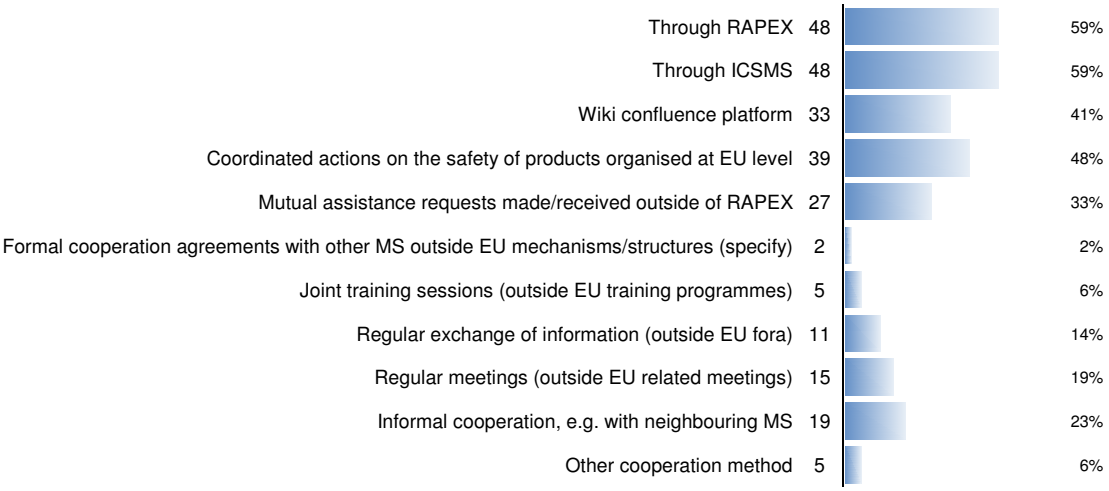


If you cooperate: How do you cooperate with other relevant authorities with respect to product safety (with respect to specific cases or common challenges)?

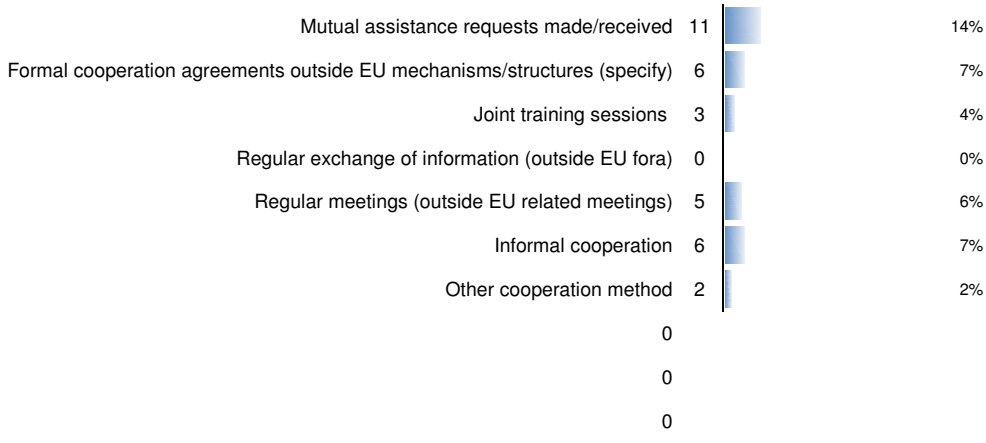
a) With other relevant authorities located in your country:



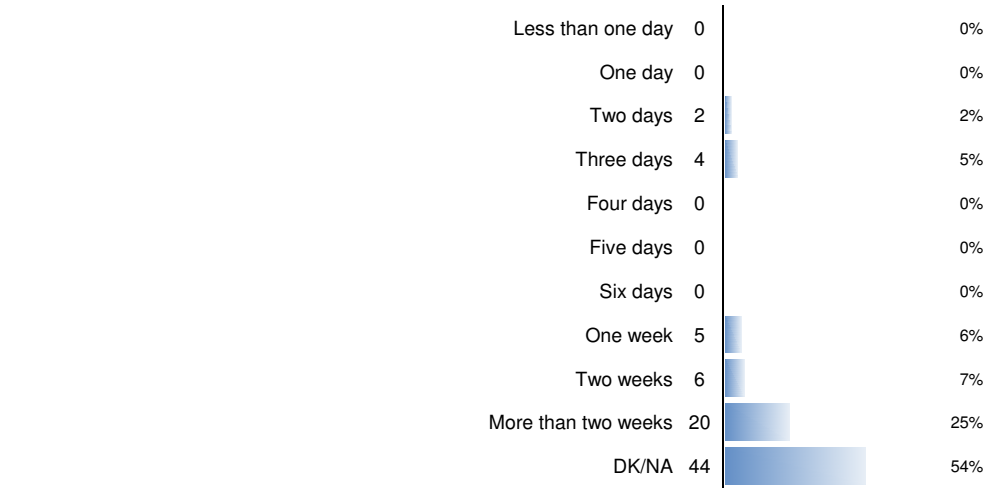
b) With other relevant authorities located in other EU/EEA countries:



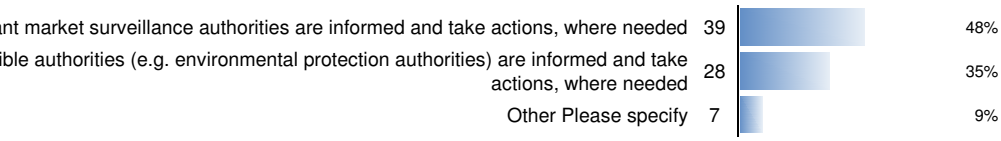
c) With other relevant authorities located in non-EU/EEA countries:



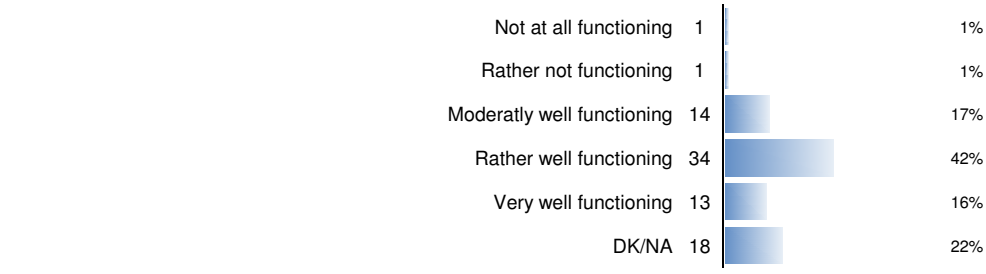
8. What is the average duration between the detection of a dangerous product and its notification to RAPEX? (in calendar days)



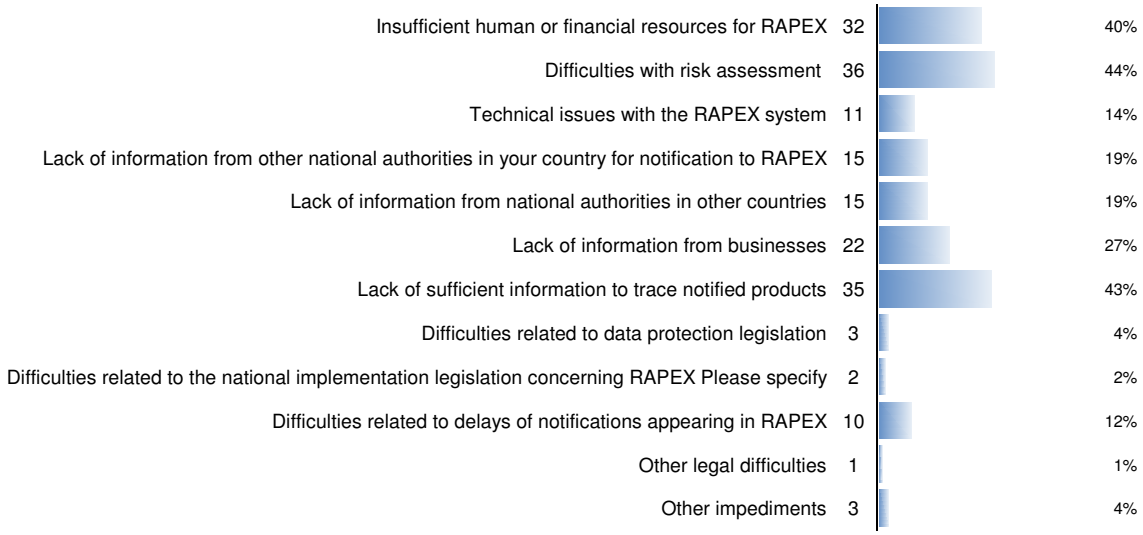
9. How do you deal with non-safety risks (e.g. environmental and security risks etc) notified to RAPEX? Please mark all that apply:



10. In your view, how well is RAPEX functioning, considering the needs of your country?

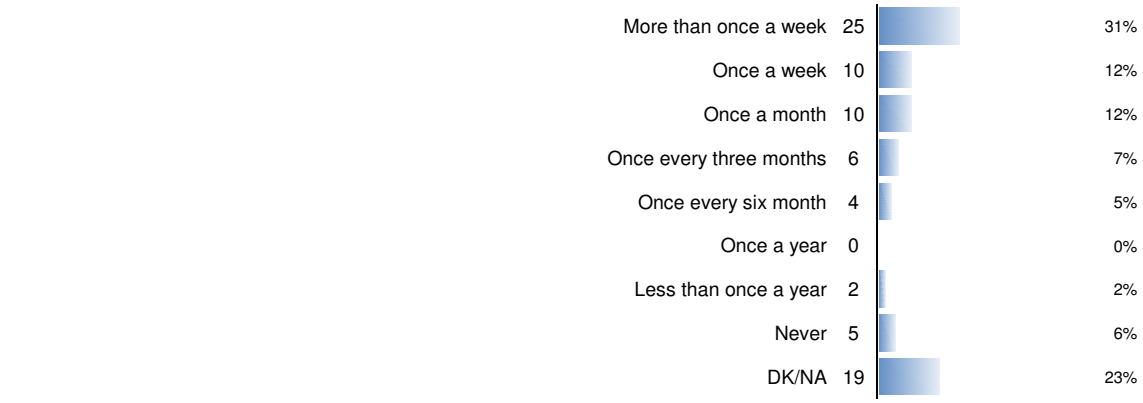


11. Have you encountered one or more of the following impediments when using RAPEX? Please mark all that apply:

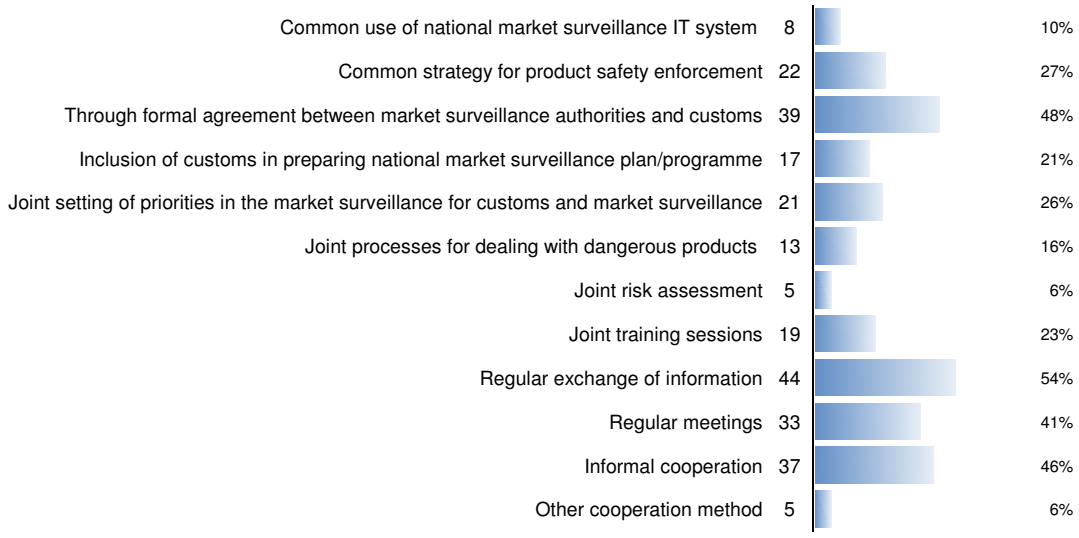


12. In your view, would there be any possible area to improve the functioning of RAPEX, considering the needs of your country?

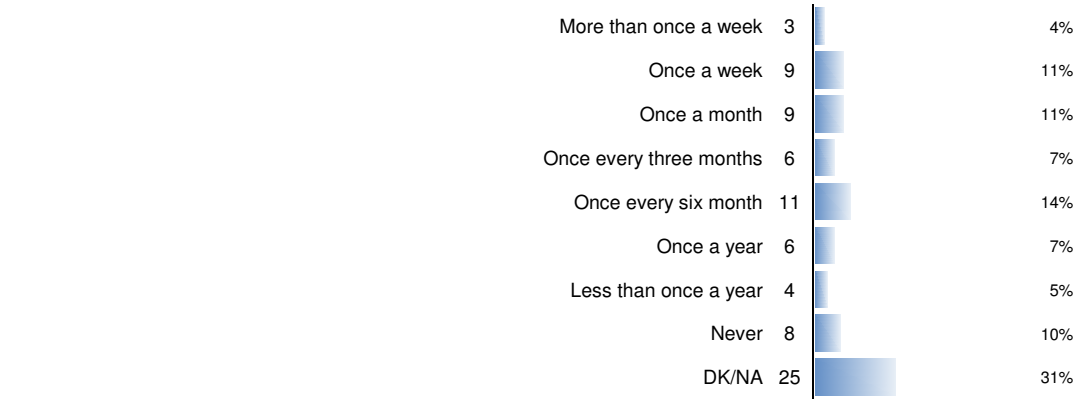
13. How often do you cooperate with customs authorities in your country with respect to product safety?



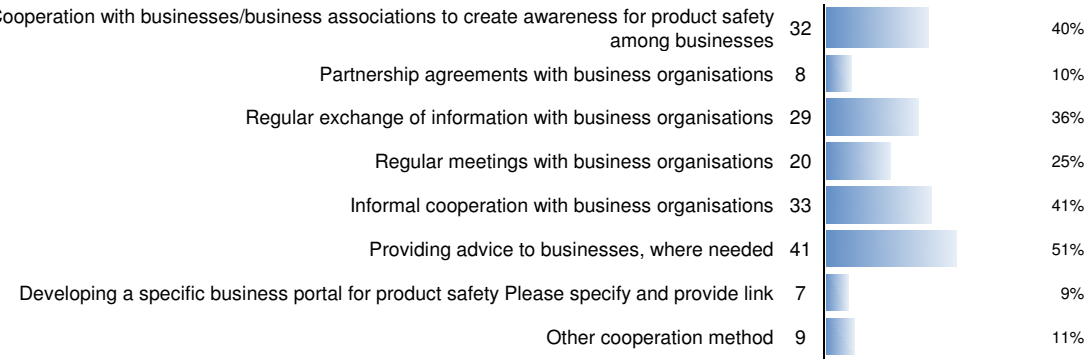
If you cooperate: How do you cooperate with customs authorities in your country to safeguard control of product safety at the borders? Please mark all that apply:



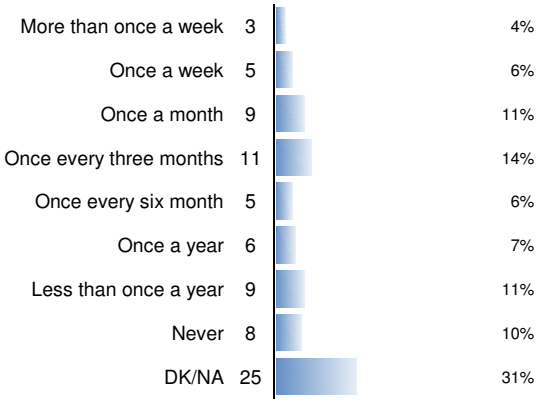
15. How often do you cooperate with businesses/business associations with respect to product safety (other than requesting corrective action)?



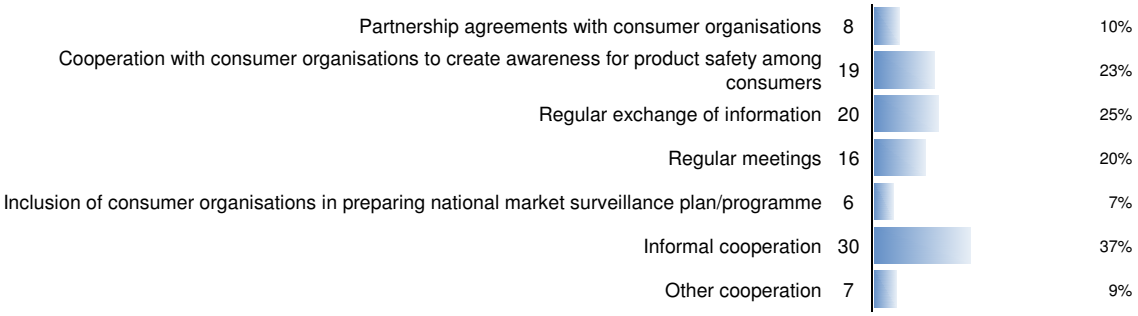
If you cooperate: How do you cooperate with businesses with respect to product safety? Please mark all that apply:



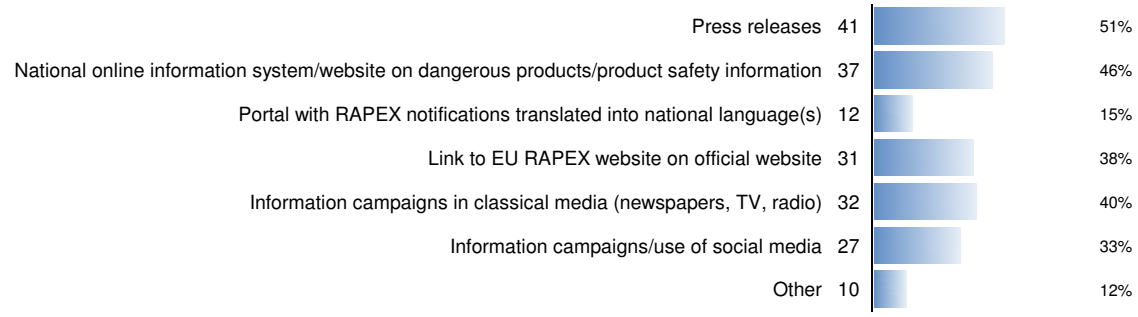
16. How often do you cooperate with consumer organisations in your country with respect to product safety?



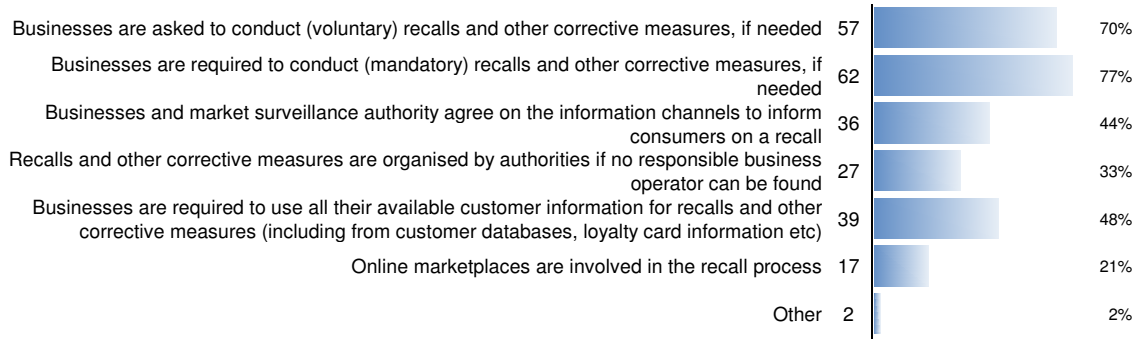
If you cooperate: How do you cooperate with consumer organisations in your country? Please mark all that apply:



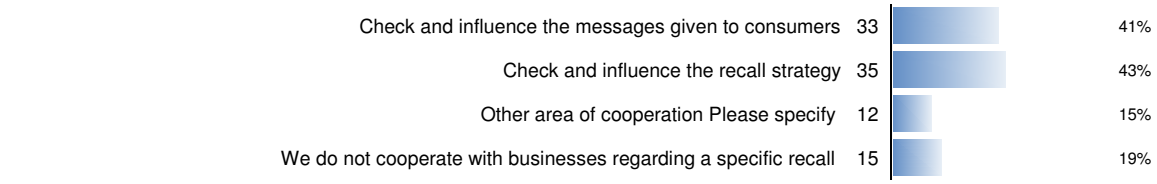
17. How do you inform and raise awareness of consumers with respect to dangerous products and product safety risks? Please mark all that apply:



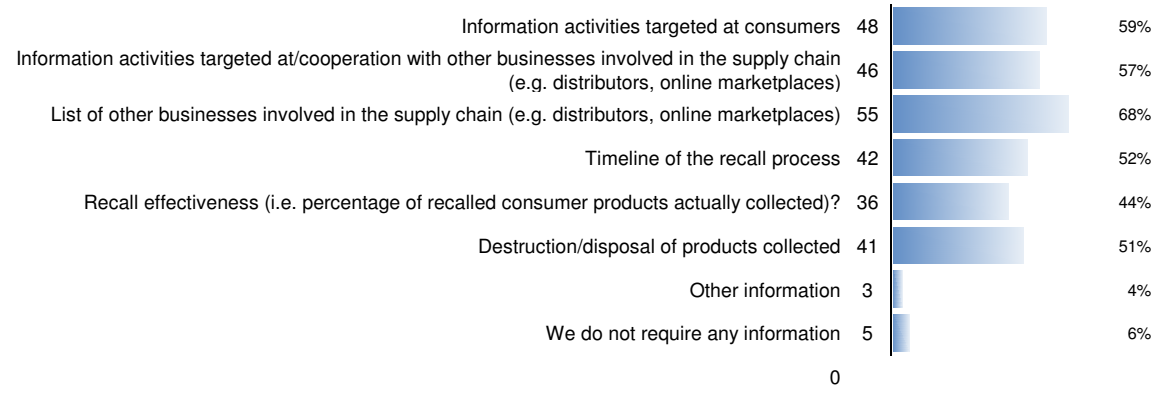
18. How are recalls and other corrective measures organised in your country? Please mark all that apply:



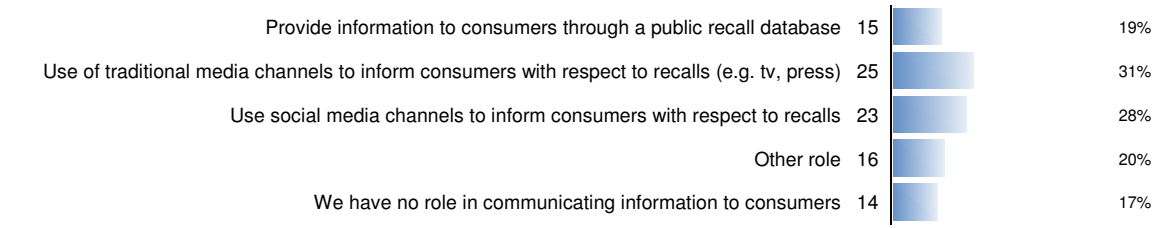
19. How do you cooperate with businesses regarding a specific recall? Please mark all that apply:



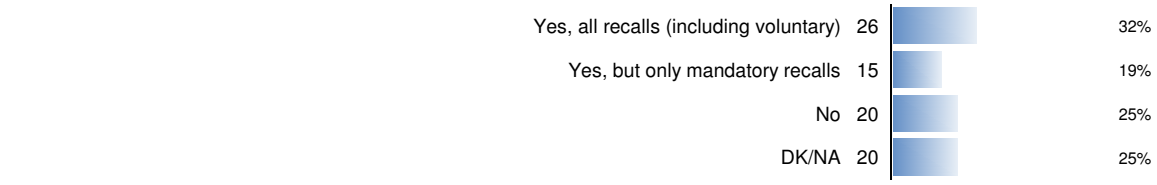
20. In case of a recall of a consumer product, which type of information do you require from the business? Please mark all information that you ask:



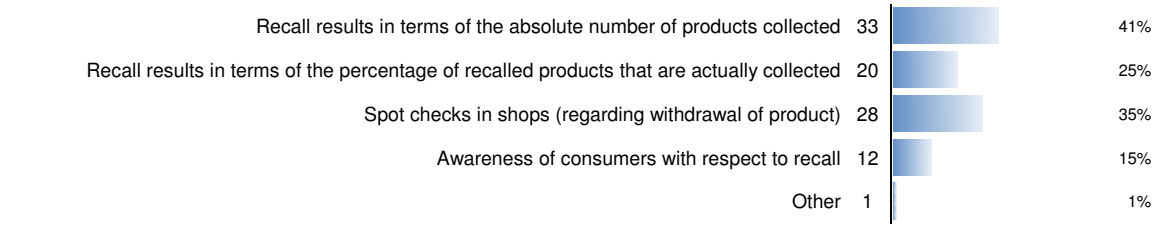
21. What is your role in communicating information on a recall to consumers? Please mark all that apply:



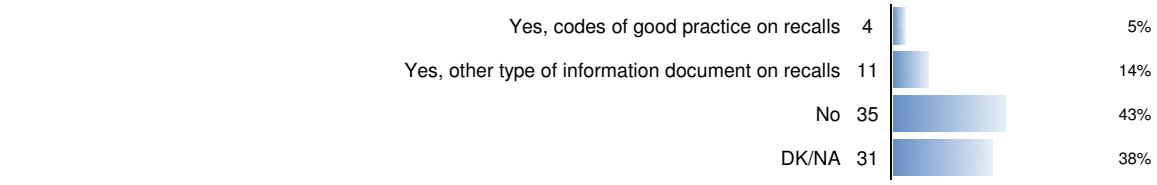
22. Do you monitor the effectiveness of the recall of a product by the responsible business?



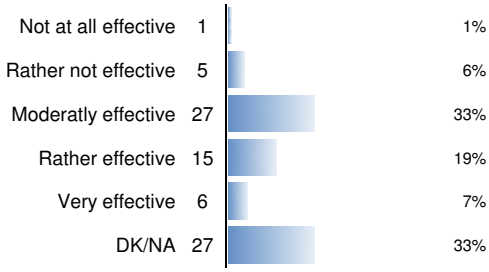
If YES: Do you collect the following information or undertake the following to monitor the effectiveness of a recall? Please mark all that apply:



23. The last paragraph of Art 5 (1) of the GPSD mentions that "recalls may be effected within the framework of codes of good practice on the matter in the Member State concerned, where such codes exist". Have you established such a code of good practice on product recalls or any other type of information documents such as guidelines on recalls etc?



24. In your view, how effective are product recalls in your country?



26. Do you keep statistics on the following aspects related to dangerous products?

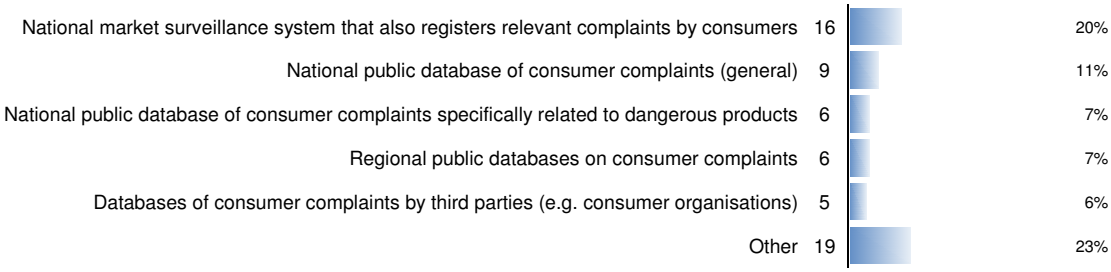
Statistics on dangerous products (other than RAPEX statistics), e.g. related to national databases of dangerous products

Statistics on dangerous products intercepted by customs at the borders

Other relevant statistics (specify)

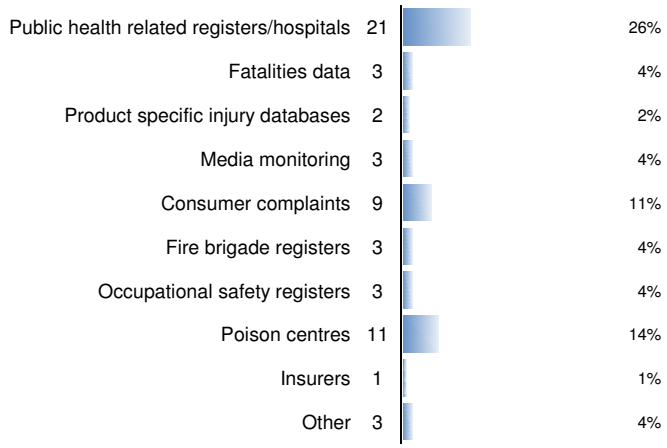
27. Do you collect consumer complaints with respect to dangerous products?

If YES: How? Mark all that apply:

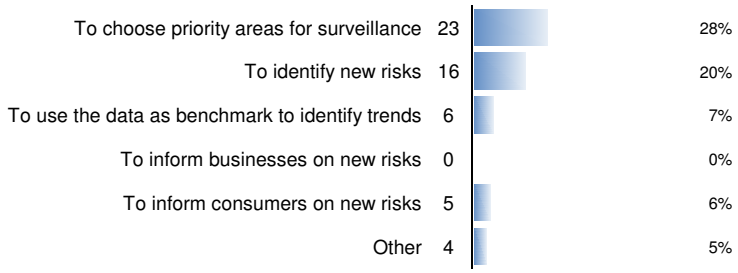


28. Do you have systematic injury data collection in your country?

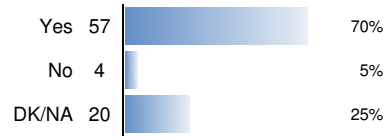
If YES: a) What are the sources of injury data? Mark all that apply (if you have this information available):



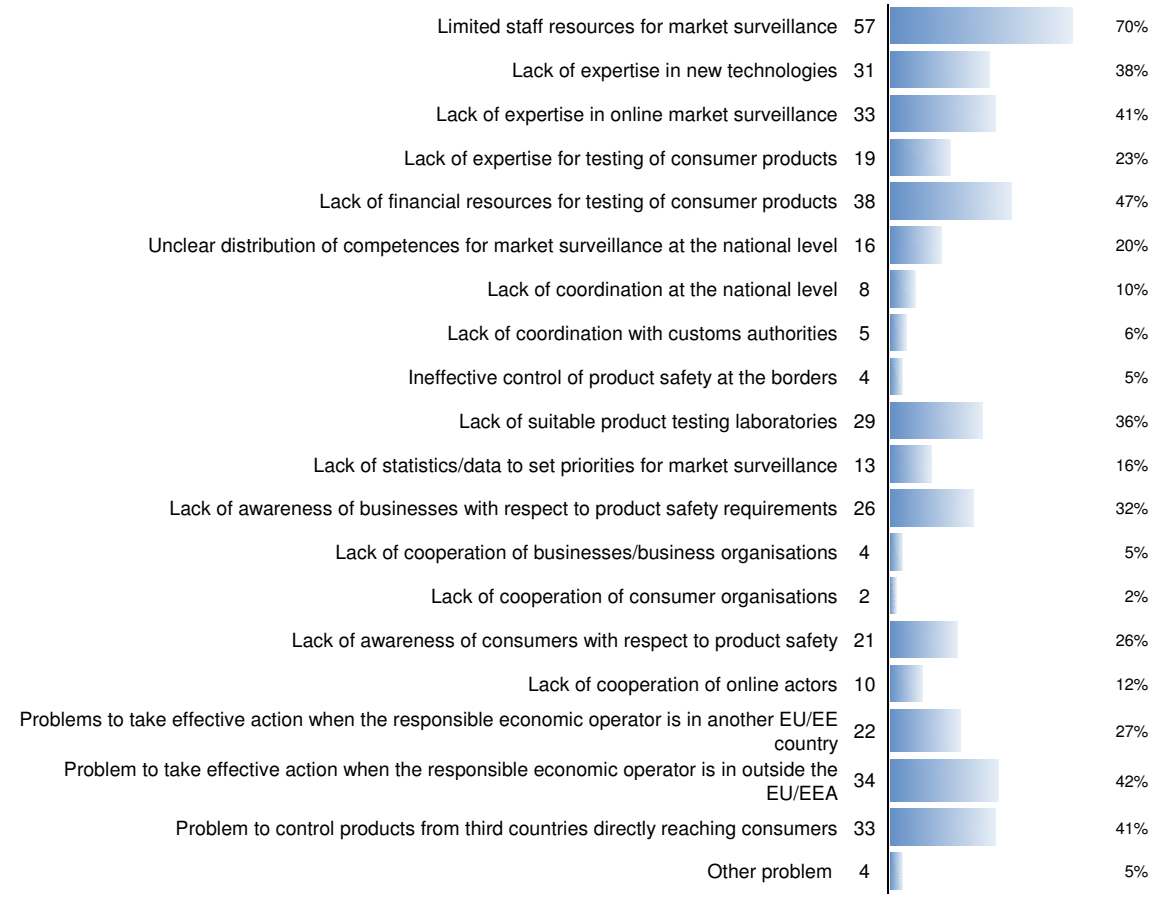
b) How do you use the injury data in the context of market surveillance? Mark all that apply:



29. Have you encountered problems affecting the functioning of market surveillance in your country?

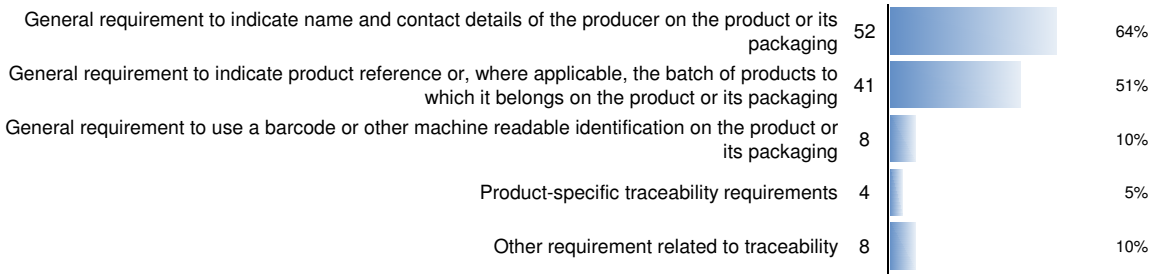


If YES: Please mark up to five most relevant problems:



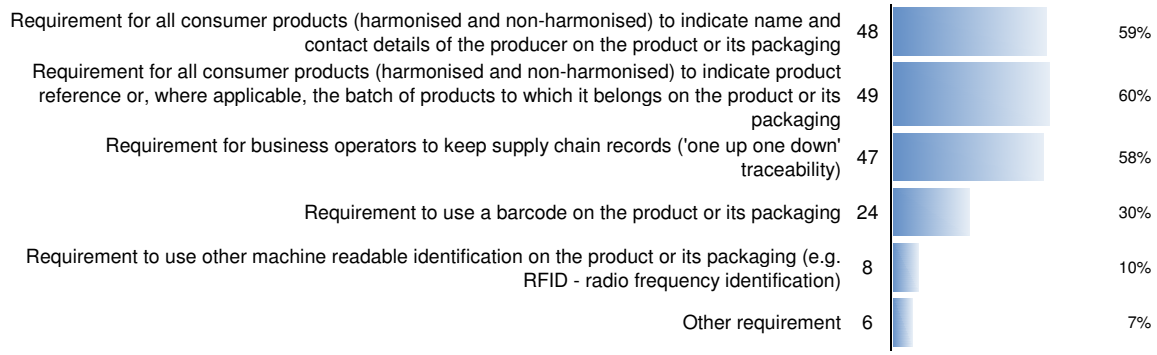
30. In your view, would there be any possible area to make market surveillance of consumer products in your country/the EU more effective?

31. How is Art 5(1) GPSD regarding traceability applied in your country? Please indicate the traceability requirements in your national legislation for non-harmonised consumer products and for those harmonised products for which EU legislation does not provide specific traceability requirements:



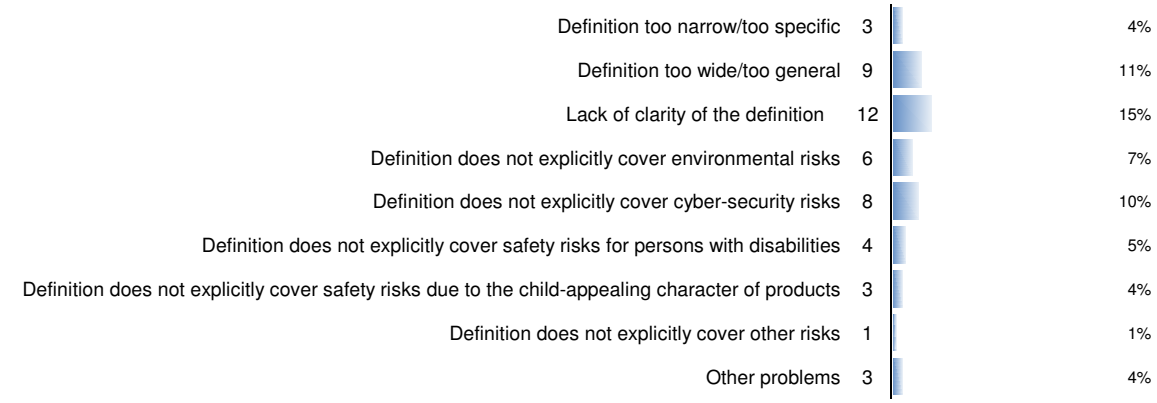
32. Have you encountered any practical problems with respect to the application of Art 5(1) GPSD regarding traceability in your country?

33. In your view, what would be the best approach(es) to improve traceability of consumer products? Please tick all that apply:



34. Have you experienced practical problems with the definition of safety in the GPSD (Art 2(b))?

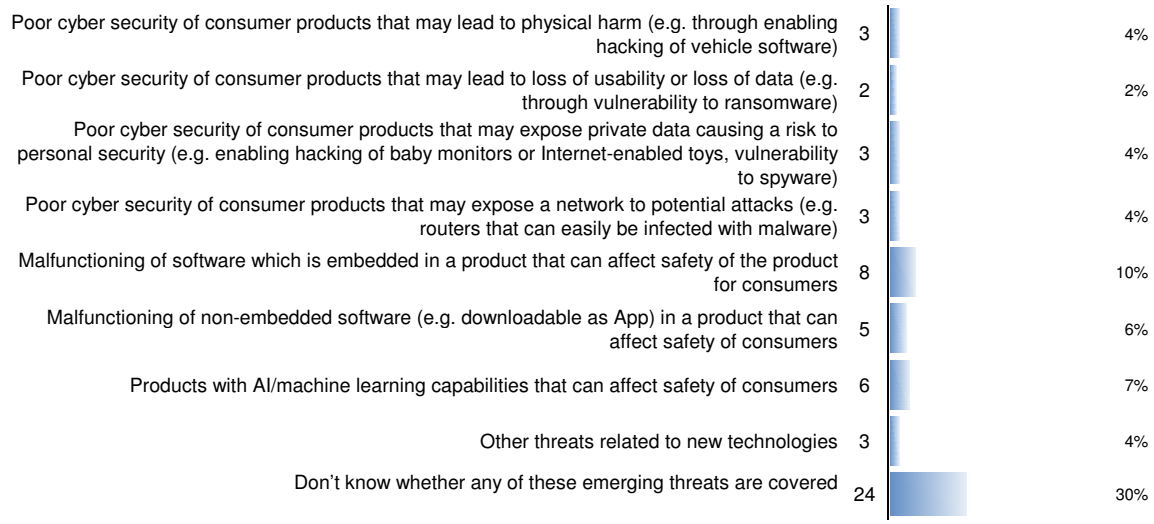
If YES: In your view, and in light of your experiences, which problems exist with respect to the definition of safety in the GPSD:



35. In your country, is there any specific definition of safety used for the application of the national implementation legislation of the GPSD in the area of new technologies?

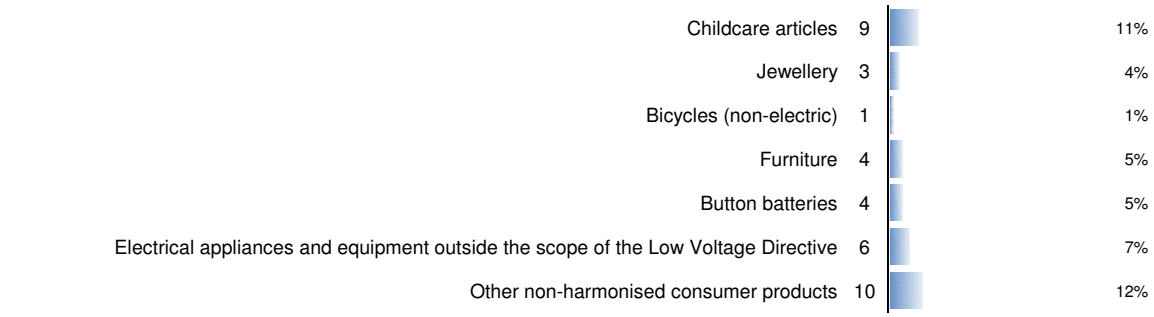
36. Which benchmarks do you use in your country for assessing the safety of a product (in line with Art 3(3) GPSD) if European standards referenced in the EU Official Journal do not exist? Please mark that apply:

37. Does your national implementation legislation transposing the GPSD cover the following emerging threats related to new technologies? Please mark that apply:

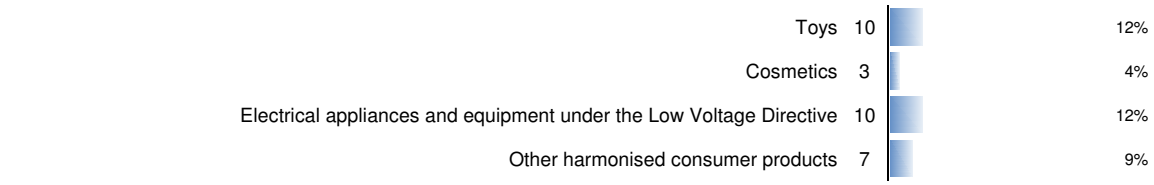


38. Are there any emerging safety issues with particular categories of consumer products in your country that are not addressed by current safety legislation?

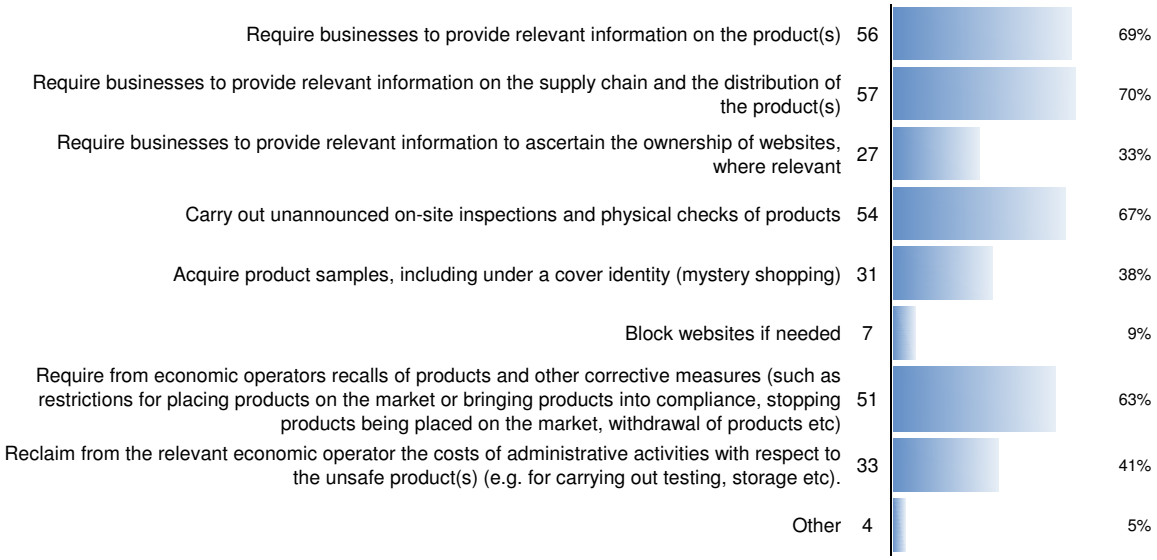
If YES: Please indicate for which of the following categories of products you have identified emerging safety issues: Non-harmonised consumer products:



Harmonised consumer products:



39. Which are the administrative measures at your disposal in case there are consumer product(s) on the market in your country which are found unsafe under the GPSD? Please mark that apply:

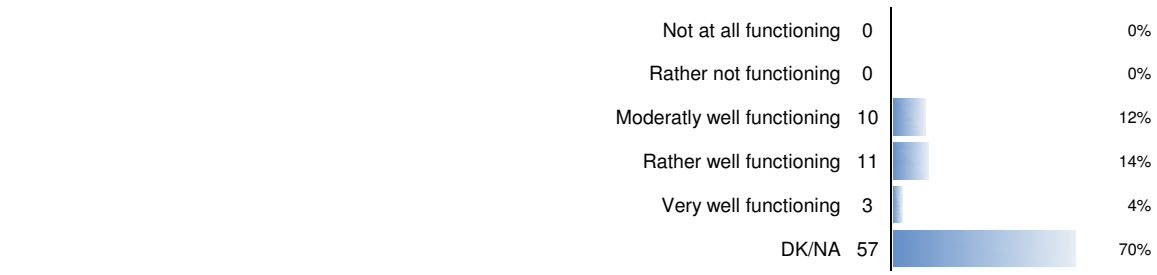


41. Are you aware of recent case law in your country with respect to or relevant for the GPSD/the national implementation legislation?

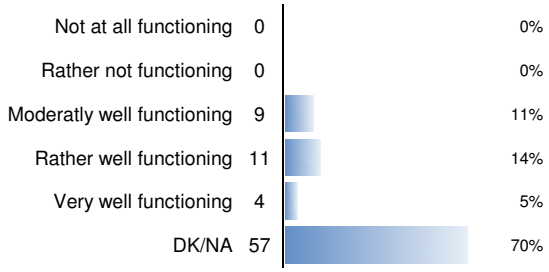
42. In your view, would there be any area of the legislative framework that could be improved to make the implementation of the GPSD in your country more effective?

43. Have you been involved in the standardisation process established under the GPSD (see Article 4 of GPSD)? a) In your view, how well is each of the four steps of the standardisation process under the GPSD functioning, as well as the overall process?

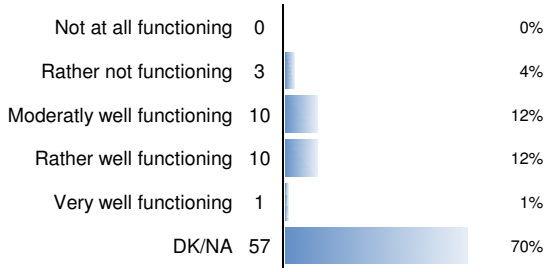
STEP 1. Preparation of Commission Decision to set safety requirements



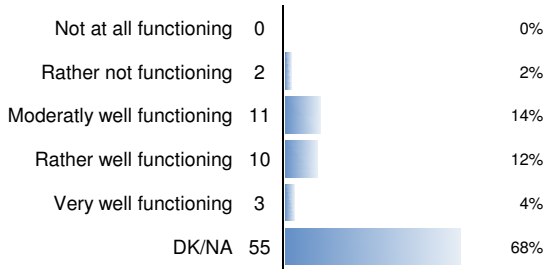
STEP 2. Commission issues a formal mandate/standardisation request to European Standardisation Organisations to develop standard



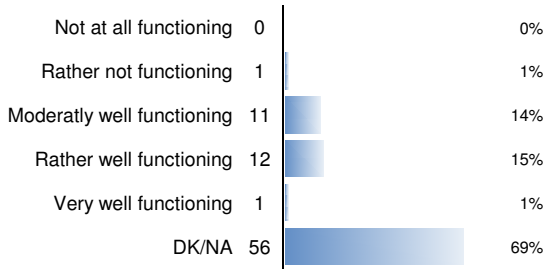
STEP 3. Development of standard by European Standardisation Organisations compliant with safety requirements



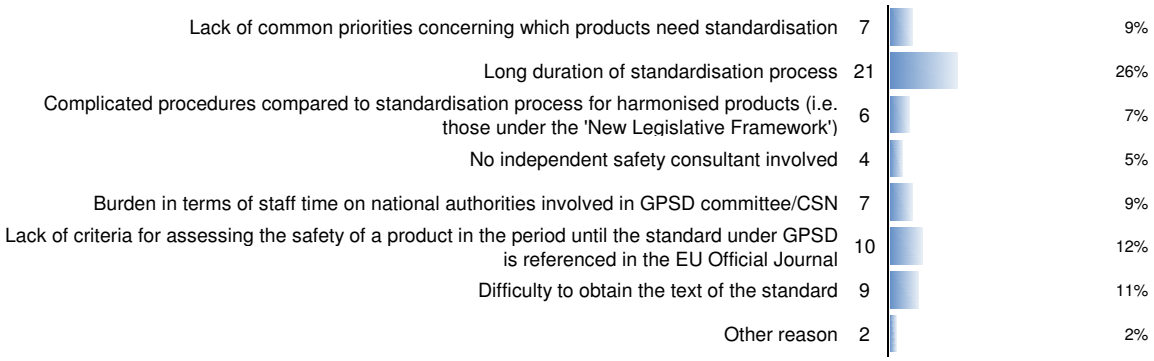
STEP 4. Preparation of Commission Decision referencing standard



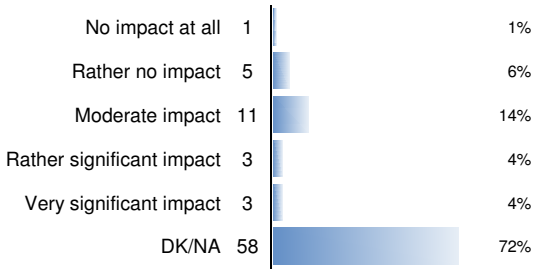
Conclusion: Overall process of the standardisation process under the GPSD



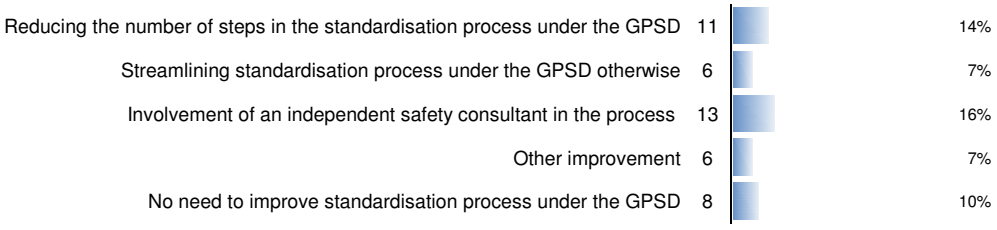
b) If you consider the process to not function well or to have certain weaknesses: What are the reasons? Mark all that apply:



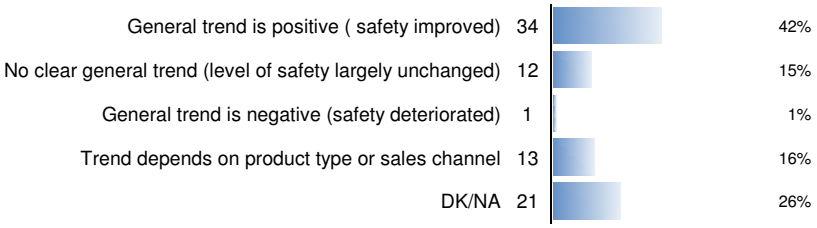
c) If your organisation is involved in the process: Please assess the impact of the standardisation process under the GPSD on your organisation in terms of resources used (e.g. staff time etc)?



44. In your view, what would be possible improvements of the standardisation process under the GPSD? Mark all that apply:

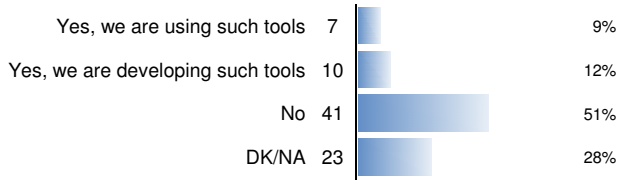


45. In your view, how has the level of safety of consumer products developed in your country since 2013?



46. Do you have the tools at your disposal to address new challenges in your country (e.g. related to e commerce, C2C sales, platform economy, new technologies etc)?

47. Do you use or are you developing technological approaches/tools in your market surveillance activities (e.g. data collection/mining of social media to identify safety issues with products, web crawler to identify new products)?



48. Do you consider certain market surveillance approaches in your country to be best practice implementation of the GPSD, which could be of interest to other countries?

Annex III. Overview of standards referenced under the GPSD 2013-2019

Figure 44: Overview of standards referenced under the GPSD between 2013 and 2018 + ongoing standardisation work

Status of standard	ESO	Product type	Reference and title of the standard	First publication in OJ	Commission Decision	Withdrawn by Decision (EU) 2019/1698	Revised standard referenced by Decision (EU) 2019/1698
Reference to standard published during reference period (2013-2018)	CEN	Gymnastic equipment	EN 913:2008 Gymnastic equipment — General safety requirements and test methods	11.7.2014	2014/357/EU	x	EN 913:2018
			EN 914:2008 Gymnastic equipment — Parallel bars and combination asymmetric/parallel bars — Requirements and test methods including safety	11.7.2014	2014/357/EU		Re-referenced
			EN 915:2008 Gymnastic equipment — Asymmetric bars — Requirements and test methods including safety	11.7.2014	2014/357/EU		Re-referenced
			EN 916:2003 Gymnastic equipment— Vaulting boxes — Requirements and test methods including safety	15.10.2005	2005/718/EC 2014/357/EU		Re-referenced
			EN 13219:2008 Gymnastic equipment — Trampolines — Functional and safety requirements, test methods	9.10.2015	2014/357/EU		Re-referenced
		Stationary training equipment	EN ISO 20957-1:2013 Stationary training equipment — Part 1: General safety requirements and test methods (ISO 20957-1:2013)	11.7.2014	2014/357/EU		Re-referenced
			EN 957-2:2003 Stationary training equipment — Part 2: Strength training equipment, additional specific safety requirements and test methods	22.7.2006	2006/514/EC 2014/357/EU		Re-referenced
			EN 957-4:2006+A1:2010 Stationary training equipment — Part 4: Strength training benches, additional specific safety requirements and test methods	11.7.2014	2014/357/EU	x	EN ISO 20957-4:2016
			EN 957-5:2009 Stationary training equipment — Part 5: Stationary exercise bicycles and upper body crank training equipment, additional specific safety requirements and test methods	11.7.2014	2014/357/EU	x	EN ISO 20957-5:2016
			EN 957-6:2010+A1:2014 Stationary training equipment — Part 6: Treadmills, additional specific safety requirements and test methods	16.1.2015	2014/875/EU		Re-referenced
			EN 957-7:1998 Stationary training equipment — Part 7: Rowing machines, additional specific safety requirements and test methods	22.7.2006	2006/514/EC 2014/357/EU		Re-referenced
			EN 957-8:1998 Stationary training equipment — Part 8: Steppers, stair climbers and climbers — Additional specific safety requirements and test methods	22.7.2006	2006/514/EC 2014/357/EU	x	EN ISO 20957-8:2017
			EN 957-9:2003 Stationary training equipment — Part 9: Elliptical	22.7.2006	2006/514/EC	x	EN ISO 20957-9:2016

Status of standard	ESO	Product type	Reference and title of the standard	First publication in OJ	Commission Decision	Withdrawn by Decision (EU) 2019/1698	Revised standard referenced by Decision (EU) 2019/1698
			trainers, additional specific safety requirements and test methods		2014/357/EU		
			EN 957-10:2005 Stationary training equipment — Part 10: Exercise bicycles with a fixed wheel or without freewheel, additional specific safety requirements and test methods	22.7.2006	2006/514/EC 2014/357/EU	x	EN ISO 20957-10:2017
		Child use and care articles	EN 1273:2005 Child use and care articles — Baby walking frames — Safety requirements and test methods	17.2.2009	2009/18/EC		Re-referenced
			EN 1466:2014 Child use and care articles — Carry cots and stands — Safety requirements and test methods	9.10.2015	(EU) 2015/1345		Re-referenced
			EN 1930:2011 Child use and care articles — Safety barriers — Safety requirements and test methods	9.10.2015	(EU) 2015/1345		Re-referenced
			EN 12221-1:2008+A1:2013 Child use and care articles — Changing units for domestic use — Part 1: Safety requirements	9.10.2015	(EU) 2015/1345		Re-referenced
			EN 12221-2:2008+A1:2013 Child use and care articles — Changing units for domestic use — Part 2: Test methods	9.10.2015	(EU) 2015/1345		Re-referenced
			EN 13209-2:2015 Child use and care articles — Baby carriers — Safety requirements and test methods — Part 2: Soft carrier		(EU) 2017/1014		Re-referenced
		Bicycles	EN ISO 4210-1:2014 Cycles — Safety requirements for bicycles — Part 1: Terms and definitions (ISO 4210-1:2014)	9.10.2015	(EU) 2015/681		Re-referenced
			EN ISO 4210-2:2014 Cycles — Safety requirements for bicycles — Part 2: Requirements for city and trekking, young adult, mountain and racing bicycles (ISO 4210-2:2014)	9.10.2015	(EU) 2015/681	x	EN ISO 4210-2:2015
			EN ISO 4210-3:2014 Cycles — Safety requirements for bicycles — Part 3: Common test methods (ISO 4210-3:2014)	9.10.2015	(EU) 2015/681		Re-referenced
			EN ISO 4210-4:2014 Cycles — Safety requirements for bicycles — Part 4: Braking test methods (ISO 4210-4:2014)	9.10.2015	(EU) 2015/681		Re-referenced
			EN ISO 4210-5:2014 Cycles — Safety requirements for bicycles — Part 5: Steering test methods (ISO 4210-5:2014, Corrected version 2015-02-01)	9.10.2015	(EU) 2015/681		Re-referenced
			EN ISO 4210-6:2014 Cycles — Safety requirements for bicycles — Part 6: Frame and fork test methods (ISO 4210-6:2014)	9.10.2015	(EU) 2015/681	x	EN ISO 4210-6:2015
			EN ISO 4210-7:2014 Cycles — Safety requirements for bicycles — Part 7: Wheels and rims test methods (ISO 4210-7:2014)	9.10.2015	(EU) 2015/681		Re-referenced

Status of standard	ESO	Product type	Reference and title of the standard	First publication in OJ	Commission Decision	Withdrawn by Decision (EU) 2019/1698	Revised standard referenced by Decision (EU) 2019/1698
			EN ISO 4210-8:2014 Cycles — Safety requirements for bicycles — Part 8: Pedal and drive system test methods (ISO 4210-8:2014)	9.10.2015	(EU) 2015/681		Re-referenced
			EN ISO 4210-9:2014 Cycles — Safety requirements for bicycles — Part 9: Saddles and seat-post test methods (ISO 4210-9:2014)	9.10.2015	(EU) 2015/681		Re-referenced
			EN ISO 8098:2014 Cycles — Safety requirements for bicycles for young children (ISO 8098:2014)	9.10.2015	(EU) 2015/681		Re-referenced
			EN 14872:2006 Bicycles — Accessories for bicycles — Luggage carriers (replaced by EN ISO 11243:2016 Cycles — Luggage carriers for bicycles — Requirements and test methods)	22.7.2006	2006/514/EC	x	EN ISO 11243:2016
		Internal blinds	EN 13120:2009+A1:2014 Internal blinds — Performance requirements including safety	10.10.2014	2014/531/EU		Re-referenced
			EN 16433:2014 Internal blinds — Protection from strangulation hazards — Test methods	10.10.2014	2014/531/EU		Re-referenced
			EN 16434:2014 Internal blinds — Protection from strangulation hazards — Requirements and test methods for safety devices	10.10.2014	2014/531/EU		Re-referenced
		Lighters	EN 13869:2016 Lighters — Child safety requirements for lighters — Safety requirements and test methods		(EU) 2017/1014		Re-referenced
		Children's clothing	EN 14682:2014 Safety of children's clothing — Cords and drawstrings on children's clothing — Specifications	9.10.2015	(EU) 2015/1345		Re-referenced
		Floating leisure articles	EN 15649-1:2009+A2:2013 Floating leisure articles for use on and in the water — Part 1: Classification, materials, general requirements and test methods	11.7.2014	2014/359/EU	x	EN ISO 25649-1:2017
			EN 15649-2:2009+A2:2013 Floating leisure articles for use on and in the water — Part 2: Consumer information	16.1.2015	2014/875/EU	x	EN ISO 25649-2:2017
			EN 15649-3:2009+A1:2012 Floating leisure articles for use on and in the water — Part 3: Additional specific safety requirements and test methods for Class A devices	4.9.2013	2013/390/EU	x	EN ISO 25649-3:2017
			EN 15649-4:2010+A1:2012 Floating leisure articles for use on and in the water — Part 4: Additional specific safety requirements and test methods for Class B devices	4.9.2013	2013/390/EU	x	EN ISO 25649-4:2017

Status of standard	ESO	Product type	Reference and title of the standard	First publication in OJ	Commission Decision	Withdrawn by Decision (EU) 2019/1698	Revised standard referenced by Decision (EU) 2019/1698
			EN 15649-5:2009 Floating leisure articles for use on and in the water — Part 5: Additional specific safety requirements and test methods for Class C devices	4.9.2013	2013/390/EU	x	EN ISO 25649-5:2017
			EN 15649-6:2009+A1:2013 Floating leisure articles for use on and in the water — Part 6: Additional specific safety requirements and test methods for Class D devices	11.7.2014	2014/359/EU	x	EN ISO 25649-6:2017
			EN 15649-7:2009 Floating leisure articles for use on and in the water — Part 7: Additional specific safety requirements and test methods for class E devices	4.9.2013	2013/390/EU	x	EN ISO 25649-7:2017
		Cigarettes (ignition propensity)	EN 16156:2010 Cigarettes — Assessment of the ignition propensity — Safety requirement	17.11.2011	2011/496/EU	x	EN ISO 12863:2010/A1:2016
		Child protective products	EN 16281:2013 Child protective products — Consumer fitted child resistant locking devices for windows and balcony doors — Safety requirements and test methods	11.7.2014	2014/358/EU		Re-referenced
	Cenelec	Audio, video and similar	EN 60065:2002 Audio, video and similar electronic apparatus — Safety requirements IEC 60065:2001 (Modified)	4.9.2013			EN 60065:2002/A12:2011
		Information technology equipment	EN 60950-1:2006 Information technology equipment — Safety — Part 1: General requirements IEC 60950-1:2005 (Modified)	4.9.2013			EN 60950-1:2006/A12:2011
Standardisation request ('mandate') published	CEN	Alcohol-powered flueless fireplaces	Standardisation work ongoing: - Safety requirements provided in Commission Decision (EU) 2015/547 - Standardisation request in Commission Implementing Decision C(2015) 8011 final	n.a.	n.a.	n.a.	n.a.
	CEN	Laser products	Standardisation work ongoing: - Safety requirements provided in Commission Decision 2014/59/EU - Standardisation request in Commission Implementing Decision C(2015) 557 final	n.a.	n.a.	n.a.	n.a.

Sources: Compiled by Civic Consulting on basis of Commission Implementing Decision (EU) 2019/1698 of 9 October 2019 on European Standards for products drafted in support of Directive 2001/95/EC of the European Parliament and of the Council on general product safety (Annex I and Annex II), Commission communication in the framework of the implementation of the Directive 2001/95/EC of the European Parliament and of the Council on general product safety (Publication of titles and references of European Standards under the directive)(2017/C 267/03), Commission Decision (EU) 2015/547, Commission Implementing Decision C(2015) 8011 final, Commission Decision 2014/59/EU, Commission Implementing Decision C(2015) 557 final. Note that standards that were referenced prior to 2013 and re-referenced by Decision (EU) 2019/1698 have not been included in the table, as they do not fall in the reference period of this study (e.g. standards regarding roller skates, outdoor furniture and paragliding equipment).

Annex IV: RAPEX data concerning unknown information items

Figure 45: Share of RAPEX alerts concerning dangerous consumer products with unknown brand, and comparison with their share in total number of notifications (by product category, 2013-2018)

Product Category	Number of alerts with brand unknown	Percent of number of alerts with brand unknown	Total number of alerts	Percent of total number of alerts	Share of unknown over share of total notifications
Lighting chains	169	8%	269	2%	**4.0**
Laser pointers	39	2%	91	1%	**2.7**
Toys	1192	57%	3686	28%	**2.0**
Pyrotechnic articles	35	2%	110	1%	**2.0**
Decorative articles	26	1%	119	1%	**1.4**
Jewellery	63	3%	309	2%	**1.3**
Lighters	23	1%	119	1%	**1.2**
Lighting equipment	73	4%	400	3%	**1.2**
Electrical appliances and equipment	186	9%	1080	8%	**1.1**
Communication and media equipment	14	1%	87	1%	1.0
Other	29	1%	206	2%	0.9
Hobby/sports equipment	37	2%	268	2%	0.9
Construction products	11	1%	91	1%	0.8
Machinery	8	0%	98	1%	0.5
Childcare articles and children's equipment	31	1%	444	3%	0.4
Kitchen/cooking accessories	4	0%	69	1%	0.4
Cosmetics	25	1%	554	4%	0.3
Protective equipment	7	0%	186	1%	0.2
Chemical products	13	1%	347	3%	0.2
Clothing, textiles and fashion items	64	3%	2280	17%	0.2
Motor vehicles	2	0%	2139	16%	0.0
Grand Total	2083	100%	13163	100%	1.0

Note: The share of unknown over share of total notifications is a measure of the degree to which specific product categories are over-represented in the notifications with products of unknown brand, compared to their share of total notifications. Values in bold indicate product categories that are over-represented (value>1).
Source: Civic Consulting, based on RAPEX data retrieved in January 2020 (calculation on basis of full dataset). Number of alerts concerning consumer products with serious risks (2013-2019). Only product categories accounting for 0.5% or more of alerts are included.

Figure 46: Share of RAPEX alerts concerning dangerous consumer products with unknown type/number of model, and comparison with their share in total number of notifications (by product category, 2013-2018)

Product Category	Number of alerts with type/number of model unknown	Percent of number of alerts with type/number of model unknown	Total number of alerts	Percent of total number of alerts	Share of unknown over share of total notifications
Cosmetics	271	16%	554	4%	**3.9**
Lighters	49	3%	119	1%	**3.3**
Chemical products	132	8%	347	3%	**3.0**
Jewellery	80	5%	309	2%	**2.1**
Decorative articles	25	2%	119	1%	**1.7**
Laser pointers	18	1%	91	1%	**1.6**
Other	28	2%	206	2%	**1.1**
Hobby/sports equipment	34	2%	268	2%	1.0
Childcare articles and children's equipment	56	3%	444	3%	1.0
Clothing, textiles and fashion items	248	15%	2280	17%	0.9
Lighting chains	28	2%	269	2%	0.8
Toys	383	23%	3686	28%	0.8
Kitchen/cooking accessories	7	0%	69	1%	0.8
Communication and media equipment	8	0%	87	1%	0.7
Electrical appliances and equipment	94	6%	1080	8%	0.7
Lighting equipment	27	2%	400	3%	0.5
Construction products	6	0%	91	1%	0.5
Protective equipment	12	1%	186	1%	0.5
Motor vehicles	117	7%	2139	16%	0.4
Machinery	2	0%	98	1%	0.2
Pyrotechnic articles	1	0%	110	1%	0.1
Grand Total	1654	100%	13163	100%	1.0

Note: The share of unknown over share of total notifications is a measure of the degree to which specific product categories are over-represented in the notifications with products of unknown type/number of model, compared to their share of total notifications. Values in bold indicate product categories that are considerably over-represented (value>1.5).
Source: Civic Consulting, based on RAPEX data retrieved in January 2020 (calculation on basis of full dataset). Number of alerts concerning consumer products with serious risks (2013-2019). Only product categories accounting for 0.5% or more of alerts are included.

Figure 47: Share of RAPEX alerts concerning dangerous consumer products with unknown batch number/barcode, and comparison with their share in total number of notifications (by product category, 2013-2018)

Product Category	Number of alerts with batch number/ barcode unknown	Percent of number of alerts with batch num-ber/ barcode unknown	Total number of alerts	Percent of total number of alerts	Share of unknown over share of total notifications
Laser pointers	57	2%	91	1%	**2.4**
Clothing, textiles and fashion items	1184	35%	2280	17%	**2.0**
Lighters	55	2%	119	1%	**1.8**
Jewellery	141	4%	309	2%	**1.8**
Machinery	43	1%	98	1%	**1.7**
Hobby/sports equipment	96	3%	268	2%	**1.4**
Electrical appliances and equipment	342	10%	1080	8%	**1.2**
Childcare articles and children's equipment	137	4%	444	3%	**1.2**
Lighting chains	77	2%	269	2%	**1.1**
Protective equipment	51	2%	186	1%	**1.1**
Decorative articles	32	1%	119	1%	**1.1**
Lighting equipment	103	3%	400	3%	1.0
Other	53	2%	206	2%	1.0
Construction products	22	1%	91	1%	0.9
Communication and media equipment	21	1%	87	1%	0.9
Chemical products	69	2%	347	3%	0.8
Pyrotechnic articles	21	1%	110	1%	0.7
Kitchen/cooking accessories	12	0%	69	1%	0.7
Toys	599	18%	3686	28%	0.6
Cosmetics	77	2%	554	4%	0.5
Motor vehicles	111	3%	2139	16%	0.2
Grand Total	*3366*	*100%*	*13163*	*100%*	*1.0*

Note: The share of unknown over share of total notifications is a measure of the degree to which specific product categories are over-represented in the notifications with products of unknown batch number/barcode, compared to their share of total notifications. Values in bold indicate product categories that are considerably over-represented (value>1.5).

Source: Civic Consulting, based on RAPEX data retrieved in January 2020 (calculation on basis of full dataset). Number of alerts concerning consumer products with serious risks (2013-2019). Only product categories accounting for 0.5% or more of alerts are included.

Annex V: Emerging safety issues identified by stakeholders

In our surveys, we asked stakeholders and MSAs about emerging issues with respect to both harmonised an non-harmonised products (to provide a complete picture). In most cases stakeholders indicated a product category (such as toys) and did not provide further details. From the scope of responses it becomes clear, however, that stakeholders understood the term 'emerging' broadly, indicating both new and current safety issues. The issues identified by stakeholders in the survey included:

- **Toys**. Reference was often made to connected toys or smart watches for children that do not incorporate cybersecurity mechanisms and are therefore easily pirated, so that hacking or manipulation can pose a risk to the user. One specialised test institute for children's products differentiated between four different challenges related to IoT and children: 1. IoT products intended for children. 2. Interaction between children and IoT products not intended for children. 3. New products and new styles of parenting not covered by current safety requirements 4. New business models (e.g. 3D printed toys). Other MSAs/stakeholders referred to toy drones, but also to 'traditional' cheap toys that were imported in large quantities such as loombands, hand spinners, slimes etc.
- **Childcare articles and children's equipment** have been identified as creating issues, for similar reasons to those concerning toys: the large number of such products and vulnerability of the targeted consumer group. Several stakeholders therefore raised the point that a harmonising instrument in this area at the EU level would be useful. Specific products listed were baby nappies (regarding use of potentially dangerous substances), baby nests, baby car seats and bed boundaries. It was also noted that there is no standard for junior chairs (only highchairs and adult chairs).
- **UV sunbeds**. These are subject to the Low Voltage Directive, but according to the MSA suggesting this item, no strong measures have been taken at the European level to protect the European population from the carcinogenic risk linked to exposure to artificial UV rays.
- **New electrical equipment**. This includes new personal transport equipment such as hoverboards, scooters, electric wheelchairs, electric bicycles (>40km/h) as well as drones and electrically operated furniture.
- **Batteries**. Reference was made to button batteries (ingestion risk), but also to lithium ion batteries used in many products. Regarding the latter, it was noted that some products do not have a battery management system included, which may lead to exploding batteries and fire.
- **Fairground and amusement park equipment**. A consumer organisation noted that there is a continued absence of a European legal framework for fairground and amusement park equipment[262]. Over the years, the concept and the design of amusement park equipment has changed considerably towards bigger, more exciting and more hazardous attractions. Although millions of consumers make use of amusement park equipment (often when being on a holiday abroad), very serious accidents continue to happen.
- **Grey area products** in the area of cosmetics, medical devices, pharmaceuticals and certain chemicals in consumer products were regarded as an emerging safety issue, with stakeholders stating there was a need to have better definitions. Examples provided were Cannabidiol (CBD) oils, aromatic

[262] While also noting that in 2018, three European standards for amusement rides and devices (EN 13814-1, EN 13814-2 and EN 13814-3) were adopted.

oils, tiger balm etc. Other emerging issues identified regarding chemicals included biocidal products and fluorinated compounds in clothing.

- **Tattoo inks and tattoo hygiene procedures** were seen as examples of products where explicit regulation is needed.
- **Other emerging issues** mentioned by our interviewees and by respondents to the stakeholder survey included *siphons à crème* (whipped cream makers), where several serious cases have occurred in France in the past few years; water filters; hot water bags; ironing boards; and pet products.

Annex VI: References

Author	Title	Year
ANEC-BEUC	Revision of the General Product Safety Directive; Key issues from a consumer perspective	2010
Austria	Market surveillance 2010-2013	2014
Austria	National market surveillance programme 2019	2019
Belgium	Review and assessment of the functioning of market surveillance activities for all products falling under the harmonisation legislation 2010-2013	2014
Belgium	National market surveillance programm 2019	2019
Bulgaria	Review and assessment of the functioning of market surveillance activities 2010-2013	2015
Bulgaria	National programme for market surveillance 2019	2019
Croatia	Review and assessment of the functioning of market surveillance activities 2013	2014
Croatia	National market surveillance programme 2019	2019
Cyprus	National market surveillance programm 2019	2019
Cyprus	Review of market surveillance activities 2014-2016	
Czech Republic	Review and assessment of the functioning of market surveillance activities 2010–2013	2014
Czech Republic	System of market surveillance - Graphic	2014
Dahouk, Sascha Al	Microbiological safety of non-food products ; What can we learn from the RAPEX database?	2019
Denmark	National Market Surveillance Programm	2019
Denmark	Review of market surveillance activities 2014-2016	
Diallo, Thierno et al.	Towards a more efficient use of process and product traceability data for continuous improvement of industrial performances	2018
Dieckmann, Ralf	Microbiological safety of non-food products ; What can we learn from the RAPEX database?	2019
Ene, Corina	Rapex system - an efficient tool for european consumer safety	2013
Estonia	Market surveillance programme 2019	2019
Estonia	Review and assessment of market surveillance activities 2014-2016	
European Commission	Guidance document on the relationship between the GPSD and certain sector directives	2003
European Commission	Comparative Inventory on General Product Safety (GPSD) and the relevant corresponding national transposition measures	2006
European Commission	Administrative Arrangement (AA) between the European Commission and Canada on the exchange of information on the safety of non-food consumer products	2008
European Commission	Report from the Commission on the implementation of Directive 2001/95/EC on general product safety	2009
European Commission	Guidance Document - The relationship between Directive 2001/95/EC and the Mutual Recognition Regulation	2010
European Commission	Market surveillance and the revision of the General Product Safety Directive (PPP)	2010
European Commission	Commission Communication in the framework of the implementation of Regulation (EC) No 1223/2009 on cosmetic products	2011
European Commission	Commission staff working document IA - accompanying Product Safety and Market Surveillance Package	2013
European Commission	European Commission proposal on product safety and market surveillance package	2013
European Commission	RAPEX facts and figures 2013 - Complete Statistics	2013
European Commission	Research support for an informal expert group on product traceability	2013
European Commission	Guidelines for import controls in the area of product safety and compliance	2014
European Commission	Evaluation of Directive 2009 / 48 / EC on the safety of toys	2015
European Commission	Keeping European consumers safe - Rapid Alert System for dangerous non-food products 2014 Complete Statistics	2015

European Commission	Rapid Alert System for dangerous products 2015 results	2015
European Commission	Study on the promotion of the use of RAPEX information by importers, distributors and retailers - study by Civic Consulting	2015
European Commission	Good Practice in Market Surveillance Activities related to Non-Food Consumer Products sold Online Annex; Good Practice Cases	2015
European Commission	Good Practice in Market Surveillance Activities related to Non-Food Consumer Products sold Online	2015
European Commission	Commission Notice - The 'Blue Guide' on the implementation of EU product rules 2016	2016
European Commission	Consumer safety - Abstracts	2016
European Commission	Guidelines for import controls in the area of product safety and compliance	2016
European Commission	RAPEX report 2015	2016
European Commission	Summary of Member States' assessment and review of the functioning of market surveillance activities	2016
European Commission	Summary of Member States' assessment and review of the functioning of market surveillance activities during the 2010-2013 period	2016
European Commission	Commission Staff Working Document - IA - accompanying the Proposal for a Regulation laying down rules and procedures for compliance with Union	2017
European Commission	Communication from the Commission - The Goods Package; Reinforcing trust in the single market	2017
European Commission	Draft minutes of the meeting of Consumer Safety Network, 17. Nov. 2016	2017
European Commission	Ex-post evaluation of the application of the market surveillance provisions of Regulation (EC) No 765 / 2008	2017
European Commission	RAPEX report 2016	2017
European Commission	Results of the EU Rapid Alert System for dangerous non-food products 2017	2017
European Commission	Working together to keep consumers safe - 2017 results of the EU Rapid Alert System for dangerous non-food products	2017
European Commission	Commission Notice on the market surveillance of products sold online	2017
European Commission	Rapid Alert System for dangerous products - 2016 Annual Report	2017
European Commission	Evaluation of impact of the " Internal Market for Goods – Digital Compliance ”	2017
European Commission	Commission implementing decision of 9.11.2018 laying down guidelines for the management of RAPEX	2018
European Commission	EU Rapid Alert System for dangerous non-food products 2018 results per country	2018
European Commission	Product safety pledge - Voluntary commitment of online marketplaces	2018
European Commission	Commission implementing decision (EU) 2019/417 laying down guidelines for the management of RAPEX	2019
European Commission	List of national market surveillance authorities by country	2019
European Commission	List of national market surveillance authorities by sector	2019
European Commission	Safety Gate; 2018 results of the Rapid Alert System for dangerous non-food products	2019
European Commission	Survey on consumer behaviour and product recalls effectiveness	2019
European Commission	Summary of EU member states and EEA EFTA states' assessment and review of the functioning of market surveillance activities 2014-2016	
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European Parliament and of the Council	Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation	2012
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European Parliament's Committee on Internal Market and Consumer Protection	Market surveillance and revision of GPS Directive (EP-IMCO)	2010
European Parliament's Committee on Internal Market and Consumer Protection	The General Product Safety Directive and Market surveillance workshop	2010
European Parliament's Committee on Internal Market and Consumer Protection	Briefing Note IMCO - Market surveillance in relation to type approval requirements	2011
European Parliament's Committee on Internal Market and Consumer Protection	The product safety and market surveillance package, IMCO workshop 2013	2013
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EuroSafe	Injuries in the European Union - statistics summary 2002-2004	2006
EuroSafe	Injury report in the European Union 2005-2007	2009
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Finland	National Market Surveillance Programm 2019	2019
Finland	Review of market surveillance activities 2014-2016	
France	National market surveillance programme 2019	2019
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Germany	Market surveillance results 2010-2013 covered by the German Product Safety Act (Produktsicherheitsgesetz)	2014
Germany	Report on the market surveillance results under the market surveillance programme for 2010 to 2013 for the sectors covered by the German Product Safety Act	2015
Germany	Marktüberwachungsprogramm 2019	2019
Greece	National market surveillance programme	2018
Greece	Review of market surveillance actvities 2014-2016	
Hungary	Review of market surveillance activities 2014-2016	
Iceland	National market surveillance programme	2019
Ireland	National market surveillance programme	2019
Ireland	Review of market surveillance activities national authority information 2014-2016	
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Lithuania	Annex-Sector specific Market Surveillance Programme for 2015	2015
Lithuania	Review of market surveillance activities national authority information 2014-2016	
Luxembourg	Programme national de surveillance du marche	2019
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Malta	Proposed template for the review and assessment of the functioning of market surveillance	2014
Malta	The national market surveillance programme for Malta- The policies behind it	
Members or Chairpersons of various Administrative Cooperation (AdCo) groups	Guidance Document - Good practive for market surveillance	2017
Netherlands	National Product Market Surveillance Plan for 2015–2016	2015
Netherlands	Collection of National Surveillance Data and Assessments 2014-2017	
Nordic Council of Minister	Nordic working papers	2016
Norway	National market surveillance programm	2019
Norway	Review of market surveillance activities 2014-2016	
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Polak, Josine; Versluis, Esther	What works to make enforcement work? ‘ Best practices ’ supporting the enforcement of the General Product Safety Directive	2011
Poland	National market surveillance programm	2019
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Portugal	National market surveillance programm	2018
Prosafe	Results of the joint action on toys	2010
Prosafe	Technical report, joint market surveillance action on cords and drawstrings on children's clothings	2010
Prosafe	Final implementation report baby walkers	2011
Prosafe	Final implementation report helmets	2011
Prosafe	Final implementation report child appealing designs	2011
Prosafe	Final implementation report sunbeds & solarium service 2	2011
Prosafe	Final implemenation report Lighters 2	2013
Prosafe	Final implementation report five consumer products	2013
Prosafe	Final technical implementation report	2014
Prosafe	Results, conclusions & recommendations baby bath tubs	2014
Prosafe	Results, conclusions & recommendations wheeled child conveyances	2014
Prosafe	Final technical report - high chairs	2015
Prosafe	Final technical report ladders	2015
Prosafe	Final technical report, CO and smoke detectors	2015
Prosafe	Final technical report, cords and drawstrings	2015
Prosafe	Final technical report, nanotechnology & cosmetics	2015
Prosafe	Progress report on method development activities	2015
Prosafe	Final report joint action China 2012	2016
Prosafe	Final technical report chemicals in clothing	2016
Prosafe	Final technical report children's kick scooters	2016
Prosafe	Final technical report cots	2016

Prosafe	Final technical report toys intended for children under 3 years	2016
Prosafe	Final technical report, acoustic toys	2017
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Prosafe	Final technical report, power tools 1, hand held electric angle- and straight grinders	2017
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Prosafe	Preliminary observations on the Goods Package	2018
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Slovakia	National market Surveillance programme	2014
Slovakia	Review of market surveillance activities 2014-2016	
Slovenia	National market surveillance programme	2018
Spain	National market surveillance programme	2015
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