Position paper of VNO-NCW and MKB-Nederland on the proposal for Consumer Product Safety Regulation (CPSR)

A. On the positive side:

It is good that the CPSR aims at a much clearer legal situation between harmonised and non-harmonised products. It is also good that The Commission will produce further guidance on that.

It is good that the CPSR aims at further simplification.

It is good that some obligations for economic operators are required 'proportionate to the potential risk'. In it good that this essential notion is incorporated into art 8.2 and 8.3., and in art 10.6

It is good that surveillance is strengthened and streamlined.

It is good that the CPSR also covers distance selling.

It is good that the CPSR takes a point of departure that economic operators should be responsible in relation to their respective roles in the supply chain. The results should indeed be clear and proportionate distribution of obligations.

B. Issues of (potential) concern:

Delegated acts: the proposal foresees on certain issues in empowering the European Commission for adopting measures. We need to closely analyse whether those delegated powers are appropriate. The treaty lays down that such measures should be about 'non-essential' elements. Setting mandatory requirements for citizens (in this case business) should primarily remain in the hands of the Council and EP.

Many of the obligations for economic operators are indeed necessary to guarantee a high level of safety. But some are not necessary for all cases for which they are proposed. The mere fact that such requirements are applicable in certain products areas, does not automatically mean that they are proportionate for all consumer products. Overcoming fragmentation, alignment and coherence (as mentioned a.o. in par. 1.5.1. and 1.5.4. of the legislative financial statement) sounds and is good in many cases, but should not refrain the legislator from targeting its requirements to cases in which requirements are necessary and proportionate. Otherwise the envisaged reduction of administrative burden and compliance costs will not be achieved.

In whereas nr 7 it is said that is 'practically impossible' to adopt community sector specific legislation for all consumer products. That is true, but it also is not necessary as well.

Products identification and traceability. It is understandable that in case of any unsafe products, surveillance authorities need to be able to identify and trace these products. Therefore we propose that economic operators, on request of the surveillance authorities, be required to give the necessary information to the authorities on those products. The results

will be that the operators can be identified. Such an obligation needs to be embedded in the CPSR itself, and not in delegated measures of the Commission. However, in the CPSR is proposed that all consumer products shall bear information allowing their identification/country of origin. That is not proportionate, bearing in mind that most consumer products are safe. Art 7 needs to be changed in that respect. Whereas nr 29 and art 15 already indicate that such identification and traceability of products is only needed with products bearing a potential serious risk to health and safety: it is likely that these are also the products for which there is harmonised EU legislation. So, these products are already determined, and need not be determined by delegated act through art 15 par 3: this par would give legislative power to the Commission for an essential element of this regulation., which is not appropriate. Besides, art 14 (applicable to each economic operator, as a consequence of which authorities can always get a full picture of the whole chain) already foresees in a proportionate system for identification of economic operators. Because of article 14, both art 7 and art 15 are superfluous, and can be deleted. Another advantage of deleting art 7 in chapter I, is that only then all obligations of economic operators are in chapter II 9as is suggested by the title of chapter II).

The demarcation between CPSR and sector specific requirements. To a very large extent the CPSR gives a good solution on this: chapters II to IV CPSR are not applicable to products for which there are specific EU requirements. However, for those products chapter I remains applicable. This needs to be assessed more in detail. Probably for some parts of chapter I requirements that might be not a problem, but for other parts it might be. A.o. we need to avoid a system of double presumption of conformity, which will reduce legal certainty.

Art 3.16 defines Union harmonisation legislation as any Union legislation harmonising the conditions for the marketing of products. We need to assess that. It may turn out that in context of CPSR we only to refer to Union legislation that harmonises the safety of products.

Art 3.17 defines serious risks. We wonder what exactly is the difference between serious risks and unsafe product. Depending on the answer to that question, we might urge for more clarification.

Art 6: aspects for assessing the safety of products. This article, in its paragraph 1, lists aspects to be taken into account. Then, in paragraph 2, again it lists aspects to be taken into account. We wonder if there are any special reasons why this distinction is made: does this mean any hierarchy?

Art 8.3 obliges manufacturers to keep distributors ‘informed of any of such monitoring’. Same in art 10.6 for importers. It is not completely clear what is meant by ‘monitoring’. Besides, we question if the word ‘any’ is appropriate and proportional.

Art 8.8 and art 10.4, in their last paragraph, can be read as a kind of minimum harmonisation: MS are entitled to determine language requirements for instructions and safety information, subject to notification to the Commission. We wonder if under the GPSD, MS have issued such requirements.

Art 9.2 specifies the obligations of authorised representatives. The last part of a, refers to information and documentation ‘necessary to demonstrate the conformity of a product’. We propose to replace these words with ‘as mentioned in art 8.4’, for better coherence.

Art 11. Both in its paragraph 3, and in its paragraph 5, obligations are specified in case of unsafe products. There seems to be an overlap here.
Art 16 par 1 lays down that the Commission may determine the requirements as to the content to be met by requested standards. We question the legitimacy of that power. Such a power would, directly or indirectly (through standards) , set the requirements to which products has to adhere. Under the Treaty, rightly so, it is the Commission that proposes requirements, which then are set by the Council and the EP, through normal democratic procedures. Through art 16 par 1 the Commission would get legislative powers, which need to remain at Council and EP, like all EU harmonisation directives. Also, art 16 par 5 and art 17 need some adjustments in this respect, e.g. by deleting 'the requirements it aims to cover'. In that way the basic safety requirement of the CPSR remains the criterion to judge the safety level (in standards).

Art 18 is a.o. on penalties. Further analyses seems needed in what cases criminal sanctions are appropriate.

The legislative financial statement does not give rise to many observations. We take note of the fact that this proposal is supposed to contribute to the EU growth strategy by enhancing consumer confidence. It seems appropriate at the time of evaluation to determine to what extent the CPSR indeed had increased confidence and growth.

Hubert van Breemen
11 April 2013.