

Position paper on the proposal for a General Product Safety Regulation

Key points

1. Introduce a more risk-based and proportionate approach
2. Ensure feasibility and clarity of the new obligations for economic operators
3. Improve the quality of notices to increase effectiveness of recall mechanisms
4. Strengthen national market surveillance and customs authorities

Introduction

In its [New Consumer Agenda](#), published on 13 November 2020, the European Commission set out its vision for restructuring EU consumer policy integrating developments such as digitalisation and sustainable transition. As part of its strategy, the Commission proposed a revision of the General Product Safety Directive (GPSD) 2001/95/EC, which currently provides the legal framework for the safety of non-food consumer products.

Ecommerce Europe believes the GPSD has generally been effective in reaching its overall objectives of ensuring a high level of consumer protection through the reduction of unsafe products and contributing to the functioning of the Single Market. It has also successfully established the EU Rapid Alert System (Safety Gate), a platform for communication between EU Member States and the European Commission on dangerous products, which can still be modernised. At the same time, we support the Commission's ambition to ensure that all products placed on the European market are safe and improve the effectiveness of the legislative framework. In particular, due to its minimum level of harmonisation, the GPSD has been implemented in different ways in the various Member States, resulting in diverging provisions across the Union and legal uncertainty and potential higher compliance costs for businesses. We welcome that the Commission has chosen to propose a Regulation rather than a Directive, to avoid fragmentation across Member States. Ensuring uniform implementation of product safety rules across Europe through a Regulation will therefore be crucial to facilitate compliance and reduce the administrative burden for companies.

With its GPSR proposal, the European Commission aims to align product safety rules with the Market Surveillance Regulation. Ecommerce Europe welcomes the intention to ensure coherence between harmonised and non-harmonised product legislation, but stresses that further alignment with other legislation regulating product safety is crucial to ensure legal certainty for businesses. In particular, it is

important to be mindful of parallel negotiations on other legislation impacting digital services, such as the Digital Services Act and the Artificial Intelligence Act. In that perspective, the GPSR should focus on what is necessary to improve the effectiveness of product safety rules, take into consideration potential non-legislative tools and adopt a proportionate and risk-based approach that differentiates, in line with existing legislation, the responsibilities of economic operators in relation to their respective roles in the supply chain.

The accelerated digitalisation and globalisation of trade in the last few years has created many opportunities for online merchants in Europe, allowing them to reach new markets as well as benefit from new types of business models. However, Ecommerce Europe recognises that the evolution of this new digital era has also created certain challenges related to non-compliant goods entering the EU, for which current enforcement structures are insufficiently equipped to effectively monitor and test the safety of products. Ecommerce Europe therefore encourages further international cooperation between the European Commission, Member States and third countries to help reduce non-compliant goods from being placed on the EU market.

Scope and definitions

Article 2(3) of the Commission's proposal states that the Regulation shall apply to "products placed or made available on the market whether new, used, repaired or reconditioned". Ecommerce Europe welcomes the overall risk-based approach of the proposal, which establishes a legislative framework of a horizontal nature covering all consumer products, both sold via online and offline sales channels. However, we would like to highlight a few issues with regards to the inclusion of second-hand products. Ecommerce Europe fully supports the EU's circular economy objectives and strongly encourages retailers to increasingly adopt circular business models. We recognise that consumer trust and safety is of utmost importance in these cases. Nonetheless, we believe a distinction should be made between the requirements that apply to newly manufactured products and used products.

While we believe safety standards should by no means be lowered for repaired or reconditioned products, the obligations placed on the various operators in the supply chain should be reasonable and feasible to comply with. According to the current proposal, distributors are required to verify that manufacturers or importers have complied with certain requirements, for instance in terms of product information or documentation. In the case of second-hand products, this could create additional administrative burdens and make it less attractive for economic operators to sell second-hand products. We fear that very strict rules could hamper the development of second-hand commerce. Instead, circular business models should be incentivised by facilitating and simplifying procedures. Ecommerce Europe would therefore recommend excluding products which have been repaired or refurbished without changing the original performance, purpose, or type from the scope of the proposal.

Article 3 (2) of the Commission proposal defines a 'safe product' as "any product which, under normal or reasonably foreseeable conditions of use or misuse, including the actual duration of use, does not present any risk or only the minimum risks compatible with the product's use [...]". Compared to the previous definition established in the GPSD, the Commission has added the "misuse" as a condition to be taken into account. Ecommerce Europe is concerned about the practical implications of this addition, as it will be very complicated to foresee the risk related to misuse. In our view, businesses can only be held responsible for a "normal or reasonably foreseeable" use of their products. We therefore recommend removing the word "misuse" from the definition of a "safe product". Additionally, we would like to stress that companies cannot fully control the "actual" duration of use of a product. Instead, they can communicate about the recommended safe period of use.

Distance sales

Article 4 of the Commission proposal provides criteria to determine whether an offer is targeted at consumers via distance sales, namely the use of an official language or currency, domain name registered in one of the Member States, or the geographical areas to which products can be dispatched. We would like to point out that these criteria have been further specified in the Alpenhof¹ case regarding the eCommerce Directive. While we generally believe the GPSR might not be the most suitable framework to develop these criteria, we would like to emphasise the importance of alignment of Article 4 with both the eCommerce Directive, other legislation and case law on how to define the targeting of distance sales.

Ecommerce Europe recommends a risk-based approach focusing on higher-risk products to Art. 18, which specifies the obligations of economic operators in the case of distance sales, to avoid imposing unnecessary overburdening of the authorities. Additionally, we would like to stress the importance of channel neutrality in these rules. Retail is increasingly becoming omnichannel, and the separation between online and offline commerce is gradually disappearing. It should therefore be avoided to create separate rules for online and offline, which could easily lead to higher costs for certain channels, creating barriers to innovation, preventing new market entrants or smaller players from launching new initiatives. With regards to the data specifically requested, the information required under Art. 18 (b) about the responsible person is not in line with the guidance on Art. 4 of the Market Surveillance Regulation. Furthermore, the obligations in Art. 18 c) and d) go beyond the information currently required in brick-and-mortar stores. For instance, offline retailers are not obliged to indicate the batch or serial number of the products. For online stores, this would be very burdensome to comply with, as it would require a new offer to be placed every time a new batch or series is sold.

Safety Requirements

Article 7 of the GPSR proposal specifies the aspects that should be taken into account when assessing whether a product is safe. Two of the new aspects for authorities and manufacturers to consider are whether a product has “the appropriate cybersecurity features necessary to protect the product against external influences” and “the evolving, learning and predictive functionalities of a product”. We would like to point out that there are no agreed standards yet on what “appropriate cybersecurity” entails, and how distributors can check or confirm this. To ensure legal certainty and coherence between the various relevant pieces of legislation, we consider that this would be more suited to be addressed in legislation focusing on cybersecurity or in harmonised product legislation. This is the same for recent innovations such as AI that are imbedded in products, which should be covered in the Artificial Intelligence Act. Ecommerce Europe would therefore suggest deleting Article 7 (h) and (i).

Article 7 (b) and (c) refer to the effects of and on other products, such as the interconnection between products or the effect of non-embedded items that are meant to impact the way another product works. Ecommerce Europe does not oppose the inclusion of these aspects as such but, to ensure proportionality and feasibility of compliance, would instead ask to specify that these would only apply when the products in question are “intended” to be used together.

Obligations for economic operators

While the general standard that unsafe products are not allowed to be placed on the European market has overall worked well, Ecommerce Europe agrees that the GPSR proposal presents a useful update to better reflect business developments and consumption patterns in the past decade. Following developments in

¹ <https://curia.europa.eu/juris/liste.jsf?num=C-585/08&language=en>

the market, in particular the digital and sustainable transition, the GPSR proposes significant changes to the obligations of different types of actors in the supply chain (manufacturers, importers, distributors, marketplaces etc.).

Ecommerce Europe is generally pleased with the proposed allocation of responsibilities in the GPSR. We consider it reasonable that the greatest responsibilities are placed on the operator that first makes a product available on the market (i.e., the manufacturer or importer). As distributors come into contact with products only after the manufacturer or importer, it is reasonable that the responsibility imposed on distributors is not as far-reaching.

Article 11 specifies the obligations placed on distributors before making a product available on the market. Ecommerce Europe believes that the obligation for a distributor to verify that the manufacturer and importer have complied with the requirements under the Regulation would be too burdensome. The GPSR is applicable to a wide range of product categories, meaning that distributors would essentially have to duplicate the work of the manufacturer of products that could be very specific and/or technical. We call on policymakers to delete this obligation for distributors. At a minimum, we would ask to maintain the wording under the current GPSD that distributors have this obligation only “within the limits of their respective activities” (GPSD Art. 5.2.).

Responsible person

Article 15 of the GPSR expands the application of the responsible person from Regulation (EU) 2019/1020 (Market Surveillance Regulation) to all products. On 16 July 2021, Regulation 2019/1020 “on market surveillance and compliance of products” fully came into application, creating a new obligation for harmonised/higher-risk products placed on the EU market to have a responsible person established in the Union, responsible for tasks related to the conformity of that product with EU safety rules. This provision of the Regulation will be the subject of an evaluation report by the Commission before 16 July 2023. While we generally support alignment between the GPSR and the Market Surveillance Regulation, we would like to stress that it is important that policymakers take into account the effects of this Regulation before expanding the rules to all products. We believe that a responsible person for all products is unnecessarily burdensome, with very little benefits for consumers. Instead, we recommend that the responsible person obligation follows a risk-based approach, focusing on higher-risk products. If and when needed, following an impact assessment and after consulting stakeholders, the Commission could add products to the higher-risk categories, to which the responsible person obligation would apply, by means of Delegated Acts.

Additionally, we have some concerns about the additional tasks for a responsible person going beyond the tasks referred to in Article 4(3) of the Market Surveillance Regulation. Article 15.2 adds the obligation for the responsible person to “*periodically carry out sample testing of randomly chosen products made available on the market*”. However, the GPSR does not specify on which standards or legislation the sample testing should be based nor does it provide clarity on what tests and on how these should be carried out. This testing requirement essentially places the obligation of a manufacturer on a responsible person. However, responsible persons may not always have the same capacity to carry out tests in a way a manufacturer could (e.g., due to fewer available stock). Ecommerce Europe therefore believes that Art. 15.2 should be deleted and that the general obligation to test and inspect products should remain with the market surveillance authorities.

Traceability of products

Article 17 of the GPSR proposal focuses on the traceability of products. It gives the Commission the option to require economic operators to “*establish or adhere to a system of traceability*” for “*certain products, categories or groups of products*”. We would like to point to the importance of clarity on the type of system that has to be used as well as on the question for which products or product categories this should be implemented. The choice for this system must be based on the best-practice examples that are currently already used by businesses.

Online marketplaces

Article 20 of the GPSR proposed specific obligations for online marketplaces related to product safety. Online marketplaces must establish a single contact point for communication with market surveillance authorities and they have to register with the Safety Gate portal. Ecommerce Europe welcomes this proposal as we believe this could be helpful to ensure a quick and appropriate response in the case of unsafe products. Upon receipt of an order from an authority, online marketplaces would have to act within two business days. However, we believe that this deadline would not always be appropriate, for instance in the case of small platforms. Additionally, the level of risk associated with the non-compliant products can be highly divergent, for which it could be important to treat orders on high-risk products first. Regardless, it is important to clarify that only after an economic operator has been able to verify the product safety issues flagged in a precise and complete order, the two working days deadline can start. According to Art. 20.4, online marketplaces also have to give “*an appropriate answer without undue delay, and in any event within five working days [...] to notices related to product safety issues*”. It is unclear to what is meant by providing ‘an appropriate answer’.

Article 20.6 introduces the requirement for economic operators to allow authorities to access their interfaces so that online tools can be deployed to detect compliance issues (Art. 20.6(d)) and, upon request of a market surveillance authority, and if considered necessary, to consent to data scraping by authorities (Art. 20.6(e)). We are concerned that these obligations may expose sensitive business information and may impact the integrity of the systems and degrade the user experience. Instead, we would strongly support an approach in which increased cooperation between market surveillance authorities and online marketplaces is encouraged, building on the current EU Product Safety Pledge.

Market surveillance & the Safety Gate rapid alert system

Ecommerce Europe would like to stress the general observation that market surveillance and customs authorities often lack the human and financial resources to effectively deal with the new challenges of the platform economy. Additionally, at EU level, the authorities are often uncoordinated, not only among themselves but also with the relevant stakeholders. Consequently, compliance with standards and requirements is not efficiently monitored and together with differences in the level of enforcement across Member States, this leads to an inconsistent application of EU law. We therefore strongly encourage coordination between authorities, for instance through cooperation on functional procedures such as inspections, and stress the importance of providing sufficient resources.

We ask policymakers to clarify which “schemes” are referred to in Art. 21.4 and what would be subject to such checks. It is important to ensure a harmonised approach in this regard between the different Member States’ authorities. We welcome the measures proposed in Art. 23, 24 and 25 aimed at increasing transparency for operators using the Safety Gate. We consider it helpful that the Commission aims to draw

up “*guidelines for the practical implementation of the Safety Business Gateway.*” Further information on these guidelines would be strongly welcomed.

Recalls

Ecommerce Europe generally believes that the GPSD sufficiently regulates recalls, however, the quality of the notices should be further improved. Online marketplaces rely on recall notices from authorities to identify the products which should be taken down. Currently, the information provided is poor or not always complete which leads to significant delays in businesses being able to take action, potentially putting customers at further risk. This system could be further improved by the use of harmonised notices which should be of sufficient quality and level of detail. Ecommerce Europe would support minimum requirements for recall notices, which we believe would help both economic operators, authorities, and consumers. It is also crucial to ensure that the risk assessment process at the basis of a recall is harmonised. Member States often have diverging approaches and methodologies and fail to provide the justification for a decision to recall to the manufacturer. We therefore encourage policymakers to improve the Safety Gate system by adding necessary details to the product safety notifications and believe that marketplaces can play a decisive role by redirecting consumers to relevant product recall information.

In addition, data between the various operators would help the recall processes to be effective. For instance, manufacturers often have the best knowledge on how products are made and are able to help consumers address issues. Ecommerce Europe encourages data sharing in the value chain to facilitate effective consumer protection.

Penalties & implementation timeline

Article 40 lays down the rules on penalties and lists the criteria Member States must take into account for the imposition of penalties. The GPSR draft also requires Member States to have a maximum fine that is at least 4% of the company’s turnover in that Member State (Art. 40.4). Generally, Ecommerce Europe supports a uniform application of penalties across the EU, to create legal certainty and avoid fragmentation. However, we would also like to stress the importance of proportionality for the imposition of penalties. We believe the focus should not solely be on penalties, but rather on assisting companies with compliance and on building prevention capacity with market surveillance authorities. Legitimate businesses do not have the intention to violate the obligations under this regulation, however, should this happen by accident, the fine should not be such that it would threaten their operations. Mechanisms should be put in place to warn or reprimand an economic operator, assist them with compliance and when violations persist, a penalty could be considered.

The 6-month timeline that is set in Article 47 for entry into application of the Regulation is unrealistic. The obligations in the GPSR have considerable impact on economic operators, including on SMEs. Far-reaching changes need to be made for instance in terms of updating labelling, websites and IT systems, and this cannot realistically be achieved in only 6 months. In comparison, the Market Surveillance Regulation had a transition period of 24 months. We urge policymakers to align the GPSR with the Market Surveillance Regulation and extend the implementation period to at least 24 months.