Position paper on the General Product Safety Directive

Introduction

In its New Consumer Agenda, published on 13 November 2020, the European Commission sets out its vision for the new role of consumers, the possible gaps in consumer protection as well as the legal fragmentation in the Member States with the aim of structuring a new EU consumer policy focusing on areas such as digitalisation and sustainable transition. As part of its strategy, the Commission is working on a revision of the General Product Safety Directive (GPSD) 2001/95/EC, which provides the legal framework for the safety of non-food consumer products.

Ecommerce Europe has already formally provided feedback on the evaluation and potential revision of the GPSD through the recent European Commission's public consultations[1], in the context of the New Consumer Agenda. This position paper largely reflects and is based on the contribution of Ecommerce Europe to those consultations.

You will find below in this position paper, Ecommerce Europe's key considerations in relation to the General Product Safety Directive in terms of its fitness for purpose and potential deficiencies, which, when addressed, would ensure a higher level of consumer protection and improve the functioning of the Single Market.

Key points

1. **GPSD principles remain fit for purpose**
2. **Address challenges related to the influx of goods into the EU**
3. **Strengthen national market surveillance and customs authorities**
4. **Adapt the GPSD to the fast-digitalising economy**

---

[1] 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, *Civic Consulting*, closed in September 2020; The New Consumer Agenda: open public consultation, *European Commission*, closed in October 2020.

1. GPSD principles remain fit for purpose

Ecommerce Europe believes the GPSD has been largely 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. The effectiveness of the GPSD is mainly a result of the common and general standard that unsafe products are not allowed to be placed on the European market. The GPSD has strongly supported the Single Market by contributing to prevent diverging actions by Member States and facilitated a more harmonised interpretation. It has also increased efficiency by common action regarding dangerous products and towards consumers. The Safety Gate/RAPEX system as such is also a useful tool to tackle ex post the appearance of unsafe products on the EU market, although its effectiveness depends on the quality of the information provided.

Furthermore, there have been a number of initiatives aimed at improving the effectiveness of the GPSD, such as the improved supply chain management by companies, the improved tracing of customers in the online environment, as well as several Commission initiatives such as the voluntary Product Safety Pledge and Memorandum of Understanding on Counterfeit Goods, the Commission Notice on the market surveillance of products sold online and the improved EU product safety market surveillance rules. Although Ecommerce Europe members have different views on the effectiveness of such voluntary measures to address product safety compliance issues, in general, Ecommerce Europe supports any initiatives that would enhance commitment and involvement of more marketplaces to the Product Safety Pledge, both from within and outside the EU, especially given it goes beyond their legal obligations.

Overall, initiatives aimed at improving the voluntary gathering and sharing of data are useful and have positive effects on product safety. Digital commerce and digital technology are data-driven, which makes it easier to follow a product through the distribution chain and to trace and identify unsafe products in online B2C offers (preventive) and to identify customers for recalls and remedies in case of (potentially) unsafe products sold to them (curative). This also accounts for Market surveillance, which has been made easier and more effective due to intelligent data driven programs.

Ecommerce Europe believes that the overall GPSD framework is basically fit for purpose. However, there are still areas of the GPSD where Member States have different interpretations and national authorities perform Product Safety surveillance in different ways. While the GPSD addresses, to a certain extent, legal fragmentation and thereby contributes to a level playing field on the internal market and its effectiveness, its application could still be substantially improved by ensuring a more harmonised and uniform interpretation of its rules across the EU.

2. Address challenges related to the influx of goods into the EU

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, the evolution of this new digital era has also created certain challenges related to the flow of non-compliant goods entering the EU, for which current regulatory and enforcement structures are insufficiently equipped to effectively monitor and test the safety of products.

Ecommerce Europe was pleased to find the Commission's attention to this issue in its Communication on the New Consumer Agenda, in which the increased challenge of direct imports and the subsequent difficulty in checking the safety of those products entering the Single Market is identified. To remedy this, Ecommerce Europe believes that the European Commission should explore options on how to address the challenge of non-compliant (e.g. unsafe) products entering the EU market unnoticed through direct imports, and on who to hold accountable for unsafe products in case there is no responsible legal entity in the EU. It should be mentioned that in principle, the non-EU based seller that is directing or making available the product to an EU market should be responsible for making sure it is compliant. In addition, the European Commission

and the Member States should ensure effective and efficient enforcement and removal of illegal content and products placed on the EU market. Currently, there is an enforcement framework that is not effective enough to prevent non-compliant products from being offered on the EU market. Ecommerce Europe also supports the principle that third-country operators selling products to EU consumers should comply with EU product compliance rules. In terms of lack of understanding of EU product compliance rules by non-EU based manufacturers, which can also be an issue, the EU could step up its efforts in educating these players about EU legislation and foster international cooperation with third countries. However, the lack of understanding of EU rules by these players should not in any case be a justification for placing non-compliant goods on the European market.

With the entry into application of the Market Surveillance Regulation in July 2021, new obligations will be introduced for non-EU based sellers and marketplaces. Most notably, the obligation for non-EU sellers to have an EU representative, a so-called economic operator, in charge of the conformity of their products on the EU market as well as collaboration with EU market surveillance authorities. Ecommerce Europe recommends that the European Commission conducts a proper impact assessment of the effectiveness of this legislation before introducing far-reaching new obligations in the revised GPSD framework, as well as to ensure the alignment with existing and future (e.g. the Digital Services Act) legislation.

Moreover, as consumer-product marketing and interaction are evolving, creative and novel ideas for ensuring product safety must also be considered. The recurring point of having a responsible person assumes one solution, but there could be other approaches for consideration, e.g. via multilateral trade agreements with cargo inspection at both ends of transport, ability to have responsible legal entities in a non-EEA country, etc.

3. Improve effectiveness of recall mechanisms

Although the existing GPSD framework already sufficiently regulates recalls, significant improvements can still be made in their efficiency. There are over 500 market surveillance authorities in Europe with no minimum standard for recall or notice-and-takedown notices.

Online marketplaces rely on recall notices from authorities to identify the products which should be taken down. Currently, the information provided is not always complete or leads to significant delays in businesses being able to take action, 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. At the same time, Ecommerce Europe also encourages better cooperation between Member States in terms of their methodologies behind the risk assessment process for recalls.

To improve the system, we see better access to data as key to effective recall mechanisms: digital services need better data that is complete and actionable; better access to data (both for businesses to inform proactive systems but also for regulators to understand trends and where action may be needed); and better sharing of data (to help governments and marketplaces enforce against rogue actors).

4. Strengthen national market surveillance and customs authorities

Market Surveillance and Customs Authorities lack human and financial resources and are often uncoordinated, not only among themselves but also with the relevant stakeholders. Consequently, these authorities are not able to effectively act in a proactive manner to control goods entering the EU in terms of safety and to block them from entering the Union when assessed as unsafe or non-compliant with EU safety rules. Moreover, these authorities widely differ in their contributions (in terms of both quantity and quality) to the Safety Gate / RAPEX system. The lack of resourcing and financing of enforcement activity has led to governments trying to push these responsibilities elsewhere, rather than investing in better cooperation, data sharing, and collaboration with businesses. This concern is echoed in the European Commission's

Communication on the New Consumer Agenda, in which it highlights that "authorities do not always have sufficiently effective instruments for online market surveillance".

In Ecommerce Europe's view, the GPSD framework could be substantially improved by empowering market surveillance (and customs) authorities, by providing them with more resources and more efficient instruments to enforce EU rules, in order to efficiently check products and block non-compliant goods before they enter the EU market. We believe that market surveillance at the trade ports will need to be scaled, in line with the increase in direct imports to EU consumers. More efficient enforcement will increase EU consumers' protection and restore the level playing field for EU-based operators. Moreover, the promotion of intergovernmental cooperation, including cooperation of the Member States' enforcement authorities, to act against non-compliant players based outside the EU could further contribute to the safety of products entering the EU market.

5. Adapt the GPSD to the fast-digitalising economy

The Commission should ensure that any legislative framework on product safety will be future proof. In that perspective, Ecommerce Europe strongly recommends adopting an approach that is principle-based, technology- and channel-neutral (omni-channel) with regards to the safety of products, which is designed to adapt and resist the evolution of the fast-digitalising economy.

In the communication on the New Consumer Agenda, the Commission explains its intention to make sure the GPSD reflects the latest developments, which challenge the current definition of products and could bring new risks. In line with the Commission's aim, Ecommerce Europe believes it should be clear that the GPSD is also applicable to software or other digital content that is embedded in the product and is meant to be part of the product or is essential to make the product function properly.

Conclusion: Improve implementation and enforcement of the EU product safety legislation

Based on the abovementioned provisions, Ecommerce Europe calls for an improved implementation and enforcement of the future product safety framework compared to how the current GPSD is actually implemented and enforced across Europe. Besides calling for a more harmonised and uniform interpretation of the provisions of the future EU product safety law, Ecommerce Europe believes that the current product safety legal framework with a few limited adaptions is basically fit for purpose as it is principle based, which makes it easy to apply by way of interpretation to new technologies as far as its scope reaches. Hence, we do not support fundamental or major changes of this framework. However, we believe additional safety guidance, extra support and promotion of the Product Safety Pledge, guidance on product recalls and increased funding for joint market surveillance activities among Member States would maximise the efficiency of EU product safety legislation.

As already mentioned above, there has been a lack of resourcing and financing of enforcement activity across the EU. It is therefore important to ensure that the current legislative framework is fully implemented and that all actors fulfil their responsibilities. Before making any regulatory changes, we believe it is important to fix the current system. Ecommerce Europe believes that the need for better quality data; better access to data (both for businesses to inform proactive systems and for regulators to understand trends in order to assess where action may be needed); and better sharing of data (better cooperation between businesses, OLAF, customs and other enforcement agencies) should be the focus at this point.

Any major change of existing rules on product safety will require compliance assessments and adaption of business models to the changed/new rules and thus will increase compliance costs significantly.