



CCIA Position Paper on the EU General Product Safety Regulation

31 January 2022

Introduction

The European Union is home to thousands of online marketplaces, big and small, and with vastly different business models. The Computer & Communications Industry Association¹ (CCIA Europe) member companies are committed to keeping consumers safe from dangerous products through internal policies and programs, as well as continuous investments in human resources and technology. Marketplaces also take part in initiatives such as they have also shown their willingness to tackle the issue of dangerous products, including through European Commission's initiatives such as the EU Product Safety Pledge², thereby making commitments to going beyond existing legal requirements.

CCIA Europe [welcomes](#) the EU proposal for a General Product Safety Regulation (GPSR)³. We support the objectives of ensuring the safety of products sold offline and online and the introduction of specific obligations for online marketplaces while ensuring that new obligations take due account of their intermediary nature. A risk-based approach and more proportionality will be necessary to ensure the effectiveness of these obligations for the safety of consumers, to support the growth of the e-commerce sector, and to align this proposal with existing and upcoming EU law.

As the European Parliament and the Council seek to define their positions on the GPSR and reach a common agreement, CCIA Europe respectfully offers the following comments.

1. Adopt a risk-based approach

The GPSR, as proposed by the European Commission, indicates that it should be applied taking due account of the precautionary principle in Article 2(5). While we understand mentioning the precautionary principle as it is widely used for consumer protection, we would like to see it balanced by the introduction of a risk-based approach. A risk-based approach will help ensure the overall proportionality of GPSR and its ability to tackle efficiently dangerous products.

The GPSR covers a wide range of products as its scope includes all non-food non-harmonized products, and it will be used as a safety net for potential gaps for harmonized products. However, products that are not harmonized are usually less likely to be dangerous for consumers. A non-compliant product is not automatically dangerous. For example, a pen might not be accompanied by sufficient technical documentation without harming consumers. In the context of product safety, we recommend a risk-based approach aligned with the EU rules already in place for harmonized products. The proposed regulation should prioritize those non-harmonized products that are the most likely to be dangerous and not impose blanket obligations on all non-harmonized products.

The GPSR would be able to improve its efficiency towards dangerous products by adopting an overall risk-based approach allowing economic operators⁴ and marketplaces to dedicate their limited resources to the products that are the riskiest for European consumers.



2. Recognize the specificities of online marketplaces in the supply chain

a. Further clarify the specific status of online marketplaces

We welcome that specific obligations of online marketplaces are placed in a separate Chapter IV. The GPSR is also consistent with the ban on general monitoring (recital 32)⁵. It is in marketplaces' self-interest to remove unsafe products from their platforms as fast as possible upon valid notification.

To strengthen this specific status of online marketplaces, several definitions laid out in Article 3 could be improved. Paragraph 14 defining "online marketplaces"⁶ should clarify that they do not make products available on the market. This would ensure that pure marketplaces are not considered as economic operators. The definition should also be clarified to exclude consumer-to-consumer sales as the proposed regulation does. We note that in any case, hybrid marketplace business models and economic operators are already covered by the definition of a fulfillment service provider included in Article 3(12).

b. Enable flexible cooperation between marketplaces and authorities

Marketplaces continuously invest in human resources and technology to keep their services safe and trustworthy, and their product safety efforts are steadily improving⁷. We welcome in that regard the precision in Article 20(2) that removal orders from authorities shall contain more accurate information to identify the products (such as a statement of reason and one exact uniform resource locator). Improving the orders of authorities is of the utmost importance for marketplaces to react as precisely and efficiently as possible. Revamping the EU Safety Gate portal to allow more automatic checks of orders would also enhance the process.

Imposing a tight time frame for marketplaces to react to orders from authorities (within two working days) or to notices on product safety under the Notice and Action mechanism (within five working days, Article 20(4)) might however lead to detrimental results. First, the GPSR needs to take due account of, and avoid duplication or inconsistencies with, existing and upcoming legal frameworks on both orders and notices⁸ that allow authorities to adapt their request with appropriate time frames. Second, such a short timeline does not consider the needs of marketplaces to properly investigate orders and notices. To verify their validity and to take action, marketplaces may need to request legal advice or liaise with economic operators, which cannot always be done within a few working days. Third, a tight time frame could incentivize marketplaces to over-remove products, as they lack time to properly assess the information received. This could lead to the removal of safe and compliant products of SMEs and the restriction of the choice of European consumers. The introduction of safeguards in the event of inaccuracies in the orders and notices would be welcomed. The GPSR should encourage online marketplace to act expeditiously upon receipt of the orders and notices.

The current proposal gives indications about the cooperation between marketplaces and market surveillance authorities in Article 20(6). This provision could reflect and incentivize the voluntary measures that online marketplaces are continuously developing. We notice in that regard that several paragraphs of Article 20 (notably 1, 2, and 3) are directly inspired by the Product Safety Pledge⁹. Beyond this initiative, marketplaces are already cooperating with



authorities and a framework already exists under the Market Surveillance Regulation¹⁰. The GPSR needs to account for how voluntary actions of marketplaces will be articulated with their specific obligations and their cooperation with authorities.

c. Clarify market surveillance authorities' access to marketplace interfaces

The obligations on marketplaces to facilitate how market surveillance authorities can interact with their interfaces for product safety purposes need clarification. In particular, allowing access to interfaces for online tools and the simplification of data scraping are concerning (Article 20 (6)d and e).

The current proposal is too vague on how marketplaces will need to open their interfaces or alleviate technical obstacles to allow data scraping. The provisions, moreover, go far beyond simple information-sharing obligations. If the access needs to be directly into the business systems of online marketplaces, this could interfere with the fundamental freedom to conduct a business, the protection of business-sensitive information, and the privacy and personal data of traders and consumers alike¹¹. It may also impact the integrity of the service and raise possible security issues.

Unless the access to online marketplaces' interfaces and data can be better defined, it should be removed entirely to limit the mentioned potential unintended consequences.

3. Maintain an EU ecosystem where traders can sell via online marketplaces

a. Be proportionate

CCIA Europe supports increasing the information available to European consumers on the products they buy on marketplaces, including information on traders and product safety. However, several articles create obligations that will not protect consumers from dangerous products, but only restrict their choices by creating unrealistic obligations for small traders.

The obligation (Article 20(5)) related to traceability of traders, also known as "know your business customer" (KYBC), should be more proportionate. The current provision does not take into account the variety of traders (including micro-enterprises and SMEs), nor the numerous types of non-harmonized products covered (notably refurbished ones). These requirements could be aligned with recent and existing ones regarding the information disclosed by traders, referring to their trading names and geographical address of establishment¹². We acknowledge the necessity to enable the traceability of traders and to make information available for consumers. However, no obligation to monitor must be extended in this regard.

Other new obligations might also prevent traders from entering their listings on marketplaces. The traders, considered as manufacturers, have to provide possibly burdensome and time-consuming information (e.g., information to identify the product) to be able to list their products. Additionally, traders outside of the EU have to appoint an authorized representative for products placed in the EU (Article 9), therefore potentially becoming the responsible person for the products placed on the European market (Article 15). This responsible person has to carry out sample testing of randomly chosen products. This responsibility regime, justified for harmonized products, would be an obstacle for traders inside and outside of the EU, especially SMEs. This regime is not proportionate to non-harmonized products, which are usually less likely to be dangerous for consumers.



b. Be channel-neutral

The draft proposal will significantly increase obligations on online marketplaces and their traders to make the GPSR a bullet-proof safety net. However, equivalent provisions do not apply to offline traders or for other types of online sales. For example, the obligation under Article 18(c) and Article 20(5)c regarding the indication of the batch or serial number raises concerns. The indication of these would require a new offer listing for each batch or series and seems impossible to comply with for printed catalogs. There is no such obligation for brick-and-mortar shops, which would undermine channel neutrality and the aim of ensuring a level playing field for businesses. The 2020 results of the EU Safety Gate found that only 26% of alerts on dangerous products from national authorities indicated that the product was also sold online¹³. GPSR should not create different rules for so-called online and offline companies, as it would only be detrimental to European consumers' choices and Europe's digital transformation.

4. Consistency with other legislation and initiatives

GPSR should be consistent with existing¹⁴ and upcoming EU law¹⁵.

The definition of an online marketplace article 3(14) should align with existing legislation¹⁶ and future ones should as well. On the one hand, GPSR should align with existing legislation to mention that the definition of online marketplaces requires the conclusion of distance contracts on the platforms¹⁷ so as not to include the provision of one-sided intermediation services without any direct contractual or business relationship between end-user and the online platform. On the other hand, upcoming initiatives, e.g., the review of the Product Liability Directive¹⁸ are likely to be intertwined with the GPSR's implementation. The specific role of online marketplaces should be established as clearly as possible.

Different provisions of the GPSR are also specifying new obligations of marketplaces introduced in the Digital Services Act¹⁹. As previously mentioned, the collection of traders' information for product listings (Article 20(5)) should not be too burdensome for traders²⁰. The timeframe for the "notice and action mechanisms"²¹ is limited to five working days (Article 20(4)). For example, marketplaces are likely to receive a significant volume of notices under this mechanism, many of which would not contain product safety issues. Additionally, we worry about mandating different time frames across regulations which might lead to legal uncertainty and lack of clarity. GPSR should only act as *lex specialis* for marketplaces.

5. Extend the implementation period

The implementation period of the GPSR should be extended. Article 47 only provides for an implementation period of 6 months. This period is particularly short for marketplaces that will enforce new obligations. In comparison, the Market Surveillance Regulation had a transition period of 24 months. Marketplaces will have to implement GPSR, and other legislation previously mentioned at the same time: to ensure equity between players, a longer implementation period is needed. CCIA Europe asks for an extension of the implementation period to at least 24 months.



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Conclusion

CCIA Europe believes that the GPSR can help improve the safety of products, including on marketplaces. We look forward to working with EU policy-makers to provide more information on how marketplaces are already tackling the issue of dangerous products, the feasibility of the new specific obligations, and the functioning of the ecosystem of traders.



Endnotes

¹ The Computer & Communication Industry Association (CCIA Europe) is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms. For fifty years, CCIA has promoted open markets, open systems, and open networks. For more, visit <https://www.ccianet.org/>

² European Commission, Product Safety Pledge, 02 March 2021, available at: https://ec.europa.eu/info/files/product-safety-pledge_en

The Product Safety Pledge is a voluntary commitment of online marketplaces concerning the safety of non-food consumer products sold online by third-party sellers.

³ European Commission, Proposal for a Regulation on general product safety (GPSR), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0346&qid=1628522210573>

⁴ European Commission, Proposal for a GPSR, op. cit., Article 3(13)

⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>

⁶ GPSR, op. cit., Article 3(14): "online marketplace' means a provider of an intermediary service using software, including a website, part of a website or an application, operated by or on behalf of a trader, which allows consumers to conclude distance contracts with other traders or consumers for the sale of products covered by this Regulation"

⁷ European Commission, 5th Progress Report on the implementation of the Product Safety Pledge, 11 August 2021, available at: https://ec.europa.eu/info/sites/default/files/5th_progress_report_product_safety_pledge.pdf

⁸ Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products (Market Surveillance Regulation), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R1020>; European Commission, Proposal for a Regulation on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, 15 December 2020, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN>

⁹ Product Safety Pledge, op. cit.

¹⁰ Market Surveillance Regulation, op. cit., Articles 7 and 14, respectively on the cooperation of marketplaces and market surveillance authorities' powers, already give incentives to marketplaces to cooperate.

¹¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), available at: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

¹² Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 as regards the better enforcement and modernisation of Union consumer protection rules (Omnibus Directive), available at: <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

¹³ European Commission, Safety Gate - 2020 results, available at: <https://ec.europa.eu/safety-gate/#/screen/pages/reports>

¹⁴ Market Surveillance Regulation, op. cit.; Omnibus Directive, op. cit.; Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws, available at: <https://eur-lex.europa.eu/eli/reg/2017/2394/oj>

¹⁵ European Commission, Proposal for a Digital Services Act, op. cit.; European Commission, Industrial products - evaluation of the new legislative framework, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12654-Industrial-products-evaluation-of-the-new-legislative-framework_en

¹⁶ Omnibus Directive, op. cit., Article 3

¹⁷ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0524>; Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union, available at: <https://eur-lex.europa.eu/eli/dir/2016/1148/oj>

¹⁸ Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31985L0374>; European Commission, Civil liability - adapting liability rules to the digital age and artificial intelligence, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12979-Civil-liability-adapting-liability-rules-to-the-digital-age-and-artificial-intelligence_en



¹⁹ European Commission, Proposal for a Digital Services Act, op. cit.

²⁰ European Commission, Proposal for a Digital Services Act, op. cit., Article 22

²¹ European Commission, Proposal for a Digital Services Act, op. cit., Article 14