

Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council

(COM(2021) 346 final – 2021/0170 (COD))

(2022/C 105/15)

Rapporteur: **Mordechaj Martin SALAMON**

Referral	European Parliament, 13.9.2021 Council, 23.8.2021
Legal basis	Article 114(1) of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	30.9.2021
Adopted at plenary	20.10.2021
Plenary session No	564
Outcome of vote (for/against/abstentions)	231/0/6

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the proposal for a Regulation on general product safety (GPSR) as it updates and has the potential to improve the current Directive 2001/95/EC of the European Parliament and of the Council ⁽¹⁾ on general product safety (GPSD), especially with regard to the challenges and new developments in markets and technology.

1.2. The EESC notes that many of the lessons learned from 20 years of implementing the GPSD are integrated into the proposed framework, giving hope that consumers will enjoy better protection, particularly when products turn out to be unsafe. At the same time, economic operators and online marketplaces will most likely benefit from clearer and harmonised rules.

1.3. The EESC supports the GPSR proposal, as it acknowledges the need to realign the level playing field between different economic operators, in particular between European manufacturers and SMEs vis-à-vis foreign companies concerning online sales.

1.4. The EESC notes that the definitions of the concepts of 'safety' and 'product' have been updated to reflect the evolving nature of markets and technology, so that threats to safety from hackable connected goods, a lack of updates to software and harmful chemicals may now be mitigated. To increase legal certainty, the EESC proposes strengthening the definition of safe products and some of the criteria used to assess safety.

1.5. The EESC supports the new obligations imposed on online marketplaces but strongly doubts that protection will be sufficient for consumers if enforcement efforts continue to rest primarily on national enforcers rather than platforms.

1.6. The EESC highlights the need to ensure smooth interplay with the other main pieces of legislation covering the same or adjacent topics, such as the Digital Services Act (DSA) and the Digital Markets Act (DMA), as well as the upcoming revision of the Product Liability Directive, especially regarding the question of holding different kinds of online marketplace to account.

⁽¹⁾ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

1.7. The EESC regrets that the GPSR does not specify that online marketplaces are importers or distributors of products depending on their activity and role in the (digital) supply chain and does not set similar duties and responsibilities for them as for brick-and-mortar shops. The EESC would welcome more clarity regarding liability fault lines.

1.8. The EESC thinks that market surveillance efforts must be extended to cover all consumer goods and should be a shared, coordinated, well-funded and streamlined effort across Europe.

1.9. The EESC regrets that there are no obligations on Member States to collect and provide better accident and injury data. Without an EU-level injury database, it will be difficult to ensure cost-effective implementation and subsequently carry out correct evaluations of the GPSR. The GPSR should therefore require Member States to collect and share data on injuries involving consumer products, based on a common methodology.

1.10. The EESC would welcome the adoption of measures to support SMEs, and in particular micro-enterprises, in their obligations, including a period of financial support, with the provision of clear and helpful guidelines, advice and relevant training to ensure that SMEs are not disadvantaged in their compliance efforts compared to bigger operators with better resources.

2. The Commission proposal

2.1. The GPSR ⁽²⁾ is in line with the New Consumer Agenda from 2020 ⁽³⁾ and aims to:

- update and modernise the general framework for the safety of non-food consumer products;
- preserve its role as a safety net for consumers;
- adapt the provisions to the challenges posed by new technologies and online selling; and
- ensure a level playing field for businesses.

2.2. While the proposal replaces ⁽⁴⁾ the GPSD, it will continue to apply to manufactured non-food consumer products. The proposed Regulation will also provide continuity with the GPSD by:

- requiring that consumer products be 'safe';
- setting certain obligations for economic operators; and
- containing provisions for the development of standards in support of the general safety requirement.

2.3. The proposed Regulation aims to update the rules currently set out in Directive 2001/95/EC to ensure a safety net for all products and, at the same time, to ensure that the regime provides greater consistency by aligning market surveillance rules for products falling outside the scope of the EU harmonisation legislation ('non-harmonised products') with those applying to products falling under the scope of the EU harmonisation legislation ('harmonised products') as set out in Regulation (EU) 2019/1020 of the European Parliament and of the Council ⁽⁵⁾.

⁽²⁾ Proposal for a Regulation of the European Parliament and of the Council on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council (2021/0170 (COD)).

⁽³⁾ Communication from the Commission to the European Parliament and the Council, New Consumer Agenda — Strengthening consumer resilience for sustainable recovery (COM(2020) 696 final).

⁽⁴⁾ Recital 2, GPSR.

⁽⁵⁾ Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).

3. General comments

3.1. The EESC welcomes the Commission's initiative to revise and modernise the GPSD, as part of the New Consumer Agenda for the period 2020-2025. The GPSD was a landmark piece of consumer protection legislation in the single market, requiring that only safe products be placed on the market and acting as a safety net for consumers that did not benefit from more sector-specific legislation. The GPSR preserves this crucial role.

3.2. Looking at the experiences drawn from the implementation of the Directive and the fundamental changes which have taken place in products and markets since its adoption in 2001, a revision was well overdue. The EESC supports the revision because, while the Directive served as an important tool towards a level playing field between European manufacturers and SMEs vis-à-vis foreign companies, it is necessary to pursue efforts to align the level playing field, notably concerning online sales (a need acknowledged by the GPSR).

3.3. The nature of products sold to consumers has evolved to an extent, meaning that the old definitions of 'safety' and of a 'product' no longer hold. The definition of safety that only covers 'health' and 'physical integrity' no longer corresponds to the actual risks to which consumers may be exposed. The EESC welcomes the inclusion in Article 7 of a number of aspects to assess the safety of products. However, the EESC regrets that Article 3(2) does not clearly point out its link to Article 7, which would improve legal certainty.

3.4. The EESC welcomes the focus on the concept of 'security' and the inclusion of 'cybersecurity' as a requirement for a product to be considered 'safe'. However, to increase legal certainty, the EESC proposes stipulating that cybersecurity be assessed in all circumstances and during the lifespan of the product. Moreover, when harmful chemicals are present in everyday products, the current GPSD struggles to protect consumers. The EESC thinks it is obvious and unavoidable that any future regulatory framework must also safeguard consumers against threats to their safety from hackable connected goods, a lack of updates to software and harmful chemicals, and welcomes changes in this regard.

3.5. Despite the existence of self-regulatory initiatives to improve protection against unsafe products sold online, a recent (2020) study ⁽⁶⁾ showed that two thirds of 250 tested products bought failed EU safety laws and technical standards, endangering consumers. This points to the need for effective regulation here rather than self-regulation. The EESC supports the adoption of regulation in this area and welcomes the new obligations imposed on online marketplaces, although it warns that they may not be fully adequate to protect consumers as much of the detection and enforcement continues to be the responsibility of enforcers rather than platforms. The EESC also regrets that the GPSR does not specify that online marketplaces are importers (or distributors where appropriate) of products depending on their activity and role in the (digital) supply chain and does not set similar duties and responsibilities for them as for brick-and-mortar shops. The EESC calls for platforms' liability to be clarified in cases where no other actor in the supply chain takes any action against an unsafe product.

3.6. Consumers are trading more online, more across borders and through longer and more complicated supply chains. The current market control regime only has weak international and cross-border powers, and is a poorly funded patchwork which covers only certain types of goods, pointing to a clear need to act. The EESC believes that market surveillance efforts must be extended to cover all consumer goods and should be a shared, coordinated, well-funded and streamlined effort across Europe. The EESC welcomes the creation of an arbitration mechanism — and the Commission's role in it — to resolve any persistent differences in interpretation and/or application between countries. The EESC also supports the development of strong cooperation links worldwide and encourages participation in international initiatives.

3.7. The GPSR will only fulfil its purpose of protecting consumers when it interplays smoothly with the other main pieces of legislation covering the same or adjacent topics. Especially with regard to the question of holding different kinds of online marketplace to account, any successful version of the GPSR will have to be coordinated with and require corresponding adjustments in the DSA and the Product Liability Directive. Consistency should also be ensured regarding the legislative proposal on artificial intelligence, the chemical strategy and the circular economy action plan. While the links are clearly acknowledged in the GPSR, the EESC would welcome more specific details on the interoperability of the various

⁽⁶⁾ https://www.beuc.eu/publications/beuc-x-2021-004_is_it_safe_to_shop_on_online_marketplaces.pdf, p. 15.

pieces of legislation to ensure effective protection on the ground. Leaving gaps would be unacceptable. The EESC also calls for attention to be given to international initiatives such as those of the OECD, Unctad and the WTO with regard to international cooperation, and encourages EU leadership in this area.

3.8. The GPSD was built on the precautionary principle and the EESC welcomes the fact that this remains a pillar of the GPSR's architecture. This principle enables adoption of the highest levels of consumer protection. The EESC thinks that anchoring the precautionary principle is key to securing consumer protection while at the same time providing a flexible concept allowing the GPSR to adapt to new challenges. Thus, precautionary measures should always be taken when scientific evidence about an environmental or human health hazard is uncertain but the stakes are high. This also makes the GPSD's safety net function — providing solutions when consumers are at risk and sector-specific legislation has loopholes — more effective. Applying the precautionary principle also makes market surveillance more complete.

4. Specific comments

The EESC:

4.1. supports the transformation of the GPSD into a regulation, as it is a choice that allows for faster and more consistent implementation across the EU. While using a directive would have enabled rules to be adjusted to local legislation, it would raise compliance costs and increase insecurity for companies trading across borders or producing for multiple markets. The experience to date has been that two out of five businesses report additional costs related to the uneven implementation of the GPSD (7);

4.2. welcomes the clearer and broader scope of the legislation, notably the clarification and introduction of secondary markets (recital 16), the clarification that environmental risk is to be part of the evaluation of a safe product (recital 11), and the inclusion of fulfilment service providers within the scope of the Regulation, enabling more effective market surveillance;

4.3. welcomes the specific obligations for online marketplaces in the GPSR. However, warns that loopholes must be closed. The obligations need to be further defined and, in particular, consideration should be given to subjecting marketplaces to Article 5 and upgrading their liability to that of an importer (or distributor where appropriate) to prevent platforms circumventing the GPSR and current DSA proposal. Recommends that online marketplaces should also have an obligation to monitor (notice and stay down) products sold via their intermediaries, as introduced in the DSA, in order to remove the burden of notice-and-take-down action from national enforcers. Clarification on how the DSA obligations will apply in addition to or as a complement to the GPSR would also be welcomed;

4.4. supports the stronger requirements for traceability and stresses that Member States must have the right tools at their disposal to pursue effective traceability. Here the Commission's new powers to adopt implementing measures and set up specific traceability requirements also potentially strengthen consumer protection;

4.5. supports the strengthening of recall processes but thinks that it should be mandatory for recall notices to always be published. In cases where consumers have purchased an item and given it as a gift or bought it on a second-hand marketplace, an otherwise well-functioning system of direct recall notices to buyers could fail because the actual user of the product does not receive the direct recall notice;

4.6. regrets that there are no obligations on Member States to collect and provide better accident and injury data, when an EU-level injury database would facilitate cost-effective implementation and subsequently correct evaluations of the GPSR. Using data from RAPEX to measure the amount of injuries experienced by consumers is problematic, as product groups related to the highest number of injuries do not show much correlation with the notifications in RAPEX. This issue is further underlined in the background study for the impact assessment, which finds that 'RAPEX data cannot be simply

(7) GPSR, p. 13.

used as proxy for consumer product safety trends...)' ⁽⁸⁾. The GPSR should therefore require Member States to collect and share data on injuries involving consumer products, based on a common methodology, in order to create a representative database covering the single market. The Single Market Programme could provide a sound financial base for the pan-European surveillance of product-related injuries. Shifting this burden to economic operators as is the case in the proposal, without a clear pan-European enforcement strategy, is likely to be unsatisfactory;

4.7. believes that the GPSR should allow chemical safety criteria to be set for the products that fall under the law. The current GPSD does not establish what a 'safe' product is when it comes to chemicals. It is unclear if the Regulation will bring more clarity in this regard. For example, the EU bans cancer-causing chemicals in toys, but not in childcare products, even though the exposure risk is often similar. The Commission's objective of moving towards a toxic-free environment as expressed in the Chemicals Strategy for Sustainability and supported by the EESC ⁽⁹⁾ should be fulfilled as part of the implementation of the GPSR ⁽¹⁰⁾;

4.8. supports the fact that cybersecurity risks that affect consumer safety will now be covered under the concept of safety. This includes the timely introduction of the concept of 'in-use conformity' — as software updates change the product, it must be surveyed over time. This is becoming more pertinent, as more consumer products are connected, raising the risks of hacking and misuse, leading to potential risks to safety. However, the definitions of a safe product should make a clear reference to such requirements and criteria;

4.9. considers that market surveillance should as far as possible be at the same level across sectors. Changes here need to be carefully scrutinised to ensure that enforcement authorities (in all sectors covered) have an adequate toolbox at their disposal and that there is also a strong link with the customs union. While an emphasis on risk-based market surveillance is welcomed, it will be crucial that authorities also perform adequate random checks to optimise protection and prevent damage to consumers. Otherwise, dangerous products not known to be unsafe will only be detected after they have caused damage to consumers;

4.10. believes that definitions, terms and systems must be made coherent across the various product safety instruments while enabling necessary variations depending on the individual product category (toys, cosmetics, electronics etc.);

4.11. welcomes the fact that definitions of safe standards throughout the standardisation process are strengthened, so that standards are made in a timely fashion and with the possibility for Member States to oppose standards that do not ensure safety for consumers and thus do not live up to the mandate given. To ensure that standardisation meets the needs of consumers and is not used to squeeze out small actors from the market, continued support for effective consumer and SME sector representation in European standardisation is of great importance ⁽¹¹⁾;

4.12. welcomes the fact that the obligations set out in the GPSR will apply to all businesses regardless of their size, anchoring the principle that safety cannot be subject to 'lighter' regimes and that every consumer product must be safe. However, regrets that SMEs' views were underrepresented at the consultation stage, exacerbating the distortions that already exist on the market. Further notes that the figures in Chapter 3 'Financial Impact' of the impact assessment were approximate. To avoid any future distortions, the EESC recommends that the key performance indicators for the yearly reporting by Member States (under Article 22(1)) should quantify the impacts on SMEs and micro-enterprises;

⁽⁸⁾ https://ec.europa.eu/info/files/study-support-preparation-evaluation-gpsd-well-impact-assessment-its-revision-part-1-evaluation_en, p. 40.

⁽⁹⁾ OJ C 286, 16.7.2021, p. 181.

⁽¹⁰⁾ <https://webapi2016.eesc.europa.eu/v1/documents/eesc-2020-05343-00-00-ac-tra-en.docx/content>

⁽¹¹⁾ OJ L 316, 14.11.2012, p. 12, Annex III.

4.13. recognises that SMEs, and in particular micro-enterprises, may be disproportionately affected by those measures due to a smaller turnover and less human capital to implement the obligations ⁽¹²⁾. Welcomes the fact that the current legislative framework addresses some of their specific needs, notably through: a sanctions regime that takes into account the size of the undertaking in the imposition of penalties (Article 40(2)(h)) and advocates proportional penalties; and a risk-based market surveillance system that does not disadvantage smaller companies ⁽¹³⁾. However, the EESC would welcome the adoption of measures to support SMEs, and in particular micro-enterprises, in their obligations, including a period of financial support, with the provision of clear and helpful guidelines, advice and relevant training to ensure that SMEs are not disadvantaged in their compliance efforts compared to bigger operators with better resources;

4.14. welcomes the fact that all consumers will be able to have access to information on product identification, the nature of the risk and the measures taken ⁽¹⁴⁾, notably by consulting the Safety Gate portal ⁽¹⁵⁾, but warns that this should not pave the way for requiring consumers to mitigate their risks by acquiring this knowledge prior to a purchase (within the context of what may be interpreted as 'reasonable consumer expectations concerning safety' (Article 7(3)(i)). In addition, databases and notifications should be easily accessible to vulnerable consumers as well as consumers with disabilities;

4.15. notes that Article 8(11) requires manufacturers to use the Safety Business Gateway to immediately alert consumers of risks to their health and safety and inform market surveillance authorities. Reiterates that the Regulation ought to ensure specifically that the fact that this information is made available does not directly or indirectly place an obligation on consumers to consult the database that may affect whether or not a product is found to be unsafe. In addition, notifications should be easily accessible to vulnerable consumers and to consumers with disabilities;

4.16. would welcome clearer delimitation and details concerning the difference between the Safety Gate (Article 24, where Member States issue notifications) and the Safety Business Gateway (Article 25, where economic operators provide enforcement authorities and consumers with information about the safety of their products) and how those portals may interact;

4.17. welcomes the ability given to consumers to submit complaints to national authorities ⁽¹⁶⁾ as well as the ability to inform the Safety Gate portal of risks ⁽¹⁷⁾, which must be followed up. Calls for adequate funding to be provided so that all of those complaints can be properly investigated in order to help protect consumers efficiently. Welcomes the coupling of this complaint mechanism with the need for manufacturers to investigate complaints received (Article 8(2)) and to take corrective action when they consider or have reason to believe that a product they have placed on the market may be unsafe (Article 8(10)).

Brussels, 20 October 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

⁽¹²⁾ 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, p. 11 and p. 320. See also, proposal for a Regulation (COM(2021) 346 final), p. 13.

⁽¹³⁾ OJ L 316, 14.11.2012, p. 12, Annex III.

⁽¹⁴⁾ Article 31.

⁽¹⁵⁾ Article 32(1).

⁽¹⁶⁾ Article 31(4).

⁽¹⁷⁾ Article 32(2).