



8 March 2021

Revision of the General Product Safety Directive

CONTEXT

The [General Product Safety Directive 2001/95/EC](#) (GPSD) covers the general safety of non-harmonised products intended for consumers or likely to be used by them, as well as non-harmonised aspects of harmonised products. It functions as a *lex generalis* for the products where no (sector-)specific harmonisation legislation with essential requirements applies. In addition, the GPSD includes provisions on RAPEX / the 'Safety Gate' where market surveillance authorities exchange information about dangerous products (both harmonised and non-harmonised) that circulate in the Single Market.

Considering this functioning of the GPSD as a 'safety net', companies indicate that they are generally [satisfied](#) with the way in which the Directive works providing a generally effective framework. The issue of rogue players who continue placing unsafe products on the market should be addressed through improved implementation, cooperation of competent authorities and better enforcement, instead of attempts to significantly revise the GPSD which would put additional burdens on compliant and cooperative businesses. When assessing the impact of new technologies on the product safety, parallel workstreams initiated by the Commission to improve the Digital Single Market should be taken into consideration. However, in view of the planned revision of the Directive in Q2 2021 and in particular the Commission's ambitions to ensure product safety in view of digital technologies and online platforms, BusinessEurope would like to take this opportunity to engage in the discussions and ideas that are currently tabled.¹

KEY MESSAGES

- The GPSD largely serves the purpose of a general "safety net" and should maintain its current general safety requirements and accompanying criteria as *lex generalis*, though certain targeted adjustments may be necessary
- Specific aspects of new technologies are better addressed through *harmonisation* legislation on the product-specific risk assessment basis, as this allows for more tailored solutions
- Key definitions should be fully aligned and consistency of responsibilities of economic operators ensured in the GPSD and the harmonisation legislation (including new rules under the EU priority "A Europe Fit for the Digital Age"), in

¹ See for example the [European Parliament's INI report](#) (adopted on 3 November 2020) and [BEUC/ANEC's joint paper](#) on product safety.



order to ensure legal certainty and uniform application as well as control over proportionality of enforcement actions

- Regulation (EU) 2019/1020 on market surveillance provides the necessary framework for enforcement that could work for products falling both under the harmonised and non-harmonised sector. It should be first fully implemented and its effectiveness assessed, including the framework it provides for cooperation with businesses
- The GPSD application regardless of the channel of sale or the location of the economic operator responsible for the marketplace is key to ensure product safety and the level-playing field

COMMENTS

Market surveillance

BusinessEurope has frequently pointed out that the current lack of resources of market surveillance authorities and lack of common methodologies across the EU distort the playing field for compliant manufacturers.² In order to ensure effective and efficient surveillance, we advocate for a risk-based approach where authorities focus on products that bring most risk to consumers. On this basis, the EU must also ensure that products imported from third countries are compliant with EU rules through reinforced data sharing and cooperation between market surveillance and customs authorities. Cooperation with businesses within the framework of [Regulation \(EU\) 2019/1020](#) should be fully used.

- Emphasis should be on *ex post* market surveillance and better enforcement rather than ever-stronger pre-market requirements. Development of a guidance on Article 4 from Regulation (EU) 2019/1020 ('responsible economic operator' for companies not established in the EU) shows how difficult this provision would be in practice. In particular for small, low-value products that pose no or an inherently low risk, this would be a disproportionate requirement that risks trade policy repercussions and diverts market surveillance resources from actions with the largest risk-reduction opportunities.
- As the GPSD and harmonisation legislation may be applied together, it is crucial that the alignment of definitions and consistency of roles of economic operators in the GPSD, the New Legislative Framework (NLF) including the new Regulation (EU) 2019/1020 on market surveillance, the proposed [Digital Services Act](#) and the upcoming initiative on Artificial Intelligence are ensured.
- As the product legislation should rest on the risk-based approach, the parallel existence of harmonised and non-harmonised product rules and their possible simultaneous application is not a problem in itself. The core principles of the Single Market – harmonisation and mutual recognition – still stay fully valid on

² See <https://www.besbusiness.eu/publications/free-movement-goods-priorities-2019-2024> and <https://www.besbusiness.eu/publications/businesses-europe-comments-commissions-goods-package>



the equal footing. Harmonisation of requirements is only appropriate where the risk profile and fragmentation of the Single Market requires this.

- RAPEX / the 'Safety Gate' should better justify how and why a serious risk occurs as now products are quite easily classified as presenting a serious risk without sufficient duty to explain why this is the case, as well as contain more information when possible (such as European Article Numbers, for example). On the other hand, the increase in notifications on dangerous products through RAPEX is also a signal that the system works and just needs some tuning to achieve more transparency and efficiency. RAPEX should continue to focus on products that present a serious risk.
- The rules should include a clear and coherent product recall framework so that effective implementation by market surveillance authorities is guaranteed. To ensure uniform enforcement and legally certain communication when issuing recall notifications and respective requests by competent authorities, it is important to have a guidance for market surveillance authorities. Authorities should have adequate and readily available expertise and resources to engage in provision of complete information in such notices. The tools they use should also be adapted to the requirements of the digital economy.
- Proportionality and consistency in application of rules and sanctions should be pursued by Member States and coordination facilitated by the Commission.

Responsibilities of economic operators

In the context of the GPSD revision, the Commission is specifically looking into the responsibilities of online sales providers for unsafe products. The level playing field should indeed be equally sought regardless of the channel of sale or the location of the economic operator responsible for the marketplace. In the view of BusinessEurope, market surveillance is and should be an essentially public task.

- Having said that, online marketplaces should be incentivised to take proportionate steps to ensure that products that are sold on their channels are compliant with EU product safety rules. While some provisions of the [product safety pledge](#)³ could be made legally binding, the well-balanced pledge should not be extended content-wise and rather a wider participation in this self-regulatory initiative should be further encouraged.
- There should be unambiguous separation of responsibilities among various types of economic operators and no overlaps with the proposed Digital Services Act that addresses responsibilities of the online marketplaces specifically, or with other existing harmonisation legislation (see the point on the GPSD and harmonisation legislation above).
- As far as responsibilities of the existing categories of economic operators in the supply chain under the harmonisation legislation (including Regulation (EU) 2019/1020) are concerned, the GPSD should not modify these.

³ The Product Safety Pledge is a set of 12 voluntary product safety commitments for online marketplaces.



Product safety and new technologies

The Commission is also looking at how far new technologies and their implications for product safety should be addressed in the GPSD. BusinessEurope finds that new technologies are better addressed through *harmonisation* legislation on the product-specific risk assessment basis, as this allows for more tailored solutions. The GPSD should maintain its current general safety requirements and accompanying criteria as *lex generalis*.

- Regarding the development of AI and other new technologies, we would like to point out that no existing technology or future innovation can demonstrate 100% safety. We should also consider the potential loss of improving safety if new technologies are not fully explored and smartly utilised. The introduction of the precautionary principle for product safety, as raised by some stakeholders, would be disproportionate and reach much beyond its current application.
- The body of EU law governing cyber-security aspects is already building up significantly. BusinessEurope considers that mandatory cybersecurity schemes for all consumer products would be disproportionate, slow, and prevent new products from appearing on the market. It would also deprive consumers of safety-enhancing innovations.
- New technologies also offer opportunities to enhance product safety and traceability, in particular for product recalls and labelling. We encourage the Commission to tap into the potential of digital technologies for a more effective application of the GPSD, without being overtly prescriptive in order to ensure that dynamic solutions can be developed.
- As the GPSD is a 'safety net', it is essential to keep broad definitions of key concepts. Standardisation can help in further defining these concepts, most notably that of safety. As a precondition to state-of-the-art standards, mandates should leave sufficient room for market relevance and not only focus on policy requirements. The development of mandates and publication of references in the Official Journal of the European Union (OJEU) should happen in a timely manner.

Options presented in the [Roadmap](#) / inception impact assessment

In view of the above, better implementation and enforcement of the GPSD remains the top priority, however BusinessEurope acknowledges that option 2 from the inception impact assessment, which proposed a targeted revision, is a balanced approach to take.

In that case the function of the GPSD as a 'safety net' should be maintained, and new safety challenges should be addressed as much as possible through harmonisation legislation which offers more tailored solutions to risk management. Improved implementation and enforcement of the existing GPSD provisions remains the key priority though.

In view of BusinessEurope, options 3 (full revision) and option 4 (integration of legal instruments) would be disproportionate.