

## POSITION PAPER

### PROPOSAL ON A GENERAL PRODUCT SAFETY REGULATION

The proposal for a General Product Safety Regulation (GPSR) (2021/0170 (COD)) will be pivotal to ensuring that only safe products are available to consumers on the EU market.

As an industry revolving around children, safety is the main priority for the toy sector. Reputable toy manufacturers integrate safety into each stage of product development and meet the EU's strict rules. However, they suffer from unfair competition from rogue traders who do not follow the same high standards and put children at risk by offering unsafe and otherwise non-compliant toys. To combat this, TIE – the voice of reputable toy manufacturers – proposes four significant improvements to the European Commission's proposal :

In 2021, 97% of toy alerts on the EU Safety Gate were linked to illegal traders, half of them with no manufacturer name and address

*-Based on TIE's own assessment of EU Safety Gate's public data*

1. **Online marketplaces:** close loopholes for unsafe products sold on online marketplaces, especially when sellers are untraceable or based outside the EU and the online marketplace is the only identifiable relevant party with a legal representative in the EU;
2. **EU Safety Gate:** ensure efficient communication between public authorities and economic operators to facilitate rapid action and target unsafe products;
3. **Accident reporting:** improve the proposal on accident reporting to make sure information provided is accurate and actually useful;
4. **Digital labelling:** promote digital labelling to provide relevant up-to-date information about the product to both consumers and market surveillance authorities.

#### I. CLOSING THE LOOPHOLE IN THE RULES FOR ONLINE MARKETPLACES

In the offline world, EU manufacturers and importers are required to comply with a range of obligations to ensure that they only allow the placement of safe products on the EU market. Ultimately, in case of material or physical damage, they can be held liable as laid down in the EU Product Liability Directive (85/374/EC). Conversely, in the online world, there are two situations when such obligations are not enforceable:

- When an online marketplace facilitates the sale of a product from a seller based outside the EU, with no identifiable EU manufacturer or importer. In this case, the online marketplace could be regarded as the *de facto* importer;
- When an online marketplace facilitates the sale of a product without having previously assessed if there is a relevant economic operator based in the EU – the seller is thus untraceable.

The current GPSR proposal could tackle these specific cases by implementing the recommendations below. These recommendations do not hamper the facilitation of sales by trusted reputable sellers, including European SMEs.

### **1. Extend the definition of ‘economic operator’ to online marketplaces**

The current definition of ‘economic operator’ in Article 3, paragraph 1, point 13 does not include online marketplaces. As a result, if an online marketplace facilitates the sale of a product by a seller outside the EU, there is no ‘economic operator’ in the EU to take the responsibility for the safety of that product.

Article 4 on “Distance sales” further highlights potential issues stemming from the exclusion of online marketplaces from the definition of “economic operator”. If sellers are based outside the EU and the goods are shipped directly to the EU consumers, products are not considered as “made available on the EU market” as there is no “relevant economic operator”.

We recommend the **inclusion of ‘online marketplaces’ in the definition of ‘economic operator’, particularly in cases where there is no EU manufacturer or importer**. In these cases, the online marketplace is the gateway for these products to EU consumers.

### **2. Recognise online marketplaces as ‘responsible person’ for the products placed on the EU market**

The proposal replicates, under Article 15, paragraph 1, the concept of ‘responsible economic operator’ that was introduced under the 2019 Market Surveillance Regulation (Regulation (EU) 2019/1020). Aimed at addressing sales on online marketplaces, it introduces obligations for numerous parties but not for online marketplaces. The concept enhances communication with market surveillance authorities but does not ensure correct application of conformity assessment procedures. We believe this concept presents the following serious shortcomings:

- Products with no EU manufacturer, importer, authorised representative or fulfilment service providers are not covered (direct sales);
- Online marketplaces are not mentioned. They have no obligation to ensure there is a responsible economic operator;
- The obligations of ‘responsible economic operators’ do not provide for a level playing field with those established for manufacturers or distributors. As a result, no operator based in the EU can be held accountable when there is no manufacturer, importer or authorised representative (in combination with a distributor) present.

**We recommend improving the concept of ‘responsible economic operator’ by including online marketplaces** as a possible ‘responsible economic operator’ in cases when there is no other relevant economic operator.

### **3. Introduce specific obligations for online marketplaces related to product safety**

We believe that current obligations for online marketplaces under Article 20 are insufficient, especially when sellers are based outside the EU. We recommend requiring online marketplaces to:

- **Verify whether a manufacturer established in the Union or an importer is available for each product they facilitate the transaction of.** If they fail to perform this check and no such economic operator is available, online marketplaces shall comply with the obligations for importers set out in Article 10;

- **Ensure that there is a responsible operator (as defined in Article 15) for every product they facilitate the transaction of;**
- **Verify that any applicable EU declaration of conformity or declaration of performance was drawn up correctly;**
- **Conduct sample testing.** Under the Commission proposal this is introduced in Article 15 and applicable to all types of economic operators but not to online marketplaces. In harmonised legislation, like the Toy Safety Directive, such requirements already exist for manufacturers and importers. The added value of the GPSR would be to introduce a similar requirement for online marketplaces in cases when it is not always clear if a party made sure the products offered are safe and compliant. We therefore recommend moving the sample testing requirement from Article 15 to Articles 20 (online marketplaces), 8 (manufacturers) and 10 (importers) and use similar wording to the one included in harmonised legislation to avoid contradictions and overlaps.

## II. ENSURING EFFICIENT COMMUNICATION BETWEEN PUBLIC AUTHORITIES AND ECONOMIC OPERATORS ON THE EU SAFETY GATE

The GPSR and other EU product safety rules oblige manufacturers and other economic operators to provide their contact details along with the product so they can be contacted by market surveillance authorities if needed. However, situations still occur when an economic operator is informed very late in the process that one of its products is regarded as presenting a risk. This leads to unfortunate situations when action is taken too late in the process or when a perfectly safe product gets listed on the EU Safety Gate and must be recalled.

These particular cases arise when the market surveillance authority has only communicated with the retailer about a potential unsafe product and the retailer has neither opposed the decision nor informed the responsible economic operator of the issue. Later on in the process, the European Commission might approve the alert and publish it on the Safety Gate without making sure the responsible economic operator was informed.

To avoid these situations and the resulting waste of resources for both the public authorities and the economic operators, it is crucial to ensure efficient communication among all actors. Hence, the GPSR proposal should establish under Article 24 that the relevant economic operator (responsible person) is immediately informed of the issue with its product by the European Commission and the Member States prior to the product notification in the Safety Gate. This will allow the economic operator to take action expeditiously, present the necessary evidence or provide additional information in case the notification is deemed unjustified. These can be done simultaneously in case of urgency.

## III. IMPROVING THE FRAMEWORK ON ACCIDENT REPORTING

TIE welcomes with reservations the GPSR proposal which includes the obligation to report accidents and safety issues related to products. Accident reporting could be helpful to inform market surveillance authorities, standardisation work and regulatory activities.

The proposal however deviates from existing international practices and requires further improvement as to definitions, obligations, and deadlines, that otherwise risk creating uncertainty for businesses and overburdening the system with irrelevant notices. Also, the Impact Assessment to the proposal does not go far enough in providing a complete picture of the impact that such wide-reaching reporting

obligations could have on companies. **A limited scope, focused on serious injuries and defective products together with a ‘review clause’ to assess the application of the requirements after several years should thus be considered.**

The following improvements should also be taken into account:

- **Introduce a definition of “accident”** in line with existing obligations in third countries. In some countries, such as Australia, the need for medical treatment is a key criterion for a report, while in others like Japan, only serious accidents need a notification. EU policymakers should thus also **include under Article 19 that the reporting is needed for accidents “that require medical treatment above first aid” or “resulting in severe injuries or serious danger to life”;**
- **Clarify the meaning of “caused by a product”** to avoid inaccurate notifications of accidents which involve the presence of a product but are not clearly caused by it. To give a few examples: a person who trips over a toy carelessly left on the stairs or a kid who gets a rash after playing with a toy but it remains to be clarified whether that might be a reaction to food. A further clarification of whether the accident was caused by a defect of the product will also be useful;
- **Clarify the meaning of “moment it knows”** as it is very difficult to define when a company knows about an accident, who shall establish it as such, and the specific procedure and parties involved in the acknowledgement of the accident. A solution could be to **indicate that the company needs to receive an accident report at the manufacturer or the importer’s contact address;**
- **Include the importers under the obligation of reporting.** They are currently excluded from the scope of Article 19;
- **Extend the obligation to report** on accidents caused by the product **to online marketplaces.** In many cases, online marketplaces are informed better than their sellers about accidents. They should inform the relevant manufacturer or importer who should report the accident or can instruct the marketplace to make the report;
- **Extend the deadlines** to allow for the establishment of a causal effect relationship and the clarification of facts and circumstances, especially if the information is to be entered into a public database. A potential solution would be to extend the deadline to 5-10 working days or introduce the condition that the 2-days reporting deadline can start from the moment when the causal effect relationship has been established.

#### IV. PROMOTING DIGITAL LABELLING

The use of digital means offers the opportunity to effectively and accurately communicate information about a product, including to market surveillance authorities and consumers. It is thus a favourable alternative or a complementary means to the information provided in a physical format.

Digital solutions have the potential to:

- Provide up-to-date information to consumers in all languages in an easily legible manner;
- Reduce packaging and packaging waste;
- Make important safety warnings stand out;
- Speed up communication;
- Facilitate the free movement of goods.



We thus welcome proposals to allow economic operators to provide mandatory information (e.g. addresses and safety information) to authorities and consumers by means of electronic (labelling) solutions, such as QR codes. We believe that **digital solutions should be allowed when providing mandatory information to authorities and consumers as set out in Articles 8(6), 8(7), 8(8) and 15(3)** of the Commission's proposal.

### About Toy Industries of Europe

**Toy Industries of Europe (TIE)** - Our mission is to promote the right of every child to play safely and securely and to promote fair practices and fair legislation, allowing responsible toy companies to continue to grow.

For more information contact [lars.vogt@toyindustries.eu](mailto:lars.vogt@toyindustries.eu)