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To:	General Secretariat of the Council
Subject:	General Product Safety Regulation (GPSR) proposal: summary of the public feedback received after the adoption of the proposal

Encl.: letter from Ms. Ana Gallego, Director-General at the European Commission (DG JUST), on the above subject.

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EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

The Director-General

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Brussels
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Subject: **General Product Safety Regulation (GPSR) proposal: summary of the public feedback received after the adoption of the proposal**

Dear Chair Cavazzini, dear Permanent Representative Léglise-Costa,

On 30 June 2021, the Commission adopted a Proposal for a Regulation 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. The general goal of the new proposal is to ensure protection of EU consumers from unsafe products, while contributing to the proper functioning of the Single Market, in particular a level playing field for businesses, in line with the current Directive 2001/95/EC on general product safety. In particular the proposal aims to better respond to issues related to new technologies and online sales, ensure better enforcement of the rules and more efficient and even market surveillance and to improve the recall of dangerous products. The proposal is part of the Commission's Regulatory Fitness and Performance (REFIT) programme. As part of its better regulation agenda, legislative proposals and accompanying impact assessments, which are put forward to the Parliament and Council, are opened for public feedback once they have been agreed on by the Commission. This

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letter summarises the feedback received through the Commission 'Have your say' webpage between 1 July 2021 and 4 October 2021.[1]

1. RESPONDENTS

The Commission received **60 feedbacks**: 46 from Business stakeholders, among them 31 from Business Associations and 15 from Companies or Business Organisations; 6 from Consumer Organisations; 2 from Non-Governmental Organisations; 3 from citizens. 3 respondents classified themselves as 'others'. 23 respondents came from BE, 11 from DE, 6 from FR, 4 from PL and NL each, 3 from DK, 2 from CZ, and 1 from SE, ES, PT, IE, HU, AT each. In addition, 3 respondents came from non-EU countries, including 2 from China and 1 from the US.

2. FEEDBACK

Feedback was received on all main elements of the proposal: scope, definition, safety requirements, obligations for economic operators, obligations for online marketplaces, market surveillance, Safety Gate rapid alert system, Commission enforcement, the right to information, the recall notice, the right to remedy, penalties and the transition period. Overall, the respondents welcomed the proposal, but had many detailed comments, reservations and suggestions on various articles. Business stakeholders in particular support the choice for a regulation. Businesses as well as consumer organisations welcome the aim of the proposal to create coherence with harmonised legislation under the New Legislative Framework and the Market Surveillance Regulation (Regulation (EU) 2019/1020). However, several business stakeholders voice concern that the proposal would impose additional obligations to products covered by harmonised legislation. Business stakeholders are also critical of adopting the WHO definition of health.

2.1. Main comments per type of stakeholders

- Consumer organisations[2] welcomed many elements of the proposal, including provisions on the precautionary principle (**art. 2**), traceability (**art. 17**), market surveillance (**art. 21**), the right to information (**art. 31**) and penalties (**art. 40**).

- Consumer organisations had additional suggestions, such as making the link between articles 6 and 7 more explicit (**art. 7**), defining online marketplaces as importers (**art. 20**), always publishing recall notices (**art. 34**), giving consumers a choice in the type of remedy (**art. 35**).

- Consumers (pro) and six business stakeholders (contra) were divided on the power of the Commission to adopt implementing acts setting out specific safety requirements (**art. 6**).

- Business stakeholders raised criticism in particular of the following elements of the proposal:

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[1] Contributions are available at 'Have your say' webpage: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12466-General-Product-Safety-Directive-review_en

[2] The 6 consumer organisations gave the same responses

- Thirteen voiced opposition to the word 'misuse' in the definition of 'safe product' (**art 3.2**).

- Seven argued against inclusion of cybersecurity and AI under the GPSR **(art 7).**

- Fourteen argued against the obligation of manufacturers to provide both a physical and the electronic address on articles, suggesting one of them to be sufficient (**art 8**).

- Seven regarded the period to notify authorities too short and nine suggested to only notify authorities in case of severe accidents or dangerous products to avoid information overload for market surveillance authorities (**art 19**).

- Four argued against what they considered to be a provision allowing consumers to decide on what products are deemed dangerous (**art 32.2**).

- Thirteen regarded the 6-month transition period for the application of the new Regulation to be far too short (**art 47**).

- Four were critical of the provisions for non-harmonised products that go further than provisions in harmonised legislation, in particular parts of articles **8**, **12**, **15**, **17**, and **35.**

2.2. Main comments per Chapter

2.2.1. Chapter I General provisions (Articles 1 to 4)

On the scope (art 2)

- *Business stakeholders* were **divided on the inclusion of certain products in the scope** of the Regulation, especially second-hand products, cybersecurity and AI, and individual businesses express the wish for inclusion of bicycles or the exclusion of medical devices (art 2.2).

- *Consumer organisations* **welcomed the precautionary principle**, one business association was critical (art 2.5).

On definitions (art 3)

- Two *business stakeholders* voiced concern about the impact on legal certainty of the broadening of the scope of the definition of 'product' (art 3.1).

- Thirteen *business stakeholders* called for the word 'misuse' to be deleted from the definition of 'safe product' (art 3.2).

2.2.2. Chapter II Safety requirements (Articles 5 to 7)

On the presumption of safety (art 6)

- *Consumer organisations* **welcomed the power of the Commission to adopt implementing acts determining specific safety requirements** and argued these acts should be legally binding and should overrule European Standardisation Organisations. However, ***business stakeholders*** **argued against** the **implementing acts,** saying these could erode the EU system of standardisation (art 6.2).

- Five business stakeholders also suggested defining counterfeit products as dangerous products (art 6).

On aspects for assessing the safety of products (art. 7)

- Consumer organisations wanted a more explicit link between articles 6 and 7 and suggested to delete the first half sentence of art. 7.

- Seven business associations **rejected inclusion of cybersecurity and AI** in art. 7.1(h)(i) and other businesses found, although **welcoming the inclusion of food imitating products** in the GPSR, the criterion 'other characteristics' to be too broad (art. 7.1(f)).

2.2.3. Chapter III Obligations of economic operators (articles 8 to 19)

On obligations of manufacturers (art. 8)

- Two *business stakeholders* criticised the obligations for manufacturers in the proposal as going further than harmonised legislation and suggested obligations should be linked to the risk potential.

- Three *business stakeholders* questioned the proportionality of the requirements for technical documentation (art. 8.4).

- Fourteen *business stakeholders* argued that, given the available space on a product, there should be a **requirement for either the physical *or* the electronic address**, instead of both, in addition several businesses pleaded for the option for all businesses to include safety information in accompanying documents (art. 8.6).

On obligations for importers and distributors (art. 10, 11)

- Three business stakeholders were critical of some of the obligations, such as keeping documentation for 10 years (art. 10) or providing information to the supply chain (art. 11).

On obligations for economic operators (art. 12 -17)

- Two business stakeholders argued that the term 'substantial modification' should be used consistently with the New Legislative Framework (art. 12).

- Two business stakeholders were critical of the obligation to keep technical files for 10 years (art. 14).

- Four business stakeholders also **argued against obligations going further than harmonised legislation** (art. 15, 17). In particular, businesses were critical of the wording of art. 15.1 and 15.2 as being too broad.

- Consumer organisations **welcomed the provision on traceability** (art. 17).

- Two businesses regarded the discretion by the Commission to adopt delegated acts (art. 17) as being too broad.

On obligations of economic operators in case of distance sales (art. 18)

- Two business stakeholders were critical of the requirement to include certain information, such as telephone numbers, batch number, user instructions and warnings on websites, which they considered unnecessary (art. 18).

- Business stakeholders were divided on the **amount of information to be present in online advertising**. Two regarded the proposed obligations to be disproportionate and argued for a risk-based approach, while two others argued for the inclusion of additional obligations; such as a visible CE mark and labelling information (art. 18).

Obligations of economic operators in case of accidents or safety issues related to products (art. 19)

- Seven business stakeholders regarded the **period to notify authorities to be too short** (art. 19).

- Nine business stakeholders suggested to **notify authorities only on severe accidents** or to link the notifying obligation to dangerous products to avoid information overload (art. 19).

2.2.4. Chapter IV Online marketplaces (art. 20)

- Three business stakeholders called to align the obligations of online marketplaces with traditional distributors.

- Consumer organisations wanted to define online marketplaces as importers.

- Three business stakeholders criticized the obligations in art. 20.6 to provide data to market surveillance authorities.

2.2.5. Chapter V Market surveillance and implementation (art. 21-22)

- Consumer organisations and some business stakeholders **welcomed the provisions.**

- Three business stakeholders were critical and wanted to **follow Regulation 2019/1020** in only applying the obligations set out in the proposal to serious-risk products, while others regarded the wording to be difficult to comprehend.

2.2.6. Chapter VI Safety Gate rapid alert system (art. 23-25)

- Business stakeholders **voiced their overall support**, but six business stakeholders suggested focusing on serious risk only to avoid information overload for market surveillance authorities.

2.2.7. Chapter VII Commission role and enforcement coordination (art. 26-30)

- Two business stakeholders had some additional suggestions but overall business stakeholders and consumer organisations welcome the provisions.

- **Consumer organisations welcomed the Consumer Safety Network** provision (art. 28).

2.2.8. Chapter VIII Right to information and remedy (art. 31-35)

- **Consumer organisations and some business stakeholders welcomed the proposals** overall, although business stakeholders had some additional suggestions per article.

- Four business stakeholders were critical of what they considered the potential power of consumers (and competitors) to determine that certain products are dangerous, arguing that consumers lack the necessary expertise. Instead they **suggested to change the wording of art. 32.2,** "products presenting a risk to consumer health and safety" to "products likely to present a risk".

On recall notices (art. 34)

- Consumer organisations argued that **recall notices should always be published**, as it is not always possible for the distributor to directly contact all consumers.

- Two business stakeholders suggested the option of **providing an illustration and graphical indication** on the product for invisible parts or software.

On the right to remedy (art. 35)

- Consumer organisations argued **that consumers should have the choice on the type of remedy** and that information must be provided to them about the different options, the dangers, and their consequences.

- Three business stakeholders wanted the article deleted.

2.2.9. Chapter IX International cooperation (art. 36)

- Consumer organisations welcome the proposal on international cooperation.

2.2.10. Chapter X Financial Provisions

No recurring comments.

2.2.11. Chapter XI Final provisions (art. 39-47)

- On penalties (art. 40), **consumer organisations welcomed the proposal**.

- On penalties (art. 40), business **stakeholders were divided**, two stakeholders wanted a minimum percentage of the EU wide, instead of national turnover, and the option to name and shame offenders. Three other businesses did not want to go further than harmonised legislation or find a penalty of 4% of turnover too high.

- On the amendment of Regulation 1025/2012 (art. 44) one business stakeholder came out against the provision.

- On the transitional period (art. 47), **thirteen business stakeholders considered 6 months too short** and suggested 12 to 36 months, with most suggesting 24 months.

Yours faithfully,

E-signed
Ana GALLEGO

c.c.: Raphaël Coesme, Chair of the Council working party for the GPSR, Isabelle Perignon (CAB Reynders), Lucie Rousselle (CAB Reynders), Ana Gallego (JUST), Barbara Kedzierski (JUST), Nils Behrndt (JUST), Pinuccia Contino (JUST), Eva Sinkovic (JUST), Andre Berends (JUST), Kristyna Deiberova (JUST), Paolo Lavaggi (JUST), Myriam Denieul (JUST), Andras Zsigmond (JUST), Bernard Nauta (JUST)