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NOTE

From:	Presidency
To:	Council
No. Cion doc.:	10381/21
Subject:	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 *AOB : Progress report*

Delegations will find attached the progress report on the Proposal for a Regulation on a general product safety, with a view to the AOB items at the meeting of the Competitiveness Council on 25 November 2021.

ANNEX

I. INTRODUCTION

1. On 30 June 2021, the Commission submitted the proposal for a Regulation of the European Parliament and the Council on general product safety[1]. The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU).

2. The proposal updates and modernises the general framework for the safety of non-food consumer products, as it reviews and repeals the legislative framework in place (the General Product Safety Directive[2]).

3. This revision, announced in the Commission's 2020 New Consumer Agenda[3], aims at addressing the new challenges for the safety of products brought by new technologies and online selling. It creates a link with the Digital Services Act proposal (DSA)[4] by including obligations for online marketplaces on product safety, and with the Artificial Intelligence Act proposal[5]. It also aims to ensure a level-playing field for businesses by increasing the coherence and consistency between the existing rules (e.g. on market surveillance) for products inside the scope of the EU harmonisation legislation ('harmonised products') and those outside of it ('non-harmonised products').

4. The European Economic and Social Committee provided its opinion on the proposal on 20 October 2021.[6]

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1 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. Doc. 10381 + ADD 1-4 + COR1.

2 Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety

3 ST 12976/20 (COM/2020/696 final)

4 ST 14124/20 +ADD1-3 (COM/2020/825 final)

5 ST 8115/21 + ADD1-4 (COM/2021/206 final)

6 INT/957 – EESC-2021. https://webapi2016.eesc.europa.eu/v1/documents/eesc-2021-03583-00-00-ac-tra-en.docx/content

5. In the European Parliament, the Committee on the Internal Market and Consumer Protection (IMCO) has not yet voted on its report.

II. WORK CONDUCTED IN THE COUNCIL PREPARATORY BODIES

6. The Slovenian Presidency started the examination of the proposal in the Working Party on Consumer Protection and Information on 13 July 2020, aiming for completion of the first examination of the text by the end of its Presidency.

7. The impact assessment accompanying this proposal was examined in detail during the Working Party meeting on 13 July 2021. The examination showed that delegations generally supported the aim of the proposal identified by the Commission.

8. In nine meetings held up to 25 November 2021 by the Slovenian Presidency, the Working Party concentrated its discussions on the general architecture, scope and substantial provisions of the proposal. Interlinks with the main related legislative instruments, in particular the DSA, Regulation (EU) 2019/1020 on market surveillance and compliance of products, as well as the proposal for the Artificial Intelligence Act, were also presented and examined.

9. A large number of delegations have provided preliminary written comments on chapters I-VI. As of this date, the vast majority of delegations have not yet lifted their scrutiny reservation on the whole text of the proposal.

III. MAIN ISSUES

10. Based on the discussions held at Working Party level so far, the Presidency has identified preliminary general support among the Member States for the level of ambition of the proposal and its overall objectives. Member States have contributed to a time-intensive and constructive debate during the first article-by-article examination of the text. In this context, the following sensitive issues have been identified:

a) Subject matter, scope and definitions

The proposed Regulation should act as horizontal legislation for the safety of non-food consumer products, complementing the existing instruments of sectorial legislation, which act as *lex specialis*. In this regard, Member States would welcome more clarity and specifications in the recitals and, in particular, in the articles of the proposal. Some Member States would like the Proposal to address end-users and not only consumers, while many believe that further clarification would be achieved by adding definitions of terms used in the articles, such as precautionary principle, interconnected, misuse or antique, repaired, reconditioned or refurbished products.

b) Safety requirements

While there is general support among delegations for enhancing the use of standards and extending the criteria for safety assessment, including new type of risks related to products based on new technologies, further clarification regarding the order and the wording of the provisions is necessary, in conjunction with clarification of the definitions. Aspects of assessing the safety of a product and the priority order of the criteria for assessment may be more important than conformity with standards or national law, which must be reflected in the proposal in order to reduce the complexity of the market surveillance authorities' work in this regard.

c) Obligations of economic operators

Member States generally agree on the need to align obligations applicable to non-harmonised products with those for harmonised products, but some have concerns about widening the scope (extending the 'responsible person' to non-harmonised products) and question the feasibility of the provisions in practice. Delegations have expressed their wish to avoid multiplication of procedures and information overload for national authorities. Moreover, they agree on the importance of traceability (and the quality of data in this respect), understandable language, the definition of accidents, and consistency with the DSA to avoid legal uncertainty.

d) Online marketplaces and the relation with the DSA

There is a broad agreement among Member States that, where the GPSR regulates specific product safety requirements and the responsibility/liability of marketplaces (that offer products via their services), consistency with the DSA, representing a horizontal act regulating the responsibility of online marketplaces with regard to illegal content, including unsafe products, is crucial. However, there is some discrepancy as to whether further obligations, for example on recalls and on preventing offers relating to dangerous products from being placed online, should be included among the specific responsibilities of online marketplaces, which some Member States would like to see brought closer to some extent to those of economic operators.

e) Legal technique concerning the alignment of market surveillance rules

In general, Member States support the alignment of the market surveillance provisions with Regulation 2019/1020, which will reinforce market surveillance and improve legal certainty for economic operators. Some Member States are, however, critical of the insufficient clarity and user-friendliness of the chosen legal technique and would prefer if the provisions of Regulation 2019/1020 were incorporated into, rather than merely referenced in, the proposal. As regards implementation, there is consensus that yearly reporting would imply an excessive and unjustified administrative burden for national authorities. Reporting should therefore be limited to the minimum, while further clarity seems to be needed regarding the nature of the data to be submitted, as well as its use and purpose.

f) Safety Gate rapid alert system

Member States recognise the importance of the system for the exchange of information on dangerous products. However, they emphasise the fact that information overload can have the opposite effect. Notifying serious risks only could be more appropriate, as widening the notification obligations would represent an additional burden for market surveillance authorities as well as for economic operators. Member States also agree that the deadline for notifications of two working days is too short, especially if different relevant databases are consulted, which is considered important.

IV. CONCLUSION

11. While the Slovenian Presidency has made considerable progress in the first examination of the proposal, in-depth discussions will continue in further meetings of the Working Party for Consumer Protection and Information. Taking into account the complexity of the proposal and its importance for reinforcing the Single Market and creating a safer and trusted environment, as well as its interrelation with other instruments of Union law, further work at technical level is required before the Council can take a political decision.

12. The Presidency considers this report to be a balanced summary of the main issues identified during the examination of Chapters I-VI and a fair contribution to shaping the way forward.

13. The Competitiveness Council is invited to take note of the present Presidency progress report.