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NOTE

From:	Delegations of Denmark and the Netherlands
To:	Working Party on Consumer Protection and Information
Subject:	Proposal for a Regulation on general product safety -Joint written comments on Chapters III, IV and VI from Denmark and the Netherlands

Proposal for a Regulation of the European Parliament and of the Council on general product safety

Comments from Denmark and The Netherlands on Chapter IV

General remarks

In general, Denmark and the Netherlands support the inclusion of online marketplaces in the product safety framework and the introduction of targeted obligations that will apply to both harmonized and non-harmonized products. Since online marketplaces are playing an increasingly important role in placing products on the European market, Denmark and the Netherlands find it paramount to introduce new obligations that obliges online marketplaces to ensure the safety of the products whose sale they facilitate. Online marketplaces are, in many circumstances, best placed, or even the only actor available to apply Union product safety obligations.

Denmark and the Netherlands agree with the Commission that the DSA should be complementary to the GPSR and that the two regulations should be coherent. Therefore, since the DSA is still open and subject to further changes, our comments are to be considered preliminary and are based on the current DSA proposal. For the practical enforceability of the GPSR it is important that the competent market surveillance authority can point out to the online marketplaces what their obligations with regard to product safety are. Some of the obligations, like for instance the 'know your business customer principle', are now only stated in the DSA. Authorities will therefore need to refer to one another to enforce the different sets of rules that have the same goal: no illegal or unsafe content on online marketplaces. It would more effective to incorporate the KYBC principle also in the GPSR.

Is the Commission willing to incorporate the obligations of online marketplaces that are now stated in sections 3a and 4 of the DSA in the GPSR regarding products? This would be a necessary clarification for the online marketplaces and makes enforcement more efficient.

Specific remarks and proposals from Denmark and The Netherlands

We propose the following specific obligations for on online marketplaces to ensure consumer safety in a changing e-commerce landscape:

1. A stay down-obligation for products assessed by market surveillance authorities to be non-compliant.
2. An obligation to display a warning sign during the time of investigation on a product after a notification has been done by the MSA
3. An obligation to react to the notification of the MSA within a certain amount of time, which is based on the level of risk
4. An obligation to ensure that information provided in accordance with Article 20(5) is verified by the online marketplaces as far as that information can be checked in publicly available registers.
5. Not to make it possible for traders to use the online marketplace if not all information as required in art. 20(5) has been provided.
6. An obligation to inform consumers about risks and support product recalls.

In annex 1 we have specified how these obligations might be implemented in the proposed text.

If the current DSA-text is to be amended in a way that enables imposing further obligation on online marketplaces, we can provide new text proposals for the GPSR.

Further questions to the Commission on chapter 4

- **Art.20, sub 3:**
  - **Question 1:** We are happy to see that the online marketplace has to inform the MSA of its actions as listed in paragraph 3. We think that it would be beneficial if not only the MSA that has done the notification is informed about the actions taken by the online marketplace, as stated in paragraph 3, but also that all European MSA's are notified and provided with this information. Does the Commission agree that this should be implemented?
  - **Question 2:** Can the Commission define "regular information" as mentioned in paragraph 3?
- **Art.20, sub 4:** Can the Commission define what an "appropriate answer" entails?
- **Art.20, sub 5:**
  - **Note on the DSA:** Article 22, paragraph 7 has been moved to article 24 (b).
  - **Text suggestion**: We understand that the Commission agrees that only the products that display all of the information listed in art. 20 para 5 should be able to be shown on the online marketplace. Here is our text suggestion to make this more evident in text:

"online marketplaces shall design and organise their online interface in a way that obliges traders to provide all of the following information for each product they intend to offer on this online marketplace. Traders will and ensures that it is displayed or otherwise made easily accessible by consumers on the product listing:"

Annex 1

1. Stay-down obligation: Online marketplaces shall prevent non-compliant products from being made available via their services when a product has been assessed by a market surveillance authority to be non-compliant. This could be done by adding the following text to recital 32 and Article 20(2):
    - Recital 32: Online marketplaces should be obliged to prevent illegal and dangerous products from being made available again, whether from the same seller or from a different seller, after the online marketplace has been ordered to remove that content from their online interfaces. They should also be obliged to prevent illegal and dangerous products from being made available again if they have removed or disabled such products upon obtaining actual knowledge of illegal activity or illegal content or becoming aware of facts or circumstances from which the illegal activity or illegal content is apparent in accordance with article 5(1)(b) of the DSA.

    - Article 20(2): Online marketplaces shall prevent products from being made available again via their services once they have been ordered by a Member State to remove the product from their service or they have acted upon knowledge or awareness in accordance with [article 5(1)(b) of the DSA] to remove or disable access to the product.

2. An obligation to display a warning sign during the time of investigation on a product after a notification has been done by the MSA and 3. An obligation to react to the notification of the MSA within a certain amount of time, which is based on the level of risk

3. Before MSA's notify an online marketplace about a product, they will most probably have received multiple complaints/ issued by consumers regarding the safety of that product. A notification by an MSA is therefore well founded and it is fair to expect that online marketplaces should publish a warning sign on the online interface of the product within 24 hours after they have been notified by the MSA.

   However, we do understand that the marketplace will need to conduct some kind of its own investigation to retrieve information from the seller. Therefore, we suggest the following system: the online marketplaces can take several business days for an investigation of a low risk product and one business day for a high risk product. Within both categories, the warning sign on the interface should be issued as soon as possible. With this system we will empower the consumer to make their own decision regarding the purchase of the product.

   Text suggestion for the last sentence of this sub: *"They shall inform the issuing market surveillance authority, within those two working days, of the effect given to the order by using […]."*

4. Obligation to verify: Article 20(2) includes different information on the manufacturer of the product, the responsible person and product information. Online marketplaces shall be obligated to verify this information as far as that information can be checked in publicly available registers and ensure that such information is kept updated, to prevent traders from filling in inaccurate or misleading information.

5. Obligation - through technical means – to ensure that it is not possible for traders to use the online marketplace, if not all information as required in art. 20(5) has been provided.

6. Obligation to inform: Online marketplaces shall inform consumers about products presenting a risk. This information should be sent directly to consumers who bought a product and the online marketplace later becomes aware that the product presents a risk. Online marketplaces shall also contribute to product recall. If a trader is ordered to recall a product, the online marketplaces shall establish direct contact between consumers and traders to inform consumers about the recall or actively recall the product themselves if the trader is unresponsive.

Concerning the stay-down obligation, we believe that this obligation would *not* constitute a monitoring obligation of a general nature but rather a monitoring obligation in a specific case (cf. recital 28 to the DSA and recital 47 to Directive 2000/31/EC). This is the case, as the obligation would only concern *specific* products that have been assessed by a market surveillance authority or the provider of the online marketplace to be non-compliant.

Proposal for a Regulation of the European Parliament and of the Council on general product safety
Comments from Denmark on Chapter III

General remarks

In general, Denmark supports the intention to align the GPSR with the New Legislative Framework and Regulation 2019/1020. As mentioned in relation to Chapter I and Chapter V, an alignment of definitions and market surveillance powers across the harmonised and non-harmonised product areas will be an advantage to both economic operators and authorities and contribute to improving consumer safety - the Netherlands agrees with this statement and addresses it in their written comments. Regarding the obligations of economic operators in Chapter III, we also find a certain level of alignment relevant. At the same time, however, we have two general reservations:

1. The introduction of many new obligations in a GPSR-context for the "traditional" economic operators (Chapter III) also involves the risk of increasing the un-level playing field that these operators experience, particularly in relation to online marketplaces. While we acknowledge that the proposal also imposes new obligations on online marketplaces (Chapter IV), the proposal appears to widen the competition gap between online marketplaces and other economic actors instead of closing it - the Netherlands agrees with this statement and addresses it in their written comments. This widening is in direct contrast with one of the key goals of the Regulation.
2. While we agree with the Commission that some GPSR-products may pose serious risks, a large portion of the GPSR Products are simple products without significant risk. NLF legislation, however, is designed to deal with products that may pose a particular risk. Thus, imposing the full set of NLF requirements to all GPSR products – without any attention to the level of risk – is disproportionate. We instead encourage a more risk-based approach to the obligations applied in Chapter III - the Netherlands agrees with this statement and addresses it in their written comments.

Specific comments

Article 8 – obligations of manufacturers

- Art. 8.2: We share the reservations regarding the term 'identified as dangerous by the complainant' made by many member states: The complainant - most often a consumer - should not be the one to decide the level of risk. As such, we propose to omit the line "by the complainant" to ensure that the burden of risk assessment and evidence does not fall in the hand of (most often) the consumer. We also support the suggestion to further specify the timeframe and the definition of complaints that need to be investigated.

- Art. 8.4: Here we believe that the complexity of the technical documentation should be related to the risk category of the product. For most GPSR products only simple technical documentation will be necessary. The Commission should consider introducing a guideline for the requirements regarding the technical documentation, since this will help both manufacturers and later the importers, which are obliged to control the manufacturer's fulfilment of the requirements (Art. 10.1). Another option could be to introduce a 'one pager'

document similar to the Declaration of Conformity for harmonized products - the Netherlands agrees with this statement and addresses it in their written comments.

- Art. 8.11: We propose to remove the reference to Safety Business Gateway (Art. 25) in this article, since this system is not the relevant one, when it comes to alerting the consumers.

Article 10 – obligations of importers

- Art. 10.3: We wonder why importers are not obliged to have a single point of contact, like distributors have? (Art. 9, point 7-8).

- Art. 10.4: This states that importers shall ensure that a product is accompanied by instructions and safety information. However, according to article 8, point 8, not all GPSR products require such instructions and information. So, when a product does not come with for example an instruction, will it be up to the importer to further investigate if this is actually in line with the rules and the safety assessment of the product – or if it is a violation? This should be clarified in the article - the Netherlands agrees with this statement and addresses it in their written comments. See also the suggestion above regarding a guidance document.

- Furthermore, does this safety assessment also include the distributor, who is expected to "verify that the manufacturer and the importer have complied with the requirements set out in Article […] 10(3) and (4)" as written in Article 11(1)? This should also be clarified in one of these articles.

- Art. 10.8: Same suggestion as above to remove the reference to Safety Business Gateway when it comes to alerting the consumers.

- Art. 10.9: Importers are obliged to keep the technical information for a period of 10 years. In our understanding, this is actually stricter than what is required on the harmonised areas, where only the much simpler declaration of conformity shall be kept for 10 years. The technical documentation can sometimes be very comprehensive. See also the suggestion regarding a 'one pager' above - the Netherlands supports this argument and addresses it in their written contribution.

Article 11 – obligations of distributors

Denmark supports the overall clear safety net measures. However, we are concerned that the current draft leads to disproportionate burdens for the economic operators, compared to their role in the supply chain. They are not well placed to – and therefore should not be obliged to – 'verify' whether the manufacturers and importers have correctly assessed and complied with their obligations, where this requires a risk analysis etc, as exemplified by our question towards the applicability of article 10.4.

Article 13 – internal processes for product safety

Denmark supports the inclusion of elements to support the development of a more process-oriented market surveillance, which we understand to be the aim of this article. We generally find that

requirements regarding internal processes to ensure product safety should also apply to the harmonised products, if we want such requirements to be relevant and useful in a market surveillance perspective - the Netherlands agrees with this argument and addresses it in their written comments. Moreover, they should, also apply to online marketplaces (Chapter IV).

Article 14 – cooperation of economic operators with market surveillance authorities

Similar to the comments previously stated, Denmark finds that the requirements of cooperation set for economic operators (Art. 14) should also apply to online marketplaces (Chapter IV).

Article 15 – responsible person for products placed on the union market

Denmark very much supports the aim to improve the safety of products imported from outside the EU. However, regarding the 'responsible person' provision which comes from Regulation 1020, this Regulation has just recently entered into force and we still have very little experience and knowledge about the actual effects of such a provision. It has been our understanding from the process regarding 1020 that we should await these experiences before further expanding the scope. While we acknowledge the explanations made by the Commission that this is one of the only instruments available to tackle the problems related to dangerous products from third countries, we still do not know if the instrument has any effect besides a symbolic one.

Moreover, we find it difficult to justify imposing stricter obligations on persons responsible for third country GPSR-products than the ones, which apply for third country harmonised products. If we are to introduce a new obligation to do sample testing, why only for the non-harmonised products?

Article 17 – traceability

We have overall reservations regarding the proportionality of the suggested requirements, which we are still investigating.

- Art. 17.3: Why has the Commission decided to use delegated acts compared to implementing acts, which were utilized in the market surveillance regulation (2019/1020)?

Article 18 – obligations of economic operators in case of distance sales

We have a question regarding the quality of the proposed data, which comes from our recent experience with digital market surveillance. The efficiency of such digital tools depends very much on the quality of the product data, for example that there is a good picture, a clearly visible batch number and other clear product identifiers. Hence, we would like to know whether the Commission has considered ways to specify the obligations here with regards to not just the type of data but also the quality of data – having in mind the common goal of improving the efficiency of market surveillance and also to create equal conditions for online sales and more traditional sales channels?

Proposal for a Regulation of the European Parliament and of the Council on general product safety
Comments from Denmark on Chapter VI

In general, Denmark supports the continuation of both the Safety Gate (art. 23) and the Safety Business Gateway (art. 25).

Article 23 – Safety Gate

Art. 23(2) - which refers to Article 24 point 1-6: We are concerned about the proposed role and obligations of the national contact point. Based on the meeting on October 27, it could seem that the Commission intends to extend the national contact point's obligations and make the contact point responsible for the notifications made by all market surveillance authorities in the member state. This is very different from the current system and does not match the decentralised organisation of market surveillance in many member states, including Denmark. Therefore, we suggest that the Commission clarifies how the proposed role of the national contact point differs from today.

Article 24 – Notification through the Safety Gate of products presenting a risk

Regarding notifications in Safety Gate, we have some reservations regarding the division of point 1 in two different categories and particularly point 1a, which extends the scope of GPSR-products to be notified quite substantially. In our view, with the proposed definition of 'a risk' in chapter 3 almost every product that our authorities control will now have to be notified in Safety Gate. How does that correspond with the ICSMS system? We would also like the Commission to explain why we should have different notification rules for harmonised and non-harmonised products, when one of the main goals of this proposal is to support more coherence?

- Article 24(7): We note in point 7 that the Commission commits to developing an interface between the ICSMS system and Safety Gate in order to avoid double data entry. Denmark has been pushing for that interface for quite some time now, since we believe it is a key to ensuring member state support for the systems. Together with the Netherlands, we therefore welcome the Commission's commitment to the further development of the interface. Could the Commission update us on the status and future timeframe for the interface?

- Like the Netherlands, we also suggest further clarification regarding the processes mentioned in point 3 – 6 regarding the Commissions role in relation to member states' notifications. For example, is the checking of notifications done via automated processes? What is the timeframe for notifying member states? Will the Commission also notify member states in the case of actualization, changes or withdrawal of corrective measures?