

Danish non-paper regarding article 15 and 20 – Improving the safety of products sold on online marketplaces

The GPSR proposal includes many steps in the right direction to ensure fair, future-proof, and technology-neutral product safety rules that support innovation while addressing the current product safety challenges, including those posed by the emergence of new business models such as online marketplaces.

However, Denmark regrets that the current text in article 20 does not contain obligations for online marketplaces that fully reflect their important role in the product distribution chain by upholding their exemption from liability. Preserving this exemption in the area of product safety will continue to allow sellers from third countries with no prior experience of the EU's consumer and product safety rules to target EU consumers without an economic operator in the EU being responsible for the legality and safety of the product *before* it is placed on the market.

Despite the noble intention of article 9 and 15 to remedy this issue, these fall short of what is needed to adequately uphold the fundamental principle where products are only placed on the Single Market if there is an economic operator in the EU. Derogation from this fundamental principle does not only put consumers in danger, it also distorts competition to the detriment of compliant European economic operators. Moreover, it further complicates market surveillance authorities' task of removing all non-compliant products given the scale and ease of which products can continue to be made available through online marketplaces.

To remedy this situation, the revision of the GPSD should explicitly impose additional and complementary obligations on online marketplaces that match their key role in the product distribution chain. These obligations should include both proactive and reactive measures applicable for all products regulated under the GPSR, including those that are subject to harmonisation legislation, in order to ensure a high level of consumer protection and level playing field between all online and offline businesses.

Hence, we suggest that online marketplaces should assume the same obligations as importers when they facilitate the import of goods into the Single Market and no other economic operator within the EU is responsible for the product's safety. This will require online marketplaces to ensure that the products made available on their platforms are compliant with the general safety requirement laid down in Article 5 or any safety requirement set out in Union harmonisation legislation when no other economic operator is available within the Single Market to ensure this. Likewise, online marketplaces should not allow a product to be placed on the market when it considers or has reason to believe that the product is not in conformity with article 5 or any safety requirement set out in Union harmonisation legislation and no other economic operator within the Single Market is available to make or have made this consideration. Finally, online marketplaces should assume all responsibilities related to a recall when it has facilitated a product transaction whereby a product has entered the Single Market without an economic operator in the EU to take on the responsibility of recalls.

Such obligations will be fully in conformity with the WTO framework, since online marketplaces situated within the Union will receive no preferential treatment under our proposal. Furthermore, such obligations will be in conformity with the Digital Services Act, which allows for *lex specialis* in the area of product safety.

Specific suggestion

To this end, we suggest the following changes to article 15 and 20:

Article 15

1. A product covered by this Regulation may be placed on the market only if there is an economic operator established in the Union who is responsible for the tasks set out in Article 4(3) of Regulation (EU) 2019/1020 in respect to that product. Article 4(2) and (3) of Regulation (EU) 2019/1020 shall apply to products covered by this Regulation. For the purposes of this Regulation, references to “Union harmonisation legislation” and “applicable Union harmonisation legislation” in Article 4(3) and (4) of Regulation (EU) 2019/1020 shall be read as “this Regulation”. **When a product is marketed on an online marketplace and the manufacturer or an importer is not established in the EU, importer in Article 4(2), point b of Regulation (EU) 2019/1020 shall be read as “online marketplace”.**

Article 20

1a. Before making a product available on their online interface, online marketplaces shall take reasonable steps to confirm that the product meets the safety requirements set for the product. These steps shall consist of at least one of the following:

- (a) online marketplaces shall confirm that the product has already been placed on the market by a manufacturer located in the Union or an importer.**
- (b) online marketplaces shall ensure that the trader making the product available on their online interface will fulfil the obligations of either manufacturer or importer when the product is placed on the market.**
- (c) online marketplaces shall ensure that the product is compliant with the general safety requirement laid down in article 5 or any safety requirement set out in applicable Union harmonisation legislation and that the manufacturer has:**
 - i. drawn up technical documentation of the product in accordance with Article 8(4) or applicable Union harmonisation legislation.**
 - ii. ensured that the product bear a type, batch or serial number or other element allowing the identification of the product in accordance with Article 8(6) or applicable Union harmonisation legislation.**
 - iii. Indicated their name, registered trade name or registered trade mark and postal or electronic address at which they can be contacted in accordance with Article 8(7) or applicable Union harmonisation legislation.**

1b. Online Marketplaces shall assume the obligations of 1a(c) if the manufacturer(s) or importer(s) mentioned in paragraph 1a(a) and (b) cannot be reached via the contact information provided in accordance with paragraph 5.

1c. Where an online marketplace considers or has reason to believe that a product is not in conformity with Article 5, any safety requirements set out in applicable Union harmonisation legislation, or requirements listed in paragraph 1a, point c) , it shall not allow the product to be made available on its online interface until the product has been brought into conformity. Furthermore, where the product is

not safe, the online marketplace shall inform the manufacturer and/or the importer and ensure that the market surveillance authorities are informed.

7. When an online marketplace has facilitated the sale of a product which is recalled, the online marketplace shall assume the responsibility of the recall, if no other economic operator is available to assume this responsibility.

8. Online marketplaces shall cooperate with market surveillance authorities and the manufacturer to ensure that products sold through its online interface are safe.

9. The Commission shall publish guidelines to help online marketplaces comply with this article.