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The Slovak Alliance
for Innovation Economy

Dita Charanzová
Vice-President of the European Parliament,
IMCO committee Rapporteur

Lenka Dupáková
Chair of the Council's Working Party on
Consumer Protection and Information

Pinuccia Contino
Head of Unit, DG JUST,
European Commission

Brussels, 22 November 2022

Re: Finalising the EU General Product Safety Regulation (GPSR)

Dear Vice-President Charanzová, dear Ms Dupáková, dear Ms Contino,

We are writing on behalf of a broad coalition that represents technology and e-commerce companies of all different sizes from across the EU. This coalition believes it is crucial to create a General Product Safety Regulation (GPSR) that both protects the safety of European consumers and provides an adequate framework for all the businesses that have to implement it.

We commend the European institutions for the progress made on this initiative so far. Yet, we believe it is necessary to draw attention to the fact that the GPSR should maintain the necessary differentiation between the requirements for harmonised and non-harmonised products to ensure certainty and clarity for manufacturers. As the interinstitutional negotiations are drawing to a close, we would like to highlight several remaining issues that need to be addressed in order to make this framework as effective as possible.

1. Ensure the GPSR is consistent with the Digital Services Act

The Digital Services Act (DSA) recently introduced an EU-wide ban on general monitoring by providers of intermediary services. While the current GPSR proposal aims to introduce a specific product-safety monitoring obligation, the proposed safeguards simply do not respect the conditions laid down in case law by the Court of Justice of the EU.

As it stands, the stay-down obligation does not reflect the reality of product safety, such as the difficulty to identify products as dangerous through automated tools. The lack of a definition of what constitutes an “identical content referring to offers of a dangerous product ” also creates legal uncertainty and a complex assessment burden for businesses. Moreover, a stay-down obligation without legal certainty will lead to the over-removal of products, as online marketplaces would adopt a cautious approach and pre-emptively remove “false positives”.

This would not only penalise legitimate businesses but also lead to fewer choices for European consumers. We therefore strongly recommend that the stay-down obligation for online marketplaces applying to products flagged as dangerous by authorities that was added to Article 20 would be brought in line with the clarifications provided in Article 8 of the Digital Services Act.

The signatories of this letter are cautious of the recent additions proposed by a coalition of Member States to Article 20 and its accompanying recitals. Specifically, they propose that *“Providers of online marketplaces to which Section 4 of the DSA applies shall make reasonable efforts to randomly check **before and after** they allow a trader to offer a product on the online marketplace, whether it has been identified as being dangerous in any official, freely accessible and machine-readable online database or online interface, made available in a Member State or in the Union, in particular the Safety Gate Portal.”*

While the Member States argue that this would not place additional burden on providers of online marketplaces, we believe proposed changes underestimate the resources required for such ex-ante random checks, especially when considering that the added value of such checks could be rather low. Moreover, we would again stress the need for alignment with the DSA, as such ex-ante checks would essentially mean that marketplaces would have to actively search for illegal activity (even if it is randomly).

2. Provide enough time for implementation and alignment with the DSA

The implementation period provided for the GPSR (Article 47) should be extended to 24 months, as proposed by the Council. The GPSR introduces significant requirements for all products. Less time would thus be insufficient, for companies across the value chain and market surveillance authorities alike, to adapt to the new rules. An implementation period of 24 months would also allow for the Digital Services Act to enter into application in February 2024 before the GPSR does, resulting in better alignment between the two pieces of legislation. Finally, the GPSR has much in common with the Market Surveillance Regulation, which contained less

stringent changes and provided a 24-month implementation period, but nevertheless already proved difficult for businesses and market surveillance authorities to implement in time.

3. Give the supply chain flexibility in product identification

The obligation to display the “batch or serial number” of the products on the product detail page should be removed from Article 20, as suggested by the European Parliament. While a product identifier is a useful tool to track a given product, requiring a specific batch or serial number throughout the supply chain is restrictive and inconsistent with reality. Products sold online do not have a pre-established number as sales are dynamic. Other products that are sold on online marketplaces - such as refurbished, secondhand or handmade ones - often simply do not have a serial number. Therefore, the adaptability of a product identifier would be better suited to how products are put on the market, this would help to avoid confusion. Indeed, for an identifier to be efficient for both consumers and companies to track unsafe products, it should be flexible and simple to use.

4. Keep the responsible person’s obligations proportionate

Extending the obligation to appoint a responsible person - from so-called harmonised products before to all products from non-EU economic operators in the future - should be proportionate to the risk associated with a given product category. At the very least, the obligations of the responsible person should be adapted to the level of risk of the product in order to keep this new requirement efficient. Imposing strict blanket obligations for low-risk products would be counterproductive, burdensome, and could lead to less consumer choice.

In particular, the responsible person’s obligation to test the products should be limited to verifying technical documentation at an adequate frequency. Random sample testing is not a realistic obligation, as responsible persons will not be able to access and physically test all products entering the EU market.

Fulfilment service providers should be responsible for product safety only when no other economic operator is established in the EU, in line with Market Surveillance Regulation (Recital 18 and Article 4.1d). In the same vein, requiring distributors to verify that the manufacturer and importer have complied with the requirements under the GPSR is disproportionate to the role played by distributors (Article 11). Hence distributors should “*act with due care*” and face a verification obligation only “*within the limits of their respective activities*”, as stipulated in Article 5.2. of the existing General Product Safety Directive.

Solving the four priority issues mentioned above will help create a GPSR that is truly able to meet its objective of increasing consumer protection while enabling the e-commerce sector to grow across the EU.

We thank you for your consideration and remain at your disposal to provide additional information or answer any questions you might have.

Signatories: (in alphabetical order, with EU Transparency Register number)

ACT - The App Association (72029513877-54)

Computer & Communications Industry Association (CCIA Europe - 15987896534-82)

Confederation of Industry of the Czech Republic (785320514128-81)

DOT Europe (53905947933-43)

Ecommerce Europe (867433111414-11)

European Tech Alliance (EUTA - 189607519323-76)

Romanian E-commerce Association (ARMO - 527739339477-02)

Slovak Alliance for Innovation Economy (SAPIE - 793779648066-85)