

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 22-9

7 April 2022

SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

EEA EFTA Comment

on the Commission 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 - [COM\(2021\)346](#)

1. EXECUTIVE SUMMARY

- *The EEA EFTA States welcome the Commission proposal for a Regulation on general product safety replacing Directive 2001/95/EC on general product safety and support its overall objective. EU product legislation is a substantial part of the EEA Agreement.*
- *The number of products being offered online have increased steadily. Consumers should however expect the same level of protection regardless of purchasing a product online or in the neighbourhood shop. To this end, the EEA EFTA States fully support that online marketplaces should have increased responsibilities as regards consumer protection.*
- *The requirement on economic operators to ensure that products are accompanied by instructions and safety information should, according to the proposal, not apply where the products can be used safely without such documentation. The EEA EFTA States question such an exception and see a need for further clarification of the proposed provision.*
- *The EEA EFTA States welcome an obligation on economic operators to have internal processes for product safety in place. However, the term "internal processes" needs to be further defined in the proposed Regulation.*

- *EEA EFTA States suggest that provisions on market surveillance in the Market Surveillance Regulation should be included in full text in the proposed Regulation in order to improve user-friendliness.*
- *The EEA EFTA States welcome rules which entail more obligations on product recalls and standardised recall notices and propose that traders should be obliged to always publish recall notices.*
- *The EEA EFTA States support the introduction of more effective, proportionate, and dissuasive penalties for infringements. However, they question the proposed detailed provisions on penalties which are not in line with the provision on penalties in the Market Surveillance Regulation and compliance of products.*

2. GENERAL REMARKS

1. The EEA EFTA States welcome the Commission proposal for a Regulation on general product safety replacing Directive 2001/95/EC on general product safety (the Regulation). EU product legislation is a substantial part of the EEA Agreement.
2. The EEA EFTA States support the overall objective of the proposed Regulation which is to increase consumer protection and trust and to ensure a level playing field for businesses.
3. The number of products being offered online have increased steadily, and new business models and new actors such as online marketplaces have emerged. Consumers should expect the same level of protection, regardless of the product originating within or outside the EEA and regardless of purchasing it online or in the neighbourhood shop.
4. The EEA EFTA States therefore support a modernisation of the existing legislation in order to address challenges linked to new technologies and online sales.
5. The EEA EFTA States see the need to ensure consistency between the Regulation and harmonised EU product legislation, and furthermore coherence between market surveillance of harmonised and non-harmonised products.
6. The Regulation will be *lex specialis* under the Digital Services Act (DSA). The EEA EFTA States issued an [EEA EFTA Comment](#) on the DSA on 29 September 2021.

3. SPECIFIC REMARKS

7. In Article 8 (8) and Article 10 (4) it is proposed that the requirement on economic operators to ensure that products are accompanied by instructions and safety information, should not apply where the products can be used safely without such documentation. The EEA EFTA States question such an exception, as it may lower the level of consumer protection and create challenges when Market Surveillance Authorities enforce the provisions. The EEA EFTA States therefore suggest that the term "can be used safely without such documentation" is further clarified.

8. Iceland and Norway have for many years had a positive experience with imposing internal control processes upon economic operators. According to their national law, internal control means systematic measures designed to ensure that the activities of economic operators are planned, organised, performed and maintained in conformity with requirements laid down in the health, environmental and safety legislation. As a part of their regular surveillance activities, the Market Surveillance Authorities control the internal control processes within the economic operators.
9. Introducing at EU level internal control processes for non-harmonised products may be of particular importance, as these products are not subject to safety requirements laid down by sector specific EU product law and thus not subject to any of the conformity assessment procedures laid down by EU law.
10. The EEA EFTA States therefore welcome that internal processes for product safety be imposed on economic operators, see Article 13 and 21(4) of the Regulation. They propose to add the following in Article 21(4): “Such schemes should be based on the principle of proportionality”, as all economic operators may not trade in goods that could be a potential danger for consumers. They furthermore propose that a definition of “internal processes for product safety” is added to Article 3, building for example on the wording of Recital 42 of the Regulation. This would also facilitate the enforcement of Article 13.
11. Considering the key role online marketplaces play in the supply chain, the EEA EFTA States fully support that online marketplaces should have increased responsibilities for consumer protection, be it in the DSA, or in the Regulation (see Article 20) as *lex specialis* under the DSA. However, depending on the final wording of the DSA as regards the responsibilities of online marketplaces for consumer protection, there may be a need to lay down more specific responsibilities on such marketplaces in the Regulation.
12. Obligations to be considered could be whether online marketplaces should be obliged to carry out recalls of dangerous consumer products distributed through their online marketplaces, including those from third party traders in case those cannot be reached or do not react properly or on time. Furthermore, it should be considered whether online marketplaces should be obliged to exclude from their interfaces traders that provide incomplete or incorrect information or fail to comply with the requirements of the Regulation.
13. To improve user-friendliness for businesses and market surveillance authorities, the EEA EFTA States propose that the provisions on market surveillance in the Market Surveillance Regulation, referred to in Article 21 of the Regulation, should be included in full text in the Regulation.
14. According to Article 20(2) of the Regulation, which applies to both harmonised and non-harmonised products, "Member States shall confer on their *market surveillance authorities* the power, for all products covered by this Regulation, to order an online marketplace to remove specific illegal content referring to a dangerous product". Article 14(3) in the Market Surveillance Regulation states that when conferring powers under paragraph 1, Member States may provide for the power to be exercisable in different

ways, including directly by the market surveillance authorities or upon application to courts. The EEA EFTA States assume that article 20(2) will be without prejudice to the right of Member States to confer powers as regulated in article 14(3).

15. In order to increase recall effectiveness, it is important to reach all consumers. The EEA EFTA States welcome rules which entail more obligations on product recalls and standardised recall notices. However, they propose that an obligation to always publish recall notices should be added to Article 33. When traders can contact consumers directly through contact data previously obtained, the recall notices should nonetheless be published as consumers may have purchased products as gifts or have sold them on second-hand marketplaces. If published, the information may reach a higher number of owners or users.
16. The EEA EFTA States support the introduction of more effective, proportionate and dissuasive penalties for infringements in Article 40. They however question the proposed detailed provisions on criteria for the application of penalties, the regulation of the level/size of fines and on the Member States' obligations to report on the type and size of the penalties imposed. This is not in line with the provision on penalties in the Market Surveillance Regulation and thus not in line with the aim to ensure consistency with Union harmonisation legislation and the Market Surveillance Regulation.