



**Independent
Retail Europe**

**POSITION FOR THE TRILOGUE ON THE MACHINERY
REGULATION: RETAILERS NEED LEGAL COHERENCE ON THEIR
OBLIGATIONS
- COMMENTS OF INDEPENDENT RETAIL EUROPE -**

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EXECUTIVE SUMMARY

As the Council, European Parliament and Commission are currently negotiating in trilogue the revision of the Machinery Product Regulation (MPR), Independent Retail Europe is deeply concerned about the risk that distributors' obligations under the MPR may be inconsistent with the same obligations under other major product safety legislation, and in particular the General Product Safety Regulation (GPSR).

Inconsistencies in the distributors' obligations would create major burdens for retailers, as even small retailers have product portfolio of thousands of products subject to different product safety legislation. Inconsistencies also create risks for consumers. We therefore invite the co-legislator to align as much as possible distributors' obligations under the MPR on the same obligations under the GPSR.

The following issues should be addressed in trilogue to ensure a coherent framework for distributors.

COMMENTS OF INDEPENDENT RETAIL EUROPE ON THE TRILOGUE ON THE MACHINERY REGULATION: RETAILERS NEED LEGAL COHERENCE ON THEIR OBLIGATIONS

1. Digital Labelling of product instructions / safety information and manufacturers/distributors' obligations

MPR Council Mandate, Art 10 (obligation of the manufacturer): The text distinguishes between machinery for professional and non-professional use. With regard to machinery for professional use, the manufacturer can decide to make the instructions available in a digital format. However, "*upon purchaser request of the user at the time of the purchase or up to 6 months after that purchase, the manufacturer shall provide the instructions in paper format free of charge*". For machinery that is intended for non-professional use, there must always be the paper version of the necessary instruction for use.

MPR, Council Mandate, Art 13.2.(ba) (obligations of the distributor) The distributors' obligation is limited to ensure that the instructions in paper format can be provided to the purchaser user in accordance with article 10.7, meaning that distributors have to verify whether manufacturers have fulfilled their obligations. This version respects the current balance of responsibilities.

MPR, EP Report, Amendment 50 on Annex III (Essential Health Safety requirements)– Part 1 – point 1.7. – point 1.7.4 .– paragraph 3 : The instructions shall be provided in a digital format over the entire lifecycle of the machinery product. However, under the purchaser's request, the instructions shall be provided in paper format free of charge up to two years after the purchase of the machinery product.

Position of Independent Retail Europe:

Digital Labelling brings multiple advantages for consumers in terms of accessibility. However, not all consumers can access digital labels yet. **Currently, there is no workable solution that would allow to provide consumers upon request at the moment of the purchase a 'paper back-up' of the mandatory safety//technical instructions.** Such an obligation would also lead to a considerable shift of responsibilities and costs from the manufacturer to the retailer. It must always be the manufacturer's responsibility (who knows the product best) to correctly inform the consumer. Retailers cannot distribute, store or print paper versions at their premises.

As the possibility of digital labelling will have a direct impact on the distributors' obligations we call upon legislators to harmonise provisions across different legal texts. Retailers have between 10.000 and 20.000 products for sale. Those products fall within the scope of different legal texts. For retailers it would be extremely cumbersome if legal regimes differ widely between products.

→ **We therefore are critical of the European Parliament proposal, which is unworkable in practice. The Council's approach is far more constructive, even though the distinction between machinery for professional and non-professional use is not entirely clear.**

We would also like to draw attention to the approach taken by the European Parliament on the GPSR concerning digital labelling (see [EP report amendment 130 on Article 19a new](#)), which allows for complementary digital information. We welcome this approach and call upon the co-legislator to ensure legal coherence between the MPR and the GPSR when it comes to digital labelling.

→ **Action proposed: If possible, use the same wording as proposed in the EP report on the GPSR. Alternatively, use the wording in the Council mandate (and reject the text in the EP mandate on the MPR)**

2. Distributors' obligation to act with due care (Art. 13.1)

MPR, Council Mandate, EP Mandate, Art. 13.1: *"When making a machinery or related product available on the market, distributors shall act with due care in relation to the requirements of this Regulation."*

Position of Independent Retail Europe:

Retailers sell products. Retailers do not produce products. Therefore, it is important for retailers to have clear guidance on what to check and verify before making a product available on the market. It is not clear what "due care" refers to. Since retailers have a wide product range it is important that processes and obligations are streamlined across the different product safety legislation texts. Different processes applying to different products will lead to confusion among retailers and possibly mistakes.

→ **Action proposed: We call upon legislators to delete this 'due care' formulation and introduce a clearer safety assessment in coherence with the new Article 11 and Article 6 of the proposed General Product Safety Regulation.**

3. Diverging notification obligations for distributors between the Council and EP mandates

MPR, Council Mandate, Art. 13.3: the distributor is required to inform the manufacturer or the importer and the market surveillance authorities.

MPR, EP Mandate, Art. 13.3 and 13.5: The MPR does not include the possibility to inform the importer instead of the manufacturer.

Position of Independent Retail Europe

In order to minimise risks of errors for retailers, the wording (and the identity as to who should be notified in case a product is unsafe) should be identical within all product safety legislation. Retailers

have a large variety in their product range (often hundreds or thousands of different product references). Different processes and differences as to who should be notified, will be burdensome and confusing in particular for small retailers.

➔ **Action proposed: We call on the co-legislator to retain the Council approach in the final text, since it fully reflects the wording used in other key EU product safety legislation. It is important to adopt a coherent and uniform approach as to who should retailers/distributors notify in case a product they make available is unsafe.**

4. Basis for distributors to take actions for unsafe products: “information in their possession” vs. “reasons to believe”

MPR, EP Mandate, Council Mandate, Art. 13.3 and 5: Distributors have to take corrective actions when they have “*reasons to believe*” that a product has wrongfully been made available on the market. The “reason” that makes retailers “believe” that a product has been wrongfully been made available on the market is not defined precisely and remains vague.

GPSR EP Mandate and EC Proposal, Art. 11.4: Retailers may rely on “*the information in their possession*” before taking corrective measures regarding a product that should not have been made available on the market.

Position of Independent Retail Europe

Different wordings may lead to different interpretations. In the proposed General Product Safety Regulation, retailers may rely on the information in their possession before they proceed with their reporting obligation (GPSR, EP Mandate, Art. 11.4). Retailers have a large variety in their product range (even SME retailers usually have hundreds or thousands of product references). The processes before introducing corrective measures must be the same across the entire product range. The obligation of being aware of different legal regimes will be burdensome in particular for small retailers, would increase the risk for errors and increases the risk of unforeseeable liabilities. Retailers must know exactly on which precise basis they must assess the need to take action.

➔ **Action proposed: Adopt a coherent approach between the MPR and the GPSR and insert the wording “*based on the information in their possession*” used in the GPSR.**

5. Retailers’ obligation to act when a product “is not safe” vs. a product that “poses a risk”

MPR, Council Mandate, Art. 13.3 and 13.5: Retailers have to act when a product “poses a risk”.

Position of Independent Retail Europe

We note different wording in different legal texts. According to Article 11.3 and 11.4 of the proposed GPSR, retailers have to act when a product is “not safe”, which is defined in the prior safety assessment. The Proposal for an AI Act refers to Article 3, point 19 of Regulation (EU) 2019/1020 to define a product that presents a risk, whereas the Toy Safety Directive defines a risk as “*the probable rate of occurrence of a hazard causing harm and the degree of severity of the harm*”. These wordings might lead to different interpretations in practice, and define products that need to be notified in a different way. Different legal definitions of products that need to be notified will be confusing and

burdensome to retailers, in particular to small retailers. Such a situation would increase the risk of error and indirectly create new problems for market surveillance authorities and potentially risks for consumers.

➔ **Action proposed: use in article 13.3 and 13.5 of the MPR the same clear wording used in Art. 11.3 and 11.4 of the GSPR proposal, obliging retailers to notify products that are “not safe”. It is important to adopt a coherent approach on the matter and give the retailer clear guidance throughout the entire product safety regulation.**

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*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer. Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.

Independent Retail Europe represents 23 groups and their over 403.900 independent retailers, who manage more than 759.000 sales outlets, with a combined retail turnover of more than 1,314 billion euros and generating a combined wholesale turnover of 484 billion euros. This represents a total employment of more than 6.620.000 persons.

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