



**Independent
Retail Europe**

PROPOSAL FOR A REGULATION ON TOY SAFETY - COMMENTS OF INDEPENDENT RETAIL EUROPE -

OCTOBER 2023



EXECUTIVE SUMMARY

Independent Retail Europe welcomes the proposal for a Toy Safety Regulation, which aims to modernise the current framework and ensure that toys that are dangerous shall not be sold in the EU. To ensure that this revision delivers an optimal level of safety while respecting the respective role of economic operators, we invite EU institutions to consider the following aspects:

- **Legal consistency between distributors' obligations under the Toy Safety Regulation (a *lex specialis*, in view of the vulnerability of children) and the General Product Safety Regulation (GPSR) is an absolute necessity for the highest level of security.** Retailers have many different types of products in store. A full harmonisation of these obligations is essential to ensure a high level of compliance amongst distributors, minimise errors and ensure the highest level of security for consumers and children. Article 10 of the Toy Safety Regulation should literally mirror Article 12 of the GPSR.
- **Article 54 (transition period) should allow distributors to exhaust their stocks of products that were legally marketed.** The 12 months transition foreseen for distributors is far too short and constitutes an unseen precedent in EU product legislation that will inevitably lead to mass destruction of unsold toys that were legally made available on the market.
- **Article 17 (Digital Product Passport) should correspond to a toy model (as per the Commission proposal), and shall not include information on batches/series number** (as this would otherwise make it impossible for distributors to fulfil the obligation to make the DPP available to consumers in online sales offer, as one toy model can have many different batch numbers). It is essential that any DPP leads to the recognition by manufacturers of their responsibility for the compliance of the toy with essential safety requirements (Article 17 paragraph 4).
- **Online marketplaces should be considered importers when a toy is sold by non-EU traders via those platforms and there is no EU-based manufacturer or importer.** Currently, there is a loophole that allows rogue traders from outside Europe to massively sell in Europe non-compliant products. The DPP is not a silver bullet in this regard, as it can be faked.

COMMENTS OF INDEPENDENT RETAIL EUROPE IN DETAIL

1. **Distributors' obligations (Art. 10): the Toy Safety Regulation should be consistent with the same obligations under the General Product Safety Regulation**

Retailers have thousands of products on their shelves, for which separate product legislation may apply. **To minimise risks of errors, it is of utmost importance that the obligations of distributors be legally consistent across the entire product safety acquis.** The (recently revised) General Product Safety Regulation (GPSR) provides a clear model for distributors' obligations that should be replicated in the Toy Safety Regulation, especially given the interaction between these two pieces of legislation. Although built on a similar structure, distributors' obligations under the proposed Toy Safety Regulation (Article 10) slightly differ without any reason from distributors' obligations under the GPSR. **We call on the co-legislator to fully harmonise distributors' obligations under the Toy Safety Regulation with the model provided by the GPSR.**

Article 10 of the Commission proposal on Toy Safety currently contains the following differences that should be amended:

- **“Due care” formulation (Article 10, paragraph 1)**

Article 10, paragraph 1 of the proposed Toy Safety Regulation states that *“when making a toy available on the market, distributors shall act with due care in relation to the requirements of this Regulation.”* This paragraph is actually redundant in view of Article 10 paragraph 3, which covers the same situation, but in much clearer terms. The same issue occurred when discussing the new the General Product Safety Regulation, which led the co-legislator to delete the provision on “due care”. Maintaining Article 10, paragraph 1 on “due care” (without defining it) and Article 10, paragraph 3 would lead to legal uncertainty as to the scope and content of this due care obligation, and conflict with the new GPSR. **Article 10, paragraph 1 should therefore be deleted.**

- **“Have reason to believe” expression (Article 10, paragraphs 2 and 4)**

Article 10, paragraph 2, sub-paragraphs 1 and 2 of the proposed Toy Safety Regulation refers to the expression *“have reason to believe”*, whilst imposing on distributors an obligation not to make available a toy in the market if not in conformity with the essential safety requirements.

The scope of this formulation is unclear, as retailers can only rely on information provided by the product manufacturers (since they did not produce the toy). The expression *“have reason to believe”* need to be clarified as under Article 12 of the GPSR, by adding the words *“on the basis of the information in the distributor’s possession”*. **Article 10, paragraph 2, sub-paragraph 1 and 2 should be rephrased as follows: “Where distributors consider, or have reason to believe, on the basis of the information in their possession, (...)”,** in order to mirror the wording of the GPSR proposal. Additionally, for the same reasons, **the words “on the basis of the information in their possession” should also be added in Article 10, paragraph 4 (in both sentences).**

- **“Toy presents a risk” concept**

The wording “presents a risk” mentioned in Article 10, paragraph 2, sub-paragraph 2 could be interpreted subjectively, given the complex definition of what constitutes a risk. The co-legislator recognised this issue under Article 12 of the GPSR and replaced it with the notion of ‘dangerous products’. **We invite the co-legislator to fully harmonise with the GPSR and refer instead to the notion of dangerous products.** The Toy Safety Regulation shall follow GPSR as closely as possible, as divergences could result in an unintended lack of compliance.

- **Obligations before and after making a toy available in the market**

In Article 10, paragraph 2 sub-paragraph 2, there is confusion on obligations that are relevant before making available on the market, and those relevant after the making available. The wording should be aligned with Article 12 GPSR, which does not create such confusion.

For instance, Article 10, paragraph 2, sub-paragraph 2, c) is only relevant if a toy has already been made available on the market, but not before it has been made available. Similarly, under the GPSR, Article 12, sub-paragraph a) and b) are also obligations arising only if the product was already made available. **We again recommend using the same approach as under the GPSR Article 12, paragraph 4 and therefore to move Article 10, paragraph 2, sub-paragraph 2 to paragraph 4 of the same Article.**

2. Transitional provisions (Article 54 of the Toy Safety Regulation) are impractical for distributors and will lead to the destruction of toys legally marketed

According to Article 54, paragraph 1 of the Toy Safety Regulation, manufacturers will be allowed to keep putting on the market toys under the current Directive for 30 months after the adoption of the new Regulation. This will be followed by a 12 months period during which distributors will be able to sell toys legally marketed under the current Directive. **This 12 months period is a novelty with no existing precedent: there is not any single EU product safety legislation that prohibits selling products that were legally put on the market. Under the EU product acquis, distributors are always allowed to exhaust their stocks of products that were legally marketed prior to new legislation. This 12 months period is far too short to allow retailers to exhaust their stocks.**

A short 12 months transition period for distributors would inevitably lead to a combination of:

- Drastic reduction of stocks (to minimize risks of unsold stocks), therefore creating a shortage of toys on shelves at critical times of the year; and
- The destruction of any unsold products by the end of the transition period.

This would massively undermine the sustainability goals proclaimed by the EU and strongly supported by the co-legislators, especially at a time when the co-legislators try in other legislation to impede the destruction of unsold goods.

We therefore invite the EU institutions to be coherent and allow explicitly distributors to exhaust their stocks of products legally put on the market, as in the current Toy Safety Directive and as in all other product safety legislation. At the very least, a minimum of three years should be given to distributors to exhaust their stocks.

3. The Digital Product Passport (Article 17) should only cover practical and feasible information

The current provisions of Article 17 reflect the practical and feasible information that can be provided in a Digital Product Passport (DPP). We strongly welcome that Article 17, paragraph 2, a) refers to the “toy model”, and not to the individual batch/series number of toys. Indeed, the toy model is essential information concerning the safety of products. **However, we warn against the inclusion of any reference to individual batches/series numbers in the DPP**, due to the indirect consequence this may have for the obligation to show the DPP in online sales channels (which results from the GPSR provisions on online sales also applicable to toys).

As recognised by the co-legislator in the GPSR, any indication of individual batches/series for products sold online is simply impractical. See the [sector statement on this issue](#) released during the debate on the GPSR which clearly explains the main impracticality of indicating (directly or indirectly through a

DPP) individual batches of products online. To stay coherent with the GPSR framework, and in light of the above, it is critical to ensure that the DPP does not contain specific information on batches.

Moreover, **it is absolutely essential that any DPP mandatorily states the compliance of the toy with essential safety requirements (Article 17, paragraph 2 (b)), and that its creation legally makes the manufacturer responsible for the compliance of the toy (Article 17, paragraph 4).** These are essential information for any distributor, and distributors will not sell toys without these essential declarations from manufacturers.

Overall, we, therefore, support the list of mandatory information in the DPP and recommend not to add any further requirements, especially as the DPP will be used in the future for many other product legislation.

4. Tackle the loophole created for sales through online marketplaces when there is no EU-based economic operator

Consumers, especially children, who purchase toys on online platforms from non-EU sellers, often, take the (unknown) risk of being provided with a toy for which there is no EU-based manufacturer or importer responsible for legal compliance and responsibility. We therefore call on the co-legislators to tackle this situation. In particular, we invite the co-legislators to treat online marketplaces as importers for the purpose of the proposed Toy Safety Regulation, in cases where in the supply chain there is no EU-based manufacturer or importer.

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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 417.800 independent retailers, who manage more than 753.500 sales outlets, with a combined retail turnover of more than 1,320 billion euros and generating a combined wholesale turnover of 513 billion euros. This represents a total employment of more than 6.500.000 persons.

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