



## Joint Retail Industry Statement - The obligation to indicate batch numbers for online sales is impractical

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The undersigning associations call to remove the obligation to indicate the batch numbers for online distance sales. Such an obligation is unworkable for economic operators and the millions of web shops they operate, due to the way the supply chain and warehousing works and goes beyond what is required in brick-and-mortar stores. It will make it particularly difficult for SME's to maintain an online presence.

The obligations in Art. 18 c) and d) as currently formulated would require economic operators to indicate the batch number on every individual offer. To the undersigning associations' understanding such a provision has been proposed with the objective to improve the efficiency of market surveillance. Whilst we agree that a well-functioning market surveillance is of particular importance, in this statement, the retail industry outlines why such an obligation is unlikely to achieve this objective whilst unduly burdening economic operators. In particular, we are strongly concerned about the following implications:

1. The obligation would require a **complete and very costly overhaul of IT systems**: A retailer would need an IT system that connects in real time its inventory with its website offer, which is currently non-existent for the large majority of the retailers with an online presence. Furthermore, internal IT systems based on EAN numbers<sup>1</sup>, commonly used in the retail sector, will no longer suffice since the batches would need to appear in the system.
2. **Batch numbers are not standardised across all product categories**. Manufacturers create their own structure of batch numbers. A retailer's IT system would therefore need to be able to handle all such individual batch number formats. This is very complex and costly and would need to be fully coordinated with the manufacturers to succeed. Implementation of the proposed requirement might be feasible in the distant future provided that batch information containing 2d codes based on GS1 standards are widely in use and stock inventory is managed automatically on batch level. For now, the batch information would have to be provided manually, i.e., the workload in warehouses would be enormous.
3. **Barriers to innovative shipping solutions**: This obligation will prevent new market entrants or smaller players from launching new retail systems. In the case of drop-shipping, the product is directly dispatched by the manufacturer to the consumer. Hence, the retailer does not have access to the batch (or other identification number). This will shorten and simplify supply chains and facilitate the market entry of start-ups and SMEs who do not have to provide costly warehousing solutions.
4. **Concerns regarding competition**: An obligation to indicate batch numbers online will reveal publicly sensitive commercial information to competitors. Competitors scraping websites will have access in real-time to information about the quantities of products ordered and sold by their competitors (as well as the time of order). Such information is likely to qualify as sensitive commercial information under EU

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<sup>1</sup> EAN: European Article Number

horizontal competition rules. Their disclosure to competitors entails a risk of collusion prohibited by article 101(1).

5. **Facilitating fraud:** A rogue trader counterfeiting a product, or selling products which are not in conformity, would no longer need to invent a batch number, since real existing batch numbers are publicly accessible and can easily be used to cheat market surveillance automated scraping tools.
6. **Batch or serial numbers do not work for all products:** Unique, custom or handmade, as well as crafted products do not carry unique identifiers. For second-hand products, unique identifiers are unlikely to be transferred when the owner changes. Moreover, certain products, such as toys, may have components with individual batch/serial numbers but no overall serial/batch number for the whole product.

In view of the above, it is evident that the EU Commission's impact assessment on the revised General Product Safety Regulation did not take account of the costs for retailers. Especially SME retailers will not be able to bear the costs involved with the overhaul of their IT system, but at the same time will have to be present online in order to remain competitive. Importantly, such an obligation will also be impossible to implement for groups of independent retailers, as every single member retailer of the group is an independent entrepreneur and hence manages his/her own inventory with an independent IT system for its warehouse. Moreover, the proposal will not lead to the expected increase of efficiency in market surveillance activities but, on the contrary, will facilitate fraud and pose a significant burden on the sector. Hence, undersigned associations urge policymakers to explore alternative means to enhance market surveillance, preferably within the context of the market surveillance regulation.

**In short, an obligation to indicate batch numbers online:**

- would be extremely costly for retailers since it will require an overhaul of or creation of new IT systems in warehouses;
- would lead to a disclosure of commercially sensitive information to competitors, which is prohibited by article 101(1) TFEU;
- would facilitate fraud;
- would require further harmonisation of batch numbers
- would require batch information containing 2d codes based on GS1 standard to be widely in use
- would need to be accompanied by a manufacturer's obligation to indicate batch numbers on transport documents/invoices;
- would not provide the expected traceability advantages for market surveillance authorities.

**We propose:**

- Stick to the EP mandate, removing the batch number from articles 18.c and 20.5.c
- Alternatively, introduce a recital and/or a clarification in article 18.c and 20.5.c to take due account of the financial and logistical burden for retailers.
- In any case, we recommend to further explore possibilities of improved and automated market surveillance activities in the context of an additional impact assessment.

	Commission Proposal	EP Mandate	Council Mandate	Proposed Amendment
<b>New recital 34a</b>				
				<i>(34a) Where the identification of illegal content requires online and distance sales channels to publish product identifiers, such as the batch or serial number, on their offers, they should only be required to do so where those identifiers are available and easily accessible. For the purpose of this regulation, availability shall mean the physical availability in the warehouse of the distributor who publishes the offer. Easily accessible shall mean that the IT system of the distributor publishing the offer allows the automated extraction and real-time updating of such data.</i>
<b>Article 18, first paragraph, point (c)</b>				
261	(c) information to identify the product, including its type and, when available, batch or serial number and any other product identifier;	(c) <b><i>pictures and other information</i></b> <del>to identify</del> <b>that allow identification of</b> the product, including its type <del>and, when available, batch or serial number</del> and any other product identifier;	(c) information <b>allowing the unequivocal identification of</b> <del>to identify</del> the product, including <b>a picture of it</b> , its type and, when <b>easily accessible and/or</b> available, batch or serial number and any other product identifier;	<b>Preferred option: Maintain EP Mandate</b>  Alternative option: (c) information <b>allowing the unequivocal identification of</b> <del>to identify</del> the product, including <b>a picture of it</b> , its type and, when <b>easily accessible and</b> available, , batch or serial number and any other product identifier. <b><i>This shall not impose any disproportionate burden upon the distributor;</i></b>
<b>Article 20(5), point (c)</b>				
277	(c) information to identify the product, including its type and, when available, batch or serial number and any other product identifier;	(c) information to identify the product, including its type and, <del>when available, batch or serial number and</del> any other product identifier;	(c) information <b>allowing the unequivocal identification of</b> <del>to identify</del> the product, including <b>a picture of it</b> , its type and, when <b>easily accessible and/or available,</b> available, batch or serial number and any other product identifier;	(c) information <b>allowing the unequivocal identification of</b> <del>to identify</del> the product, including <b>a picture of it</b> , its type and, when <b>easily accessible and</b> available, , batch or serial number and any other product identifier. <b><i>This shall not impose any disproportionate burden upon market places and traders.</i></b>

### **About EuroCommerce**

[EuroCommerce](#) is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 28 countries and 5 million companies, both leading global players such as Carrefour, Ikea, Metro and Tesco, and many small businesses. Over a billion times a day, retailers and wholesalers distribute goods and provide an essential service to millions of business and individual customers. The sector generates 1 in 7 jobs, offering a varied career to 26 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector. Find more information on our [website](#), on [Twitter](#), and on [LinkedIn](#).

### **About Ecommerce Europe**

[Ecommerce Europe](#) is the sole voice of the European Digital Commerce sector. As a result of joining forces with EMOTA, Ecommerce Europe now represents, via its national associations, more than 150,000 companies selling goods and services online to consumers in Europe. Ecommerce Europe acts at European level to help legislators create a better framework for online merchants, so that their sales can grow further. Find more information on our [website](#), on [Twitter](#) and on [LinkedIn](#).

### **About Independent Retail Europe**

[Independent Retail Europe](#) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors. 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 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. Find more information on our [website](#), on [Twitter](#), and on [LinkedIn](#).

### **About SMEunited**

[SMEunited](#), formerly known as UEAPME, is the association of crafts and SMEs in Europe with around 70 member organisations from over 30 European countries. SMEunited is a recognised employers' organisation and European Social Partner and acts on behalf of crafts and SMEs in the European Social Dialogue and in discussions with the EU institutions. We represent national cross-sectoral Craft and SME federations, European SME branch organisations and associate members. We speak on behalf of the 22,5 million SMEs in Europe which employ almost 82,4 million people. We are a non-profit seeking and non-partisan organisation. For more information, please visit our [website](#) and our [Twitter](#) and [LinkedIn](#) accounts.