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DIGITALEUROPE's response to the New Consumer Agenda consultation



Executive Summary

Europeans are the best-protected consumers in the world thanks to a robust EU consumer *acquis* built up over decades. DIGITALEUROPE supports the ambition to ensure that EU consumer law keeps pace with emerging trends and remains fit for purpose in the context of the green and digital transition. Ensuring that European consumers are adequately informed and protected helps to maintain trust and is to the benefit of both consumers and industry alike.

- **DIGITALEUROPE's members have taken a zero-tolerance approach to COVID-19 related scams and fraud.** Some members directly experienced such issues as rights holders. Other members worked swiftly with the EU and national authorities to combat and remove removed hundreds of thousands of product listings and pieces of misinformation.
- **DIGITALEUROPE's members empower consumers to take part in the circular economy** through numerous strategies, including providing transparent information on the sustainability credentials of our products and services, facilitating access to repair, and providing extended product guarantees, offering trade-in programs and refurbished products.
- **We support the European institutions' ambition to better protect the safety of European consumers** by improving product recalls, creating more effective enforcement and by ensuring that existing rules are fit to deal with new technologies and online sales. A lot can be achieved by improving the enforcement of the current system as suggested in the GPSD policy option 1.

As the European institutions consider new consumer legislation, it should always take into account the existing framework and be based on evidence along with the checks for proportionality and the effect on future innovation.



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New Consumer Agenda communication

Emerging issues from COVID-19

The COVID-19 crisis was exploited by bad actors to take advantage of European consumers. As in the offline world, COVID-related scams, fraud as well as disinformation, proliferated online. Within DIGITALEUROPE diversified membership rights holders experienced such issues frequently. Online platforms worked swiftly with the EU and national authorities to combat and remove such practices.¹ DIGITALEUROPE's members have zero tolerance for such rogue activities which risk the safety of European citizens and reduce trust in the online economy.

¹ European Commission (2020) [Actions of the Consumer Protection Cooperation Network \(CPC\) on rogue traders during the COVID-19 outbreak](#)

Our members welcomed the positive and collaborative nature of the cooperation with DG Justice in the context of the health crisis. The collaboration between the European Commission and the CPC network, along with the rapid action of industry resulted in tangible results. Our members removed hundreds of thousands of product listings and pieces of misinformation.

We believe that continued cooperation and intelligence sharing between all relevant actors on emerging COVID-19 trends is vital to helping better protect European consumers.

Ensuring a holistic approach

Protecting vulnerable consumers through legislative intervention needs to be done as part of a broader set of measures to help empower European consumers. Through concerted investment in digital skills and digital literacy, European consumers will be better able to understand the digital transition and make informed purchasing decisions.

At DIGITALEUROPE we strive for a Europe where no one is left behind. With our members, we support public and private policies that help people develop the digital skills necessary to professionally and personally flourish.

In a rapidly changing world, there is an increasing demand for people to learn how to use new technologies. Without the right skills, people fall behind. Investing in digital skills and continuing education of Europeans is not just an option. It is imperative.

Personalised offers

The consultation seems to include an implicit assumption that personalisation of offerings is harmful to consumers and that they are unaware of such practices. This assumption is incorrect. Most consumers choose to use services in the knowledge that they are personalised and a 2016 study conducted by the European Commission highlighted that close to two thirds (67%) of consumers are aware of personalisation practices. ²

The personalisation of offerings for consumers can be beneficial when used transparently. For instance, personalisation can be used to better target offers for certain segments of consumers.



Proposal on empowering consumers for the green transition

² European Commission (2016) [Consumer market study on online market segmentation through personalised pricing/offers in the EU](#)

The European Green Deal and the New Circular Economy Action Plan have set out a historically ambitious agenda for environmental policy. DIGITALEUROPE's members have long led the way with environmental progress, and many have put forward ground-breaking commitments and programmes to deliver innovative products and services in a sustainable way.

DIGITALEUROPE's members empower consumers to take part in the circular economy through numerous strategies, including providing transparent information on the sustainability credentials of our products and services, facilitating access to repair, and providing extended product guarantees, offering trade-in programs and refurbished products.

Our recommendations identify four key areas of action for EU legislators:

- ▶ **Empowering consumers by paving the way towards online information provision** in the digital age, based on EU-wide harmonised methodology and product-specific standardisation.
- ▶ **Protecting consumers by defining 'Right to Repair'** as consumer access to high quality, safe and secure repair option in all cases, recognising the importance of manufacturer-led repair networks.
- ▶ **Upholding existing legislation for consumer protection against premature obsolescence**, while unleashing competitive dynamics of the marketplace with regards to commercial extended warranties and reliability innovations.
- ▶ **Support and facilitate repair and refurbishment professionals.**

As the EU institutions work to elaborate on the announced proposals, DIGITALEUROPE stresses the need to ensure balanced requirements that promote sustainable purchasing, offer high-levels of consumer protection and enable industry's ability to provide innovative products and services.

For more details, DIGITALEUROPE further elaborated on its ideas on how to enhance European consumers' participation in the Circular Economy in a [position paper](#) on 'Sustainable Consumers' in July 2020.³



Review of the General Product Safety Directive (GPSD)

³ DIGITALEUROPE (July 2020) '[DIGITALEUROPE's vision for sustainable consumers: consumer information, repair and product lifetimes](#)'

DIGITALEUROPE fully supports the European institutions' ambition to better protect the safety of European consumers by improving product recalls, creating more effective enforcement and by ensuring that existing rules are fit to deal with new technologies and online sales. DIGITALEUROPE's members work with European, national and local authorities on a daily basis to ensure that European consumers are kept safe and continually evolve their processes to keep pace with new market trends.

In general, the GPSD sets a good framework for ensuring product safety on the European market. Consumers are generally safe when interacting with products within the Internal Market and when issues do present themselves, these can be addressed through available mechanisms. There is however room for improvement that could eventually be addressed by the proposed policy option 1, as set out in the following paragraphs.

We also note that the lack of resources and uncoordinated surveillance/enforcement appears to result in "targeted" investigations for products which are relatively easy to assess but may not necessarily present the greatest level of consumer risk. It is essential to fully understand the current reasons that still enable unsafe products getting to consumers, both online and offline. Similar challenges do not necessarily depend on the current wording of the GPSD, rather the ability to achieve sufficient levels of enforcement. The improvements that have been integrated in the recent Market Surveillance regulation are not yet applicable. Option 1 could help to work on these gaps, by focusing in a more practical way, where appropriate.

New technologies

DIGITALEUROPE believes that the existing essential requirements of the GPSD, coupled with existing and emerging requirements in other legislation and harmonised standards, provide sufficient assurances regarding the safety of connected and AI-embedded devices on the EU market. DIGITALEUROPE believes that the current body of existing EU laws (including the GPSD) applies to AI-based products.

To the extent that policymakers identify specific gaps that could be uniquely caused by the use of AI, those gaps should be addressed within the existing sector-specific regulatory schemes whenever possible. Furthermore, extensive legislative efforts have either been completed or are currently underway that seek to address the potential safety concerns of new technologies cited in the Roadmap/Inception Impact Assessment. For instance, we understand that the European Commission and the European Cybersecurity Agency (ENISA) are contemplating the development of a cybersecurity certification scheme for internet of things (IoT) baseline security.

We, therefore, recommend that any potential updates to the GPSD should consider the risk level associated with new technologies, with particular consideration to areas of application. Targeted legislation is an effective way to

address risks that new technologies might pose, as opposed to a blanket product safety requirement for any product that may include or utilise emerging technologies or software.

Online sale of goods

Dangerous products sold by bad actors online, as in the offline world, put the safety of European citizens at risk and undermine trust in the online economy. DIGITALEUROPE's members are therefore fully committed to helping tackle the problem and play their part in increasing the levels of trust that European citizens have in digital services. For example, some online marketplaces already voluntarily notify customers of unsafe products sold by third-party sellers based on information from manufacturers, market surveillance authorities or public recall websites. While such practices do not necessarily work in all circumstances, they could be seen as a way forward with respect to the online sale of unsafe or illicit products and should be encouraged.

The current consultation follows the 2019 adoption of Regulation (EU) 2019/1020 on market surveillance of products (Goods package). This Regulation amended existing harmonised legislation to improve the quality and consistency of market surveillance activities across the EU. Requirements introduced in the Goods Package were explicitly geared at guaranteeing "that products placed on the Single Market, including products traded online, comply with high common EU rules, are certified and meet the quality and safety standards."

The Goods Package took meaningful steps to address precisely these concerns, including through the clarification and introduction of tasks of economic operators regarding products subject to a broad range of harmonised legislation, however it has not entered into force yet. As such, we respectfully urge European policymakers, in the interests of Better Regulation, to allow these changes to be implemented by Member States and companies and give time for these rules to be assessed before considering additional changes to the framework.

Given the updates of the Blue Guide and the creation of new definitions in the Goods Package and potentially in the upcoming Digital Services Act, we believe that it is not productive to add further definitions at this stage. These would further fragment the definition of 'economic operator' and responsibilities appointed to each actor within that framework. Rather, we propose providing additional guidance where there may be ambiguity with "older" definitions that were drafted prior to the emergence of online sales channels.

Provision of information via digital means

Times are mature to consider the additional option of digital documentation as a way to improve the quality of the information provided to customers. Simple technologies can enhance traceability and transparency, especially for ITC products.

These opportunities should be encouraged and recognised as equivalent to the classic product documentation. Many positive results could be easily achieved if clear guidance was given on what could be considered equivalent. This could improve the quality of product information, ability to localise content, or established direct links with the manufacturer.

We often underestimate the potential of what can be achieved with new media. We think about QR codes and pdf manuals in the cloud, while in reality, products could also rely on companion apps, video tutorials and instant messaging, to mention a few already available solutions. This type of digital transformation can help authorities, are easier to implement by manufacturers and can bring much-needed improvement even without legal measures.

Market surveillance authorities

As noted in the consultation, Member States' authorities are responsible for enforcing the law and to take actions ensuring the safety of products placed on the market. However, the public narrative has long criticised the lack of resourcing and financing of enforcement activity. This has led to governments trying to push these responsibilities elsewhere, rather than investing in better cooperation, data sharing, and collaboration with businesses.

In addition, the current framework is not being implemented effectively – there are over 500 MSAs in Europe with no minimum standard for recall or notification for takedown notices – sometimes the information provided is incomplete or leads to significant delays in businesses being able to take action, putting customers at further risk. Some key legislation which will solve some of these challenges has not yet entered into force – such as the Goods Package, the Platform to Business Regulation, and the Omnibus Directive (revising key consumer legislation). These need to first be implemented, giving the time for companies to comply with, and then assessed.

If, following assessment, gaps are identified; these can then be amended, if needed. Before making any regulatory changes, the implementation and enforcement of the current system should be improved. The focus at this stage should be to enable MSAs to provide complete and practical data, share it between themselves and give better access to that data for businesses.

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

Accenture, Airbus, Amazon, AMD, Apple, Arçelik, Bayer, Bidao, Bosch, Bose, Bristol-Myers Squibb, Brother, Canon, Cisco, DATEV, Dell, Dropbox, Eli Lilly and Company, Epson, Ericsson, Facebook, Fujitsu, Google, Graphcore, Hewlett Packard Enterprise, Hitachi, HP Inc., HSBC, Huawei, Intel, Johnson & Johnson, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Mastercard, METRO, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe Inc., NEC, Nokia, Nvidia Ltd., Oki, OPPO, Oracle, Palo Alto Networks, Panasonic Europe, Philips, Qualcomm, Red Hat, Ricoh, Roche, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Sony, Swatch Group, Tata Consultancy Services, Technicolor, Texas Instruments, Toshiba, TP Vision, UnitedHealth Group, Visa, VMware, Xerox.

National Trade Associations

Austria: IOÖ

Belarus: INFOPARK

Belgium: AGORIA

Croatia: Croatian

Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT

BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, Syntec

Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: INFOBALT

Luxembourg: APSI

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS, APDETIC

Slovakia: ITAS

Slovenia: GZS

Spain: AMETIC

Sweden: Teknikföretagen,

IT&Telekomföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform,

ECID

Ukraine: IT UKRAINE

United Kingdom: techUK