

European Commission
DG GROW
GROW-B1@ec.europa.eu

30 January 2020

Dear Sir or Madam,

Thank you very much for the opportunity to give input to the update of the “Blue Guide”. The Blue Guide is an essential tool for trade associations and companies in order to understand and comply with the EU regulation on product Safety.

We have the following input and suggestions:

Responsibility

It should be acknowledged that online marketplaces who facilitate the marketing and placement of products on the EU market by so called third-party sellers have an active role in the product distribution chain - if they do not have any specific reason to be classified as passive. Therefore, they are not automatically covered by the rules on exemption of liability (safe harbor rules) in the e-commerce directive article 12-14.

There is an urgent need for this clarification on the active/passive issue, since it is obvious that the current guidance in the Commission Notice (2017/C 250/01) has been misused by the most popular online-platforms to claim that they are passive and as such are not liable for the product safety of the products sold on/through their online-platforms. It seems that it has been common among these players to claim passivity simply by calling themselves an online marketplace or online platform.

Therefore, it needs to be stressed in the Blue Guide that it is a very concrete and specific assessment whether or not an online platform or an online marketplace meet the very strict requirements in the e-commerce directive in order to be classified as a passive service provider that merely host content and do not have any influence on the content. And the starting point of the assessment must be that the platforms are liable unless they prove to be passive according to the e-Commerce directive.

Most of the highly popular online-platforms are very active in selling and promotion a large range of different products covered by the EU-product safety rules and most often the EU-consumers are not able to distinguish products sold directly by the platform and products which are claimed by

the online-platforms to origin from third party sellers, and further the online platforms are unquestionable first stop for the EU consumers when engaging with these products.

Furthermore, it is very important to take into account that most of these platforms are perfectly able to control the nature of the content and products for sale on their platform. They do that already for commercial reasons and i.e. take decisions on which products should be rated best etc.

Further there is no fairness or logic in providing these sales platforms with the same protection as for example a telecom company or a host master; merely providing access to internet-connections or home page hosting facilities.

It is important to stress that platforms from third countries or European platforms selling products that origin from a third country manufacturer need to comply with the regulation on responsibilities of importers that imports products into EU. A large and broad product range doesn't exempt from the responsibility.

Further it is important that the product safety rules are enforced in the same manner in relation to the online marketplaces and platforms as they are towards other traders who play the same role as the online marketplaces and platforms. An operator should not be able to avoid responsibility simply by claiming to be a "platform".

Voluntary commitments by online platforms or marketplaces are not sufficient - or even relevant - for most operators, cf. the points above. Online platforms and marketplaces should have the same obligations as any other comparable operator.

Legislation on Product Safety and Market Surveillance

The current legal framework on product safety and market surveillance is not suitable for ensuring that products sold online to EU consumers are safe. In order to make sure that the consumers can buy safe products, the market surveillance authorities need to have possibility to block access to online platforms and marketplaces that often or consequently do not comply with the product safety legislation.

The new regulation on market surveillance and compliance of products, introduces an EU representative. The Danish Chamber of Commerce foresee that the EU representative could be used as a loop hole, as the obligations are vague or non-existing. Therefore, there is a risk that current (more rough) European operators - today established as an importer-business in EU - will choose to move their business and country of establishment to a third country and merely having a EU representative established in EU in order to avoid their current responsibility as an importer. In short: It could undermine the whole structure of the current product safety legislation framework. We already see that products are shipped directly from production entities in third countries to EU consumers, even if the products are bought from an EU company. As such the situation just described is not far away from becoming reality.

We believe that all operators in the chain of product safety, incl. distributors, should be obliged to check the EU Safety Gate to identify dangerous products among their product range.

Placing on the market

We suggest that the wordings and definitions on “placing products on the market” are clarified. The difference between “making available on the market”, “placing on the market” and “putting into service” needs to be clarified. There is often confusion regarding these definitions, as it is a part of different EU legislation.

Better coordination between member states

Ensure a good cooperation and exchange among relevant authorities nationally and among other countries, and make sure there is an exchange with other Member States information and best practice on measuring the volume and risks, and with the Commission, as to ensure that the EU and its member states will react in the same way to same products.

Yours sincerely,

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