

Consultation response

AmCham EU perspectives on the New Consumer Agenda



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The American Chamber of Commerce to the European Union (AmCham EU) welcomes the opportunity to contribute to the debate on the New Consumer Agenda. AmCham EU member companies represent a variety of different sectors, but all of them treat serving and protecting the consumers across the EU as utmost priority. Some of the examples of how US companies in Europe contribute to high standards of consumer protection are discussed below.

The New Consumer Agenda

AmCham EU is of the view that the existing legislation already sets appropriately high standards to ensure the protection of consumers in the EU. Accordingly, when designing the New Consumer Agenda, we believe that a major opportunity will be the optimisation of the enforcement of existing legislation and not on the creation of new legislation. This would be consistent with the principles set out in the Mission Letter issued in September 2019 by the President of the European Commission, Ursula von der Leyen: 'We need to ensure that regulation is targeted, easy to comply with and does not add unnecessary regulatory burdens [...]. Every legislative proposal creating new burdens should relieve people and businesses of an equivalent existing burden at EU level in the same policy area. We will also work with Member States to ensure that, when transposing EU legislation, they do not add unnecessary administrative burdens.'

In the context of designing the New Consumer Agenda, AmCham EU would also like to bring to the attention of the Commission some risks to the integrity of the Single Market. Enforcement gaps continue being observed throughout the EU which can lead to actual consumer harm (via delayed notifications), unjustified decrease of trust of consumers in the digital channels and brands themselves, and commercial detriment of the EU industry versus rogue actors continue finding ways to place their products in the EU without complying with the applicable legislation.

We are also concerned about national initiatives, divergent interpretation and lack of harmonised enforcement of existing EU legislation. These developments lead to weakening of the Single Market which in turn leads to adverse consequences for consumers and industry. Maintaining the integrity of Single Market (through uniform enforcement and preventing distortive national measures hindering the free flow of goods and services) should be one of the key objectives for the New Consumer Agenda.

AmCham EU believes that the Commission should focus its efforts on finding ways to improve the enforcement of existing legislation throughout the EU – in particular at its borders and through the digital channels – and limit legislative proposals to provisions that facilitate the consistency of enforcement without increasing the regulatory burden for those players that already satisfy the high consumer protection standards required under the existing EU legislation. Clear guidance for Member States could be extremely helpful at aligning on interpretation of the rules, given the complexity of the network with over 500 market surveillance authorities¹. This would also bring greater certainty to businesses.

We support measures to improve the protection from dangerous goods, and call for all actors in the value chain to play their part, including by ensuring that sellers of dangerous goods can be quickly and effectively identified, and consumers who have purchased those goods can be informed of the fact. We would also recommend that the Commission look to identify goods at risk of being dangerous, so that they can be removed before being exposed to, and bought by, consumers.

¹ https://www.europarl.europa.eu/pdfs/news/expert/2019/2/press_release/20190207IPR25330/20190207IPR25330_en.pdf

Empowering consumers in the green transition

Acknowledging the difficulties that consumers face sometimes when they try to make sustainable choices, AmCham EU welcomes the Commission's efforts in trying to streamline the information available to consumers regarding the sustainability performance of products.

Substantiating green claims properly is a technical exercise which must be dealt with via dedicated guidance that takes into account, amongst others things, the sustainability expertise and experience of industry. AmCham EU underlines the importance of science-based life-cycle assessment taking into account all stages of a product's life in order to establish fair judgements about the sustainability performance of products and a recognition of the limitations of any methodologies vis-à-vis product-on-product comparisons.

Addressing obsolescence and reparability will be key to advance the circular economy, and it is our understanding that this will be an area of focus for the Commission within its sustainable product policy. In that exercise, it will be crucial that aspects related to intellectual property and product safety are taken into account seriously. Also, in this dossier, industry expertise will be key to ensure that both industry and consumers remain protected whilst transitioning to a more sustainable economy. To this end, design and technological improvements should not be associated with premature obsolescence, and efforts to address this practice should not impede innovation, which is key to ensure the well-being of our society and of the environment. The 'right to repair' should ensure consumers have access to high quality, safe and secure repair options, but this should not create unnecessary burdens on the manufacturer, also taking into account that many manufacturers have their own repair network already in place.

Finally, enforcement once again will prove key to the success of these initiatives: there needs to be a level playing field vis-à-vis producers outside the EU and even application across EU Member States as well in order to ensure the well-functioning of the Internal Market.

General product safety directive (GPSD)

AmCham EU has long advocated and supported the Commission's work to assess the European legislative framework on safety. We appreciate the objective to constantly improve and design a simplified, coherent and effective market surveillance and consumer safety legislation.

For consumers, this must mean guarantees for safe products and accurate product information, while for business it must serve to enhance competitiveness, by ensuring that all relevant stakeholders play by the same rules and contribute to enhanced consumer protection with measures that are proportional to risks.

The Market Surveillance and Compliance of Products Regulation (EU) 2019/1020 (the "MSCP Regulation") was adopted in 2019 and the various provisions will apply from 1 January or 16 July 2021. The impact of the regulation has yet to be realised. The respective Member States and market surveillance authorities need to adapt to ensure that they have the necessary resources to fulfil their roles and responsibilities. Separately, the assessment of the GPSD is thus an opportunity to clarify the applicable legal framework for both market operators and authorities. To that end, AmCham EU would favour policy option 1 to identify very specific improvements that can be achieved quickly without engaging in a complex review of the GPSD, which according to our members has positively contributed to put safer products and accurate product information in the market as well as manage recalls and incidents.

Our preference for option 1 does not mean that we believe that there is no potential for improving the status quo, it simply means that we strongly support actions without the revision of the directive. We believe that a renewed focus on enforcement and the development of appropriate tools to assist in enforcement is an aspect that should be considered. A systematic review will take much more time, compared to very targeted improvement actions outside the review. In this regard, we would like to share some additional general considerations.

Coherence of the legal framework

Consistency between the horizontal legislative framework and sector-specific regulations must always be ensured and verified constantly. Product safety rules in the EU are complex and multi-layered and both authorities and businesses have a differing understanding of how to interpret key elements. For our members, alignment among the key definitions in harmonised and non-harmonised legislation is a key principle. We were surprised to learn that the MSCP Regulation ended up introducing another layer of complexity when similar language recently revised in the New Legislative Framework could have been adopted. This is a continued concern of ours when it comes to a possible revision of the GPSD.

We would thus urge the Commission to consider what non-legislative actions and guidance could be adopted to promote coherence among the different regulations and directives that make up the broader safety framework.

Trend for surveillance to focus more on compliance than risk

Any product framework must prioritise the highest risks for consumers – if the same focus is put on all risks, then there is no filtering system and the most dangerous products potentially remain available for sale. Non-compliant products do not necessarily present a risk and should not be presumed to present a risk or be unsafe. For instance, the wrong size of a mark, eg, CE mark, is a failure to comply with the EU legislation. However, it does not represent a health and safety risk for the consumer. Therefore, it is not proportionate to take the same measures for such non-compliant products as those applicable to products presenting a (serious) risk. This is why our members feel that introducing stringent measures for GPSD products when these do not exist in sectoral legislation challenge and possible alignment of the market surveillance and safety framework for harmonised and non-harmonised products (as stated in policy options 3 and 4), risks further compounding this. This is partially why we support policy option 1.

A way to overcome this confusion is for the regulation to restate the differentiation between a **‘formal non-compliance’** and a **‘product presenting a risk’**. On the other hand, AmCham EU strongly agrees that corrective and proportionate action must promptly be taken to bring products into conformity.

For market and customs surveillance and enforcement to be effective, attention must be given to the funding and resourcing of both customs and market surveillance authorities. The current framework is not set up to effectively check products and enforce at scale. There are also over 500 market surveillance authorities in Europe², which means that coordination and consistency are a challenge, policy option 1 could try to focus on these challenges as well as to ensure that the recent market surveillance regulation is enforced properly and reach these objectives.

Obligations on economic operators

AmCham EU members would like to take opportunity to underline the fact that a distributor does not need to physically hold the technical documents at their premises. There is trade sensitive information in technical documentation that manufacturers are not eager to share with the distributor. Other legislation can serve as an

² https://www.europarl.europa.eu/pdfs/news/expert/2019/2/press_release/20190207IPR25330/20190207IPR25330_en.pdf

example in this regard. For instance, the toy safety directive has clarified that distributors should only be responsible for making available the technical documentation upon a reasoned request by market surveillance authorities. The competence to evaluate the risk of products indeed lies with manufacturers more than with distributors. Nevertheless, distributors should be obliged to verify the identity of sellers, so that a proper chain of responsibility can be established.

Online sales

Any proposals should appreciate the multi-faceted nature of marketplaces and dynamic business models, and should not place overly oppressive, infeasible requirements on platforms, but involve them in a proportionate manner in the establishment of a secure and trusted online ecosystem. Efforts taken by e-commerce platforms are ongoing in the product safety pledge, which goes beyond legal obligations. These questions should, indeed, be covered by the ongoing review of the Digital Services Act.

As stated before, given the ongoing update of the blue guide and the creation of new definitions in the MSCP, we believe that it is not productive to add further definitions at this stage which 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 such new technologies.

Artificial intelligence

The assessment of the GPSD comes amid an ongoing debate around the potential introduction of a dedicated legislative framework for **Artificial intelligence** (AI) and the Regulation for Fairness in **Platform-to-Business** Relations, as well as ongoing consultations, such as for the Digital Services Act.

Insufficient recall effectiveness

Recall effectiveness is an essential instrument when ensuring consumer safety. In this regard, AmCham EU supports efforts to ensure an effective and coherent recall framework. This is in the best interest of European consumers and gives clarity to businesses as they identify and take action on potentially dangerous products.

We believe that it is critical to provide guidance for regulators when issuing both recall notifications and authorities' takedown requests to ensure consistent communication. Given the complexity and fragmentation of national market surveillance authority networks, it is important to have clarity in order to be able to make clear and decisive steps to identify unsafe products and remove them from sale. We would support the definition of mandatory key elements to be included in recall notices.

We believe that manufacturers should retain control of any corrective action. Manufacturers prefer to manage issues that occur with their products with the customers' best interest at heart.

Pan-European accident and injury database

When the Commission proposed to modify the GPSD in 2013, it proposed the creation of a pan-European accident and injury database, which includes incidents involving consumer products. AmCham EU could support the development of a pan-European accident and injury database, provided it collects appropriate information in an effective and systematic fashion, on established legal basis and including information on the causes and circumstances of the accidents/injuries. Proportionality and anonymity (both of the victim and if a brand is implicated) must be ensured. The database should not be available to the public in its raw form as the information could be wrongly interpreted, but some element of it should be made available for wider public safety initiatives, and should not be available only to commercial institutions. We believe that a dialogue among manufacturers and authorities is essential to increase the level of diligence, but at the same time we lament the excessive fragmentation of the current system.