

Q&A's on the GPSR – responses to questions from Toy Industries of Europe

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This document contains answers provided by the European Commission, DG Justice & Consumers, to questions from TIE. Official guidelines are under preparation.

Disclaimer: At this stage the European Commission can only reply to our enquiries at service level as these issues will also be covered by the guidelines of the GPSR the Commission is going to adopt. Therefore, these do not represent an official interpretation of the Commission which is given by its Legal Service, nor do they represent an official interpretation of EU Law which is ultimately given by the Court of Justice of the European Union.

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Question 1 – Obligations of economic operators in the case of distance sales

Article 19 Obligations of economic operators in the case of distance sales

Where economic operators make products available on the market online or through other means of distance sales, the offer of those products shall clearly and visibly indicate at least the following information:

- (a) name, registered trade name or registered trade mark of the manufacturer, as well as the postal and electronic address at which they can be contacted;
- (b) where the manufacturer is not established in the Union, the name, postal and electronic address of the responsible person within the meaning of Article 16(1) of this Regulation or Article 4(1) of Regulation (EU) 2019/1020;

For a manufacturer not established inside in the Union: Do online retailers have to show both of (a) manufacturer and (b) responsible person on their website, or does only (b) has to be shown?

Response from the European Commission

[.....] the requirements under Article 19 (a) and (b) are to be read as cumulative. Consequently, an online product offer / distance sales product offer should bear the required information on the manufacturer as requested under Article 19 (a) in any case, including those cases when the manufacturer is established outside the Union. If the manufacturer is not established in the Union, the product offer should bear, in addition

to the requested information on the manufacturer, the name as well as postal and electronic address of the responsible person.

Article 22(9)b) GPSR also introduced similar requirement for sales via online marketplaces and requires that providers of online marketplace have to ensure that the information is displayed or otherwise made easily accessible by consumers on the product listing of their online interface.

Question 2 – Second-hand products

The requirements laid down in the Regulation will apply to second-hand products. Which obligations apply to who in that case?

Response from the European Commission

[.....] the GPSR applies to all products placed on the EU market; whether new, used or repaired, with the only exception of being products to be repaired or reconditioned where this is clearly stated (see Article 2(3) and Recital 16). Antiques are excluded from the scope of the GPSR (see article 2.1.(i) .

Two situations can be distinguished depending on whether the product in question is sold by an economic operator or by a consumer.

- 1) If an economic operator sells the second-hand product, that economic operator must ensure that the product complies with the Regulation. In this case, all provisions of the GPSR apply to the product in question and to the economic operators involved.
- 2) If a consumer sells the second-hand product, they have no specific obligations under the GPSR, unless they can be considered an economic operator.

Question 3 – Second-hand products – follow-up

When a professional places a product on the market for the second time (second hand products), and when this professional is not the manufacturer, nor the importer (e.g. social economy or other operators with lucrative purpose) of the product when it was placed on the market a first time

Are these professionals considered as natural or legal person and then covered by the definition (13) of the ‘economic operator’ ?

(13) ‘economic operator’ means the manufacturer, the authorised representative, the importer, the distributor, the fulfilment service provider or any other natural or legal person who is subject to obligations in relation to the manufacture of products or making them available on the market in accordance with this Regulation;

If the answer is yes then, is it correct that they need to comply with the obligations for manufacturers under the GPSR? If not with the obligations of manufacturers, with which obligations do they have to comply ?

Response from the European Commission

The definition of ‘Economic Operators’ in Article 3 (13) GPSR describes them as not only the manufacturer or importer, but “[...] *any other natural or legal person who is subject to obligations in relation to the manufacture of products or making them available on the market in accordance with this Regulation*”. As making available following Article 3 (6) implies “[...] *any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge*”, this would mean that a professional acting in the way described by you, should comply with the GPSR.

The type of Economic Operator role that the professional has to assume is dependent on the types of activities this professional provides in relation to the product. For example, following the BlueGuide (Point 3.1 – Manufacturer): “[...] *a person who places on the Union market second-hand products from a third country, or any product not designed or manufactured for the Union market, must assume the role of the manufacturer*”.

If the product was already placed on the Union market, the professional would likely take up the role of the distributor or could also act as trader if offers the product via providers of online marketplaces.

In order to differentiate between citizens who sell second hand products and traders the GPSR applies the same principles as general EU consumer law on traders and consumers. Accordingly, by analogy the relevant ECJ jurisprudence clarifies that considering whether a consumer could qualify as a trader needs to be decided on a case-by-case basis, taking into account for example the regularity of the transactions it carries out, or whether he does so for profit. If on this basis a consumer is to be considered as a trader and offers the second-hand product in question via online marketplaces, it needs to respect the relevant obligations for the listing of such offer.

Question 4: Accident reporting

In some other jurisdictions, companies have to report on accidents where their products are “involved”, also if they are not dangerous. For example, it could be a toy lying on the floor and causes an adult to fall over and break an arm, fall down the stairs etc. The product itself is perfectly safe and compliant, but it will still have been “involved” in an accident that required medical care (and therefore the accident is reportable).

Article 20 in GPSR states in the heading “accidents related to safety of products” and in the actual text of the article there is a mentioning of “accidents caused by a product” but also “occurrences associated to the use of a product”. Recital 43 mentions “accidents that are caused by a product”. We also heard that companies are supposed to use the existing process for notification of dangerous products: [Product Safety Business Alert Gateway \(europa.eu\)](https://gateway.europa.eu/).

The question we like to have clarified would be whether the intention of Article 20 is that operators shall only report an accident if their product has caused the accident and has been found to be dangerous, or if in fact there is an expectation to report any accident “associated” with the product (also if the product is not dangerous)?

Response from the European Commission

Indeed, not any accident “associated” with the product should be reported. When an accident occurs where a product is involved, the GPSR expects the manufacturer to check whether a product caused this accident. This does not require to assess the safety of the product itself but just to understand whether the circumstances of the accident can show some potential causality between the safety of the product and the accident. If there is a possible causality, the accident should be reported via the Safety Business Gateway without undue delay. Only after that moment the proper risk assessment of the product will start, determining whether the product is or no dangerous. Since the risk assessment can take some time (e.g. can include some laboratory checks, etc), the accident should be reported already before.

Therefore the obvious cases as the one you mention when a person falls down over a toy laying down on the floor, are not to be à priori reported. But this needs to be assessed by the manufacturer on a case by case basis, taking into the circumstances and the foreseeable use and misuse of the product.

Also as the Blue Guide states ([2.8. Reasonably foreseeable and intended use / misuse](#)) in regard to the obligation of market surveillance authorities to check the reasonably foreseeable use of products, “[...] not all risks can be prevented by product design”. Yet the line between association and causation and with it of reasonably foreseeable use are gradual. Therefore, the economic operator would have to decide on reporting on a case by case basis.