



Raising standards for consumers



The Consumer Voice in Europe

BEUC AND ANEC VIEWS FOR A MODERN REGULATORY FRAMEWORK ON PRODUCT SAFETY

Achieving a higher level of consumer safety
through a revision of the General Product
Safety Directive

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Why it matters to consumers

Consumers legitimately expect all products to be safe and compliant with legislation and standards, no matter if they buy clothes, home appliances, IT equipment, toys or childcare products and regardless of whether they purchase them online or in traditional shops.

However, safety checks performed by consumer organisations and market surveillance authorities show that many dangerous goods continue to be available on the market. And the problematic products which are uncovered might be only the tip of iceberg as many escape the safety net.

We call for urgent action to be taken to keep consumers safe and confident about shopping in the Single Market. With the new challenges posed, not only by the emergence of new market realities and sales channels (e.g. online marketplaces and increased international e-commerce) but also new technologies (e.g. connected devices), the revision of the General Product Safety Directive is indispensable to address these issues.

Summary

The General Product Safety Directive (GPSD) adopted in 2001 proved a key piece of consumer protection policy by creating a general obligation for producers to place only safe products on the market¹. It functions as the safety legislation for products that do not benefit from 'sectoral' – that is, product-specific – legislation. In practice, this means the GPSD is the main safety law for commodities as diverse as furniture, textiles and child-care products. But by 2020, the Directive has however become outdated.

As previous attempts to reform it failed, we welcome the European Commission decision to present a new proposal in 2021.

In the context of the preparatory work for a modernised GPSD, we have formulated in this position paper recommendations on how a GPSD revision can contribute to effectively protect consumers in the EU. In a nutshell, the reform process should deliver on the following key objectives:

- Keeping the GPSD as a horizontal safety net which can fill lacunae in sector specific legislation, based on the precautionary principle.
- Establishing a uniform framework for market surveillance of all consumer products with flawless traceability along the supply chain and effective enforcement.
- Making the GPSD future proof to cope with new technologies.
- Ensuring accountability in the supply chain and closing loopholes regarding international e-commerce.
- Reducing exposure of consumers to harmful chemicals in products.
- Setting product-specific mandatory safety requirements to provide for legal certainty.
- Addressing other shortcomings of the GPSD, such as allowing the legislator to choose more demanding conformity assessment methods, defining criteria for child-appealing products, improving the effectiveness of product recalls, and collecting EU-wide accident and injury data.
- Working well and flawless in combination with other policy reforms such as the Product Liability Directive, the Digital Services Act and the sustainable product policy framework initiative to ensure a high level of safety in the EU internal market and higher standards at global level².

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0095&from=EN>

² BEUC sees large opportunities to increase the level of safety through reforming key pieces of EU legislation such as on e-commerce and product liability. This paper should be consulted in combination with our other

This paper has been structured in order to first highlight what the current shortcomings and challenges are in relation to the globalisation of e-commerce, the increasing number of products incorporating new technologies and consumers' exposure to harmful chemicals. The second part presents our recommendations on each aspect as well as how to address unresolved safety issues from the past.

1. What are the main safety issues for consumers?

Too often, consumers' health and safety is put at risk because of a high number of dangerous products that circulate freely on the EU internal market³. Even though the EU's safety legislation requires producers to place only safe products on the market, this is often not the case: the annual statistics of the EU rapid alert system Safety Gate⁴ demonstrate that too many products fail to comply with key safety requirements.

Every year, EU Member States trigger over 2.000 alerts, covering for example unsafe toys (which may lead to injuries or pose a suffocation risk), electric appliances (which can lead to electric shock) and products that contain high quantities of harmful chemicals. This figure is likely to be only the tip of iceberg as each alert may represent thousands of faulty products, and many products are possibly not found at all.

This is because first safety rules are missing or are not strict enough. Second, there is a serious lack of market surveillance and enforcement. Third, there is often a lack of consumer awareness with regards to product safety.

In 2019, the EU addressed certain shortcomings by adopting a new Regulation on market surveillance and product compliance⁵. The new rules will apply in 2021 and potentially can improve the current situation. Yet, the improvements do not apply to all consumers products⁶ and therefore, further reform and ambition in the EU's safety framework urgently need to be made to keep consumers safe.

While old problems in the system have not sufficiently been tackled in the past, new problems are emerging on the horizon linked to new technologies and the need to control new sales channels.

In this paper we will analyse the main safety issues for consumers first of all and give policy recommendations on how those should be tackled in the upcoming reform of the General Product Safety Directive⁷.

recommendations: [Product Liability 2.0 - How to make EU rules fit for consumers in the digital age](#) and [Making the Digital Services Act work for consumers – BEUC's recommendations](#).

³ <http://www.beuc.eu/publications/dangerous-consumer-goods-once-again-found-high-numbers-eu/html>

⁴ Safety Gate is the current name of the EU's rapid alert system for dangerous non-food products. In the past this system has been referred to as 'RAPEX'. The Safety Gate rapid alert system enables quick exchange of information between EU/EEA member states, the UK and the European Commission about dangerous non-food products posing a risk to health and safety of consumers. https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm

⁵ [Regulation \(EU\) 2019/1020 on market surveillance and compliance of products](#).

⁶ The EU's product safety regime makes a difference between products for which sector specific legislation exists. These are referred to as 'harmonised products'. Examples are toys, electric appliances and cosmetics. As not all products are regulated, no specific legislation exists for most consumer products. They are referred to as 'non-harmonised products'. Examples are furniture, child-care articles and textiles. Their safety is ensured through a general product safety directive.

⁷ The European Commission is planning to present a legislative reform proposal for the General Product Safety Directive in May 2021. The preparatory work such as the impact assessment are already ongoing since spring 2020.

1.1. Safety challenges posed by the globalisation of e-commerce

Consumers buy more and more products online. For many years, such purchases took place mainly on websites of companies with brick-and-mortar shops. But the situation has rapidly been changing: products can be bought in just a few clicks from marketplaces and third-party sellers located in non-EU countries which have often less advanced legal safety rules and which apply lower technical production standards.

According to Eurostat⁸, while 87% of online shoppers had made online purchases from sellers in their own country in 2018, 26% had bought something from a non-EU seller compared to 89% and 14% respectively in 2014, meaning that consumers buy more often now directly from producers who are established outside the EU.

Our research⁹ has shown that consumers often do not even realise that they are buying from foreign traders. This is related to the fact that information on the websites about the seller is not easily found or presented in a user-friendly, transparent or clear manner. Consumers are also misled as they access websites with EU-country domain names or buy from traders with websites in the EU who drop-ship products from the rest of the world to EU consumers¹⁰.

Another challenge is that online supply chains are becoming more and more complex, with diverse underlying business models. Online platforms, such as Amazon, Alibaba and eBay, offer products to consumers in different capacities: sometimes they act as retailers/sellers, but sometimes they act only as marketplaces, liaising between third-party (and regularly third-country) sellers and producers and consumers.

We also expect the market to develop so consumers will be able to shop via messaging apps. As more and more online platforms are becoming 'hybrid platforms' consumers are confused. And these different channels also lead to different legal obligations under the current legislative framework, this being a framework where loopholes to safety protection have been identified.

In 2020, following serious concerns already raised about unsafe jewellery, cars seats, chargers, travel adaptors and power banks that were available online, national consumer organisations Altroconsumo (Italy), Consumentenbond (The Netherlands), Forbrugerrådet Tænk (Denmark), Stiftung Warentest (Germany), Test Achats (Belgium) and Which? (UK) uncovered the presence of many other non-compliant and dangerous products on popular marketplaces¹¹.

Similar tests and conclusions were also reported by consumer groups from other European countries¹².

Concerns are not only related to the online sales of dangerous products but also to their promotion and reappearance on websites and applications even when they have been subject to risk alerts and sometimes even recall notices¹³.

⁸ https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals#General_overview

⁹ See BEUC and vzbv study "The challenges of protecting consumers in global online markets": https://www.beuc.eu/publications/beuc-x-2017-122_the_challenge_of_protecting_eu_consumers_in_global_online_markets.pdf

¹⁰ Dropshipping is a form of e-commerce through which an e-seller delivers directly to the final consumer from its supplier without, most often, the consumer knowing. The principle of dropshipping can be used for part of the assortment of the merchant site or for the entire offer. For the e-merchant, the practice of dropshipping avoids the logistical and financial constraints related to storage and shipping. It is also financially interesting as the payment from the consumer is received by the e-seller before having himself to pay the supplier. This represents several risks for consumers (delayed or absence of delivery, limited after-sales service etc) as demonstrated by the French consumer organisation UFC-Que Choisir <https://www.quechoisir.org/actualite-seinsafe-com-le-soutien-gorge-anticancer-etait-une-arnaque-n70011/>

¹¹ See BEUC press release at <https://www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html>.

¹² See complete list of BEUC members' publications at the end of this document.

¹³ See article from the UK consumer group Which? <https://www.which.co.uk/news/2020/02/dangerous-child-car-seats-sold-via-amazon-flagged-by-bbc-panorama/>

66% of 250 consumer products that were purchased on online marketplaces, such as Amazon, AliExpress, eBay and Wish, were found non-compliant with EU laws and technical standards which are in place to protect consumers' rights, health and the environment. This was the result of mystery shopping conducted by 6 consumer groups of the BEUC and ICRT networks. The products included smoke and carbon monoxide alarms that did not work; children's clothing featuring long cords (posing a strangulation risk); toys containing chemical levels 200 times over the limit, and a power bank that melted during testing.

Findings from consumer research and testing are mirrored by figures from the EU Safety Gate¹⁴, the rapid alert system used by EU Member States to exchange information about unsafe products in the internal market. The latter shows that a large proportion of non-compliant products are imports, especially from Asia.

Despite customs checks and international cooperation being in place, the sheer volume of traffic means that dangerous products still make their way on to the Single Market. Liège airport in Belgium, which has become the EU hub for a major online platform¹⁵, alone receives 1 million small parcels daily. These are checked by fewer than 100 customs agents and with no market surveillance authority on site.

This is just an illustration of the overall lack of capacity of authorities that can significantly impact consumer safety. It should also be noted that, although the EU framework allows customs agents to set aside suspicious imports and alert market surveillance authorities, there is a legal obligation to release the products if no feedback is received from their counterparts within a few days.

Another problem lies with the fact that online marketplaces¹⁶ present themselves as mere "intermediaries". They claim they should not be held liable for the safety of the goods they sell, or facilitate selling, on their apps or websites. This is however far from clear to consumers because online marketplaces are the business operators from which they order, pay and receive (in principle) after-sales service. More fundamentally, it is not fair to consumers, because without the marketplaces, who are paid well for this intermediation, they would very often not have entered into contact with these suppliers, with the specific safety risks to which they are then exposed.

The current regulatory framework is therefore not adequate from a consumer protection and fair markets perspective. There are not only loopholes in existing laws but also in their enforcement.

¹⁴ See 2019 annual report of the EU Rapid Alert https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/reports/docs/RAPEX.2019.report.EN.pdf

¹⁵ <https://www.lesoir.be/265287/article/2019-12-06/les-batiments-dalibaba-liege-airport-operationnels-durant-le-premier-semestre>

¹⁶ In this document, we use the concept of online marketplaces as online platforms offering a service of facilitation of contact between sellers and consumers. This concept has to be differentiated from that of online platforms acting as sellers/retailers in their own capacity. See also Article 2(1)(n) of the Unfair commercial practices Directive, as amended by Directive 2019/2161, that defines 'online marketplace' as "a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers;" <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

Guidance for national authorities¹⁷ and voluntary initiatives are clearly insufficient to keep consumers safe¹⁸. In this regard, the EU Product Safety Pledge¹⁹, which aims at a faster removal by online marketplaces of dangerous products listed on their websites, is not leading to satisfactory results. Even though Allegro and cDiscount recently joined AliExpress, Amazon, eBay and Rakuten France, the Pledge will likely not comprise all relevant players in the market. Furthermore, it has not been assessed against strict and detailed key performance indicators²⁰.

The future GPSD should therefore decisively contribute to improve the safety of products sold online. The recently adopted regulation on market surveillance and product compliance brought some improvements in this regard, but more ambitious provisions should be set-up, regardless of whether products fall in the category of harmonised or non-harmonised products²¹.

Why would a bed for a child benefit from less market surveillance and safety requirements than a bed for a doll?

This is a question raised by the recent adoption of the EU Regulation on the market surveillance and compliance of the so-called harmonised products. These include toys or mobile phones for instance. When entering into force in July 2021, its provisions will require the name and contact details of a product's manufacturer to be displayed on the product or its packaging. Alongside other obligations regarding the designation of an authorised representative, it has potential for improving product traceability and aid the work of market surveillance authorities in Europe. However, products that are not already subject to common EU rules, like childcare products and furniture, will fall outside the scope of the regulation and therefore not benefit from these rules.

Current challenges also call for a consistent and comprehensive EU approach towards the online sale of goods which requires additional reform measures related to the eCommerce and Product Liability Directives.

1.2. Safety challenges posed by new technologies (Internet of Things, algorithmic decision making and 3D-printing)

The use of 'smart products' that connect to the Internet and sometimes incorporate algorithmic decision making is already widespread and will continue to increase²². These products include not only smart televisions, door locks, home lights and thermostats. Baby monitors, fridges, blood pressure devices and many other consumer products can now also connect to the web, be upgraded, controlled or even fixed remotely (e.g. predictive maintenance and anomaly detection). Some also have the capacity to evolve, to exchange data and have influence on each other's functioning. While new technologies, such as the so-called automated decision making (ADM) and Internet of Things (IoT) have the potential to offer new benefits to consumers, such 'smart' products can also come with

¹⁷ See EC notice on the market surveillance of products sold online [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0801\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0801(01)&from=EN)

¹⁸ Voluntary agreements are unsuitable to address product safety issues as they are usually not covering the whole market and are therefore neither effective nor efficient to create a level playing field in the EU internal market. Companies established outside the EU may neither be aware of the legal requirements nor of voluntary sector agreements. Furthermore, voluntary agreements often face severe governance issues such as insufficient transparency about specific measures being taken, missing reviews by independent auditors who check compliance of a company with the agreement and missing sanctions for non-compliant companies.

¹⁹ See EU Safety Pledge https://ec.europa.eu/info/sites/info/files/voluntary_commitment_document_4signatures3-web.pdf

²⁰ See last report that dates from September 2019 https://ec.europa.eu/info/sites/info/files/2nd_progress_report_product_safety_pledge_1.pdf and BEUC recommendation for a stricter evaluation https://www.beuc.eu/publications/beuc-x-2019-072_new_evidence_from_beuc_member_organisations_regarding_dangerous_products_available_online.pdf

²¹ Regulation 2019/1020 applies to 'harmonised goods' such toys. These are goods that are already covered by EU-wide legislation setting common requirements that all products of that type must meet before being placed on the market. Products that are non-harmonised fall outside the scope of the regulation.

²² The number of IoT connections within the EU was estimated to increase from approximately 1.8 million in 2013 to almost 6 billion in 2020. See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016SC0110>

multiple flaws²³. As consumer organisations have reported, connected products often do not include the most basic security features: they can be hacked from a distance, become deficient after a loss of connectivity or because of a lack – or as a result of – software updates²⁴. One could also imagine certain products taking unintended/unexpected decisions potentially harmful for consumers. Beyond concerns raised about the collection and use of private data, there are indeed scenarios that could result in safety weaknesses.

While there are potentially huge benefits for consumers in the Internet of Things and other new technologies such as AI and 3D printing, there are also risks linked to people's safety, security and their right to privacy.

In particular, several BEUC and ANEC members [revealed serious security flaws](#) with a wide range of connected products that can often be hacked too easily. More recently, Consumentenbond [showed](#) that fixing such risks or providing information about how long smart devices will continue to receive (security) updates is not yet a priority for many manufacturers. This calls for loopholes in legislation to be closed.

These new market realities therefore call for core concepts in the General Product Safety Directive to be revised. These include:

- The concept of "safety": the legal definition of safe products is quite broad, but it has been traditionally interpreted only with regard to risks that have an impact on consumers' health or physical integrity, such as mechanical and chemical risks. What if a self-driving car would lose connectivity and create a road accident? What if a third-party exploited the security gaps of a connected oven or of a smart watch for children and either caused a fire or put the personal security of a child at risk²⁵? The current definition of a 'safe product' also speaks about the fact that a product shall not present any risk or only the minimum risk compatible with the product's use. The latter notion may no longer be appropriate in an era of connected products as it is unclear what this would imply.
- The notion of "product": the legal definition of a product does not explicitly include software that may be incorporated in a connected product or downloaded after its placing on the market. What if a safety issue would arise as a result of a software update? Similarly, the current definition does not offer clarity about who is responsible for the safety of products which function with 'Artificial Intelligence' and which are self-learning.

²³ Automated decision making (ADM) is a process whereby software which operates with a product is making decisions instead of just offering information to humans who then make decisions based on the information. Many of these systems are self-learning meaning they use ongoing data input to refine their decisions. This can be a concern for product safety and liability in many respects. Today, software is not covered unequivocally by product safety and liability legislation, posing many questions as to who is responsible for safety if something goes wrong. An example could be an implanted insulin measurement device which injects a wrong dose, either because of the malfunctioning of the device or an erroneous data input and consequently leading to a wrong decision on the insulin dose needed, potentially putting the life of the patient at risk.

Not all connected products are self-learning and take autonomous decisions. Many products today come along with incorporated software and remain in the same condition unless being updated from distance or hacked by third parties with malicious intentions. As they can connect to the internet and to many other devices in a network, they are referred to as the 'Internet of Things' or IoT. As with artificial intelligence, many legal questions with regard to liability and product safety need to be answered for this type of connected products. While there is an overlap, it will be important that a legislative reform covers both aspects, Automated Decision Making (ADM) and IoT.

²⁴ See <https://www.theguardian.com/technology/2016/jan/15/bug-nest-thermostat-turns-heating-off-for-some>. Consumer organisations are critical that updates are continuously being sent on the decision of the manufacturer, making it a completely unilateral decision. The GPSD could be used to restrict certain possibilities in the modification of the software to ensure the product remains safe and in line with the functions provided to the consumer when it was purchased.

²⁵ See Safety Gate notification A12/1671/15 from the Icelandic authorities in 2019 and concerning the recall of a smart watch for children. This product had previously been identified by consumer groups because a lack of even minimum security could have easily led to access to a child and perhaps put the child at risk.

- While the current GPSD definition of a 'safe product' does extend to reasonable foreseeable use including duration, and, where applicable, putting into service, installation and maintenance requirements, it is not clear today if the term 'maintenance' would require a producer to make software updates available over the lifetime of a product to ensure safe use. What if no updates are made available by the producer or if consumers fail to install them?
- The notion of "placing on the market": current provisions in the GPSD require a product to be safe at the moment when offered the first time for sale, be it to a wholesale dealer or an individual consumer. There is no further specification how far a producer must monitor the behaviour of a product in the market once additional software has been downloaded and installed, be it by the consumer, the manufacturer or a service provider remotely during the use-phase of a product. With an increasing number of connected products in use, the question therefore arises if this concept needs to be replaced with a concept of 'continued conformity' and a requirement on producers to carry out continuous risk assessment against appropriate standards.

It is also expected that in the future, more and more consumers will use 3D printers to create their own products based on datasets provided by traditional manufacturers, 3D printshops or service providers. These products escape the current scope of product safety legislation because it is not clear who the responsible manufacturer is. Is it the consumer who prints out the object or is it the provider of the design file? As consumers could be exposed to safety risks, this situation also calls for an update of the regulatory framework, so these challenges are correctly and ultimately addressed.

1.3. Challenges with regards to harmful chemicals in consumer products

The European Union boasts the world's most advanced and ambitious chemicals management framework. EU laws for example, prohibit the use in cosmetics, toys, and (plastic) food packaging of chemicals that may cause cancer, change DNA or harm reproductive health.

Despite these landmark achievements, robust chemicals provisions are absent for most consumer products. A 2017 study for the European Commission for example found²⁶ that legislation preventing the presence of toxic substances in products is scattered, neither systematic nor consistent and applies only to very few substances, products and uses, often with many exemptions.

The [latest figures](#) from the EU Safety Gate show that 23% of all notifications of dangerous products were based on chemical-related risks. Similar observations are made by consumer organisations that regularly put products under the microscope to look for unwanted chemicals. In 2019, concerns were expressed by Altroconsumo over **coloured marker pens** which contained highly allergenic substances. In Denmark, Forbrugerrådet Tænk found **toy products** with illegal levels of phthalates. Cancer-causing nitrosamines were also released above the EU limit values in **balloons**. Many other test results from across Europe shed light on the urgent need for a stronger EU approach against hazardous chemicals.

²⁶ Study for the strategy for a non-toxic environment of the 7th Environment Action Programme. Final report. August 2017. Available at: <https://op.europa.eu/en/publication-detail/-/publication/89fbbb74-969c-11e7-b92d-01aa75ed71a1/language-en>

Where rules do exist, enforcement is often weak and patchy. A 2018 joint EU enforcement project showed²⁷ that one in five toys contained dangerous phthalates – despite a ban in effect for close to two decades. A significant proportion of other tested consumer products contained toxic metals or other restricted chemicals with adverse health effects, such as asbestos, a known carcinogen.

Despite the requirement that only safe products are made available on the market, the GPSD in practice plays a marginal role in protecting consumers against harmful chemicals in products. The GPSD was not designed to establish specific chemical safety criteria but to manage the risks of products in general. As such, demonstrating compliance with the GPSD safety requirement depends either on chemical safety criteria defined in other EU laws, such as the Cosmetics Regulation or in the absence of these,²⁸ any relevant national standards, Commission recommendations, *etc.* This approach thus *de facto* implies that the use and presence of chemicals of known concern, such as endocrine disruptors, in most consumer products is legal as long as no specific health risk can be shown. Given the absence of specific chemical safety criteria for most consumer products, market surveillance authorities are therefore rarely in a position to ensure compliance with the GPSD's general safety requirement.

Addressing harmful chemicals in products only takes on a new urgency as the EU's transition to a (more) circular economy begins to gain momentum. Many of today's products contain chemicals that were legal when first manufactured but are now either restricted or banned. Increased materials recycling could give these chemicals a second lease on life in consumers' homes. From a consumer perspective, it is therefore paramount that the EU develops an ambitious framework that prevents toxic chemicals from being reinjected into the economy.²⁹

2. Policy recommendations

The European Commission intends to present a proposal for the revision of the General Product Safety Directive during the second quarter of 2021. The combined roadmap and inception impact assessment³⁰ outline as main challenges and in line with BEUC and ANEC's views, the need to address product safety challenges linked to new technologies, online sales channels, and inconsistent market surveillance rules.

As one of the policy options, the Commission envisages to repeal the current Directive and replace it with a Regulation which would:

*'in addition (1) extend the definition of products to standalone software; (2) include new provisions for actors across the online supply chain, going further than integrating the elements of the Product Safety Pledge; (3) establish mandatory requirements for product recalls and registration; (4) give stronger enforcement powers to Member State authorities (for example on penalties and sanctions) and give arbitration powers to the Commission in case Member States have diverging product safety risk assessments; and (5) consider the ban of the marketing and sale of all food imitating products in the EU market.'*³¹

Furthermore, there would be only one set of rules for market surveillance for all consumer products (referred to as 'Option 4' in the roadmap/inception impact assessment).

²⁷ ECHA. Harmonised Enforcement Project on Restrictions. 2018. Available at: https://echa.europa.eu/documents/10162/13577/ref_4_report_en.pdf/b53f5cd9-64a4-c120-1953-e9e176b9c282

²⁸ Examples of product categories which are not covered by specific EU product legislation addressing chemical exposure include clothing and textiles, construction materials/products, furniture, child-care articles and sports and playground equipment and surfaces.

²⁹ See BEUC. [How to detoxify the circular economy](#). July 2017.

³⁰ European Commission: Combined Roadmap and Inception Impact Assessment on the Revision of Directive 2001/95/EC of the European Parliament and of the Council on general product safety, 23 June 2020.

³¹ See roadmap/ inception impact assessment: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12466-Review-of-the-general-product-safety-directive>

We clearly favour Option 4 as the best way forward for consumer protection. We make the following more detailed recommendations which should be taken into account by the Commission when presenting the proposal for a new legal instrument in 2021.

However, as this Option 4 includes repealing the current GPSD, the legislator must keep in mind that the GPSD has proven a landmark piece of consumer protection in the Single Market and its basic principles must be kept as fundamental pillars of the future framework. The GPSD must continue to:

- Function as a safety net able to cover lacunae in sector specific legislation and for those consumer products for which no specific rules have been established.
- Be based on the precautionary principle and allow market surveillance authorities to withdraw products from the market using this principle in order to protect consumers from safety risks.

2.1. In view of addressing the challenges raised by the globalisation of e-commerce:

We see opportunities for the GSPD to increase the safety of products sold or promoted online by:

Ensuring as a first step that the tools brought by the new Regulation on market surveillance and compliance of products³² will apply to all consumer products and not only those covered by sector specific legislation. As of 2021, new provisions will indeed require national authorities to check more actively the safety of products sold online as part of their market surveillance strategies. They will also be given new powers such as carrying out mystery shopping on online marketplaces, entering fulfilment centres to take product samples for testing, or, “where there is a risk of serious and irreparable harm to end users due to non-compliance”, requiring information society service providers to restrict the access to an online interface³³. Moreover, the new provisions will require online marketplaces and information service providers to cooperate with authorities in the case of non-compliance of products. Most importantly, the name and contact details of the manufacturer or of the next responsible economic operator in the Single Market will need to be indicated on the products or their packaging³⁴. It will be important these innovations are also applied to products which are in the scope of the General Product Safety Directive.

Going beyond requiring an authorised representative in the EU. Sector specific legislation as well as the horizontal Market Surveillance Regulation requires a manufacturer located in a third country to establish an authorised representative in the EU. This representative is the contact for market surveillance authorities and is expected to act on behalf of the manufacturer. We observe however that the obligation to establish an authorised representative in the EU does not lead to optimal enforcement. This concept has been used for many years (e.g. in the cosmetics sector), yet the number of non-compliant products from outside the EU remains high. There are many reasons for these indifferent results and online sales channels are highlighting the shortcomings even further:

- The legal representative does not have possession of the products compared to importers which could be seized by market surveillance authorities to check compliance. The representative is also not part of the company.

³² See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R1020>

³³ The possibility for market surveillance authorities to block the access to specific products or even a whole online marketplace has also been included in the recent Danish law on products and market surveillance. See <https://www.retsinformation.dk/eli/lt/2020/799>

³⁴ Article 4 of regulation 2019/1020 indeed requires that companies who are not present in the EU internal market appoint an authorised representative who can act on behalf of a manufacturer if a product breaches EU safety law. However, this requirement applies to only certain consumer products.

- Many products do not include any authorised representative, because the third country producers are not aware of their duties under EU law or because they try to circumvent the system. These breaches might come unnoticed: products may indeed slip through (online) checks or border controls as customs and market surveillance authorities are understaffed compared to the large turn-over of goods.
- It may happen that the name and contact details of an authorised representative are indicated on the product and freight documentation, but that this authorised representative does not exist in reality (letterbox company). This can be the case for fraudulent producers outside the EU who are informed about EU rules but seek to by-pass them to gain market access. As in the previous scenario, authorities are limited in their enforcement work, unless they can address their actions to the importer or the next (online) economic operator in the supply chain.
- It can be that an authorised representative is indicated on the product, but that the mandate for their representation has been terminated in the meantime and no successor can be found by market surveillance authorities when carrying out enforcement actions.
- Finally, and depending on how shipping is organised, it may be that a third-country producer is even not aware that their products are being sold online by an intermediary and that they are being shipped to the EU.

One can therefore be faced with situations in which dangerous products are still being made available and cannot be withdrawn effectively from online shops. This is unacceptable for consumers and frustrating for market surveillance authorities. Moreover, this leads to unfair competition for those businesses that respect their duties under the safety legislation. Given such fundamental shortcomings, the new legislation should clarify the role of each actor in the supply chain.

Clarifying that online marketplaces³⁵ are economic operators in the supply chain which:

- Have clear obligations to contribute to general product safety and market surveillance;
- Are subject to sanctions by market surveillance authorities for failing to comply with product safety obligations;
- Can be held ultimately liable for damages exposed by consumers³⁶.

To this end, in the context of the GPSD, online marketplaces should be considered as importers for all products that can be bought via their online interfaces (e.g. a website or an app), not only for the ones which pass through a fulfilment centre. This provision in the GPSD should be complemented by an extension of liability under the Product Liability Directive which should consider platforms as suppliers if certain conditions apply³⁷. In addition, the forthcoming Digital Services Act should enable this framework by creating a special liability regime for online marketplaces beyond for those that facilitate the selling of products³⁸.

³⁵ See definitions as explained in section 1.1.

³⁶ Based on a reformed e-Commerce Directive and Product Liability Directive. See BEUC's position papers referenced at the end of this document.

³⁷ For example, if (1) the producer cannot be identified (2) the marketplace fails to inform the consumer in due time of the identity of the producer and does not enable communication between the consumer and the producer by providing them with relevant contact details (3) the marketplace received clear evidence about non-compliant products on its platforms (4) the producer is identified but does not take measures to remedy the harm or (5) the marketplace has a predominant influence or control in the transaction chain.

³⁸ According to article 14 of the e-commerce Directive, marketplaces can already be held liable for damages for failure to remove or disable access to illegal product postings. BEUC's recommendations for the DSA include to go beyond the current framework and ask for liability in more scenarios. See again the specific position paper referenced at the end of the document.

Enabling market surveillance authorities to address all enforcement actions that are mentioned in the GPSD to the online marketplaces as well. This comprises at least the following actions:

- Withdrawing dangerous products from the supply chain, such as by delisting them from websites or applications and not sending such products to consumers which have already been ordered but are still in the fulfilment centres. As online marketplaces offer a 24/7 service and many state that they are able to handle complaints in such a timeframe, they should be required to respond to alerts and remove unsafe products within 24 hours once these are identified (for example by consumer organisations, or through the EU's rapid alert system which they should be required to consult continually). They should also be required to prevent recalled products from being listed again³⁹.
- Destroying dangerous products stored in their fulfilment centres on instructions of the authorities.
- Recalling products from consumers who have already purchased a dangerous product. This will be easily possible for the marketplace, as they hold all the necessary information to contact consumers.
- Publishing recall notices on their websites and informing consumers proactively about dangerous products.
- Providing consumers with warnings and instructions on safe use.
- Cooperating with the authorities on all matters related to safety.

Empowering market surveillance authorities to fine and bring marketplaces to court if they do not comply with the abovementioned obligations to ensure product safety. Such penalties must take into account criteria such as being proportionate and dissuasive, the level of infringement, illegal profits and potential damage to consumers. Fees and penalties must be used to finance market surveillance activities and be an effective deterrent against non-compliances. Mandatory inspection fees – as under food safety legislation – should be introduced.

Stepping-up customs and market surveillance controls. When entering into force, the regulation on compliance and market surveillance will enable enforcement authorities to better cooperate, and provide them with new powers and obligations. Adequate human, technical and financial resources must be allocated by Member States however to make sure these requirements are implemented and that authorities keep pace with the rapid development of e-commerce. The European Commission should also determine uniform conditions for checks (including their frequency and the number of samples to be taken per product category)⁴⁰ as well as set-up digital tools to facilitate the exchange of information about dangerous products between authorities.

Strengthening international cooperation on market surveillance, product safety, customs and enforcement. Good examples of cooperation between regulators, such as the EU-Canada arrangement on product safety alerts⁴¹, should be replicated with other countries. The EU should use the opportunity of the World Trade Organization e-commerce negotiations⁴², and bilateral trade negotiations in which it is involved, to promote such cooperation to keep consumers safe through a more stringent enforcement of national laws and better cooperation between national authorities. It is also important to implement

³⁹ See also the policy recommendations of our UK member Which? on Online marketplaces and product safety to the UK government from November 2019:

<https://www.which.co.uk/policy/consumers/5234/onlinemarketplaces>

⁴⁰ The new market surveillance Regulation already creates the possibility to define the frequency of checks for specific high-risk products. This possibility should also be used in the context of the General Product Safety Directive.

⁴¹ EU-Canada administrative arrangement to exchange information on the safety of products: https://ec.europa.eu/info/sites/info/files/aa_final_en-eu_version.pdf

⁴² See BEUC recommendations on the World Trade Organisation e-commerce negotiations: https://www.beuc.eu/publications/beuc-x-2019-014_wto_e-commerce_negotiations_-_beuc_recommendations.pdf

the UNCTAD international guidelines to better protect consumers and the OECD recommendations for consumer protection in e-commerce⁴³.

To ensure legal certainty, the reform of the GPSD should complement and establish a consistent legal framework together with other relevant legislation, including those that are also under revision⁴⁴, such as the e-Commerce Directive⁴⁵ and the Product Liability Directive⁴⁶.

The legal framework must indeed be stringent enough so that marketplaces make proper arrangements with their sellers to check trustworthiness before admitting them or their products on their platforms. Sellers should provide evidence of compliance with safety and other legal requirements as a condition for their listing.

2.2. In view of emerging technologies such as smart and 3D-printed products:

To keep consumers safe and ensure legal certainty when assessing the safety of smart and 3D printed products, a revision of the GPSD should focus on:

Broadening the definition of 'safety' to include (cyber)security aspects that have an impact on safety. It would allow national market surveillance authorities to take specific measures, including the possibility to make notifications to the EU Safety Gate and to withdraw smart products from the market because of security flaws that have an impact on safety.

Introducing the concept of 'continued conformity'. This would require actors in the supply chain to make sure that products are both safe and secure when being placed on the market and during the whole duration of their expected lifespan. This concept should ensure that safety risks related to (lack of) software updates or connectivity, for instance, are addressed even after a product has been placed on the market. It would encourage manufacturers of products with algorithmic decision-making to include safeguards that enable a fallback plan, and which allow them to keep a high degree of control over their products in case of problems⁴⁷. Consumers should be able to expect producers and other economic operators to take care of the safety of their products on an on-going basis⁴⁸.

Ensuring that authorities have the necessary means to enforce legislation. They should be equipped with additional human, financial and technical resources to fulfil their roles effectively (for instance, by being able to test and verify IoT products or algorithms).

⁴³ See respectively https://ec.europa.eu/info/sites/info/files/aa_final_en-eu_version.pdf, https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf and <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>

⁴⁴ See BEUC's position paper "Making the Digital Services Act work for consumers - BEUC's recommendations", https://www.beuc.eu/publications/beuc-x-2020-031_making_the_digital_services_act_work_for_consumers_-_beucs_recommendations.pdf

⁴⁵ See BEUC's position paper "Product Liability 2.0 - How to make EU rules fit for consumers in the digital age" http://www.beuc.eu/publications/beuc-x-2020-024_product_liability_position_paper.pdf

⁴⁶ Platforms must check suppliers from outside the EU which target European consumers either have set up a branch in the EU or have appointed a person responsible in the EU. Platforms – notably online marketplaces – should be obliged to check whether the EU representative office exists and whether it is operational. This obligation could be fulfilled by random checks and by evaluating the trader-related data that is generated. If the trader does not meet this obligation and the platform is proven to have failed to verify compliance of this obligation, the platform would be liable for damages and guarantees, without prejudice to seek redress to the trader *a posteriori*. See BEUC's position paper [Making the Digital Services Act work for consumers](#).

⁴⁷ Ethics Guidelines for Trustworthy Artificial Intelligence (AI) is a document prepared by the High-Level Expert Group on Artificial Intelligence <https://ec.europa.eu/futurium/en/ai-alliance-consultation/guidelines#Top>

⁴⁸ For comparison purposes, the Digital Content Directive already provides that the trader (i.e. the seller) shall ensure that the consumer is informed of and supplied with updates, including security updates, that are necessary to keep the digital content or digital service in conformity for the period of time (Art.8 2b). Similarly, the EU Directive on the sales of goods (2019/771) also provides that a seller is liable for digital elements being in conformity with the product including for updates provided for as long as the consumer may reasonably expect (Art.7.3)

2.3. In view of reducing consumer exposure to harmful chemicals in products

The European Green Deal notably commits the Commission to develop a 'Chemicals Strategy for Sustainability' with an aim to better protect EU citizens, including against harmful chemicals in products. We welcome this initiative. We urgently need new solutions to reduce consumer exposure to chemicals of concern in everyday products, including imported goods. A revised GPSD must contribute to achieve this objective. In this respect, we call on the Commission to:

Explore how a revised GPSD could set detailed chemical safety criteria for consumer products. While the GPSD was not designed to set out specific chemical safety criteria, the lack of such criteria constitutes a major gap within the horizontal legislative framework. We therefore encourage the Commission to explore how criteria for chemicals of concern, such as those which may cause cancer, could be introduced through implementing measures. To improve consumer protection, a revised GPSD should thus enable the adoption of legally binding chemical safety criteria for product categories which are not covered by specific EU product legislation, such as clothing and textiles, construction materials/products, furniture, childcare articles and sports and playground equipment and surfaces.

In parallel, however, we also insist on the need to develop an overarching legal framework for chemicals in products. This framework should address human health and environmental aspects of products through product specific requirements, including chemical safety criteria, information provision as well as systematic monitoring and assessment of the occurrence of chemicals in (certain) products.⁴⁹ An overarching framework for chemicals in products is thus needed to better protect consumers against health risks associated with combined exposures from multiple sources. For example, such a framework would enable the adoption of total indoor air emission requirements for products such as furniture, carpets, floor coverings, paints, laser printers or air fresheners which are currently covered by various separate pieces of legislation.

Strengthen coordinated market surveillance activities: the fitness check on EU chemicals legislation⁵⁰ found that resource constraints at national level negatively affect the capacity to carry out different enforcement activities, such as inspections and other controls including market surveillance activities or reporting. These constraints together with differences in the level of enforcement from one Member State to another lead to an inconsistent application of EU law. Given the limited resources available to authorities, a revised GPSD should ensure that market surveillance efforts are shared, coordinated and streamlined throughout Europe, including through EU-agreed functional procedures (e.g. on how to perform inspections). This could also help avoid that the same products are controlled repeatedly, whereas others are not controlled at all. The Union's Product Compliance Network should support this development, including by promoting harmonisation of chemical test methods and guidelines.

2.4. In view of the need to strengthen the setting of safety requirements

Although we do not consider the setting of safety requirements under the GPSD to be complicated, we believe the process should be strengthened under the new legislation in order to give legal effect to the requirements. A shortcoming of the GPSD is that it provides the private European Standardisation Organisations (ESOs) with the freedom to decide the detailed safety requirements for specific products. Instead, we think the related Commission Decision should be legally-binding which it is not at the moment.

More precisely:

- **The measures adopted must be detailed enough so they can be enforced directly.** The measures should be product-specific implementing measures, based on preparatory studies for product groups and following a prioritised programme, in analogy to the implementing measures for the Energy-related Products Directive.

⁴⁹ See further ANEC. *Hazardous Chemicals in Products*. June 2014.

⁵⁰ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561530857605&uri=COM:2019:264:FIN>

- **A hazard-based approach should be followed.** This would comprehensively and systematically identify the hazards and assess and address the related risks during the development of safety requirements and the drafting of standards. It would ensure safety requirements are informed by appropriate data and information. The levels of safety set out in the requirements should be relevant to the significance of the hazards and risks, and be defined by the policy-makers, not the ESOs⁵¹.
- Moreover, as the ESOs do not have to accept the Standardization Request (SReq) that is attached to the Commission Decision, no legal certainty exists for economic operators and market surveillance authorities in the absence of standards. The safety requirements could be used to for market surveillance purposes, even if the ESOs decide to reject the SReq.
- **Member States should be able to introduce a Formal Objection to a standard earlier.** The possibility for a Member State to express a Formal Objection to a standard intended to support legislation before the publication of its reference in the Official Journal of the EU should also be introduced. This would be another step to aiding legal certainty.
- **The voice of consumers in the ESOs must continue to be heard.** Knowingly or unknowingly, the position of business interests in the development of European standards can undermine the broader consumer interest. Hence the role of ANEC is crucial in influencing the content of standards so all consumers can benefit from their use. Business also tends to reflect the needs of only 'average' or 'mainstream' consumers in standards, so minimising cost and maximising profits in the delivery of a product or service. This disadvantages 'vulnerable' consumers: children, older people and persons with disabilities. Noting public authorities have also withdrawn from many standardisation activities to the detriment of the public interest, we call on authorities to become more engaged in standardisation and support consumer participation in standardisation at national level.

2.5. Additional points that need urgently to be addressed

Making it possible to apply higher conformity assessment modules. The GPSD does not provide a possibility for the legislator to choose a level of conformity assessment appropriate to the risks that a product may pose. A provision should be introduced to allow EC-type examination (independent third-party testing and certification) for certain categories of consumer products, such as products that have caused serious accidents in the past or products that are aimed at vulnerable consumers.

Defining specific requirements for vulnerable consumers. We consider that mainstream products should be designed in such a way that as many people as possible can use them in a safe way, regardless of the age or ability of the user. If mainstream products do not meet the safety needs of all consumers, it means that many cannot be used by a significant and increasing part of the population, particularly taking into account current demographic trends in Europe.

The GPSD should therefore include specific references to the safety of vulnerable groups such as children, older people and persons with disabilities.

For example, the current lack of specific safety requirements for child-appealing products raises concern: it should be clear that products with such characteristics (e.g. school items or lighters looking like a toy) must be safe, including for children to use or to come into contact with.

Moreover, a reference to 'people with disabilities' should be added in the definition for a safe product.

⁵¹ ANEC study on development of safety requirements, <https://bit.ly/2PQnOqk>

Revitalisation of the European Injury Database (EU-IDB): European consumer safety needs solid injury data. Parliament, Member States and the Commission should strive for a legal framework, which supports Member States in collecting and sharing data on injuries involving consumer products, based on a common methodology, with the aim of achieving a high quality, representative and up-to-date data sample for the entire Single Market.

Ensuring quicker market intervention and emergency legislation: Although the GPSD allows regulators to adopt product specific requirements in the form of implementing measures in emergency situations, as noted above, it relies on the ESOs to provide detailed safety requirements for specific products. The "emergency measures", based on Article 13 of GPSD, should be used as needed.

Improving the functioning of the EU Safety Gate: more systematic pictures and information about the risk assessment, batch number/bar code, the distribution channels, the measures adopted by notifying country (date and type) and the follow-up actions undertaken in other member states, would make market surveillance and consumer information more effective. The disclosure of the full address of the producer and authorised representative of a dangerous product should also be made available. Details about the accidents and injuries that lead to a notification would also be useful. The time between tests performed against safety standards and the publication of an alert should be reduced to a minimum of days, while updates to the system should always be possible when more information becomes available to the notifying authority.

Increasing market surveillance resources and their cooperation, including at international level and with consumer organisations. Even if the latter sometimes look at safety levels that go beyond legal minimum requirements, more of their test results could be used by authorities as a direct basis for corrective measures and evidence for improving legislation.

The possibility of imposing mandatory inspection fees – as done in Food Safety legislation – should be explored.

2.6. Improving product recalls

Another important point that needs to be addressed by regulators is how to **increase the effectiveness of recalls** of dangerous products already supplied to consumers, whether such recalls are initiated by economic operators or ordered by authorities⁵².

It is indeed crucial for consumers, market surveillance authorities and for reputable economic operators, that the withdrawal or recall of unsafe products happens as quickly as possible, despite the fact that supply chains are increasingly more complex.

In online markets, economic operators may have exact information about to whom their products have been sold. This information could be used – provided consumers have given consent and it is in line with the General Data Protection Regulation – for targeted recalls. However, for products purchased in brick-and-mortar stores, information about the buyer is usually missing. Therefore, product registration has been mentioned as part of the solutions to more effective recalls, but it is not adequate for all types of products: indeed, consumers cannot be reasonably expected to register every single toy or small items that they buy or receive as a gift. Surveys⁵³ also show that consumers are highly sensitive about sharing their data as they could be misused for commercial purposes. In any case, the responsibility of recalls should not be shifted to consumers and the primary obligation of safe products should stay with the economic operators.

⁵² The European Commission, DG JUST, is currently carrying out a study about recall effectiveness. BEUC is planning to comment on the study findings in more detail at a later stage but we have outlined some essential points already below.

⁵³ See 2019 survey about Consumer Behaviour and Product Recalls Effectiveness https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/tips/Product.Recall.pdf

We believe that the following points need to be tackled by a GPSD reform:

- Harmonising the framework for recalls by the development of EU guidance or the adoption of secondary legislation. While a one size-fits-all approach is not possible, setting up minimum requirements for recall notices and recall processes would help economic operators and authorities. Good practices can be identified⁵⁴ including on how to make sure recall notices reach consumers beyond the initial buyer of the good (e.g. gifts, second-hand products).
- Exploring the opportunities offered by new technologies to make market surveillance and recalls more effective⁵⁵, especially for product categories where non-compliance immediately poses a safety risk or for which the number of non-compliances is high (e.g. connected product recalls initiated at distance via voice assistants, automatic disconnection, or the limitation of a product's functionalities). Experience has shown that technology may help, however they should not be considered as a silver bullet solution. For example, when BEUC members have reported about the sale of unsafe products on platforms, some platforms nevertheless had filters in place. Yet, BEUC members, researchers, businesses and authorities keep uncovering illegal products being sold online. Therefore, we urge caution as mandating such type of automated tools could be counterproductive and not address the core issues. The use of such technologies should therefore be assessed against their applicability, reliability, and potential adverse effects on consumers' privacy or security.

⁵⁴ See UK government guidance on recalls (PAS 7100) and OECD recommendations for enhancing product recall effectiveness globally
[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP/CPS\(2018\)1/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP/CPS(2018)1/FINAL&docLanguage=En)

⁵⁵ See European Commission Single Market Enforcement Action Plan of last March which addressed the use of new technologies for stepping up market surveillance illustrating your points
<https://op.europa.eu/en/publication-detail/-/publication/06c4f770-6395-11ea-b735-01aa75ed71a1/language-en>

ANNEX: List of relevant BEUC and ANEC/BEUC members' publications

- [BEUC position paper on Digital Services Act](#)
- [BEUC position paper on Product liability 2.0: EU rules fit for consumers in the digital age](#)
- [BEUC position paper on keeping consumers secure: How to tackle cybersecurity threats through EU law](#)
- [BEUC recommendations for the World Trade Organisation e-commerce negotiations](#)
- Which? test on cars seats ([February 2019](#))
- Consumentombond survey on consumers' experience with Chinese web shops (May 2019) and [Tips voor het kopen bij een Chinese webwinkel](#)
- Which? test update on dangerous smoke alarms ([May 2019](#))
- Forbrugerrådet TÆNK test on soft plastic toys containing phthalates ([June 2019](#))
- Test-Achats article on Chinese web stores 'Webhops chinois et 10 pièges potentiels' (September 2019)
- Which? test on chargers, travel adaptors and power banks ([September 2019](#))
- Forbrugerrådet TÆNK test on cheap jewellery containing harmful heavy metals ([October 2019](#))
- New Which? article on dangerous CO and smoke alarms ([November 2019](#))
- Which? investigation on dangerous toys found on Amazon and eBay ([November 2019](#))
- Which? policy paper on "Online marketplaces and product safety" ([November 2019](#))
- Verbraucherzentrale Bundesverband legal study on effective protection of consumers in online trade: responsibility and liability of internet platforms ([November 2019](#))
- Verbraucherzentrale Bundesverband policy paper on responsibility and liability of online marketplaces and comparison websites ([February 2020](#))
- Altroconsumo, DECO, OCU, Test Achats policy recommendations on unsafe products on online marketplaces ([February 2020](#))



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