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Public Consultation on EU proposal for a General Product Safety Regulation

July 2021

Public Consultation on EU proposal for a General Product Safety Regulation

Background

The European Commission, on 30 June 2021, proposed reforms to Directive 2001/95/EC¹ (the General Product Safety Directive, GPSD) in the form of a Regulation, intended to safeguard consumers². The GPSD applies to all non-food consumer products where there are no specific provisions with the same safety objective in other EU legislation.

The proposed General Product Safety Regulation (GPSR) makes substantial amendments to the GPSD, which has been in place for the last 20 years. The proposed GPSR seeks to increase the protection offered to EU consumers in respect of products they purchase, both in physical shops and online, whilst also addressing challenges posed by new technologies and connected devices. The proposed GPSR aims to enhance the market surveillance of dangerous products in the EU and ensure that any recalls of such products are effective.

The Department of Enterprise, Trade and Employment recommends readers to visit the European Commission website which provides further information on the proposal. The website outlines the consultation processes undertaken so far by the European Commission and also invites feedback on the proposal (closing date of 21 September next) which will be summarised by the European Commission and presented to the European Parliament and Council with the aim of feeding into the legislative debate. See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12466-General-Product-Safety-Directive-review_en

Objectives of the GPSR

The proposed GPSR is intended to provide better protection for consumers by:

- Addressing product safety challenges arising from new technologies.
- Protecting consumers when shopping online, including on online marketplaces, and from dangerous products coming from outside the EU.
- Providing a safety net for all non-food dangerous products not covered in other EU legislation.
- Making product safety recalls more effective.

¹ [EUR-Lex - 32001L0095 - EN - EUR-Lex \(europa.eu\)](#)

² [General Product Safety Directive – review \(europa.eu\)](#)

- Ensuring better enforcement of product safety rules throughout the supply chain by giving market surveillance authorities more powers and better tools to take action.
- Address safety issues related to food imitating products.

The proposed GPSR is intended to create better conditions for businesses by:

- Strengthening responsibilities across the supply chain in order to offer an equal footing to businesses active in the EU, both online and offline.
- Providing better enforcement of product safety rules and market surveillance.
- Ensuring a more even application of product safety rules.
- Providing more legal certainty with clearer rules and helping businesses comply with them.

It is anticipated that EU Council negotiations at working party level will commence in September 2021.

Breakdown of the proposed GPSR

The proposed GPSR consists of 11 chapters comprising 47 articles.

CHAPTER I – GENERAL PROVISIONS

This Chapter sets out the scope and the main terms used in the proposed GPSR. It provides a ‘safety net’ for all products falling under its scope of application establishing requirements to ensure the safety of consumer products and therefore the safety of consumers. The Chapter updates the definitions used in the GPSD, in particular to take into account the different scope of the definition of ‘product’, ‘safe product’ and introduces a specific definition of ‘online marketplace’.

Question 1: What are your views on the scope of the proposed GPSR?

Question 2: What are your views on the definitions in the proposed GPSR, including the definition of ‘online marketplace’?

CHAPTER II – SAFETY REQUIREMENT

This Chapter introduces the general safety requirement, confirms the importance of standards published in the EU Official Journal as providing a presumption of safety. It also updates the assessment of the safety of products to take into consideration food-imitating products in the risk evaluation, following the repeal of Directive 87/357/EEC.

New aspects for assessing product safety also include the possible risks related to products based on new technologies.

Question 3: What are your views on the safety requirements contained in Chapter II?

Question 4: What are your views on the aspects for assessing the safety of products?

CHAPTER III – OBLIGATIONS OF ECONOMIC OPERATORS

Section 1

This Section set outs the obligations of the economic operators except those economic operators which fall under the scope of application of Regulation (EU) 2019/1020. This is to avoid the possibility that obligations contained in this Chapter could conflict with similar obligations contained in Regulation (EU) 2019/1020. Apart from the more general obligations of economic operators to ensure the safety of products, it introduces the concept of substantial modification, in which case responsibility for the safety of the product shifts to the person making the modification. Furthermore, it extends the concept of person responsible contained in Article 4 of Regulation (EU) 2019/1020 to non-harmonised products. This chapter also contains the basic provisions on traceability, mostly taken from Decision 768/2008/EC, and the possibility, in the case of products liable to pose a serious risk to people's health and safety, to adopt a more stringent system of traceability, to be adopted by a delegated act.

Question 5: What are your views on the obligations the proposed GPSR imposes on economic operators?

Question 6: What are your views on including the concept of a responsible person in line with Article 4 of Regulation (EU) 2019/1020?

Question 7: What are your views on the traceability of products provisions?

Section 2

This Section imposes obligations on economic operators in the case of distance sales, and which are also applicable to economic operators falling within the scope of Regulation (EU) 2019/1020.

Question 8: What are your views on these obligations imposed on economic operators?

Question 9: What are your views on the obligations imposed on economic operators in the case of accidents or safety issues associated with a product?

CHAPTER IV – ONLINE MARKETPLACES

This Chapter examines the role played by online marketplaces and lays down specific obligations applicable to them. It also gives powers to market surveillance authorities to order online marketplaces to remove content that refers to dangerous products. The Chapter also includes some provisions contained in the new Commission proposal for a Regulation on a Single Market for Digital Services (Digital Services Act).

Question 10: What are your views of the obligations imposed on online marketplaces?

Question 11: What are your views of the obligations imposed by the requirements of the Digital Services Act?

CHAPTER V – MARKET SURVEILLANCE AND IMPLEMENTATION

This Chapter brings in some aspects of Regulation (EU) 2019/1020 on market surveillance and compliance of products, in order to create, as far as possible, a single regime for both harmonised and non-harmonised products.

Question 12: What are your views on the inclusion of relevant articles from Regulation (EU) 2019/1020?

CHAPTER VI – SAFETY GATE RAPID ALERT SYSTEM

This Chapter lays down the principle for exchanging information in the case of a dangerous product and changes the name of the RAPEX system to Safety Gate. The Chapter also clarifies the relationship between RAPEX and the Information and Communication System on Market Surveillance (ICSMS) and specifies the timeframe for notifications. This Chapter also gives the EU Commission powers to adopt implementing acts on the operation of Article 24.

Question 13: What are your views on the information exchange specified in this Chapter?

Question 14: What are your views on giving the EU Commission powers to adopt implementing acts for Article 24?

CHAPTER VII – COMMISSION ROLE AND ENFORCEMENT COORDINATION

This chapter allows the EU Commission to adopt measures, through implementing acts, in the case of a serious risk which cannot be addressed satisfactorily by means of

measures taken by the Member State(s) concerned or by any other procedure under EU legislation. This possibility already exists in the GPSD and the proposed GPSR makes its scope of application more precise. Chapter VII also introduces a voluntary arbitration mechanism where Member States can submit to the EU Commission questions concerning the identification or the level of a risk linked to a product in case of diverging risk assessments. This will make it possible to take more uniform action at EU level against dangerous products.

Question 15: What are your views on the powers allowed to the EU Commission under this Chapter?

Question 16: What are your views of the coordinated control actions (sweeps) under Article 30?

CHAPTER VIII – RIGHT TO INFORMATION AND REMEDY

This Chapter sets out provisions on information to be supplied to consumers and confirms the obligation for the EU Commission and Member States to make available information relating to risks to health and safety posed by products. The Chapter also provides an obligation for Member States to allow consumers the opportunity to submit complaints to the competent national authorities. It confirms and further enhances the scope of the Safety Gate web portal, which already exists, adding a new section where consumers can consult warnings and recalls issued directly by economic operators. In addition, the new provisions on recall notices attempts to improve their effectiveness and gives consumers the right to remedy.

Question 17: What are your views on the obligations imposed on Member States and the EU Commission contained in this Chapter?

Question 18: What are your views on the new provisions on recall notices and the right to remedy for consumers?

CHAPTER IX– INTERNATIONAL COOPERATION

This Chapter provides the legal basis for the EU Commission to establish forms of cooperation to improve product safety. These include common enforcement actions, technical support, exchange of officials, and the exchange of information on dangerous products and in particular information contained in the Safety Gate. In this respect, the provision allows either fully fledged participation in Safety Gate or an exchange of selected information.

Question 19: What are your views on the provisions contained in Chapter IX?

CHAPTER X – FINANCIAL PROVISIONS

This Chapter provides for the financing by the EU Commission of activities in all matters falling under its scope of application. The proposed GPSR includes general clauses on protecting the financial interests of the EU.

CHAPTER XI - FINAL PROVISIONS

This Chapter provides for a system of penalties. The Chapter recognises that establishing penalties is a national competence but also sets out guiding principles for penalties, in particular the criteria for setting penalties, the types of infringements to be penalised, the criteria on maximum ceilings and the possibility to impose periodic penalty payments.

Question 20: What are your views on the provisions on penalties?

Question 21: Do you think the provisions on penalties impinge too much into Member States' competence?

Question 22: Have you any further comments to make on the proposed GPSR as a whole or on individual articles?

Deadline for Submissions

The deadline for responses is **Friday 24 September 2021**.

Submissions should be sent to: conspol@enterprise.gov.ie

When making your submission please provide the name of the individual, firm or organisation making the submission; contact details and briefly describe your interest in the subject matter.

FREEDOM OF INFORMATION ACT 2014 AND PUBLICATION OF SUBMISSIONS

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

GENERAL DATA PROTECTION REGULATION

Respondents should note that the General Data Protection Regulation entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose Limitation;
- Data minimisation;
- Accuracy;
- Storage Limitation;
- Integrity and confidentiality, and
- Accountability.

The Department of Enterprise, Trade and Employment is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

Appendix – Reply Forms

- 1 What are your views on the scope of the proposed GPSR? Please limit your views to 500 words:

2 What are your views on the definitions in the proposed GPSR, including the definition of 'online marketplace'? Please limit your views to 500 words:

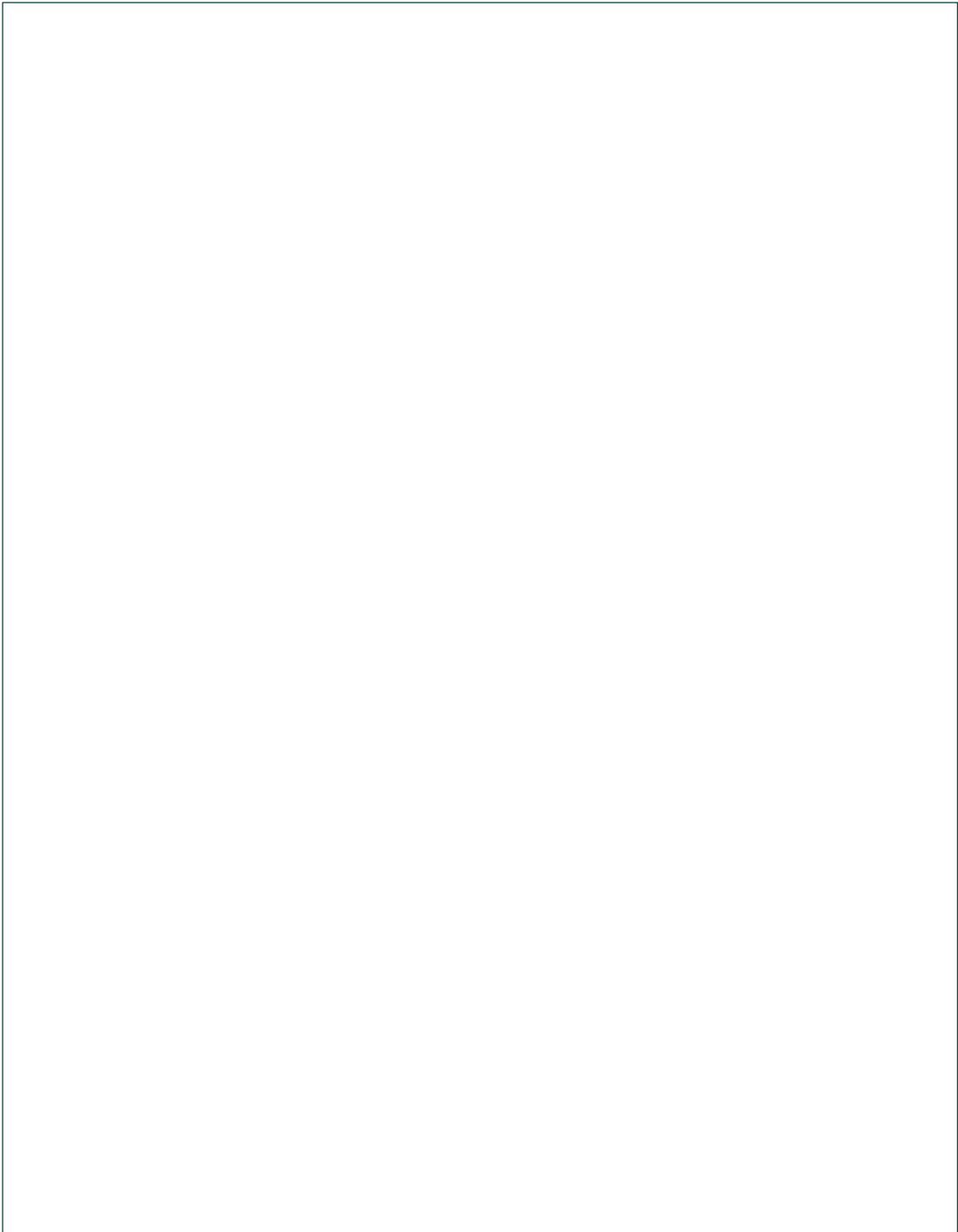
- 3 What are your views on the safety requirements contained in Chapter II?
Please limit your views to 500 words:**

- 4 What are your views on the aspects for assessing the safety of products?
Please limit your views to 500 words:**

5 What are your views on the obligations the Regulation imposes on economic operators? Please limit your views to 500 words:

6 What are your views on including the concept of a responsible person in line with Article 4 of Regulation (EU) 2019/1020? Please limit your views to 500 words:

7 What are your views on the traceability of products provisions? Please limit your views to 500 words:



**8 What are your views on these obligations imposed on economic operators?
Please limit your views to 500 words:**

- 9 What are your views on the obligations imposed on economic operators in the case of accidents or safety issues associated with a product? Please limit your views to 500 words:**

**10 What are your views of the obligations imposed on online marketplaces?
Please limit your views to 500 words:**

11 What are your views of the obligations imposed by the requirements of the Digital Services Act? Please limit your views to 500 words:

12 What are your views on the inclusion of relevant articles from Regulation (EU) 2019/1020? Please limit your views to 500 words:

**13 What are your views on the information exchange specified in this Chapter?
Please limit your views to 500 words:**

14 What are your views on giving the EU Commission powers to adopt implementing acts for Article 24 of the proposed GPSR? Please limit your views to 500 words:

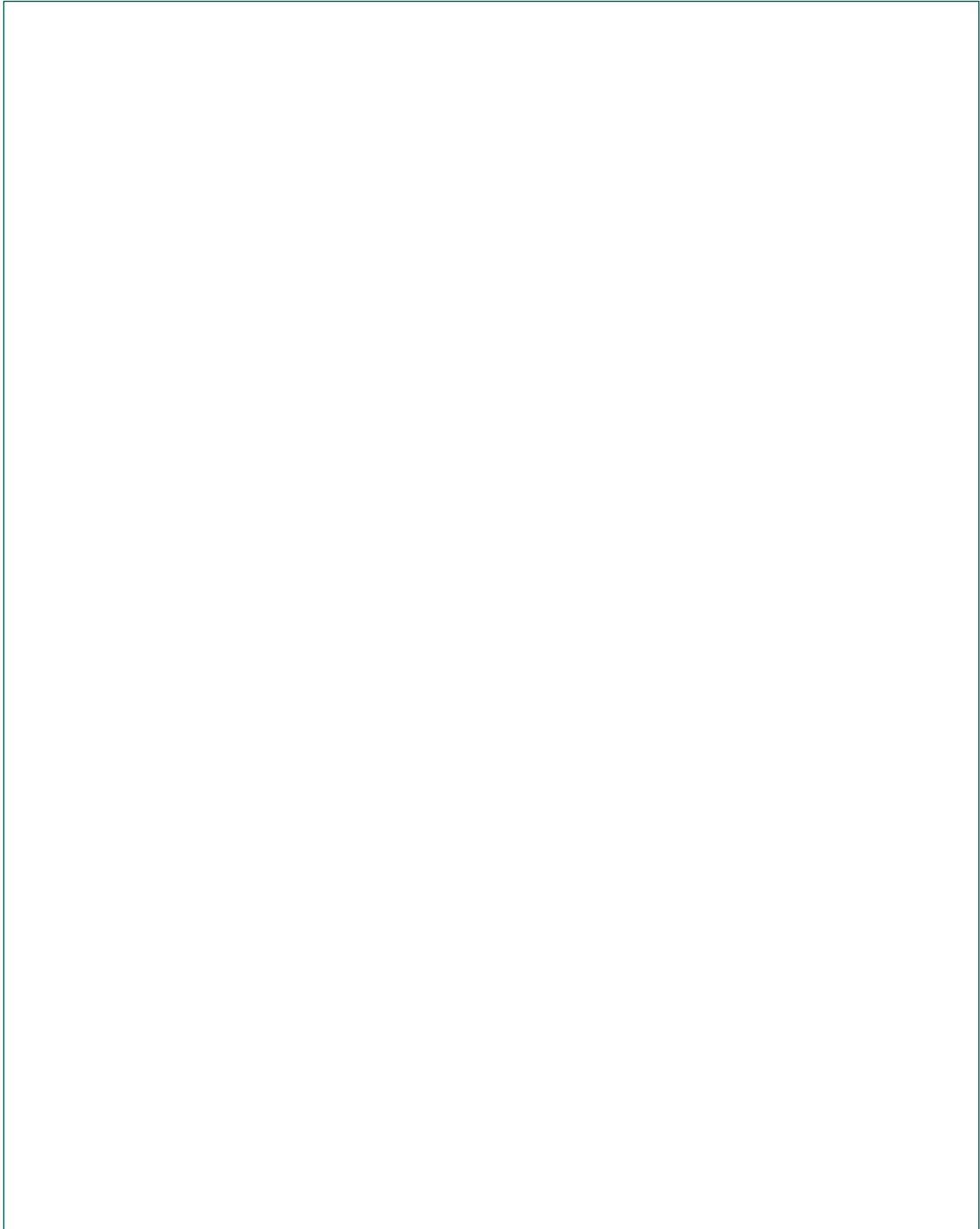
15 What are your views on the powers allowed to the EU Commission under this Chapter? Please limit your views to 500 words:

16 What are your views of the coordinated control actions (sweeps) under Article 30 of the proposed GPSR? Please limit your views to 500 words:

17 What are your views on the obligations imposed on Member States and the EU Commission contained in this Chapter? Please limit your views to 500 words:

18 What are your views on the new provisions on recall notices and the right to remedy for consumers? Please limit your views to 500 words:

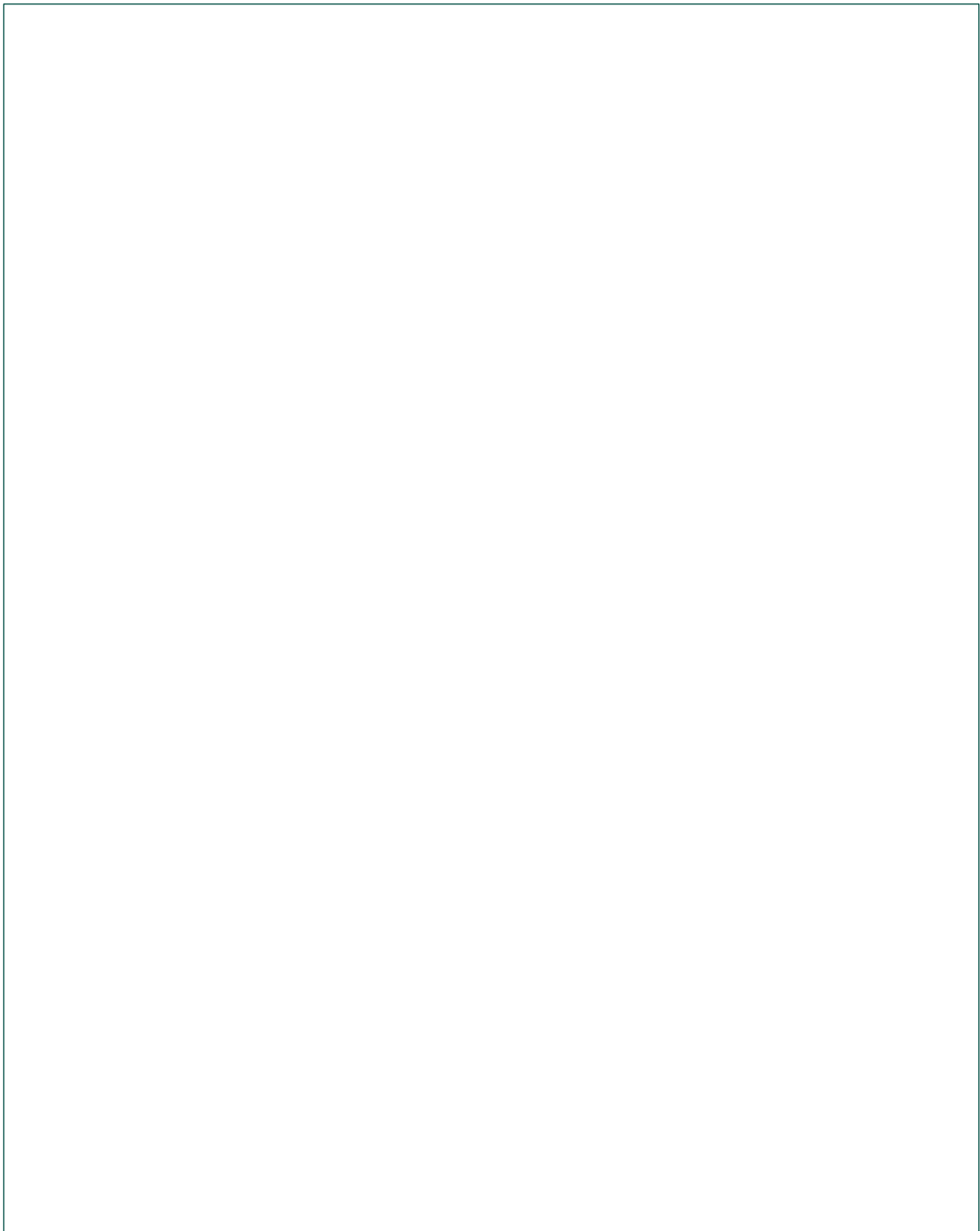
19 What are your views on the provisions contained in Chapter IX? Please limit your views to 500 words:



20 What are your views on the provisions on penalties? Please limit your views to 500 words:

21 Do you think the provisions on penalties impinge too much into Member States' competence? Please limit your views to 500 words:

22 Have you any further comments to make on the proposed GPSR as a whole or on individual articles? Please limit your views to 500 words:

A large, empty rectangular box with a thin black border, intended for the respondent to provide their comments on the proposed GPSR. The box is currently blank.