

CORPORATE BRIEFING: Special Edition

Recent Developments in Product Safety Legislation

This Briefing provides an overview of recent developments in product safety legislation including new obligations placed on economic operators and online marketplace providers and sheds light on the changing landscape of product safety responsibilities under the new EU Regulation 2023/988.

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A. Revision of the Previous General Product Safety Framework

1. **Regulation (EU) 2023/988** of the European Parliament and the Council of 10 May 2023 on general product safety (the **Regulation**) sets the legal framework for the new regime regarding consumer product safety and repeals Directive 2001/95/EC (previous general product safety framework) and Council Directive 87/357/EEC (safety of food-imitating products, now subsumed under the Regulation).
2. The Regulation provides safety-net consumer protection given that it applies to all consumer products within its scope that are made available in the EU market to the extent that there are no other, sector-specific safety provisions. Even when such sector-specific legislation is in place, the Regulation complements those provisions by regulating aspects of product safety which they do not cover.
3. It should be noted that certain products are wholly outside

the scope of the Regulation such as medicinal products, food, feed, living plants and animals.

4. The Regulation entered into force on 12 June 2023 but applies from 13 December 2023. This allows for a transitional period during which products which conform with the previous framework (Directive 2001/95/EC) may still be placed on the market. The advent of online selling and developments in new technologies created the impetus for a modernized regulatory framework that would properly account for such phenomena.
5. Some of the most important features of the new framework under the Regulation include:
 - a. the relevant risk assessment of consumer products must now consider possible cybersecurity threats;
 - b. new obligations are set for providers of online marketplaces, while the existing obligations of businesses along the supply chain (manufacturers, authorized representatives, importers, distributors and service fulfilment providers - all collectively defined as economic operators) are refined and extended to cover distance sales, including online selling;
 - c. the Regulation requires the existence of a responsible person in charge of product safety for every product available in the EU market;
 - d. consumers are assigned a special cluster of rights in the case of product recalls, independent of their contractual rights; and
 - e. the existing RAPEX system is being replaced by the Safety Gate System and an EU-wide network of Member State authorities is established.

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B. Obligations of Economic Operators and Online Marketplace Providers

1. As under the previous framework, all economic operators along the product supply chain are required to put safe products only on the market (general safety requirement).
2. Each operator is assigned a set of duties proportionate to their role in the supply chain. Each subsequent operator along the chain is tasked with verifying that the preceding operator has complied with certain obligations.
3. The obligations of **manufacturers** include:
 - a. to carry out an internal risk analysis and drawing up technical documentation before placing the product on the market;
 - b. to ensure that their product is traceable (by way of product batch, type and serial number) and accompanied by clear instructions, safety information and their contact information;
 - c. to maintain a suitable channel for receiving safety complaints from consumers;
 - d. once they have reason to believe that a product they have placed on the market is dangerous, to immediately undertake corrective measures, including a withdrawal or recall if appropriate, and inform consumers, market surveillance authorities (authorities) and other operators along the supply chain.
4. **Importers** should not place a product on the market unless they have verified that the manufacturer has fulfilled its requirements relating to product traceability, safety information and contact information. In the event of a dangerous product, they must immediately notify the manufacturer and authorities.
5. **Distributors, authorized representatives and service fulfilment providers** are similarly required to fulfil certain duties, according to their role.
6. In the case of distance sales, including **online sales**, all economic operators must ensure that the offer of their products complies with the requirements of product traceability, suitable product safety information and manufacturer contact information.
7. It is important to note that for every consumer product within the scope of this Regulation, whether originating from within or outside the EU, a **responsible person** must be appointed, whose responsibilities include ensuring the conformity of the product to the EU safety requirements and cooperating with authorities and informing them if there is reason to believe that their product is dangerous.
8. Under the Regulation, **online marketplace providers** must:
 - a. provide a single point of contact for Authorities and for customers;
 - b. maintain internal processes for product safety and comply with any orders from authorities concerning removal of product content from their marketplace;
 - c. design their user interface in a manner which allows traders to insert at least the information regarding traceability, safety information and manufacturer contact information of each product; and
 - d. temporarily suspend the provision of services to traders that are non-compliant with the Regulation.
9. Finally, in order to mitigate the risks presented by a product that was offered through their services, providers must comply with a series of requirements including directly notifying all customers who bought the product through their services and, where applicable, publishing information on product safety recalls on their websites.

C. The Safety Gate System, the Consumer Safety Network and National Authorities

1. The Regulation modernizes and renames RAPEX, the previous notification and information exchange system concerning dangerous products in the EU market, with the new **Safety Gate System**. The Safety Gate System comprises of three elements:
 - a. the **Safety Gate Rapid Alert System**, an internal rapid alert communication system on dangerous products, corrective measures taken and further updates between the authorities of Member States and the Commission;
 - b. the **Safety Business Gateway**, a web portal to enable businesses to comply with their obligation to inform authorities and consumers of dangerous products and accidents; and
 - c. the **Safety Gate Portal**, a web portal to inform the public (eg economic operators, providers of online marketplaces, consumers) of dangerous products and enable them to submit complaints to the Commission, which in turn will notify the national authorities accordingly.
2. The Regulation also establishes the **Consumer Safety Network**, a network consisting of the authorities of each Member State and the purpose of which is to exchange information and best practices, as well as carry out joint activities with businesses and consumers including inspections of products acquired under a cover identity.
3. The Regulation provides for simultaneous coordinated control actions of authorities aiming to detect online and offline infringements of the Regulation (**sweeps**), which will be coordinated by the Commission and make the aggregated results publicly available. Such sweeps will be conducted mainly where market trends or consumer complaints suggest there is an increased probability of dangerous products.

D. Consumer Rights to Information and Remedies

1. In the event of a recall, economic operators must offer an effective, cost-free and timely remedy to consumers. Specifically, they must provide at least two of the following:
 - a. the repair of the recalled product;
 - b. a replacement of the recalled product with a safe one of the same type and at least the same value and quality;
 - c. an adequate refund of the value of the recalled product, provided that the amount of the refund is at least equal to the price paid by the consumer.
2. These rights are independent of any contractual remedies the consumer enjoys remedying the lack of conformity of the goods with the contract.

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