

The New Product Safety EU Regulation

Key Changes you need to know about

The European Union's new general product safety Regulation entails new consumer protections, union-level enforcement cohesion efforts, requirements for providers of online marketplaces, and obligations for economic operators established in or exporting into the Union.

Published in the official journal of the European Union on 23 May 2023 and entering into force on 13 December 2024, the new EU Regulation 2023/988 on general product safety enumerates new consumer rights, economic operator responsibilities, and surveillance and enforcement provisions for certain products targeted towards consumers in the EU.

Thus, businesses, manufacturers, importers, exporters, distributors, providers of online marketplaces, and other economic operators involved in the consumer product supply chain in the Union should prepare steps to assure compliance with the new general product safety regulation.

Unlike a Directive, the legal form of a Regulation renders it binding and directly applicable in all member states, thus allowing for “better delivery of the objective of ensuring coherence” regarding both products themselves (those to which Union harmonisation legislation applies) and market surveillance. By consolidating union-level enforcement of product safety guidelines, the regulation also intends to reduce the regulatory burden of individual member states “through a consistent application of product safety rules across the Union.”

→ Union-wide consolidation and cohesion are key themes of this new Regulation, in addition to the acknowledgement of the growing dominant role of online marketplaces in the sale and purchase of consumer goods.

Below are the key changes you should be aware of.

1. Information Exchange

The new Regulation largely serves to modernize Union consumer protection and product safety regulations to meet the new and evolving realities of inter-Union and international commerce.

Included in this modernization is the Union Rapid Exchange of Information System (RAPEX), which, for “greater clarity and better outreach to consumers,” is renamed **Safety Gate**.

Safety Gate will provide a portal for businesses to effectuate their obligation to provide both consumers and authorities with information on accidents and dangerous products (Safety Gate Portal). Safety Gate will also include a web portal where the **public** can not only access information about product safety, **but also submit their own complaints**.

The Safety Gate Rapid Alert System enables the Commission and national authorities to exchange information on dangerous or potentially dangerous non-food products. The development of the Safety Gate in place of RAPEX once again demonstrates how, in the wake of the new regulation, **businesses must be prepared to engage in the routine provision and exchange of product safety information, not only with national and union-level market surveillance authorities, but with consumers themselves** – the Safety Gate being a key arena for this.

The Regulation also establishes the **Consumer Safety Network**, a network of member state authorities responsible for product safety. The Network will serve to coordinate and enhance Union-specific consumer safety information and communication between member state authorities.

2. EU-Established Authorized Representatives of Non-Union Economic Operators

Non-EU manufacturers wishing to target sales into the EU can identify an EU-established legal person acting on behalf of the manufacturer external to the Union. The authorised representative must be a legal person established within the EU, for example, a French firm serving as the authorised representative in the EU



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for a Canadian manufacturer. The manufacturer will appoint this authorised representative through a written mandate, agreeing to the obligations which the authorised representative will effectuate during it.

The new Regulation enumerates a minimum of duties which must be performed by the authorised representative on behalf of the manufacturer, including:

- providing information and documentation to market surveillance authorities,
- informing the manufacturer in the case of a suspected dangerous product,
- using the Safety Business Gateway to inform national authorities about steps taken to eliminate any risks pertaining to products under their mandate,
- cooperating with national authorities on action to eliminate any risks posed by products covered in their mandate.

The authorised representative system, as introduced in the Regulation, will enable market surveillance authorities to retain adequate ability and power to investigate and act against dangerous products on the Union market that may not have been manufactured within the Union.

As online sales of consumer products continue to grow and become more and more dominant, the authorised representative system can facilitate the market surveillance systems and practices of both the Union and its member states, protecting consumer safety in the face of growing international exchange of goods. Manufacturers looking to export into the union should be aware of this new requirement.

3. New Requirements for Importers

Union-established importers of non-union manufactured products also have an enhanced responsibility under the new regulation. The importer, in addition to assuring that the imported product adheres the new safety guidelines, must assure the maintenance of proper technical documentation requirements, **during and for 10 years after the placing of the product on the European market.**

In order to ensure the effective and proper carrying out of market surveillance by both Union and member state authorities, this documentation shall be made available to authorities upon their request.

In addition to collaboration with market authorities, if an importer suspects that a product they have placed on the market is dangerous, the importer shall then inform the manufacturer, consumers (directly, in accordance with Articles 35 and 36), and the relevant market surveillance authorities (through the Safety Business Gateway) of the suspected dangerous product, all while

ensuring that the necessary corrective measures (including withdrawal and recall) are being taken.

Importers also take up **new informational responsibilities**, such as the management of consumer communication channels, the investigation of consumer complaints, and the maintenance of an internal register; all the while keeping distributors, the manufacturer, and any other relevant entities informed regarding any ongoing product investigations.

4. New Obligations for Providers of Online Marketplaces

In order to streamline the oversight measures of market surveillance authorities, the Regulation requires providers of online marketplaces to designate a single point of contact for market surveillance authorities to contact in the case of consumer issues with product safety. This contact point will then redesignate the complaint to the proper service unit within the online marketplace.

The provider of the online marketplace will also provide a **single point of contact** concerned with market surveillance and shall make this contact public through the Safety Gate Portal. The single point of contact for market surveillance and consumers can be the same. This new step taken by the Regulation acknowledges both the importance of direct contact between consumers/market surveillance authorities and the providers of online marketplaces, not only the distributors and vendors who vend them.

Providers of online marketplaces also have new obligations regarding the usage of their platforms and interfaces for the sake of safety information. Providers are now required to design their interfaces in a fashion which enables traders on the platform to clearly display all necessary safety and traceability information. In the case of product recall, providers shall not only clearly display recall information on their platform, but, in the case in which consumer data was collected by the provider, use that data to directly contact consumers who may have been affected by the dangerous product.

The Regulation also outlines various timelines for provider adherence to orders from relevant market surveillance authorities regarding the product of warnings for products or the removal of products from platforms. When products listed on online marketplaces are identified as dangerous by any relevant market surveillance authority, that authority is entitled to order the provider of the online marketplace to remove, display warning, or disable access to the product on their platform within two days of notification.

In acknowledgement of the rising domination of online marketplaces in consumer product markets, the Regulation entails new requirements for providers of online marketplaces in addition to traditional economic operators, both to prevent and repair the placement of potentially dangerous products on their platforms.



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5. Recall Guidelines

The new Regulation also entails providers of online marketplaces with new responsibilities in relation to product recall and accident reporting. POMs now have a legal obligation to use relevant consumer data at their disposal to directly notify affected consumers and to offer them a minimum of two of three reparative measures to affected consumers – refund, repair, or replacement.

The Regulation holds that 1/3 of consumers “*continue to use dangerous products despite seeing a recall notice.*” In order to combat the potential dangers posed by this practice, the regulation also covers recall notices themselves, designating a specific form to be adhered to and a requirement for the avoidance of language in the recall notice which may diminish the consumer’s perception of the risk posed by the recalled product. Through implementing acts, **the EU Commission will designate a recall notice template for economic operators to use.**

6. Risk Assessment

The Regulation provides discerning definitions between risk (“*the combination of the probability of an occurrence of a hazard causing harm and the degree of severity*”) and serious risk (“*a risk which, based on a risk assessment and taking into account the normal and foreseeable use of the product, is considered to require rapid intervention*”), effectively clarifying risk assessment measures that various actors (including

economic operators, the commission, and the relevant market surveillance authorities of member states) can take to assess the risk of products on the Union market and verify compliance across product categories.

These include the risk assessment processes of manufacturers, sweeps conducted by the commission, or performed by providers of online marketplaces. The Regulation also clarifies that it applies to goods sold second-hand, repaired, or refurbished by manufacturers (except for products classified as antiques or items of historical significance that cannot reasonably be expected to meet modern safety standards). Economic operators in the Union should be aware of these new provisions and adjust internal assessment measures accordingly.

7. Social Considerations in the Context of Product Safety

Outlined in the Regulation are special provisions for economic operators to take certain social factors into account in the assurance of product safety. The Regulation acknowledges the “gender safety gap,” the notion that products “*can present different risks for different genders,*” and asks economic operators to take standardization efforts to assure that the gender safety gap is prevented before products hit market. Regarding the Union’s environmental and sustainability goals, the Regulation requires that any disposal entailed during product recall abide by the Union’s set objectives.



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