



ALERTS

New Consumer Product Safety Regulations In The EU

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Highlights

Major changes in product liability law are on the immediate horizon for companies doing business in the European Union

On May 23, the European Commission published the new General Product Safety Regulation, overhauling product safety regulations in the EU

The new regulations aim to implement new requirements for bringing products to market, recalls, and the online marketplace in the EU, and more

Major changes in product liability law are on the immediate horizon for companies doing business in the European Union. After more than a decade of proposals for reform, on May 23, the European Commission – the EU’s independent executive arm – published the new General Product Safety Regulation (GPSR) in the Official Journal. With this, the new GPSR repeals and replaces the previously existing General Product Safety Directive 2001/95/EC.

While the European Parliament adopted the text of the new regulation in March 2023 and the European Council adopted it on April 25, 2023, this

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official publication triggers the timeline for implementation of the broad reforms set forth in the new GPSR. The GPSR aims “to improve the functioning of the internal market while providing for a high level of consumer protection,” and “lays down essential rules on the safety of consumer products placed or made available on the market.”

The new GPSR will take effect on June 12, 2023, with an 18-month transition period in place until the new regulations take full effect as of Dec. 13, 2024. The new GPSR represents a major overhaul of the previously existing regulation in the EU.

Full analyses of the new GPSR will follow, but here is an overview of what product manufacturers doing business in the European Union need to know.

1. New Reporting Requirements About Accidents Caused by a Product

Under the new GPSR, manufacturers are required to notify authorities of accidents caused by products via the Safety Gate system – the European Commission’s online portal for reporting information about allegedly dangerous products. The old GPSR had no threshold for such reporting, but the new GPSR sets the trigger as: “Occurrences associated with the use of a product that resulted in an individual’s death or in serious adverse effects on their health and safety, permanent or temporary, including injuries, other damages to the body, illnesses and chronic health effects.”

Under the new GPSR, these reports must be made “without undue delay from the moment” the product manufacturer knows about the accident.

2. New Requirements for Product Recalls

Under the new GPSR, for product recalls, manufacturers must offer a choice between at least two of these options: (i) a refund, (ii) repair, or (iii) replacement, unless to do so would be impossible or otherwise disproportionate. In that case, offering only one of these two remedies would be acceptable under the GPSR. The refund must be at least equal to the purchase price.

3. New Requirements Related to Risk Assessments Prior to Bringing Products to Market

The new GPSR introduces additional factors to be considered in product safety assessments. These additional factors include but are not limited to: risks to vulnerable consumers, including children; the differential impact on the health and safety of different genders; connectivity with other products; and the effects of software updates and predictive functions of products.

On this first point, the new GPSR specifically provides that “when assessing the safety of digitally connected products likely to have an impact on children, manufacturers should ensure that the products they make available on the market meet the highest safety standards of safety, security and privacy by design, in the best interests of children.”

4. New Requirements for Non-harmonized – or, Non-CE-Marked – Products

The new GPSR's requirements for non-CE-marked products aim to align the requirements for these products with the requirements for CE-marked products. In the EU, letters marked "CE" indicate that the manufacturer or importer has affirmed that the product conforms with European health, safety and environmental protection standards. Under the new GPSR, there are also stricter requirements for the labeling of non-CE-marked products.

5. New Requirements for Online Offers and Online Marketplace Reporting of Accidents Caused By Products

Under the new GPSR, online offers and products for sale in the online marketplace must display warnings or safety information required to be affixed to the product or its packaging under other EU product laws. These offers must also allow for the identification by bearing a type, batch or serial number or other element enabling the identification of the product which is "visible and legible for consumers, or, where the size or nature of the product does not allow it, that the required information is provided on the packaging or in a document accompanying the product." In addition, the name and contact details for the manufacturer and the responsible person in the EU must be provided.

In the online marketplace, other new obligations include establishing one point of contact for market surveillance authorities and consumers, and express cooperation with authorities.

6. Penalties Left Up to Member States

While the original legislative proposal set minimum maximum penalties of 4 percent of annual turnover, the new GPSR leaves penalty thresholds up to the EU member states. Member states are to "lay down the rules on penalties applicable to infringements of this Regulation that impose obligations on economic operators and providers of online marketplaces and shall take all measures necessary to ensure that they are implemented in accordance with national law."

The penalties are to be "effective, proportionate, and dissuasive," and the member states must notify the Commission of these penalty-related rules by no later than Dec. 13, 2024.

7. Representative Actions Allowed

The new GPSR specifically provides that consumers "should be entitled to enforce their rights in relation to the obligations imposed on economic operators or providers of online marketplaces through this Regulation through representative actions in accordance with Directive (EU) 2020/1828 of the European Parliament and of the Council." In other words, class actions for violations of the GPSR will be allowed.

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