

# Proposed revisions on product safety and consumer credit

**Commercial analysis:** The European Commission has proposed amendments to the General Product Safety Directive, as part of the New Consumer Agenda. Alison Newstead, partner/solicitor and Marisa Pearce, associate/solicitor, both at Shook, Hardy & Bacon discuss the proposed revisions.

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## Original news

The Commission proposes amended rules on product safety and consumer credit, [LNB News 30/06/2021 66](#)

*The Commission has proposed revisions to [Directive 2001/95/EC](#) (the General Product Safety Directive) and [Directive 2008/48/EC](#) (the Consumer Credit Directive) in order to ensure that dangerous products are recalled from the market and that credit offers are presented to consumers in a clear way, easily readable on digital devices. Both proposals are part of the New Consumer Agenda, which was launched in 2020 with a view to updating the overall strategic framework of the EU's consumer policy.*

## What are the Commission's proposals?

Reform of the EU's product safety legislative framework has been under consideration for some time. The General Product Safety Directive protects EU consumers by ensuring that only safe products are placed on the EU market. The directive is now nearly 20 years old. It does not reflect technological developments, in particular, in relation to artificial intelligence, connected devices and online sales.

The Commission now seeks to revise the directive. On 30 June 2021, the Commission published a proposal for a new General Product Safety Regulation (the Regulation) which, if adopted, will repeal and replace the directive and as well as [Directive 87/357/EC](#) concerning products which, appearing to be other than they are, endanger the health or safety of consumers (commonly known as 'imitation products'). This proposal is one of the legal initiatives under the New Consumer Agenda. It would have direct effect in all 27 EU Member States—ie it would not need to be incorporated into national law in each country before coming into force.

As well as responding to issues related to new technologies and online sales, the Regulation also aims to ensure better enforcement and more efficient and even market surveillance, simplify the standardisation process and improve the recall of unsafe products.

The proposed Regulation includes provisions relating to:

- online marketplaces—specific obligations will apply to online marketplaces. These include:
  - the establishment of a single contact point at the online marketplace allowing for direct communication with Member States' market surveillance authorities in relation to product safety issues, in particular for orders concerning offers of dangerous products

- mandatory registration with the Safety Gate portal, including provision of information concerning the single contact point
- taking the necessary measures to receive and process orders issued by market surveillance authorities to remove specific illegal content referring to a dangerous product from their online interfaces, to disable access to it or to display an explicit warning to end users when they access it
- co-operation with market surveillance authorities and relevant economic operators to facilitate any action taken to eliminate or mitigate the risks presented by a product offered for sale online through their services
- obligations of economic operators—obligations are imposed on all economic operators in the supply chain. For example:
  - before placing a product on the market, importers are required to ensure that it complies with the general safety requirement and that the manufacturer has complied with specific obligations
  - distributors are required to verify that both the manufacturer and importer have complied with specific requirements
  - all economic operators in the supply chain are required to co-operate with market surveillance authorities, ensure the effectiveness of corrective measures, and to establish or adhere to a traceability system for certain products which are susceptible to bear a serious risk to health and safety of consumers
  - from 16 July 2021, under the Market Surveillance Regulation 2019/120, where a product is placed on the EU market by a manufacturer established outside the EU, that manufacturer is required to appoint an economic operator based in the EU responsible for liaison with market surveillance authorities. The Regulation would impose a further obligation on this responsible person to periodically carry out sample testing of the products
  - there is a requirement on the manufacturer to notify the authorities of any accident involving a product within two days of the accident. Where the importer or distributor has knowledge of an accident caused by a product, they are required to inform the manufacturer, which can instruct the importer or distributor to make the notification
- recalls—the Regulation includes obligations on economic operators aimed at increasing recall effectiveness. Provisions relate to:
  - the content of recall notices, setting out specific language to be used and that which is to be avoided
  - the appropriate method of communicating recalls and providing safety information to customers, including the use of websites and social media
- enforcement and penalties—failure by an economic operator to comply with its obligations under the Regulation may result in a fine of up to 4% of its annual turnover, or, where applicable, that of the online marketplace in the Member State(s) concerned

### **How does this represent a divergence between product liability and product recall regulation and process in the UK and the EU?**

The UK left the EU on 1 January 2021. Any future EU legislation will not form part of UK law. The UK's General Product Safety Regulations 2005, [SI 2005/1803](#) are derived from the directive. These remain in effect unless or until the UK government acts to repeal or amend them. While UK law is, therefore,

currently in line with EU law in this area, if the Regulation comes into effect, there will be divergence in respect of the changes introduced by the Regulation, in particular, those outlined above. The Regulation imposes significantly more onerous obligations on economic operators than those under the existing directive, which are reflected in the current legal provisions in the UK. The UK government is revisiting current provisions, as detailed below. Revisions to the UK regime may follow, or diverge from, the EU position.

### **What does this mean practically for UK producers trading in Europe?**

UK producers who place, or who intend to place, their products on the market in EU countries, including via online selling, will need to track the proposed changes to the EU product safety regime. In the event that the Regulation is adopted, producers will need to take all steps necessary to ensure compliance with the new rules when trading in Europe. In particular, attention should be paid to the requirement on manufacturers established outside the EU to appoint a 'responsible person' based in the EU and the new obligations which would be placed on this responsible person by the Regulation. In the event that the UK introduces measures to update its own product safety regime, producers will need to be alive to any differences, as the UK may not decide to mirror the changes to EU law.

### **Are further changes in this area anticipated (either in the UK or EU)?**

In March 2021, the UK government announced plans to update and modernise the UK's regime. A call for evidence was conducted between March and June 2021, and the government aims to publish a summary of responses and an evidence paper by the end of August 2021. While many of the areas of focus are compatible with those covered by the European proposals (eg online marketplaces and new technologies), in announcing the plans, the UK government was keen to highlight that, post-Brexit, the UK has the freedom to establish its own product safety regime. It therefore remains to be seen whether the UK will follow any revisions to the EU's product safety regime or diverge from it.

### **What are the next steps?**

Stakeholders may provide feedback to the Commission on the Regulation before 30 September 2021. This feedback will be summarised by the Commission and presented to the Parliament and Council for consideration in the course of the legislative debates. The proposals then go through the legislative process in the Council and Parliament before becoming law. The Commission has not yet indicated an anticipated timeline for these steps.

*Interviewed by Elodie Fortin*

[Alison Newstead](#) specialises in the field of product safety and product liability. She advises on all aspects of product regulation, often on a global scale.

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