

## **Client Briefing: Q&A regarding the new EU Product Safety Regulation (GPSR) (EU) 2023/988**

### **1. When does the new Product Safety Regulation apply?**

The EU legislator has replaced the former General Product Safety Directive (Directive 2001/95/EC) with a directly applicable regulation. The new GPSR came into force on June 12, 2023 and will **apply from December 13, 2024**. The GPSR is a European regulation and applies directly in every member state of the EU without the need for national implementation.

### **2. Who is affected by the new product safety regulation?**

All **economic operators** operating in the EU are directly affected, i.e. **manufacturers**, authorized representatives, importers, distributors or any other person who is subject to obligations in connection with the manufacture of products, their making available on the market or their putting into service in accordance with the relevant legislation.

This now also includes **fulfillment service providers** within the meaning of Art. 3 No. 12 GPSR and **providers of online marketplaces**, which are subject to obligations within the meaning of Art. 3 No. 14 GPSR.

### **3. To which products does the regulation apply?**

The Product Safety Regulation applies to **all consumer products** to the extent that there are no specific EU provisions on the safety of the products concerned that pursue the same objective. This would also include e.g. **cosmetic products and to some extent medical devices**, as some regulations of the GPSR also apply to harmonized products. Medicinal products and food are explicitly excluded from the application.

### **4. What are key novelty regulations relevant for Product Safety and Product Recall matters (selected topics)?**

#### **4.1 Expansion of the assessment criteria for the safety of products**

- **Article 6** (Aspects for assessing the safety of products): When determining the safety of a product, the following aspects must be considered, e.g.
  - Characteristics of the product, including design, technical features, composition, and packaging.
  - Effects on other products, especially if used together or interconnected.

- Effects of other products on the assessed product.
- Presentation, labeling, warnings, instructions for use and disposal, and any relevant information.
- Categories of consumers, with particular attention to vulnerable groups.
- Appearance that might lead to unintended use, especially by children.
- Cybersecurity features if necessary for protection against external influences.
- Evolving, learning, and predictive functionalities of the product.

#### **4.2 Stricter product recall and safety warnings requirements**

- **Article 36 - Recall Notice:**
  - In the case of a product safety recall, economic operators and online marketplaces must notify affected consumers directly and without undue delay.
  - If personal data is collected, it should be used for recalls and safety warnings. There is an option for consumers to provide separate contact details for safety-related purposes.
  - The Commission may set specific requirements for product registration systems to notify consumers directly about recalls or safety warnings.
  - If not all affected consumers can be contacted directly, operators must disseminate clear recall notices through various channels, ensuring accessibility for persons with disabilities.
- **Article 36 - Recall Notice Content:**
  - Recall notices must be provided in written form, easily understood by consumers and available in the language(s) of the Member State(s) where the product was sold.
  - Elements of a recall notice include a clear description of the recalled product (e.g. picture, name and brand), hazard information, action consumers should take, available remedies, free contact information, and encouragement to share the information.
  - The notice must also include a clear description of the remedies available to consumers (i.e. repair, replacement or adequate refund).

- The Commission will set out a template for recall notices, considering scientific and market developments.
- **Article 37 - Remedies in the Event of a Product Safety Recall:**
  - In the case of a product safety recall, the responsible economic operator must offer consumers an effective, cost-free, and timely remedy.
  - Consumers have the choice between at least two remedies: repair, replacement, or an adequate refund. The consumer is entitled to a refund if repair or replacement is not completed within a reasonable time.
  - An adequate refund of the value of the recalled product, provided that the amount of the refund shall be at least equal to the price paid by the consumer.
  - Repair by a consumer is considered effective only if it can be carried out easily and safely, with instructions and necessary parts provided by the economic operator.
  - The remedy should not cause significant inconvenience to the consumer, and the consumer should not bear the costs of returning the product, with arrangements made for non-portable products.

**Contact us directly with any questions:**

Dr. Marc Oeben

Direct: +49 211 90 99 36-11

email: [marc.oeben@novacos-law.com](mailto:marc.oeben@novacos-law.com)