

General Product Safety Regulation (GPSR): what changes, what should be done?





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On 13 December 2024, the General Product Safety Regulation (EU) 2023/988, also known as the General Product Safety Regulation (GPSR), came into force, which replaced the previous General Product Safety Directive of 2001 (2001/95/EC) as well as Directive 87/357/EEC, regarding dangerous food-like products.

The Regulation aims to strengthen the level of consumer protection, by adapting security legislation to the technological innovation of products and services currently on the market. This legislative initiative has resulted in a uniform regulatory framework that, among other things, addresses recent technological development, with particular reference to aspects related to e-commerce, cybersecurity and products incorporating artificial intelligence (AI).

For Italy, this Regulation will constitute a significant amendment to the Consumer Code, which had transposed the aforementioned Directives.



Scope of application

This Regulation applies to products placed on the market (whether new, used, repaired or reconditioned) insofar as there is not already a specific discipline dictated by sector legislation (e.g. toys). In other words, the Regulation is subsidiary in nature, applying only in cases where the specific legislation does not fully cover aspects related to product safety.

Specific product categories are excluded from the new Regulation, including pharmaceuticals, foods, GMOs, animal feed, plants and animals, by-products and products of animal origin, plant protection products, aircraft and antiques.

Addressees

The objective of making the regulation on the subject responsive to the needs dictated by technological development is also evident in view of the addressees of the Regulation: not only manufacturers, but also importers, exporters, authorised representatives, **distributors and logistics service providers, as well as *marketplace* platforms**, all of which have in common that they market their products in Europe.

Among the subjects mentioned, particular attention must be paid to the 'manufacturer', who plays a central role in the supply chain and is defined by the Regulation as '*any natural or legal person who **manufactures** a product, or **has it designed or manufactured, and markets it under that person's name or trademark***'.

New provisions

The main novelties of the Regulation include:

- the alignment of *online* sales (so-called distance sales) with *offline* sales;
- the broadening of the **notion of safe product**, which will have to be assessed in relation to: (i) characteristics, packaging, labelling of the product; (ii) interactions with other products; (iii) vulnerable categories of consumers, specifically assessing risks to children, the elderly and persons with disabilities; (iv) risks related to the appearance of the product, which could potentially mislead children; (v) possible risks arising from the use of new integrated technologies (e.g. AI);
- the definition of new obligations for economic operators involved in the supply chain, according to their role in the process (including producers, distributors and importers);
- the introduction of **new obligations** for *online marketplace providers*, including the obligation to designate a single point of contact for communication with the competent authorities;
- the modification of the **retention time of technical documentation on product safety** which today is **10 years**;
- the way in which **the personal data** of consumers making complaints are **stored**, which should be limited to the data needed to investigate the complaint and in any case may not exceed **five years**;
- **up-to-date alert system** (so-called *Safety Gate*) to which recipients of the Regulation must subscribe, which includes a portal to inform consumers about dangerous products, as well as international communication mechanisms between local authorities and the EU Commission;
- the obligation on the economic operator **to grant consumers a choice of at least two remedies between repair, replacement or reimbursement**, without prejudice in any event to the right to damage compensation.



Artificial Intelligence and Cybersecurity

The most innovative aspect of the Regulation must certainly be found in the provisions concerning the safety of products incorporating AI systems, the risks of which had already been highlighted in 2020 by the European Commission in its '*Report on safety and liability implications of AI, the Internet of things and robotics*'.

On this subject, the Regulation has provided for the need to carry out an assessment of health risks, especially with reference to the most vulnerable consumers, as well as risks concerning the product's evolutionary and learning functions.

It should be clarified that the GPSR does not apply to AI software but **to products incorporating predictive or generative artificial intelligence systems**: these include, by way of example, *fitness trackers* that analyse data such as sleep, physical activity performed, heart rate, as well as household appliances, e.g. fridges that can provide recipe suggestions based on the ingredients inside.

It is with reference to technologically advanced products, including those incorporating AI systems that the Regulation introduces *cybersecurity* as a benchmark for assessing their security: in fact, some products, due to their characteristics, could be the target of dangerous hacker attacks - think, for instance, of smartwatches for children which, in the absence of specific cybersecurity measures, could allow third parties to locate the wearer.

Sanctions

There is no uniform system of sanctions for violations of European law: the Regulation leaves it to the individual Member States to provide for proportionate and deterrent sanctions, which will soon be enacted at national level.



Conclusions and Suggestions

The provisions and novelties introduced by the Regulation will have to be further implemented: we refer both to the sanctioning discipline, left to the determination of the individual Member States, and to the European Union Guidelines, aimed at clarifying certain points of controversial interpretation. In particular, the latter will be designed to: (i) address the specific needs of SMEs and (ii) clarify the scope of application of the Regulation with reference to its complementarity with other rules, particularly in relation to sectors or products already governed by previous regulatory acts.

In order to adapt to the new developments in product safety, it is advisable for economic operators to:

- **Assess the compliance of internal processes** adopted to date and carry out a risk analysis in light of recently introduced parameters, considering the new **timing for archiving** technical documentation;
- **Introduce or implement a complaints management system**, facilitating communication channels for consumers;
- **Review, and possibly amend, current contracts with supply chain operators**, with particular reference to the remedies that must be guaranteed in the event of complaints;
- **Introduce internal procedures for future monitoring**, also with reference to products that incorporate artificial intelligence;
- **Verify the compliance of the cybersecurity** systems currently adopted;
- **Update the Privacy Policy** with reference to the processing of personal data of consumers who make complaints.

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Chiara has extensive experience in various areas of intellectual property and commercial law, devoting herself to the resolution of judicial and extrajudicial disputes.

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Chiara is also dedicated to national and international contract law, supporting her clients in drafting agreements such as supply, distribution, agency, licensing, and research and development. She also aids companies operating in the e-commerce sector, for which she drafts a wide range of contracts.

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