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## ASSESSMENTS ON THE METHODS OF ACHIEVING THE CONSUMER'S RIGHT TO INFORMATION FROM THE PERSPECTIVE OF REGULATION (EU) 2023/988

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### **Abstract**

*The right to information is a fundamental right of the consumer for which there must be a constant concern of the authorities to update its components and the methods of realization. The diversity of issues raised by respecting and ensuring the right to information, in the context of the accelerated evolution of commerce, determined a review of the existing rules to achieve the general objective of consumer security and health, with a predilection for vulnerable categories, especially minors and people with disabilities.*

*The present study follows these changes, carrying out an analysis of the impact of the recently legislated rules, on consumers but also on economic operators.*

**Keywords:** *information, consumer, safe product, safety warning, risk of injury.*

### **INTRODUCTION**

Consumer rights, like human rights for democratic political societies, represent for business law, fundamental values for which the states of the world and international bodies undertake firm measures to ensure their respect.

The right to information is among the main rights of consumers, and it, as a complex right, consists of a comprehensive, clear, precise presentation, made by economic operators (manufacturers, importers, distributors, suppliers, providers) regarding the properties/characteristics of the products and services, which are the basis of the consumer's choice from a multitude of offers.

At the same time, the existence of this right, leads to achievement of a an education of the consumer who is more and more demanding and careful in his choices, giving the possibility of the complete and safe use/utilization of goods and services (Niță, 2023, pp .43-44).

The increase in the level of the consumer's education, who is more and more connected to the new technological realities, causes his choices to be more demanding, to much higher standards. Basically, increasing the quality of the consumer has a direct effect on increasing the quality of the product. Competitors can no longer manipulate the consumer through various marketing strategies that used to be effective. Now they appeal to an informed, educated public that knows its rights very well and reacts knowingly when it is harmed.

The diversity of offers, the way of presentation, especially in the online environment, expose the consumer more and more (Dumitru, 2021, pp-63-65; Vâlcu, 2023, pp. 90-98).

Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023<sup>1</sup> aims to contribute to the harmonization of European Union legislation and the achievement of the objective provided for in art. 169 of the Treaty on the Functioning of the European Union (TFEU), which aims to ensure the health and safety of consumers<sup>2</sup> (for a summary of the legislative evolution J. Ruohonen, 2022, 351-152).

The solution chosen to regulate, through the regulation, is justified by the desire to have a European normative act that has clear and detailed rules, with direct application, eliminating the risk of different transposition of a directive at the level of the member states, existing at this moment, in certain cases, transposition divergences.

This regulation on general product safety applies to products supplied to the market, if with regard to the safety of the products concerned, there are no specific provisions or if there is the intervention of its rules is necessary to complete the gaps found in the provisions of the Union's sectoral harmonization legislation. Thus, it applies to new, used, repaired or refurbished products, under the condition shown above.

This regulatory framework appears as a necessity in view of the evolution of the online market, the development of new technologies and at the same time the approach to the recall of unsafe products, the reporting of unsafe products and

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<sup>1</sup> Regulation (EU) 2023/988 on general product safety, amending Regulation (EU) no. 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and of the Council and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC

<sup>2</sup> Regulation (EU) 2023/988 entered into force on June 13, 2023 and will apply from December 13, 2024, an 18-month transition period being necessary to organize the application of its provisions, especially regarding the two "Safety" portals Gate" and "Safety Business Gateway";

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a better collaboration regarding the exchange of information between supervisory authorities had to be changed .

At the same time, the regulation updates a number of concepts used in the field of consumer protection, providing clarity and a better understanding of the legislation, implicitly in terms of consumer information.

By product, we understand according to art. 3 of the regulation "*any article, whether or not it is interconnected with other articles, provided or made available, for a fee or free of charge, including in the context of the provision of a service, which is intended for consumers or which is susceptible, under conditions that may be provided reasonably, to be used by consumers even if it is not intended for them*". In addition, the provisions of the regulation make substantial clarifications regarding the product safety assessment, including for products that imitate food, children being the most exposed.

In the following, we will focus on the presentation of the elements regarding consumer information that fall under the responsibility of all parties involved in putting a product on the market, but also the tools specially created to facilitate the information of any interested person, including here also the more exposed people, with vulnerabilities and we mean children, the elderly and people with disabilities.

### **I. THE OBLIGATION TO INFORM THE PARTIES INVOLVED IN THE COMMERCE OF A PRODUCT**

#### ***1.1 Producers' obligations to inform***

Producers are the first economic operators involved in the circuit of goods on the market, assuming the obligation to provide consumers with information on the characteristics of the product but also data certifying the safety of the product, following as during the circuit of the goods, whether we refer to the importer, distributor, supplier, those should complete the information with their specific elements. The content of the information is transmitted by labeling, by handing over the product accompanied by the technical book, instructions for use and other such documents, with visible text, in an unequivocal, easy-to-read form, by displaying prices and tariffs and by demonstrations of use. As we also find in our legislation<sup>3</sup>, art 6 and 9 of Regulation (EU) 2023/988, reinforce this, emphasizing the protection of vulnerable people.

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<sup>3</sup> According to art. 19 of the O.G. no. 21/1992" Informing consumers about the products and services offered is carried out, obligatorily, through their identification and characterization elements, which are registered visibly, legibly, easily understood, in a form that does not allow deletion and not to be inscribed in obscure places, not to be interrupted by drawings or images, as the case may be, on the product, label, sales packaging or in the technical book, contract, instructions for use or others similar, accompanying the product or service, depending of its nature".

As for the technical documentation, it is essentially a certification of the safety of the product based on a general presentation of it and its essential characteristics. Depending on the situation, if there is the possibility of a risk occurring, the documentation will refer, as appropriate, to: (1) the likely risk, the measures taken to eliminate or limit it and the results of the tests performed; (2) the list of all national and international documents complied with (specifying whether partially or fully) to ensure the safety of the product.

The technical documentation is periodically updated and kept so that it can be made available to the authorities, for a period of 10 years from the moment the product is introduced to the market.

As far as labeling is concerned, the differentiation between products is made by mentions of type, series, batch or other such elements. Other information concerns the identification of producers: name, name/registered trademark, postal address, email address. This information will be written on the product, on the packaging or on a separate document, as the case may be.

All information, instructions provided will be communicated in principle, in a language established by the legislation of each state, so that it is easily understood. If there are no such instructions and the product can be used safely and as intended by the manufacturer, the requirement does not apply.

If, after placing a product on the market, the manufacturer considers that it has a degree of danger, he has the obligation to inform, on the one hand, consumers and, on the other hand, the authorities of the Member State where the product is on the market, through the "Safety Business Gateway" portal. The information does not exclude the adoption of urgent measures regarding the safety of the product, these measures being mandatory and may even consist in the withdrawal or recall of the product as the case may be (*Marin Lopez, 2023, 87-104*).

According to the regulation (art. 33) we must remember that producers must not have any reservations, reluctance to communicate information to the supervisory authorities and the commission fearing the disclosure of professional secrets, confidential information, since the provisions of the regulation protect this information, the authorities making available to the public only that information in accordance with transparency requirements. The regulation under review envisages for the general public, in particular, information on the identification of products, the nature of the risk and the measures taken.

The responsibility for informing the consumer rests mainly with the manufacturers, together with the national market surveillance authorities and the commission which must ensure that the information has been passed on to the consumers. In this sense, producers can use, among others, several means: telephone, email, a section within their website. They must ensure that these information levers are also accessible to people with disabilities.

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The natural or legal person who introduces a product to the market under the name or brand of the manufacturer is assimilated to the manufacturer, returning to him the specific obligations. Also, the natural or legal person who substantially modifies the product is assimilated to the manufacturer, taking over the manufacturer's obligations regarding "the part of the product affected by the modification or for the entire product if the substantial modification has an impact on the safety of the product" (art. 13 paragraph 2).

### ***1.2 Specific obligations of representatives authorized to inform***

The authorized representative is that person specially empowered by prodecer through a written mandate to fulfill the obligations of the mandate, among which the following tasks must be found:

- to provide at the request of a supervisory authority the information and documentation that certifies the safety of the product, drawn up in an official language<sup>4</sup>;
- to inform the manufacturer if he has indications that a product is dangerous;
- to notify on the "Safety Business Gateway" portal, any steps taken to reduce the risks of a product for which it has competence according to the mandate, so that the national authorities with powers in this regard take note, if there is no such information;
- to cooperate with the national supervisory authorities to eliminate any risk regarding the products referred to in the mandate.

### ***1.3 Obligations of importers and distributors to inform***

The importer will notify an alert on the "Safety Business Gateway" portal if they are aware that a product has a potential risk and immediately notify the manufacturer. Moreover, regardless of the situation, they have specific obligations regarding information. Thus, they will mention on the product, on the packaging or in a document that accompanies it, their name, their registered trade name or their registered trademark, their postal and e-mail address and if they have designated a single point of contact, his postal or e-mail address.

At the same time, they will ensure that the imported products have clear safety instructions and information, in the language provided by the legislation of the state where the product is placed on the market, if such instructions and information are necessary. In addition, they will ensure that they have a copy of the technical documentation, for a period of 10 years<sup>5</sup>, in case the supervisory authorities request this document.

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<sup>4</sup> The text of art 10 paragraph 2, point a provides that the chosen official language must be understood by the respective authority.

<sup>5</sup> The term begins to run from the moment the respective product is placed on the market

Also, importers will have a cooperative attitude with the authorities and the manufacturer, aiming at the safety of the product, and if it has information regarding a danger for a product that it has introduced on the market, it informs the manufacturers, consumers and supervisory authorities about the risk, the corrective measures and the quantity of the products concerned in each Member State, using the "Safety Business Gateway" portal.

If a complaint is made, the importer shall inform the manufacturer, distributors and logistics service providers, online marketplace providers, as applicable, of the status of the investigation and its outcome as soon as possible.

The distributor will also inform the importer, on the "Safety Business Gateway" portal, of any risk regarding a product that is in circulation on the market through it, will inform the manufacturer and the importer and will take all necessary remedial measures.

#### ***1.4 The obligation to inform, what is incumbent on economic operators in the case of distance sales***

Regulation (EU) 2023/988 stipulates the obligation to comply with certain minimum information requirements for economic operators who offer products on the market online or through other means of distance selling, consisting of: manufacturer identification elements and contact data<sup>6</sup>, and if it is from a state outside the Union, the economic operator in the Union, declared responsible; elements leading to the identification of the product, including a picture of it; any other information, including product safety warning, posted in a visible place: on the product, packaging or in an attached document.

It is to be appreciated that this regulation pays special attention to the qualification of the notion of economic operator, defining this concept in a comprehensive manner including several categories: "the manufacturer, the authorized representative, the importer, the distributor, the logistics service provider or any other natural person or legal entity that is the subject of the obligations related to the manufacture of the products or making them available on the market"<sup>7</sup>(art. 3 point 13).

#### ***1.5 The obligation to inform online market providers***

The providers of online markets have the obligation to designate a single point of contact for the purpose of providing information on product safety, a single point that will be communicated both to the authorities and to consumers through the "Safety Gate" portal.

Regulation (EU) 2023/988, leaves to the member states the competence to regulate the content of offers of dangerous products, and if they are not compliant, based on an order of the supervisory authorities to order "the removal of that content from their online interface, block access to it or display an explicit

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<sup>6</sup> Art 19 point of "the name, registered trade name or registered trade mark of the manufacturer, as well as the postal and e-mail address at which he can be contacted";

<sup>7</sup> [Europe publishes new Regulation on General Products Safety \(sgs.com\)](https://www.sgs.com)

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warning". The providers of online markets will inform the competent authorities in electronic format, on the portal, about the fulfillment of the requirements of the order.

Also, they have the obligation to constantly follow the notifications uploaded on the portal and, if necessary, to adopt measures, in order to comply with the notifications, if those dangerous products are found on their markets, informing the authorities of the measures taken.

Online marketplace providers will create an easy-to-use interface so that traders will provide the general public with all the information required by Regulation (EU) 2022/2065 and Regulation (EU) 2023/988.

## II. TOOLS USED FOR INFORMATION ASSURANCE

### *II.1 "Safety Gate" rapid alert system*

"Safety Gate" is a portal managed by the European Commission through which any interested person has free access to certain notified information. This portal is intended to be designed in a simple manner, being easy and accessible to people with disabilities.

Information can also be sent by consumers and other interested parties through a special section of the portal, regarding products that they consider likely to present a serious risk and for which Member States have not sent a notification through this system. The Commission verifies the data received, and if confirmed, it is quickly forwarded to the relevant Member States for action<sup>8</sup>.

According to article 35 of the regulation, the "safety warning" regardless of whether it is a recall or an information is sent, must target as many consumers as possible and the information provider must take all measures in this regard, in particular by using personal data, if there is an agreement to this effect and, last but not least, it must also be concerned with informing people with disabilities. Likewise, they can also use other general means of information, provided that the announcement is clear and visible, such as: the company's own website, newsletters, announcements at retail outlets, in the mass media, other communication channels.

The written safety warning in the event of a product recall must meet the following requirements<sup>9</sup>:

1. Be clearly titled as "Product Safety Recall";
2. To include an explicit description of the recalled product, including: the image, name and brand of the product; the identification numbers of the product and possibly the indication of the place where they are found on the product

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<sup>8</sup> Further details on the possibility of extending this portal see [Fourteenth Report of Session 2022–23 - European Scrutiny Committee \(parliament.uk\)](#)

<sup>9</sup>The recall notice model will be made available by the Commission depending on the evolution of scientific data and market requirements (art. 36 last paragraph):

(graphical aspect), as the case may be; data on when and where the product was sold and by whom, if possible;

3. A clear presentation of the risk associated with the product, avoiding expressions that would diminish the risk<sup>10</sup>;

4. Explicit presentation of the action that the consumer must follow, including to stop using the product;

5. Presentation of remedial measures available to the consumer;

6. Indication of a free telephone number or an online service available in one or more of the Union's official languages;

7. An encouragement to disseminate information to other people.

A presentation of the number of alerts in the period 2012-2022, based on the data provided in the Annual reports Safety Gate 2022, shows us that at this moment the warnings have a downward trend starting from 2018, compared to the period 2012-2014 when the trend was growth, peaking in 2014, followed by a sharp decline between 2015-2017<sup>11</sup>.



source: *Annual reports Safety Gate 2022*<sup>12</sup>

Regarding a statistical presentation of the risks to which consumers are subjected, referring to the years 2021-2022, we note that the chemical risks are the highest in the year 2022, increasing by 10% compared to the year 2021, followed by the risks of accident, the other risk categories being at a relatively close level.

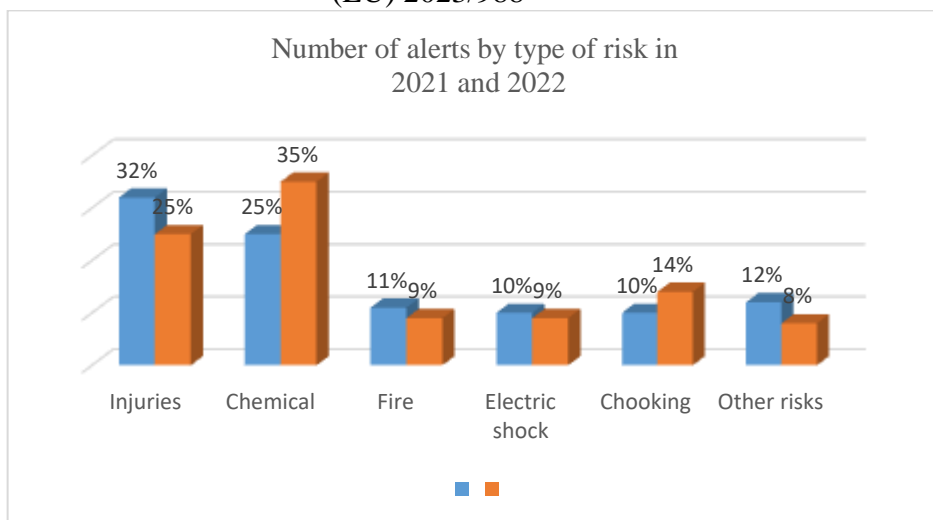
<sup>10</sup> The text of the regulation identifies several ways of presenting the hazard that would violate the recall warning requirements, such as: "voluntary", "preventive", "discretionary", "in rare situations" or "in specific situations", or indicating that no accidents were reported;

<sup>11</sup> According to Annual reports Safety Gate 2022, the lowest number of alerts, 139, was recorded in 2003, compared to the highest number of alerts so far, 2447, in 2014;

<sup>12</sup> [RAPEX 2022 report EN \(1\).pdf](#)



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source: *Annual reports Safety Gate 2022*<sup>13</sup>

## ***II.2 The "Safety Business Gateway" rapid alert system***

"Safety Business Gateway" is the second portal managed by the European Commission through which economic operators and online market providers can easily communicate the information provided for in Regulation (EU) 2023/988<sup>14</sup>, both to authorities with powers in market surveillance and to consumers, when there are indications that a certain product is dangerous or an accident has occurred caused by the use of a product (or events associated with the use of a product) and the alert must be issued quickly together with the measures taken.

## **III. EUROPEAN NETWORK OF MARKET SURVEILLANCE AUTHORITIES**

Also called the "Network for Consumer Safety", the network of competent authorities in European states aims to create the necessary framework for coordination and cooperation between the authorities and the commission to achieve the objective of improving product safety in the Union, the commission assuming the role of coordinating cooperation administrative.

We note among the responsibilities of this network and attributions aimed at information on product security, especially those that hold the control activity of the authorities, but also common activities that lead to the increase of the authority's performance, such as: joint surveillance and testing projects, exchange of best practices, of specialized knowledge, tracing the traceability of products at risk, cooperation regarding the withdrawal and recall of dangerous products.

<sup>13</sup> [RAPEX 2022 report EN \(1\).pdf](#)

<sup>14</sup> Provided in Article 9 paragraphs (8) and (9), Article 10 paragraph (2) letter (c), Article 11 paragraphs (2) and (8), Article 12 paragraph (4) and Articles 20 and 22;

### CONCLUSIONS

*The solutions adopted by Regulation (EU) 2023/988 appeared as a necessity in the conditions where product safety was regulated dispersedly in several directives, sometimes unevenly transposed into the legislation of the member states and the market is characterized by an increase in online sales and the use large scale of new technologies. Moreover, the marketing of various products coming both from the European space and from outside the European union, including products imitating food products, led to the revision of the rules on product safety, with an emphasis on the protection of vulnerable people. Informing the consumer makes him less vulnerable. He becomes an educated consumer and is a regulator of market mechanisms. It is the responsibility of the authorities to create the mechanisms, the legal instruments through which the right to information is realized and respected. The two portals "Safety Gate" and "Safety Business Gateway", in the manner in which they are now regulated, and with substantial improvements after December 2024, have the role of ensuring a high level of product safety.*

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8. *Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC;*

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[Fourteenth Report of Session 2022–23 - European Scrutiny Committee \(parliament.uk\)](#) [RAPEX 2022 report EN \(1\).pdf](#)



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