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## Editorial

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### Bridging the Consumer Safety Gap on Online Platforms

E-commerce has facilitated cross border trade, enabling EU consumers to acquire goods from regions of the world where safety standards are not necessarily in line with EU standards, resulting in an increased proportion of goods on the EU market being unsafe and causing consumers injuries. The harm to EU consumers is estimated around 19.3 billion euros per year, while the injuries and death caused by those dangerous products is estimated to cost a further 11.5 billion a year.<sup>1</sup>

The sale of unsafe products was able to thrive on a complex and outdated EU legislative framework coupled with international governance still catching up with global supply chains and new online business models (eg online platforms, drop shipping and fulfilment service providers). A steep increase in the volume of small parcels<sup>2</sup>, tax loopholes<sup>3</sup>, deficit in consumer safety enforcement and lack of oversight on the activities of intermediaries had created an almost perfect storm for unsafe products finding their way to EU consumers.

To fix this consumer safety gap, many reforms have now taken place. This includes not only the adoption of the Market Surveillance Regulation<sup>4</sup> in 2019 improving enforcement mechanisms available to enforcement agencies, but also the adoption of new VAT rules<sup>5</sup>, the DSA<sup>6</sup> and the DMA<sup>7</sup> dealing with aspects of online platform oversight, the General Product Safety Regulation (GPSR)<sup>8</sup> as the main piece of the jigsaw, and the update of the Product Liability Directive<sup>9</sup> (that came into force

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1 Enrico Letta, Much more than a market – Speed, Security, Solidarity. Empowering the Single Market to deliver a sustainable future and prosperity to all EU citizens (2024)117, <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enri-co-letta.pdf> (accessed 18 March 2025).

2 Christine Riefa, Consumer Protection and Electronic Commerce: Protection against Unsafe Products bought online (2021) 35, see [http://emmanuelmaurel.eu/wp-content/uploads/2021/04/Consumer\\_protection\\_and\\_electronic\\_commerce\\_Protection\\_against.pdf](http://emmanuelmaurel.eu/wp-content/uploads/2021/04/Consumer_protection_and_electronic_commerce_Protection_against.pdf) (accessed 18 March 2025).

3 Notably this included an exemption on import VAT for low value good coming to the EU and a discount on the rate of postage charged to non-EU based suppliers. Also see n 14.

4 Market Surveillance Regulation 2019/1020.

5 VAT rules on cross-border business-to-consumer (B2C) e-commerce (in force since 2021). see [https://vat-one-stop-shop.ec.europa.eu/index\\_en](https://vat-one-stop-shop.ec.europa.eu/index_en).

6 Digital Services Act 2022/2065.

7 Digital Markets Act 2022/1925.

8 The General Product Safety Regulation 2023/988.

9 The Product Liability Directive 2024/2853 clarifies that online platforms can be held liable for defective products if they act as one of the economic operators (which includes manufacturer, importer, authorised representative, fulfilment service provider or distributor). The fulfilment service provider can only be held responsible if there is no importer or authorised representative in the EU. As distributors, they can only be liable if they do not provide the victim with information about the EU based liable party responsible for selling the unsafe product within one month of a request. Their liability for acting as intermediaries in the sale therefore remains unchallenged unless the average consumer would believe that the information, product or service is provided by the platform itself or some acting under its authority and control (Art 6(3) DSA). There are no joint liability rules. The directive relies on consumers to bring a claim against the trader of the unsafe goods (or their representative). See the Directive: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202402853](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202402853) (accessed 18 March 2025).

in December 2024 but needs to be transposed into national law by December 2026). However, despite those changes in the regulatory landscape, much remains to be done to protect EU consumers effectively, notably for goods sold via online platforms. The remaining consumer safety gap stemming from the import of unsafe products in the EU is squarely on the European radar. The European Commission has notably announced some actions to tackle risks from low value imports sold via non-EU online retailers and marketplaces hosting non-EU traders.<sup>10</sup> The Committee on the Internal Market and Consumer Protection (IMCO) at the European Parliament also hosted a public hearing on the safety of products sold via online platforms<sup>11</sup> in February 2025 and Rapporteur Salvatore De Meo presented a draft report on the safety of e-commerce products in March 2025.<sup>12</sup>

Some of the key gaps that remain derive from a legal regime that is multi-layered and somewhat complex (1). The regime now in place is also much reliant on enforcement authorities with limited means (2). In addition, international collaborations that are paramount to the success of EU rules are moving rather slowly towards a more homogenous consumer safety landscape (3).

(1) The current legal regime has improved drastically, and many gaps have been filled. But, instead of one neat instrument, EU rules dealing with the issue are scattered across many. This creates difficulties in the application on the ground. For traders targeting EU consumers from outside the EU, there is much legislation, often in a foreign language, to grapple with.<sup>13</sup> Arguably this is a legal regime for specialists, not small traders using online platforms to sell their goods. The personalised compliance lists and the training that are offered notably through the SPEAC<sup>14</sup> project of the European Commission are a step in the right direction to boost retailers' compliance but remain insufficient. For online platforms, irrespective of where they are established (and this includes indeed marketplaces situated outside of the EU, but who target<sup>15</sup> EU consumers), they will be subject to a vast array of legislation notably horizontal legislation, and for the largest platforms, the DMA is also applicable. Tensions exist in the different iterations of those pieces of legislation with seemingly different scopes. For example, the GPSR applies to all businesses regardless of size, while the DSA in Article 29 carves out an exemption for platform enabling sales with traders that are micro or small enterprises unless they are very large online platforms. This means that consumers could expect less protection on smaller platforms than on bigger ones. In turn this creates a perverse incentive for consumers to shop on dominant platforms and further entrench dominance. By way of another example, the levels of fines that can be imposed, notably in Art 44 of the GPSR, under which the levels of sanctions are left to Member States, could lead to fragmentation in enforcement and the possibility to game the system in spite of the coordination of enforcement measures announced by the European Commission in its recent comprehensive EU toolbox for safe and sustainable e-commerce.<sup>16</sup> Another necessary bridge are the much talked about customs reforms addressed in the Commission's toolbox document<sup>17</sup> to prevent goods ordered to reach consumers and further supported by the Report from Rapporteur De Meo at IMCO.<sup>18</sup> Indeed, customs reforms are necessary in order to close important regulatory gaps including the introduction of reforms to include a new Union Customs Code, a proposal to remove the current €150 duty exemption for imports delivered direct to consumers alongside the introduction of a simplified tariff treatment for low value consignments and a proposal to extend the scope of the Import one stop shop to cover all goods regardless of value. For background, Since 2021, the VAT exemption that existed for goods valued up to €22 has been replaced by new tax rules. VAT for goods up to €150 must now be paid in the EU member state the goods will be delivered. However, Product below 150 € that are shipped

10 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_410](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_410) (accessed 18 March 2025).

11 <https://www.europarl.europa.eu/committees/en/safety-of-products-sold-via-online-platf/product-details/20250122CHE12866> (accessed 18 March 2025).

12 [https://www.europarl.europa.eu/doceo/document/IMCO-PR-768166\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/IMCO-PR-768166_EN.pdf) (accessed 18 March 2025).

13 This includes vertical and horizontal legislation. EU Harmonised legislation is a series of 70 or so vertical directives and regulations regulating particular products or sectors.

14 <https://speac-project.eu/> (accessed 18 March 2025).

15 Art 8 DMA explain obligations laid down in DMA complies with applicable law, in particular (...) legislation on consumer protection, product safety (...).

16 See, 5.2.2025, COM (2025) 37 final.

17 Ibid.

18 De Meo (n 12).

directly to consumers remain exempt from customs duties. Depending on the type of goods in question this can represent a hefty saving for the foreign seller.<sup>19</sup> Considering that an estimated 4.6 billion items under the EUR 150 exemption threshold were imported into the EU in 2024 (around 12 million small e-commerce items per day) and that this number in fact was almost twice the number recorded in 2023 (2.4 billion), and more than triple the volume of 2022 (1.4 billion)<sup>20</sup>, the urgency of those reforms comes into focus. Notably the large volume of small parcels makes customs checks almost illusory and contrast starkly to the way in which customs used to operate, checking a sample in large shipments entering the EU.

(2) Most of the volume of trade in unsafe goods takes place via online platforms from non-EU countries.<sup>21</sup> Yet, there is a lack of a generalised obligation requiring online platforms to monitor actively for unsafe product. Online platforms currently have to act within 2 days of receiving an order from an enforcement authority (Art 22(4) GPSR) but these orders are limited in time and scope.<sup>22</sup> Platforms are also obligated to remove content as soon as possible and within maximum 3 days after receiving a notice from a consumer or an entity (Art 22(8) GPSR; Art 16 DSA).<sup>23</sup> But here again they are not obliged to monitor the information they store, nor are they obliged to seek facts or circumstances indicating illegal activities (Art 8 DSA). In some circumstances, 3 or even 2 days is a long time and leads to the potential multiplication of injuries to consumers. Imposing a general obligation to monitor would very much enable blocking listings at the source and avoid a time delay in the removal of listings of unsafe products. The opinion of the European Economic and Social Committee doubted that protection would be sufficient if enforcement efforts continued to rest primarily on national enforcers rather than platforms.<sup>24</sup> The EESC also recommended that online marketplaces should have an obligation to monitor (notice and stay down) for products sold via their intermediaries, in order to remove the burden of notice-and-take-down action from national enforcers.<sup>25</sup>

Online platforms notably large online platforms have the technology necessary for monitoring and this type of action has proven effective as a voluntary measure under the GPSR.<sup>26</sup> The 2024 report of the Safety Pledge+ reveals that almost all signatories had reported that they were increasingly investing in using AI solutions to help them ensure the safety of products. Some had also taken new measures to prevent the reappearance of dangerous products.<sup>27</sup> Besides, under the DSA online platforms that have allowed traders to list on their platforms, are to make reasonable efforts to randomly check in any official freely accessible and machine-readable online databases or online interface whether the products or services offered have been identified as illegal (Art 31(3) DSA). According to the Safety pledge + report this led to the identification of nearly 81000 listings following an alert on the EU Safety Gate or another database in 2023. One can only imagine what regular rather than random checks could do to protect consumers from unsafe products.<sup>28</sup> Active monitoring is therefore possible. However, as this option was not taken by the GPSR, national

19 Closing this loophole, however, is tricky. Imposing a duty on those products would mean providing EU businesses with a more level playing field, but it could equally raise cost for consumers.

20 De Meo (n 12) para 2.

21 De Meo (n 12) para 3.

22 They can be asked to remove all identical content referring to an offer of the dangerous product, to disable access to it or to display an explicit warning, provided that the search for the content concerned is limited to the information identified in the order and does not require the provider of an online marketplace to carry out an independent assessment of that content, and that the search and the removal can be carried out in a proportionate manner by reliable automated tools. The order also has to be for a prescribed period (Art 22(5) GPSR).

23 In addition, The DSA states that on receipt of a notice by consumers or entity the platform is deemed to have received actual knowledge or awareness and thus should be removed expeditiously so long as the illegality can be detected without detailed legal examination (Art 16(3) DSA).

24 EESC Opinion INT/957, adopted at plenary 20/10/2021, plenary session 564. Outcome of votes 231 for, 0 against and 6 abstentions, para 1.5.

25 EESC Opinion INT/957, adopted at plenary 20/10/2021, plenary session 564, para 4.3.

26 Art 22(6) GPSR. does provide for online platforms to respect voluntary measures aimed at detecting, identifying, removing or disabling access to content carrying unsafe products.

27 Safety Pledge +, The 10th progress report on the implementation of the product safety pledge (2024) [https://commission.europa.eu/business-economy-euro/doing-business-eu/eu-product-safety-and-labelling/product-safety/product-safety-pledge\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/eu-product-safety-and-labelling/product-safety/product-safety-pledge_en) (accessed 18 March 2025), reporting action taken notably through the blocking of keywords and risk search engine/ system analytics to ensure removed products cannot be searchable or purchased again even if products are re-listed on platforms.

28 An increasing number of signatories monitor multiple databases including the UK, Australian Canadian and OECD Product safety websites. One signatory reported that they checked twice daily 43 websites.

authorities remain central to enforcement with a regime largely ex-post rather than ex-ante. Authorities are stretched relatively thin faced with the surge in the sale of unsafe goods. More remains to be done to enable national surveillance authorities to detect unsafe products rapidly and with increased accuracy and cooperate more effectively. On this, the European Commission's communication on a comprehensive toolbox for safe and sustainable e-commerce<sup>29</sup> which highlights plans to ramp up efforts to tackle the issue with increased cooperation and the adoption of AI tools for the detection of illegal goods and shared databases is welcomed<sup>30</sup> and encouraged by rapporteur De Meo.<sup>31</sup> The use of enforcement technology (EnfTech<sup>32</sup> for short) is a step forward and it is also to be deployed in the customs area.<sup>33</sup> Those projects ought to be fast tracked to improve consumer protection pending further reforms.

(3) No amount of increase capacity for enforcement authorities in the EU can fill the need for ensuring that consumer safety standards are raised across the world. At the time of the revision of the Directive, the European Economic and Social Committee called for attention to be given to international initiatives such as those of the OECD<sup>34</sup>, UNCTAD and the WTO with regard to international cooperation, and encouraged EU leadership in this area.<sup>35</sup> Protecting EU consumers against unsafe product requires some engagement with standard setting because the nature of electronic commerce and the globalisation of supply chains requires an international response.<sup>36</sup> Efforts in international fora to promote a high level of protection and safety, at international level remains essential as well as engaging more bilaterally with countries that are unsafe products geographical hotspots (such as China). There have been improvements in the way the EU interacts internationally with many success stories. Notably this includes now well-established collaborations with China and the USA<sup>37</sup> and continued discussions. Equally, international institutions have accelerated their work on unsafe products. Notably UNCTAD has hosted, since 2018, an informal working group on consumer safety at the request of the Intergovernmental group of experts on consumer protection law and policy.<sup>38</sup> The remit of the informal working group is to highlight best practices, to facilitate information exchange and consultations, and to continue the work from the Group, led and integrated by member States on a voluntary basis. DG JUST is an active and key participant of this working group. UNCTAD and the European Commission have also hosted four annual workshops on consumer product safety issues. The group has prepared a number of useful documents including a Recommendation on preventing cross-border distribution of known unsafe consumer products<sup>39</sup>, some Modalities for the implementation of the recommendation on preventing the cross-border distribution of known unsafe consumer products<sup>40</sup> and a technical and statistical report on Emerging trends and challenges in consumer product safety.<sup>41</sup> Currently the working group is discussing a draft resolution on product safety<sup>42</sup>, which aims at assisting member States to establish and strengthen national and

29 5.2.2025, COM (2025) 37 final.

30 This should include a new Web Crawler to be launched in 2025 to perform automated searches for potentially non-compliant products on online marketplaces, which, according to the Commission, should screen product offers and consumer reviews. On harnessing consumer information shared online, also see Fuchs, Jadhav, Jaishankar, Cauffman, Spanakis, What's wrong with this product? – Detection of product safety issues based on information consumers share online' (2023) Nineteenth International Conference on Artificial Intelligence and Law (ICAIL 2023), June 19–23, 2023, Braga, Portugal. ACM, New York, NY, USA, 5 pages. <https://doi.org/10.1145/3594536.3595145> Also includes using keywords indicating potential non-compliance, selected by market surveillance officers, and computing lists of potentially non-compliant products, see <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52025DC0037> (accessed 18 March 2025).

31 De Meo (n 12) para 36.

32 <https://www.enftech.org/report> (accessed 18 March 2025).

33 Customs authorities are also stretched with a large number of small packages finding their way through customs. The proposal to create an EU Data Hub which would include data from other authorities, would enable screening of goods based on the declaration of operators and enable to stop goods before they leave their country of origin.

34 See notably the work of the OECD in this area: <https://www.oecd.org/en/topics/sub-issues/product-safety.html> (accessed 18 March 2025).

35 EESC Opinion INT/957, adopted at plenary 20/10/2021, plenary session 564, para 3.7.

36 Riefa (ftn 3).

37 With China notably, progress is encouraging but remains embryonic compared to the scale of the problem. Indeed, according to the SPEAC project, 90 % products imported and deemed unsafe come from China.

38 <https://unctad.org/Topic/Competition-and-Consumer-Protection/Working-group-on-consumer-product-safety> (accessed 18 March 2025).

39 UNCTAD/DITC/CPLP/MISC/2021/1 – 19 Feb 2021.

40 TD/B/C.I/CPLP/28 – 06 May 2022.

41 UNCTAD/DITC/CPLP/2024/1 – 11 Feb 2025.

42 The draft does not address online platforms directly but it is addressed to businesses in general and does include online sales. For the latest on the development of this draft resolution, see: [https://unctad.org/system/files/information-document/minute-28\\_wg\\_productsafety\\_12.2.2025.pdf](https://unctad.org/system/files/information-document/minute-28_wg_productsafety_12.2.2025.pdf)

regional product safety policies, as advocated by UNCTAD's guidelines and recommendations. It also aims to provide a framework for international consultations and cooperation at the global level to ensure consumers' right to safety is protected everywhere. The informal working group on consumer protection in e-commerce<sup>43</sup> is also engaged in exchanges concerning the deployment of AI tools in consumer enforcement agencies, paving the way for consumer agencies seeking to harness technology.<sup>44</sup> EU consumer safety can only be as good as its lowest common denominator. Thus international efforts to raise awareness and standards are all to be encouraged and are thankfully facilitated by the GPSR.<sup>45</sup>

As we move toward a brave new world of increased protection for EU consumers purchasing on online platforms, vigilance should remain a guiding principle. Even with an optimal system in place, operators who wish to continue to sell products to consumer which the EU would class as unsafe will try and circumvent rules. Many will succeed.

*Christine Riefa\**

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<sup>43</sup> <https://unctad.org/Topic/Competition-and-Consumer-Protection/working-group-on-consumer-protection-in-e-commerce> (accessed 18 March 2025).

<sup>44</sup> <https://unctad.org/meeting/webinar-artificial-intelligence-deployment-consumer-protection-enforcement-authorities> (accessed 18 March 2025).

<sup>45</sup> Art 40 GPSR on international cooperation.

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