

THE “SAFETY BUSINESS GATEWAY” AND THE CONSUMER SAFETY NETWORK. ON THE OCCASION OF REGULATION N.º 2023/988*

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1. Introduction

Regulation (EU) 2023/988 of the European Parliament and of the Council of May 10, 2023 on general product safety, which modifies Regulation (EU) n.º 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 Directive 87/357/EEC of the Council -published in "DOUE" n.º 135, of May 23, 2023, pages 1 to 51-, entered into force on June 12, 2023, being applicable from December 13, 2024, incorporates regulations on what is now called "Safety Business Gateway" and establishes the functions of the Consumer Safety Net, which we will examine in this commentary.

With the aforementioned regulation, the legislative framework aimed at consumer protection is expanded, determining the guidelines to be followed in cases in which a dangerous product has been put into circulation.

2. What is the "Safety Business Gateway"?

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As stated by the Community legislator in recital 68 *in fine* of the aforementioned regulation, the term "Safety Business Gateway" refers to a web portal whose use corresponds to companies to inform the market surveillance authorities of the Member States about products hazards or accidents, configured as a mechanism that allows a rapid alert system.

However, it is not a new system, but rather "since 2003, the Safety Gate system allows the rapid exchange of information between the Member States of the European Union and the European Economic Area, the United Kingdom and the European Commission on dangerous non-food products that suppose a risk to the health and safety of consumers"¹.

It should be noted that the "Safety Business Gateway portal" is a modernization of the RAPEX² alert system -already used in Union harmonization legislation, whose name is modified in favor of greater clarity and rapprochement with consumers- "so that it allows the adoption of more efficient corrective measures throughout the Union in relation to products that present a risk beyond the territory of a single Member State" (recital 68 of Regulation n.º 2023/988).

In order for it to be effective, the European Commission is ordered to develop a technical solution that guarantees the information that companies enter into it can be made available to consumers without undue delay, since the purpose is to alert consumers. Likewise, the Commission must implement an interoperable interface which enables online market providers to connect their interfaces with the mentioned portal in an easy, fast and reliable way. Vide arts. 25 and 27 of the aforementioned regulation.

Recital 72 also contains guidelines relating to the Safety Business Gateway web portal, ordering the Commission to maintain and continue developing the aforementioned portal, which empowers economic operators to comply with their obligations to inform authorities and consumers of dangerous products that they have marketed, so that it is

¹ EUROPEAN DOCUMENTATION CENTER OF THE UNIVERSITY OF GRANADA: "Consumer protection: Safety Gate contributes to the withdrawal of dangerous products against COVID-19 from the market", *Web Page European Documentation Center of the University of Granada*, March 2021, available in: <https://cde.ugr.es/index.php/union-europea/noticias-ue/1145-proteccion-de-los-consumidores-safety-gate-contribuye-a-la-retirada-del-mercado-de-productos-contr-la-covid-19-peligrosos#:~:text=Desde%20el%20a%C3%B1o%202003%2C%20el,la%20seguridad%20de%20los%20consumidores> [last consultation 06/19/2023].

² About this you can see MANIET, F.: «The rapid exchange of information system on dangerous products (or RAPEX) implemented in the European Union», in ÁLVAREZ RUBIO, J, (Coord.); TOMILLO URBINA, J. L. (Dir.): *The legal protection of consumers as an engine of economic development: (Proceedings of the II Euro-American Congress on Legal Protection of Consumers)*, 2011, ISBN: 978-84-470-3700-1 (pp. 111-138) and GONZÁLEZ VAQUÉ, L.: «Control and surveillance of products sold over the Internet», *Revista Aranzadi Unión Europea* n.º 6, 2018, ISSN: 1579-0452.

possible “a rapid and efficient exchange of information between economic operators and national authorities, and facilitate economic operators to provide information to consumers”.

The above guidelines are specified in art. 9.9 of Regulation n.º 2023/988 in the following terms:

“The Commission will ensure that information intended to alert consumers can be made available by manufacturers via the Safety Business Gateway and is made available to consumers on the Safety Gate portal without undue delay”.

Regarding the use of the Safety Business Gateway portal, as we can see in art. 9.8, letter c), of the aforementioned regulation, constitutes an obligation of the manufacturer when it considers or has reasons to estimate, according to the information available, that a product placed on the market is a dangerous product, immediately inform the market surveillance authorities of the Member States where the product has been marketed, to comply with such taxation, will use the Safety Business Gateway portal.

The obligation to inform the competent national authorities may be carried out by an **authorized representative** (who has a written mandate issued by the manufacturer). In addition, he may carry out the task of informing the aforementioned authorities of the measures adopted to eliminate the risks of the products (while his mandate is in force), making the notification through the Safety Business Gateway portal, either because the manufacturer does not provided such information or following the manufacturer's instructions.

Importers are also obliged to ensure the information to the market surveillance authorities when they consider or have reason to think, according to the information in their possession, that a product is dangerous, through the aforementioned portal, *ex art. 11, par. 2* of Regulation n.º 2023/988, as well as to inform the market surveillance authorities of the Member States where the product has been marketed through the aforementioned portal, by virtue of the provisions of art. 11.8, letter d), of the aforesaid regulation.

Likewise, **distributors** who appreciate or have reason to believe, according to the information they have, that any of the products they have marketed is a dangerous product or does not comply with the provisions of art. 9, par. 5,6,7, and in art. 11, paragraph 3 and 4, they must ensure that the market surveillance authorities of the Member States where their marketing takes place are informed of this without delay through the Safety Business Gateway, in accordance with art. 12.4, letter c), of Regulation n.º 2023/988.

According to what is stipulated in art. 20 of the cited regulation, the manufacturer will have to guarantee that accidents caused by a product placed on the market or marketed are notified through the “Safety Business Gateway” to the competent authorities of the Member State in which the accident occurred without delay undue from the moment you become aware of the accident. The notification will include the model and product identification number, as well as the circumstances of the accident, if known. The manufacturer will communicate to the competent authorities, upon request, any other relevant information. Although, this will only be possible when the manufacturer is aware of the event (which will happen, for example, when responsibilities for the accident are demanded)³.

The following is a list of incidents related to the use of a product that must be reported to the competent authorities, stating the following cases: those that cause the death of a person or serious adverse effects on their health and safety, whether permanent or temporary, including injuries, other bodily harm, diseases and chronic health effects (art. 20.2 of Regulation n.º 2023/988).

Pursuant to the provisions of art. 22, par. 12, letters d) and e), of Regulation n.º. 2023/988, online market providers are also obliged to:

- i. Inform through the cited portal to the surveillance authorities about the dangerous products that they have offered in their interfaces if they had effective knowledge, having to provide the adequate information that they have about the risk that it implies for the health and safety of consumers, what quantity of products continue to circulate on the market, including a breakdown by Member State, if such information is available, as well as any corrective measures that have been taken, if known;
- ii. Cooperate in relation to accidents that are notified to them, having the obligation to notify without undue delay through the Safety Business Gateway portal any accident that they have been informed of and that causes a serious risk or real damage to the health or safety of consumers, that was caused by any of the products that they marketed in their online market, and informing the manufacturer of this.

³ The Community legislator tries to solve this problem in the third section of article 20, ordering importers and distributors who become aware of an accident caused by a product that they have placed on the market or sold, to inform the manufacturer without undue delay so that that the latter can make the indicated notification or instruct them to do so.



To illustrate the statement, it is recommended to go to the website <https://webgate.ec.europa.eu/gpsd/screen/public/home> where it is specified that “Business Gateway facilitates the notification of dangerous products to the authorities of the Member States”⁴ and includes a visual map that shows the different steps of the “Product Safety Business Alert Gateway” process. Regarding its use, the following standards are mentioned:

- i. “The submission of notifications through this portal is reserved to the producers/distributors of the notified product, or their authorized representative, in compliance with their obligations under Article 5.3 of the General Product Safety Directive”⁵.
- ii. Submission of notifications by third parties is prohibited. Only an excerpt of the alerts (submitted by the named subjects, who are entitled to issue notices on the "Safety Business Gateway portal") will be published to inform the public about dangerous products; although the “Safety Gate” Rapid Alert System also consists of a web portal to inform the public and allow them to submit claims, called the “Safety Gate portal”, as stated in recital 68 of the aforementioned regulation.

3. The Consumer Safety Net

Regulation n.º 2023/988 specifies what the “Consumer Safety Net” consists of. Thus, in art. 30.1 of the aforementioned regulation states that with the creation of this European network of authorities of the Member States competent in matters of product safety, it is intended that it serve “as a platform for structured coordination and cooperation between the authorities of the Member States and the Commission, in order to promote product safety in the Union”.

As indicated in recital 76 of Regulation n.º 2023/988, exchange of information, the organization of joint market surveillance activities, as well as the exchange of expertise and best practices. In the same recital it is decreed that “the Consumer Safety Network must be duly represented and participate in the coordination and cooperation activities of the Union Network on Product Conformity contemplated in Regulation (EU) 2019/1020 always that the coordination of the activities included in the scope of application of both Regulations is necessary to guarantee their effectiveness”.

⁴ EUROPEAN COMMISSION: "Product Safety Business Alert Gateway", *Official website of the European Commission*, available at: <https://webgate.ec.europa.eu/gpsd/screen/public/home> [last consultation 06/19/2023].

⁵ EUROPEAN COMMISSION: "Product Safety Business Alert Gateway", *Official website of the European Commission*, available at: <https://webgate.ec.europa.eu/gpsd/screen/public/home> [last consultation 06/19/2023].

Furthermore, in order to preserve the coherence of the legal framework and ensure effective cooperation, the Consumer Safety Network is associated with the Union Network on Product Conformity.

Among its functions, by way of example, it must issue its opinion on certain products or categories or groups of products that could present a serious risk to the health and safety of consumers, in response to accidents registered on the Safety Business Gateway portal, Safety Gate statistics and other relevant indicators or evidence (art. 18.1 Regulation n.º 2023/988); they will be informed of the evaluation of the efficiency of the implementing measures adopted by the Member States (art. 28.1 Regulation n.º 2023/988) and of other periodic reports (art. 29.5 Regulation n.º 2023/988).

In article 30, paragraph 3 of Regulation n.º 2023/988 specifically details the functions of the Consumer Safety Network, which we transcribe below:

- “a) facilitate the regular exchange of information on risk assessments, dangerous products, test methods and results, technical standards, data collection methodologies, interoperability of information and communication systems, recent scientific advances and use of new technologies, as well as other relevant aspects for control activities;
- b) organize the preparation and implementation of joint monitoring and testing projects, also within the framework of electronic commerce;
- c) promote the exchange of know-how and best practices, as well as collaboration in training activities;
- d) improve collaboration across the Union on the location, recall and recovery of dangerous products;
- e) facilitate reinforced and structured cooperation between Member States in terms of guaranteeing compliance with product safety regulations and, in particular, to facilitate the activities referred to in article 32, and
- f) Facilitate the application of this Regulation”.

The names 4 to 6 of article 30 of Regulation n.º 2023 also contain rules on the performance of the Consumer Safety Network, which, in essence, are the following:



- i. The aforesaid body must coordinate its action with the other activities of the Union that are related to market surveillance and consumer safety. In addition, where appropriate, it will have to cooperate and exchange information with other networks, groups and bodies of the Union.
- ii. The Consumer Safety Network will have to carry out the adoption of its work program, where, among other issues, it establishes the priorities in terms of product safety and the risks covered by Regulation n.º 2023/988 in the Union.
- iii. Meetings must be held periodically if necessary, at the duly justified request of the Commission or a Member State.
- iv. The Network may invite experts and other third-party persons or entities - including consumer organizations- to its meetings.
- v. The cited network will have the proper representation and will participate periodically in the activities of the Union Network on Product Conformity, contributing to its activities in relation to product safety to guarantee adequate coordination of the surveillance activities of the product. market in harmonized and non-harmonized areas.

4. Conclusions

- i. The intention of the European legislator to have a unified regulation that protects the consumer in terms of dangerous products, modernizing the RAPEX system and establishing a series of obligations for economic operators, who will have to communicate risks to health or safety, so that consumers can know their potential risks as soon as possible, regardless of the country in which they were marketed, and withdraw unsafe products from the market, thanks to the immediacy and interoperability of the Internet, it is good, since, at least on paper, reinforces consumer rights without the need for transposition into national legal systems.
- ii. However, relying specifically on the information provided by manufacturers, distributors, importers and providers of online markets, “when they have it”, makes it difficult to achieve their objective, especially when fines or other coercive measures are not established to guarantee the observance of the obligations contemplated in the regulation by distributors and other agents.



- iii. Regarding the Consumer Safety Network, it will be necessary to know if it will have a significant influence on decision-making or if, despite the need to request their opinion in advance, it will not be binding.