

## Product Risk Radar

### Digital Services Act (from a product safety and liability perspective)

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The aim of the Digital Services Act (EU Regulation 2022 / 2065) ("**DSA**") is to facilitate innovation and competition to ensure the development of innovative cross-border digital services, while at the same time maintaining a safe online environment by seeking to balance the responsibilities of users, platforms, and public authorities.

The DSA (an EU Regulation) became fully applicable across EU Member States from 17 February 2024.

In this note, we have included some limited comments on the DSA in as far as it is relevant to product safety and product liability (see also our articles on the EU General Product Safety Regulation (the "**GPSR**") [here](#), which applies from 13 December 2024, and the new EU Product Liability Directive which will apply from late 2026 [here](#)).

#### Product safety

- Across the EU (and also the UK), concerns have grown about the safety of products sold via online marketplaces. There is increased regulatory focus on the safety of products sold via online marketplaces, with an overall aim to try to improve the protection of consumers who purchase products online.
- This is reflected in the terms of the DSA and also in the GPSR (see our comments on the GPSR [here](#)).
- The DSA requires online platforms which allow consumers to conclude distance contracts with traders to, for example:
  - obtain certain information about the identity of the traders before they can use the platform (including name and contact details, a copy of an ID document, payment account details and a self certification by the trader committing to only offering products or services that comply with EU law) and make best efforts to assess whether that information is reliable and complete;
  - take steps if the online platform obtains sufficient indications or has reason to believe that the information referred to above is inaccurate, incomplete or not up to date (e.g. give the trader an opportunity to remedy the situation and if this is not done, suspend the provisions of services to the trader);

- make some of the information listed above available to recipients of online platform service (e.g. including, the name and contact details of the trader and the self-certification);
- design and organise their online platform to allow traders to provide certain information, including (where applicable) information concerning the labelling and marking of a product in accordance with EU product safety and product compliance rules;
- to make reasonable efforts to randomly check in any official, freely accessible and machine-readable online database or online interface whether the products or services offered have been identified as illegal;
- to inform consumers it has contact details for of the fact that a product is illegal, the identity of the trader and any means of redress where the provider of the online platform becomes aware that an illegal product has been offered to consumers in the EU

(this is not a complete list of obligations under the DSA).

- The GPSR builds on the requirements of the DSA and includes specific requirements for providers of online marketplaces (see Article 22).

## Product liability

The new Product Liability Directive, which will apply in EU Member States from late 2026, provides for strict product liability claims to be made against online marketplaces in some very limited circumstances if a product sold via an online marketplace is defective and causes: (i) personal injury; (ii) damage to personal property; or (iii) the destruction or corruption of data that is not used for professional purpose.

Under the new Product Liability Directive, an online marketplace (which is not otherwise an economic operator, such as a manufacturer, importer, fulfilment service provider or distributor) could face liability in similar circumstances to a distributor if it allows consumers to conclude distance contracts with traders but leads consumers to believe the product is provided by the marketplace itself or by a trader acting under its authority or control. If so, the online marketplace would only be liable if it fails to identify a manufacturer, importer or fulfilment service provider established in the EU or its own distributor within one month of receiving a request from the claimant.

If an online marketplace is also a manufacturer, importer or fulfilment service provider, then the online marketplace could face liability for strict product liability claims on that basis (so the potential for liability would be higher than in the circumstances set out above).

## What comes next?

Online marketplaces should consider their obligations and how to manage their risk taking into account the provisions of the DSA together with the GPSR and the provisions of the new Product Liability Directive which will apply from late 2026.

In this context, it is worth bearing in mind that potentially very significant fines could be imposed for breach of the DSA requirements. For example, the DSA provides that Member States shall ensure that the maximum amount of fines that may be imposed:

- (a) for a failure to comply with an obligation laid down in the DSA shall be 6% of the annual worldwide turnover of the relevant company in the preceding financial year; and
- (b) for the supply of incorrect, incomplete or misleading information, failure to reply or rectify such information or failure to submit to an inspection shall be 1% of the annual income or worldwide turnover of the provider of the intermediary services or the person concerned in the preceding financial year.

By contrast, early drafts of the GPSR had included large maximum penalties that could be applied. However, the final wording of the GPSR, which now applies, left it up to each Member State to decide on the penalties that could apply for failure to comply with the obligations in the GPSR.

It is important to note that the GPSR applies to products sold in Northern Ireland (given arrangements put in place following Brexit).

# Digital Services Act (from a products perspective)

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