

Feedback on the Inception Impact Assessment on the Review of the General Product Safety Directive

eBay welcomes the Commission's intention to review the General Product Safety Directive and address challenges in the online sales channels

The General Product Safety Directive (GPSD) was adopted in 2001 to set out a broad regulatory framework for the placement of non-food consumer products and complement sector specific legislation, in particular those applying to toys, electronic goods, cosmetics, chemicals, etc. The main purpose of the GPSD is to ensure that products placed on the EU market are safe and requires that appropriate steps are taken where there are risks to consumers. The GPSD also established the EU Rapid Alert System (Safety Gate), a platform for communication between EU member states and the European Commission on dangerous products.

eBay agrees with the European Commission that the GPSD should be reviewed in order to address the problems rightly identified, in particular insufficient recall effectiveness and inefficient market surveillance rules. We therefore appreciate the opportunity to provide feedback to the European Commission on the revision of the GPSD.

1. Introduction: eBay and product safety

Founded in 1995, eBay is one of the first online marketplaces. Initially built on peer-to-peer transactions focused on auctions, eBay has grown from a predominantly C2C auction-based marketplace to a B2C fixed-price platform. Today, more than 90% of transactions are B2C. eBay is a third-party marketplace, a mere hosting service provider, that enables sellers and buyers from all over the world to connect and transact. Through eBay, businesses are allowed to individually adopt their own storefront and fully control their product pricing, while remaining responsible for the delivery of their products. As such, our marketplace does not hold, ship or deliver any of our seller's goods. By enabling millions of sellers around the world to build their businesses using our innovation and digital technologies, we are committed to providing a safe, secure and convenient location for e-commerce, economic activity and the empowerment of micro, small and medium sized businesses across the globe.

At eBay, we take product safety very seriously. To ensure the safety and well-being of our members, eBay does not allow items that are banned, recalled, or could in any way be dangerous to a buyer, to be listed. We have therefore established strict [product safety policies](#), under which the following items are not allowed:

- Items that pose a health or safety hazard as specified by any government agency
- Products recalled by a manufacturer or another government agency if the sale of the product is prohibited by law or regulation. Current information can be found on the [Safety Gate rapid alert system website](#) and the [OECD Global Recalls portal](#)
- Products without a CE mark where it is legally required
- Products that do not comply with product safety laws. This includes but is not limited to the Machinery Directive (2006/42/EC), the Electrical Equipment (safety) Regulations 2016, the Plugs and Sockets etc. (Safety) Regulations 1994 and the Cosmetic Directive 1223/2009, etc.



Activity that doesn't follow eBay policy can result in a range of actions including for example: administratively ending or cancelling listings, hiding or demoting all listings from search results, lowering seller rating, buying or selling restrictions, and account suspension.

In 2018, eBay committed to additional voluntary measures aimed at ensuring the safety of products sold through eBay by signing the **EU Product Safety Pledge**. The initiative sets out specific voluntary actions that go beyond what is already established by EU legislation. The objective of the pledge is to improve the detection of unsafe products marketed in the EU before they are sold to consumers or as soon thereafter as possible, and to improve consumer protection. In line with the pledge, eBay has an established notice-and-take-down procedure in place which can lead to removal of the listing, as well as efforts to educate and inform sellers on infringements. In addition, where applicable, we:

- impose appropriate sanctions against sellers (depending on violation history)
- request the seller to contact buyers and recall the product and/or warn sellers
- implement block filter rules
- review and improve existing block filter rules
- send information to the reporting authority about actions taken

To monitor and moderate listings that are found to be breaching product safety rules we take the following actions:

- We proactively monitor listings for unsafe products and products that may be illegal by using a rules-based filtering system combined with manual review where necessary
- We proactively monitor databases for products that are being recalled (i.e. Safety Gate or Member States' databases as well as the [Product Safety Australia website](#))
- We take down listings whenever we receive reports from our users, government agencies and other third-party experts. We have set up a single point of contact for authorities that do not have an existing working relationship with eBay (We react to government notifications within two working days. eBay always informs authorities about the removal of the reported listings and where applicable about additional actions taken.
- In addition to removing items, we also put in place filtering mechanisms aiming to prevent new listings offering the same items as previously removed listings.
- We continuously refine our processes and develop new tools to improve the safety of our site. For example, we are at nascent stages of exploring the opportunities offered by image recognition technologies. It is, however, too early to assess how effectively such technologies will be in the product safety area
- Customers may report listings by clicking on the "Report Item" link, available on each product listing.
- Product Safety Guidance: Within our permanent work on Product Safety, we have designed a Product Safety Guidance aimed to further educate our sellers who list on US, EU and Australian sites. We have drafted these documents as flash cards for ease of reading and we cooperate with authorities to include proper and relevant sources of information for our sellers to ensure their products meet legislative and safety requirements. The Product Safety Guidance:
 - i. focuses on products that have been identified by the authorities with high level of non-compliance with mandatory standards (e.g. child car safety seats, Chinese health products, carbon monoxide detector alarms, etc.) and,
 - ii. shares guidelines from government agencies so that sellers can check whether their products comply with related applicable mandatory standards. The document also refers to the products recalled by the authorities.



The overall objective of this initiative is to increase the level of compliance of sellers when listing on eBay from a product safety point of view. While the overwhelming majority of retailers selling through our marketplace are law-abiding and diligent, there are instances when such a business user fails to comply with their legal obligations. In such instances, we review the specifics of the case and impose appropriate penalties (warning, suspension, restriction).

Working with authorities across jurisdictions plays a critical role in product safety work on eBay. Authority reports help us keep the sites safe for users/consumers and authorities benefit from access to information held by eBay – often even beyond their geographical jurisdiction. Seller education also plays a big role in keeping unsafe products off the site.

2. Issues we encounter regarding product safety

Based on our experience, we find that national regulatory structures are not sufficiently equipped to deal with the new challenges of the platform economy. For example, we believe market surveillance authorities have been historically underfunded, limiting their capacity to monitor and test the safety of products. As a result, compliance with standards and requirements is not efficiently monitored. In addition, their efficiency has further been limited by national boundaries in a world where the Internet has made trade increasingly borderless. Coordination between authorities has significant opportunity for further improvement and efforts are required to better enable intermediary service providers to identify the safety of products.

It is important to note that for a third-party online marketplace which merely enables users to interact and transact without physically possessing the product at any given point in time, we have to rely on recall databases and notices from public authorities in order to identify products to be taken down. A significant problem we encounter when we receive notifications from some market surveillance is related to the quality of notifications. To achieve successful deletion of potentially infringing content we would require the following information to be provided in a notice:

- the complainant should be clearly identified and in a legitimate position to send a notification (e.g. market surveillance authority);
- the notification should be made in writing and the complainant should provide adequate information of the specific material alleged to be infringing (e.g. link to the listing,);
- it should be sent to an email address or other secure method reserved for this purpose by the service provider;
- it should clearly specify which information or activity the complaint relates to;
- it should include details, including legal ground to demonstrate the unlawful nature of the activity or content in question. Links to the Safety Gate page for the unsafe product remains essential to educate sellers.

In order to remove products that could pose safety issue we therefore require sufficient information from market surveillance authorities, otherwise we experience delays or problems identifying impacted products. It should be noted that there are approximately 1.5 billion listings on eBay at any point in time. In conclusion, we believe that market surveillance authorities should be better equipped financially and be empowered with more efficient instruments to check products and notify non-compliant goods. In addition, enhanced cooperation should be assured between market surveillance and customs authorities.



3. Third party marketplaces should have responsibilities commensurate with their business model

A pure third-party marketplace like eBay does not hold, ship or deliver any of its sellers' goods. At no point in time is it in physical possession of the products traded via its platform. This significantly reduces the capacity to detect unsafe products. Therefore, we believe our responsibility should be limited to expeditiously removing products that are found to be deficient or dangerous whenever we are notified by public authorities or when we identify them through public recall databases.

In addition, we believe that regulatory intervention should address the entire value chain. In particular it should tackle the source: product manufacturing and compliance. We believe the Commission should look into how manufacturers demonstrate compliance and conformity with product safety rules. In addition, the Commission should focus on ways to improve reporting of products that have been found to be infringing product safety rules.

4. Interplay with other EU legislation and initiatives

It is important to note that the review of the GPSD should take into account several other initiatives aiming at regulating digital services, in particular the revision of the e-Commerce Directive and the upcoming Digital Services Act, the Market Surveillance Regulation, and EU consumer legislation, in order to ensure consistency and avoid any overlap. Therefore, the Commission should only regulate what is necessary from the perspective of product safety when it comes to online marketplaces, as the abovementioned initiatives already address or are planning to address some of the issues identified in the inception impact assessment.

As such, we believe that the GPSD should focus on enhancing the effectiveness of product recalls, improving resources granted for the enforcement of product safety rules, as well as ensuring alignment with harmonized market surveillance rules while keeping different legal instruments and simplifying standardization procedures.