

The Regime of Product Safety and Conformity is Being Renewed

Following the enactment of the Law no. 7223, the ministries headed by the Ministry of Trade, as the regulative bodies in charge of certain sets of products, began to issue secondary regulations concerning product safety and conformity. As the respective regulations are originated from different administrative bodies, the new market surveillance regime composed of all these regulations are fragmented and thus may not always be coherent.

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The first step towards harmonisation with EU Directives was the enactment of the Law no 7223 on Product Safety and Technical Regulations (“Law no. 7223”) that entered into force as of 12.03.2021 and replaced the Law no 4703 on Preparation and Application of Technical Legislation (“Law no 4703”). The Law no 4703 was initially aligned to certain extent to EU regulations, too; however, the legislator had failed to update it in parallel with the developments in EU law. The Law no 7223, whilst adapting to EU’s new horizontal legislation, introduced long awaited liability regime concerning the damage to third parties and their properties caused due to the products placed on the market.¹ Apart from the embodying such a new ground for product liability regime within the ambit of private law, the Law no. 7223 spares the bigger part to provisions concerning product safety subject to administrative law principles.

In this new regime, Ministry of Trade is the regulative body in charge of ensuring coordination among the other competent authorities as well as transposing the horizontal legislation of the EU, in particular those in the field of product safety. In this respect, the Ministry has issued the General Product Safety Regulation on 11.03.2021 in view of Directive 2001/95/EC whereby the reference terms such as “safe product”, “dangerous product” and “serious risk” are defined. The Presidency, in view of Regulation (EU) 2019/1020 further issued Framework Regulation on Market Surveillance and Compliance on 10.07.2021 laying down obligations of the producers, distributors and third-party conformity assessment bodies and specifies duties of the competent authorities. These framework regulations are accompanied by other newly issued regulations concerning CE marking, conformity assessment bodies and mutual recognition in the non-harmonized areas.

¹ Please see “Liability without Fault: A New Era for Product Liability” at <https://www.baysaldemir.com/files/Liability-without-Fault-Baysal-Demir.pdf>

Ministry of Industry and Technology, as the competent authority with respect to a wide set of products, ranging from household electrical appliances to packaged products on the shelves at the retail stores, has also issued its own regulation 14.07.2021 based on the Law no 7223 and aforementioned framework regulations. This regulation stands as the guideline for the manufacturers, importers and other relevant entities positioned at the supply chain of relevant products especially when it comes to volunteer corrective works including the recall actions. In this respect, the enterprises are, among other things, required to cooperate with the regulators to minimize or eliminate the risk posed by the products placed on the market.

As an aspect of this cooperation, the enterprises are encouraged to take the initiative to detect the non-conformities with the product and promptly engage in the corrective works deemed proportionate with the non-conformity in question. These corrective works are exemplified by the regulation as ceasing the supply of the product, recalling the product from the supply chain, informing the distributors about the non-conformity and warning the end-customers about the risks in question. The appropriate corrective works can vary depending on the nature of the non-conformity; however, the enterprises need to resort to volunteer recall action if other corrective actions are understood to be ineffective to eliminate the safety risk stemming from the non-conformity.

The new law and accompanying regulations aim at establishing a uniform regime for all market players to enhance product safety and conformity irrespective of the product and the regulative body in charge. However, the secondary regulations issued by the regulative bodies may not always remain within the four corners of the framework drawn by the law. The regulation of the Ministry of Industry and Technology, for instance, adopts an equivocal wording which may lead to a broad interpretation requiring the enterprises to notify the regulator bodies in case of non-conformities which does not amount to a safety risk, whereas, the law and framework regulations impose such notification duty only in cases of the safety risk. This is why the enterprises are advised to seek legal consultation upon detecting a conformity with their products placed on the market in order to establish the best practice strategy.

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