

POLICY GUIDANCE ON CONSUMER PRODUCT SAFETY PLEDGES

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Foreword

In recent years, a number of consumer product safety authorities¹ have established product safety pledges with online marketplaces as a new way to better protect consumers from the risk of purchasing unsafe products available for sale on those marketplaces. Recognising the benefits of such initiatives, in June 2021, the Working Party on Consumer Product Safety (WPCPS) released a Communiqué (OECD, 2021^[1]) calling for the development of further product safety pledges at domestic and regional levels with a common set of key commitments by online marketplaces.

This policy guidance aims to help countries implement the Communiqué's four key commitments by providing many practical examples. It also highlights strategies to ensure that pledges are successfully implemented, aiming to counter the risk that pledges may be ineffective if their commitments are too vague, overly prescriptive or too rigid for businesses to comply with, or if they are not monitored or adapted over time.

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Policy guidance on consumer product safety pledges

Introduction

Online marketplaces offer consumers a range of benefits, including greater seller and product choice, often at competitive prices. However, the availability of unsafe products offered by third-party sellers through online marketplaces continues to present serious risks to consumers globally. To address this issue, in recent years, some jurisdictions have developed product safety pledges that have been committed to by a number of online marketplaces. Pledges involve online marketplaces committing to certain actions to protect consumers which may go beyond their legal obligations in transactions between consumers and third party sellers.

Product safety pledges can assist jurisdictions in implementing the OECD Recommendation on Consumer Product Safety (OECD, 2020^[2]) adopted in July 2020, which calls on Adherents to work with businesses, including online marketplaces, in a transparent and inclusive manner, to promote and implement effective policy frameworks relating to consumer product safety. Consistency across pledges will encourage a minimum baseline of protections for consumers across countries with product safety pledges, but will also greatly assist online marketplaces, and their third-party sellers, operating across multiple jurisdictions. Accordingly, the OECD Working Party on Consumer Product Safety (WPCPS), under the OECD Committee on Consumer Policy (CCP), released in June 2021 a Communiqué (OECD, 2021^[1]) aimed to encourage the development of product safety pledges at domestic and regional levels, and to identify the key commitments for inclusion in any such pledges.

The policy guidance draws on learnings from jurisdictions that have already implemented product safety pledges, as well as a draft summary report on recent questionnaires to governments and selected online marketplace businesses on the role of online marketplaces in enhancing consumer protection that was jointly undertaken by the WPCPS and the CCP.²

The Communiqué and policy guidance apply to sales of new and second-hand products and to business-to-consumer and consumer-to-consumer sales via online marketplaces. Whilst encouraging the establishment of more product safety pledges, the policy guidance may also inform policy frameworks relating to online marketplaces and product safety more generally.

Guidance on key online marketplace commitments

In developing the Communiqué, the following four commitments were identified as the core commitments necessary for a successful product safety pledge. However, countries should not feel limited to these commitments alone and consultation with relevant online marketplaces may identify further commitments that could enhance product safety.

1. Detecting and preventing the sale of unsafe products

The Communiqué's first key commitment for online marketplaces is to detect and prevent the sale of unsafe products:

“by setting up processes and mechanisms to identify banned, non-compliant or recalled products on the online marketplace. These processes and mechanisms include:

- i. *regularly consulting government product safety websites and other relevant sources*
- ii. *establishing systems to prevent re-listing of such products following removal from the online marketplace, and*
- iii. *re-assessing and improving such processes and mechanisms over time (e.g. considering possible enhancements through the use of new technologies)."*

Online marketplaces have a key role in detecting and preventing the sale of unsafe products on their platforms. They have the ability to screen listings before products are offered to consumers to check that none are recalled or banned by using information available from consumer product safety authorities. They could also be well placed to detect emerging safety risks; customer feedback provided through ratings and reviews systems on their platforms for multiple sellers may be the first indication that there is a broader safety issue with a certain product.

In order to better detect and prevent the sale of unsafe products, marketplaces could consider committing to:

- undertaking organised product safety surveillance and monitoring of their marketplaces on a regular basis, and in relation to specific issues reported to them (e.g. through reports from different consumer protection authorities, or consumer complaints);
- using automated digital tools, including artificial intelligence enabled image detection and keyword filters, to assist with surveillance activities on existing listings, but also to block or flag potentially unsafe new listings for further investigation. Digital tools may also be used to analyse consumer reviews to detect safety issues. Marketplaces should consider retaining copies of original customer reviews that may reveal safety issues for listings that are no longer active. Marketplaces should also consider keeping visible original customer reviews that may reveal safety issues for current listings, noting that in many jurisdictions online marketplaces may be legally required to do so in order to comply with prohibitions on misleading and deceptive conduct;
- regularly updating any automatic tools (e.g. keyword filters, image detection) to detect new products of concern and avoid traders circumventing detection by using new descriptions or images to re-list unsafe products that have already been removed ;
- regularly checking the OECD GlobalRecalls portal³ and other relevant national and regional product recalls databases, websites or alerts/newsletters for new recalled or banned products that may be present on their platforms; and
- engaging with third-party sellers regarding consumer feedback about potentially unsafe products that are not already banned or recalled and reporting such feedback to consumer product safety authorities for investigation if widespread.

2. Co-operating with consumer product safety authorities

The Communiqué's second key commitment for online marketplaces is to co-operate with consumer product safety authorities to:

“identify the supply chain of unsafe products, including affected groups of consumers, and removing the corresponding listings. Such co-operation includes:

- i. *establishing a clear contact point for government requests and notifications*
- ii. *removing identified listings for unsafe products within a short timeframe⁴ agreed with the relevant consumer product safety authority, and*
- iii. *responding to information requests in a reasonable time should relevant information not be publicly available.”*

Authorities may lack visibility about who may have sold and who may have purchased unsafe products. As such, authorities will rely heavily on online marketplaces for information and assistance and strong co-operation between online marketplaces and consumer product safety authorities is essential. Such co-operation is particularly important to enhance the effectiveness of a product recall.

In order to strengthen their co-operation with product safety authorities, marketplaces could consider committing to:

- establishing dedicated contact points for consumer product safety authorities;
- providing a template for authorities to complete their requests and enquiries to help ensure that, where possible, all necessary information is provided by authorities at the one time so that marketplaces can identify relevant listings or third-party sellers and take action quickly;
- requesting unique product identifiers from third-party sellers prior to listing certain products considered to pose higher potential safety risks, for example products used by vulnerable consumers who may be more susceptible to injury (e.g. children or the elderly).⁵ It is important to note however that categories of products with a higher risk profile may differ from jurisdiction to jurisdiction and marketplaces should consider engaging with relevant consumer product safety authorities on what products should be considered high risk;
- requesting safety compliance information from third-party sellers prior to listing, particularly certain types of products considered at higher product safety risk, in order to minimise the risk that products do not comply with relevant product safety standards or legislation;
- ensuring that it is technically possible for third-party sellers to provide additional safety information on product listings (e.g. labels, instructions for use and warnings) if they wish to do so, and considering requiring this information;
- regularly prompting registered third-party sellers and buyers to update their contact details if they have changed so that they can be promptly contacted in the event of a product recall; and
- assisting consumer product safety authorities with market surveillance, including by allowing access for, or removing technical barriers to, data scraping on their platforms for product safety purposes.

3. Raising consumer product safety awareness amongst third-party sellers

The Communiqué’s third key commitment for online marketplaces is to raise consumer product safety awareness amongst third-party sellers by:

“implementing measures to facilitate third-party sellers’ compliance with relevant product safety laws. These measures include regularly sharing product safety

information, such as links to government product safety websites, the OECD GlobalRecalls portal and other relevant consumer product recall databases.”

Online marketplaces are well placed to educate their third-party sellers about product safety issues and their responsibilities towards consumers. Online marketplaces generally require third-party sellers to comply with certain listing policies as a condition of using their platforms and often provide education and training to assist in compliance. Third-party sellers’ understanding of their product safety responsibilities may be raised significantly if such matters are included in third-party seller policies, education and training.

In order to raise consumer product safety awareness amongst their third-party sellers, marketplaces could consider committing to:

- ensuring that third-party sellers have access to clear information about their consumer product safety responsibilities that is available to them at all times, particularly when they register as a seller on the platform;
- providing education and training to third-party sellers to assist them to comply with their consumer product safety responsibilities, including by sharing any relevant educational material developed by relevant consumer product safety authorities;
- regularly sharing links to the OECD GlobalRecalls portal and other relevant national and regional product recalls databases with third-party sellers;
- joining relevant product safety awareness campaigns run by consumer product safety authorities and relevant international organisations, including the OECD’s annual global awareness campaigns on consumer product safety;
- implementing a system to sanction third-party sellers that contravene their consumer product safety obligations, including banning sellers for repeat offences; and
- maintaining a list of banned and sanctioned third-party sellers and when authorising new sellers, checking their contact details against the list in order to minimise the risk of sanctioned third-party sellers returning to the marketplace under a new alias.

4. Empowering consumers on product safety issues

The Communiqué’s fourth key commitment for online marketplaces is to empower consumers on product safety issues by:

“providing them with a pathway to report unsafe product listings to the online marketplace and informing them about relevant recalls or corrective actions on unsafe products in co-operation with consumer product safety authorities and third-party sellers.”

In many cases, consumers may shop regularly with an online marketplace and develop a high level of trust in them. Online marketplaces may also collect data on what consumers have purchased and store their contact details, such as email and postal addresses and mobile phone numbers. As such, online marketplaces have unique opportunities to empower consumers on product safety generally, and to directly alert them in relation to specific risks.

In order to better empower consumers on product safety, online marketplaces could consider committing to:

- adding a functionality to allow consumers and other users to flag listings where products may be unsafe so that they promptly come to the marketplace's attention and can be assessed;
- in the event of a product recall, promptly directing the third-party seller to make contact with affected consumers and assisting them to do so where necessary (e.g. if consumer contact details are stored by the marketplace and not the third-party seller, or if the marketplace has current contact details and not the third-party seller);
- if the third-party seller is unresponsive to the marketplace's direction within a short time period:
 - committing to directly contacting consumers itself where possible
 - considering offering refunds to affected consumers; and
- adding a dedicated product safety page on their platform where consumers can find:
 - links to the OECD GlobalRecalls portal and other relevant national and regional product recalls portals
 - information on their rights, and information on both the marketplace's and third-party sellers' responsibilities in relation to product safety, including any differences where products are sold by private individuals and consumer protection laws may not apply. Such information may include, where available, links to resources developed by consumer product safety authorities in relevant jurisdictions.

Strategies to ensure continued effectiveness and relevance of consumer product safety pledges

A consumer product safety pledge is a promising initiative with potential to enhance consumer protection on online marketplaces. Many online marketplaces are likely to see benefits in signing a pledge as a public way of demonstrating their commitment to enhancing consumer product safety. As they attract more signatories, pledges have the potential to raise standards across all online marketplaces operating in a jurisdiction. As a pledge becomes more widely recognised by consumers, it may be seen by online marketplaces as a competitive advantage leading more marketplaces to join it.

Despite this, there are a number of implementation risks that may affect the effectiveness of a pledge in enhancing consumer product safety. These are highlighted in the ACCC's Online Product Safety Pledge Toolkit for Product Safety Regulators⁶. For example:

- **The pledge may be ineffective at enhancing consumer product safety:** As outlined above, it is important that commitments are clear and concise and able to be demonstrably complied with by online marketplaces. This may mean that pledge commitments need to be re-assessed over time as circumstances change to ensure their continued relevance. Commitments that are too vague may risk disagreements about whether marketplaces have complied or not, but overly prescriptive commitments may risk outright non-compliance if they are unnecessarily burdensome on online marketplaces. To guard against such risks, it is important that pledge commitments are regularly reviewed, in cooperation with online marketplaces, to ensure ongoing relevance. Importantly, compliance with pledges should be able to be measured by objective criteria and the consequences of non-

compliance (e.g. online marketplaces being removed from a pledge) and procedures for resolving disputes about potential non-compliance must be clearly agreed with marketplaces in advance of signing and regularly communicated.

- **The pledge may be misunderstood by consumers.** Consumers may interpret the pledges as being an endorsement of the safety of all the products offered by a marketplace and that if they shop with a certain marketplace, then they will be safe. Consumers may even be misled if pledge signatories overstate commitments. To avoid these risks, it is important that both authorities and online marketplaces carefully and consistently communicate the scope and limitations of the pledge to consumers.
- **The pledge may suffer reputational damage if a signatory is involved in breaches of consumer product safety laws:** This may even arise if an online marketplace signs the pledge, but fails to implement wider compliance measures. To avoid this risk, product safety authorities may consider conducting a comprehensive risk assessment to measure the risk of pledge non-compliance as well as potential signatories' broader compliance culture before progressing pledge discussions.
- **There may be delays in implementing the pledge:** Delays may arise in the negotiation of pledges with online marketplaces for a variety of reasons, including insufficient authority resources and inability to reach mutually agreeable terms with online marketplaces. The risk of delays may be minimised by authorities developing a detailed project plan and seeking additional resources early on.⁷ It may also assist to commence pledge discussions with online marketplaces that have signed pledges in other jurisdictions, and those with which a positive working relationship has already been developed.

References

- OECD (2021), *Working Party on Consumer Product Safety Communiqué on Product Safety Pledges*, [1]
<https://www.oecd.org/digital/consumer/communique-product-safety-pledges.pdf>.
- OECD (2020), *Recommendation of the Council on Consumer Product Safety*, [2]
<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0459>.

Notes

¹ At the time of writing, the Australian Competition and Consumer Commission, the European Commission, the Korea Fair Trade Commission, and Korea's Consumer Agency had all developed their own product safety pledges with selected online marketplaces.

² A public version of the summary report on the CCP and WPCPS' joint survey on the role of online marketplaces in enhancing consumer protection is forthcoming.

³ The OECD's GlobalRecalls portal is at: <https://globalrecalls.oecd.org/#/>

⁴ Both the ACCC and EC's pledges specify a takedown period of two business days (from receiving the request).

⁵ For more information on international approaches to product safety risk assessment see: OECD Working Party on Consumer Product Safety (2016) *Report on International Consumer Product Safety Risk Assessment Practices* <https://www.oecd.org/sti/consumer/Report%20on%20International%20Consumer%20Product%20Safety%20Risk%20Assessment%20Practices.pdf> and (2016) *Product Risk Assessment Practices: Summary of discussions at Workshops and Meetings of the OECD Working Party on Consumer Product Safety* <https://www.oecd.org/sti/consumer/product-risk-assessment-practices-regulatory-agencies.pdf>.

⁶ The ACCC's Online Product Safety Pledge Toolkit for Product Safety Regulators can be found on the WPCPS O.N.E Community Site (internal site).

⁷ The ACCC's Online Marketplace Product Safety Pledge Toolkit provides detailed guidance for product safety regulators about how to develop a product safety pledge project plan based on the ACCC's own experience in developing its pledge.