Recommendation of the Council on Consumer Product Safety

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Please cite this document as:
OECD, *Recommendation of the Council on Consumer Product Safety*, OECD/LEGAL/0459

Series: OECD Legal Instruments

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Background Information

The Recommendation on Consumer Product Safety (hereafter "the Recommendation") was adopted by the OECD Council on 17 July 2020 on the proposal of the Committee on Consumer Policy (CCP). The Recommendation outlines the key elements that should be at the core of consumer product safety frameworks at domestic and international levels and promotes a consistent approach to product safety rules and terminology across jurisdictions in order to increase certainty and efficiency for all stakeholders. The Recommendation consolidates and updates six OECD legal instruments on consumer product safety ("the OECD consumer product safety acquis") adopted by the OECD Council, on the proposal of the CCP, between 1977 and 1989.

The OECD's work on product safety and rationale for developing the Recommendation

For over forty years, the OECD has been a key voice in global consumer product safety policy through the activities of the CCP and its Working Party on Consumer Product Safety (WPCPS). During this period, the CCP and WPCPS have produced research, analysis and policy guidance and coordinated international sweeps and consumer awareness campaigns in regard to a broad range of consumer product safety issues.

A key area of interest for the WPCPS in recent years has been the use of consumer behavioural insights to improve consumer responses to product recalls. In 2018, the WPCPS produced a background report on enhancing the effectiveness of product recalls globally and policy guidance is forthcoming.

Given the digital transformation taking place globally, the work of the WPCPS has had an increased focus on product safety issues relating to e-commerce and new and emerging technologies, such as the internet of things and artificial intelligence. In 2018, the WPCPS produced a background report on consumer product safety in the internet of things to inform this ongoing work.

The WPCPS also maintains the OECD's GlobalRecalls portal, an online platform that brings together information on consumer product recalls from over 47 OECD Members and non-Members, and growing.

As part of the OECD-wide standard setting review launched by the OECD Secretary-General in May 2016 to strengthen and review all OECD instruments, in 2017, the CCP and its WPCPS agreed to consolidate the OECD consumer product safety acquis. The Recommendation builds on the last four decades of the CCP and WPCPS' work. In particular, it takes into account current and emerging challenges to consumer product safety brought about by new technologies, increased cross-border trade and more complex globalised supply chains.

Scope of the Recommendation

The Recommendation calls for the establishment of robust consumer product safety regulatory and policy frameworks. Notably, it calls for frameworks that:

- Provide for a consumer right to safe products and rapid alerts when unsafe products are on the market or are the subject of a ban or a recall;
- Are informed by sound evidence and data sources, including, if possible, through the establishment of injury data collection systems, the development of systematic risk management and assessment approaches that are comparable from one country to another, information sharing activities (through the CCP), as well as awareness initiatives; and
- Pay specific attention to vulnerable consumers.

In order to remain relevant and effective, the Recommendation has a level of built-in flexibility, catering to the dynamic environment of product safety regulation. Notably it applies to consumer purchases occurring in-store and via e-commerce and all actors in the supply chain, including those actors involved in product design, manufacture, certification, distribution and maintenance. This in-built flexibility ensures its continued relevance and applicability across a variety of contexts, including in relation to product safety issues emerging from the Covid-19 crisis.

Consistent with the WPCPS' mandate, the Recommendation applies to consumer products with the exception of food, drugs and medical devices due to their specific characteristics.

The development of the Recommendation has been inclusive and participatory in nature, incorporating regular input from the CCP and WPCPS delegates as well as other interested OECD bodies, and stakeholders from the business community and civil society.

Follow-up, monitoring of implementation and dissemination tools

The implementation of the Recommendation will be supported by the development of a companion document to assist with interpretation of its key provisions and encourage consistency in its application amongst Adherents. In relation to product recalls specifically, the implementation of the Recommendation will also be supported by policy guidance on recall effectiveness.

In addition, the WPCPS will serve as a forum for exchanging information on consumer product safety policy and fostering multi-stakeholder dialogue on consumer product safety, as well as experience with the implementation of the Recommendation itself.

For further information please consult: http://www.oecd.org/internet/consumer/consumer-product-safety.htm

Contact information: sticonsumerproductsafety@oecd.org or consumer.policy@oecd.org

Implementation

Companion Document to the OECD Recommendation on Consumer Product Safety

The [Companion Document](#) aims to assist Adherents in their ongoing implementation of the Recommendation by providing additional details to clarify its main provisions, as well as practical guidance on ways to implement them. It also provides definitions for a number of key terms used in the Recommendation such as "product safety risk" and "recall". The Companion Document also includes useful background information about the Recommendation's development and references to other useful OECD resources.

Policy guidance for maximising product recall effectiveness

With the adoption of the OECD Recommendation of the Council on Consumer Product Safety in July 2020, the CCP through the WPCPS has developed and approved in October 2020 a [policy guidance](#) to support Adherents in their implementation of the product recall provisions of the Recommendation.

The policy guidance provides advice for governments and businesses about how recalls can be designed and implemented more effectively, including by incorporating consumer behavioural insights.

[Booklet of the Recommendation including the Policy guidance](#) and the Companion Document

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council concerning the Establishment of Data Collection Systems Related to Injuries Involving Consumer Products [OECD/LEGAL/0160]; the Recommendation of the Council concerning the Safety of Consumer Products [OECD/LEGAL/0183]; the Recommendation of the Council concerning Recall Procedures for Unsafe Products Sold to the Public [OECD/LEGAL/0192]; the Recommendation of the Council concerning Risk Management and Cost-Benefit Analysis in the Product Safety Field [OECD/LEGAL/0196]; the Recommendation of the Council concerning Safety Measures Taken in the Interest of Children [OECD/LEGAL/0208]; and the Decision-Recommendation of the Council on the OECD Notification System on Consumer Safety Measures [OECD/LEGAL/0254], which this Recommendation replaces;

HAVING REGARD to the Recommendation of the Council on Consumer Policy Decision Making [OECD/LEGAL/0403]; the Recommendation of the Council on Digital Security Risk Management for Economic and Social Prosperity [OECD/LEGAL/0415]; the Recommendation of the Council on Consumer Protection in E-commerce [OECD/LEGAL/0422]; the Declaration on the Digital Economy: Innovation, Growth and Social Prosperity (Cancún Declaration) [OECD/LEGAL/0426]; and the Recommendation of the Council on Artificial Intelligence [OECD/LEGAL/0449];

RECOGNISING that consumers have a right to expect that products put on the market are safe under reasonably normal or foreseeable consumer use or misuse;

RECOGNISING that compliance with product safety requirements by all economic operators can support a safe, fair and competitive consumer product marketplace;

RECOGNISING that businesses should only place safe products on the market;

RECOGNISING the benefits of global and digital supply chains, which have provided consumers with easy access to a wider range of innovative and technology-driven products, and have transformed how product design, manufacturing, and delivery processes are monitored, analysed and improved, including remotely;

RECOGNISING that consumer confidence in the safety of products supports sustainable market development and that in addition to the social costs of injuries and deaths resulting from hazardous consumer products, such products can also negatively impact the economy;

CONSIDERING that consumer trust in global and digital supply chains may however be affected by a number of ongoing and emerging safety challenges, such as inadequate information disclosures about safety risks, the changing nature and safety of technology-driven products throughout their lifetime, and the availability in domestic and global e-commerce of products that have been banned or recalled from traditional consumer markets;

RECOGNISING the importance of effective and innovation-friendly consumer product safety policies that reduce the risks and challenges associated with unsafe products, regardless of the technology involved, and, thereby, increase the protection of consumers at domestic and international levels;

RECOGNISING that a whole-of-government and multi-stakeholder approach is key to identifying and addressing consumer product safety challenges, which, in the digital transformation, cut across related issue areas, such as data protection, security, and transport;

RECOGNISING that consumer product safety frameworks differ across jurisdictions and therefore further international cooperation is vital to protect consumers from unsafe products within and across borders, including in particular in e-commerce.

RECOGNISING that Members and non-Members having adhered to this Recommendation (hereafter the "Adherents") have different legal, policy, and institutional frameworks affecting their implementation of this Recommendation;

UNDERLINING that international cooperation, including digital information sharing tools and initiatives, such as the OECD *GlobalRecalls* portal and the OECD's global product safety awareness campaigns, can result in greater global awareness of product safety risks and more informed policy-making by governments to achieve better safety outcomes for consumers worldwide;

On the proposal of the Committee on Consumer Policy:

I. **AGREES** that this Recommendation addresses safety requirements related to consumer products (with the exception of food, medical devices and drugs) during a product's lifetime, including products incorporating new technologies and those purchased via e-commerce.

CONSUMER PRODUCT SAFETY POLICY FRAMEWORKS

II. **RECOMMENDS** that Adherents work with businesses and consumer representatives and other civil society organisations (hereafter "other stakeholders") in a transparent and inclusive manner, to promote and implement, at domestic and international levels, effective policy frameworks relating to consumer product safety.

To that effect, in their frameworks, Adherents should:

Business practices for safe products

1. Include measures in order that businesses:

    a) Place safe products on the market and consider and manage risks to the safety of such products throughout their lifetime, in particular at the design, manufacture, distribution, use and disposal stages;

    b) Do not supply to consumers unsafe products that pose an unreasonable risk to the health or safety of consumers in reasonably normal or foreseeable use or misuse;

    c) Implement, without delay, appropriate corrective measures (including product withdrawals and recalls), and take all the necessary steps to notify the relevant government bodies and consumers in instances where businesses should have known, or where they become aware, that the products they placed on the market are unsafe.

Effective protection

2. Establish and maintain government bodies that have the authority and power to investigate and take action to protect consumers from unsafe products, including requiring businesses to withdraw, recall or adopt any other appropriate corrective measures against unsafe products, and to issue market withdrawal and recall notices. Such government bodies should have the resources and technical expertise to exercise their power appropriately and effectively. In addition, policy frameworks should be reviewed, when needed, to ensure they remain effective.

3. Provide government bodies with powers to make public final product safety decisions affecting businesses and, where possible, any final measures or commitments given by businesses.

4. Consider, where appropriate, establishing an alert system at domestic level to enable government bodies to identify and swiftly exchange information about unsafe products including, where possible, with their foreign counterparts.

5.   Take into account behavioural insights, and give special attention to vulnerable and disadvantaged consumers, such as children, the elderly and disabled people, when developing and implementing consumer product safety policy frameworks.

6.   Encourage transparency and co-operation on consumer product safety matters among businesses and between businesses and government bodies.

7.   Encourage the continued development and use of technology as a tool to enhance consumer product safety, and ensure that appropriate steps are taken to address the risks associated with such technology, in consultation with businesses and other stakeholders.

Information disclosures

8.   Include measures in order that businesses:

   a)   Inform consumers about ways to report consumer product safety problems, as appropriate;

   b)   Provide consumers, via appropriate communication channels, with timely, clear, accurate, easily accessible, and conspicuous safety information about a product they placed on the market. Such disclosures, which should be made in plain and easy-to-understand language, at a relevant time and should allow consumers to assess and take precautions against the risks inherent in a product when such risks are not immediately obvious without adequate warnings. They should include, as appropriate, instructions for safe use, information about the maintenance and disposal of the product, as well as warning labels, such as age restrictions; and

   c)   Make available all safety-related information necessary for consumers to make an informed purchase decision in all languages in which the purchase can be conducted.

9.   Consider, where appropriate, the use by government bodies and businesses of consumer product safety communication tools and symbols that already exist at the international level.

Product risk assessment and management

Performed by businesses

10.   Encourage businesses to systematically take safety into account in the design, quality assurance, production and supply of consumer products, including in risk assessment and risk management, and to consider how they might need to respond if a product is found to be unsafe before or after it is placed on the market.

11.   Invite businesses to develop tools to monitor and communicate information about the safety of a product to relevant government bodies, consumers and other stakeholders.

Performed by product safety government bodies

12.   Adopt systematic procedures for risk assessment and management to enable effective and comparable domestic and global approaches for:

   a)   Identifying risks that may require policy intervention;

   b)   Understanding the magnitude of injuries, related patterns, and identifying high risk groups; and

   c)   Prioritising their policy and enforcement actions.

Such approaches may be informed by cost-benefit analysis, as well as risk data from other jurisdictions.

13.   Make publicly available, as appropriate, information such as criteria, and methodologies of risk assessment and management in order to achieve greater transparency in government bodies' decision-making processes, and for the purpose of ensuring greater comparability of risk assessment and management systems within and across jurisdictions.

14.   Consider establishing and maintaining, as part of government bodies' risk management programmes, data collection and analysis systems on injuries resulting from unsafe products at the domestic level, as appropriate.

Product recalls and other corrective actions

15.   Include measures in order that businesses:

   a)   Issue warnings, withdraw, modify, repair or replace the product concerned or prevent consumers from using it when the need for a recall and any other corrective action is identified, as soon as possible and as appropriate;

   b)   Communicate effectively with consumers about a product recall without delay by providing them with clear, accurate and easy-to-understand information about the affected product and its associated risk and remedies. Such communication should, where appropriate, be coordinated with relevant government bodies and should also include information relating to the rights and obligations of the consumers affected by a product recall;

   c)   Provide consumers with adequate compensation as appropriate;

   d)   Put in place mechanisms and tools appropriate to the circumstances in order to identify and contact those consumers affected by a recall without delay;

   e)   Put in place product identifiers and tracking and traceability information, which should be made available to the relevant government bodies, as appropriate; and

   f)   Assess and report on the effectiveness of their product recalls and adapt, if necessary, their recall strategy and report to the relevant government bodies, so that the latter can assess if the situation is properly managed or if their intervention is necessary.

16.   Encourage government bodies, businesses and other stakeholders to work together on the development of guidelines and international standards for planning, launching and conducting recalls, promoting their use and communicating effectively to consumers about them.

17.   Encourage relevant government bodies and businesses to establish mechanisms at domestic level, as appropriate, to alert all stakeholders about the existence of a product recall in their jurisdiction.

18.   Encourage businesses to establish and maintain adequate production and quality control records, which should be made available to the relevant government bodies, where appropriate.

CONSUMER PRODUCT SAFETY AWARENESS

III.   RECOMMENDS that Adherents work together with businesses and other stakeholders to provide consumers with relevant information on ways to buy and use safe products. Such initiatives should be designed to meet the needs of different groups, taking into account factors such as age, income, disability, and literacy.

To that effect, Adherents should:

1.   Ensure that official information about the relevant consumer product safety legislation and relevant legal requirements that apply in their jurisdiction are accurate, up-to-date, and easily accessible to all stakeholders.

2.   Develop, as appropriate, awareness activities aimed to alert all stakeholders about the steps they can take to identify risks and prevent injuries associated with consumer products.

INTERNATIONAL COOPERATION

IV.   RECOMMENDS that Adherents work together to enhance international cooperation, having in mind the objective that product safety government bodies should be well-informed about products regarded as unsafe in other jurisdictions so they may, if necessary, take steps to protect consumers in their own jurisdiction.

To that effect, Adherents should:

1.   Develop, as appropriate, effective information sharing initiatives among consumer product safety government bodies, which could, for example, cover the following initiatives:

   a) Consumer product safety legislation, regulations and guidelines, as well as officially published draft legislation and regulations;

   b) Individual measures, such as product withdrawals, bans, recalls and other corrective measures;

   c) Research projects developed or sponsored by governments, undertaken by universities, businesses and other organisations; as well as the results of analyses of injury data;

   d) Risk assessment methodologies and practices; and

   e) Emerging product safety risks.

2.   Explore, when developing their domestic consumer product safety frameworks, the compatibility with rules in other jurisdictions, as appropriate.

3.   Examine, when developing or reviewing domestic, government-initiated standards or technical regulations, the possibility of alignment with existing international standards.

4.   Engage in the development and promotion of international standards, and encourage businesses and other stakeholders to participate in such activities.

5.   Use information sharing mechanisms available at the international level, such as the OECD *GlobalRecalls* portal, to facilitate a timely response to incidents, to help detect and deter unsafe products from being made available in other jurisdictions, including among non-Adherents.

6.   Work together, as appropriate, on the development and implementation of joint surveillance and enforcement programmes, including with non-Adherents.

7.   Develop global awareness campaigns on consumer product safety and encourage businesses and other stakeholders to participate in such activities.

8.   Work together with businesses and other stakeholders on the development of a global injury data taxonomy and procedures for collecting and analysing injury data, where appropriate, and take into account the value of aligning the taxonomy with well-established systems.

V.   ENCOURAGES business and other stakeholders to disseminate and follow this Recommendation in their approach to consumer product safety;

VI.   INVITES Adherents and the Secretary-General to disseminate this Recommendation;

VII.   INVITES non-Adherents to take due account of and adhere to the present Recommendation;

VIII.   **INSTRUCTS** the Committee on Consumer Policy, through its Working Party on Consumer Product Safety, to:

i.   Serve as a forum to exchange information with respect to the implementation of this Recommendation;

ii.   Develop best practice guidelines to support the implementation of this Recommendation;

iii.   Serve as a forum, using the OECD *GlobalRecalls* portal, for the rapid exchange of worldwide recall information; and

iv.   Monitor the implementation of the Recommendation and report to Council no later than five years following its adoption and at least ten years thereafter.

Policy guidance on maximising product recall effectiveness[1]

Foreword

Timely and efficient product recalls are a key process for ensuring that consumers are protected from unsafe consumer products available in the marketplace.

This policy guidance provides advice for governments and businesses about how recalls can be designed and implemented more effectively, including by incorporating consumer behavioural insights. It is intended to support countries in their implementation of the product recall provisions of the OECD Recommendation on Consumer Product Safety [OECD/LEGAL/0459].

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[1] This document has been approved by the Committee on Consumer Policy on 2 October 2020 [DSTI/CP/CPS(2019)4/FINAL].

I.   Introduction

1.   Every year, businesses recall millions of consumer non-food products, ranging from complex automotive and electronic products to toys and childcare items. Such recalls are both an important corrective action for mitigating the risks posed by unsafe products to consumers and a critical part of risk communication to consumers.

2.   Growth in regulatory oversight and transparency of consumer product recalls has not only helped enhance business and consumer awareness of product recalls, but is also one of the factors that has led to an increase in the volume of recalls over the past decade (OECD, 2018[1]). Moreover, many of these recalls are now taking place in a more complex, global and digital marketplace, creating significant challenges for businesses, governments and consumers alike worldwide.

3.   While some businesses may tend to perceive recalls as damaging to their brand and reputation, a 2018 survey on consumer behaviour and product recalls effectiveness (hereafter "2018 EC consumer survey") commissioned by the European Commission found that 54% of consumers surveyed declared that their confidence in a business increased after a product recall (European Commission, 2019[2]).

4.   The Working Party on Consumer Product Safety (WPCPS) assessed the situation during 2017 and 2018 via:

- an informal roundtable on the challenges faced by product safety authorities, businesses, and other stakeholders in measuring and maximising the effectiveness of product recalls, at domestic and global levels
- a survey on how product safety agencies measure and manage recall effectiveness within their jurisdictions
- an OECD Workshop on Measuring and Maximising the Impact of Product Recalls Globally (OECD, 2018[3]), which brought together representatives from OECD Members and non-Members, as well as business and consumer organisations.

5.   In light of the discussions and findings from the above activities, an analytic report on *Enhancing product recall effectiveness globally* was released in November 2018 (OECD, 2018[1]),which notes the following:

- While response rates vary across product categories, the level of consumer reaction generally remains low in most jurisdictions.
- A variety of factors can impact recall effectiveness, ranging from product traceability, price and lifetime, to the level of risk, severity of an injury, and the quality, nature and frequency of communication with consumers.
- Behavioural biases (OECD, 2010[4]) (OECD, 2017[5]) also play a salient role in consumer inaction to recalls. Information overload and complexity, as well as recall fatigue, are often to blame as the number of products recalled continues to grow each year, making it difficult for consumers to identify the recalls that apply to the products they have purchased or otherwise have in their homes. Consumers may also disengage if the remedy is impractical, or inconvenient to access (OECD, 2018[1]).

II.   Objectives

6.   This guidance, which builds on the WPCPS' existing work on product recall effectiveness, aims to implement the provisions relevant to product recalls that are contained in the Recommendation of the Council on Consumer Product Safety ("the Product Safety Recommendation") [OECD/LEGAL/0459]. Its objective is to serve as a

guide for governments and stakeholders to explore ways to enhance product recall effectiveness globally. More specifically, it aims to address the need for:

- a multi-faceted approach to measuring recall effectiveness
- recall identification and management
- a global and multi-stakeholder approach
- improved communications to consumers
- enhanced awareness for businesses and consumers.

III.   Scope

7.   This guidance covers those consumer products supplied by businesses to consumers, including second-hand products and products purchased via e-commerce. It does not cover food, medical devices or drugs.

8.   The guidance uses key consumer product safety terms, which, for the purposes of this document, are understood as follows:

- **Businesses:** All supply chain economic operators, including manufacturers, retailers, online platforms enabling third party sellers to sell products to consumers, as well as fulfilment centres. While all businesses are accountable, not all have the same obligations, which are dependent on their involvement in the supply chain.

- **Consumer response:** An action taken by a consumer in response to a product recall notice.

- **Products:** Goods intended for and/or likely to be used by consumers, with the exclusion of food, medical devices or drugs, as these products are, in a number of countries, subject to specific regulatory or policy frameworks. The definition includes products that incorporate software, as well as new technologies, such as the Internet of Things (IoT) and artificial intelligence (AI).

- **Product safety risk:** A combination of the probability of occurrence of harm and the severity of that harm.

- **Recall:** A corrective action, which incorporates notification to consumers, and is undertaken by businesses in co-operation with, or is ordered or recommended by, government bodies to address one or more safety risks in a consumer product that has been, or is being supplied to consumers. Remedies offered within this corrective action may include, but are not limited to, refunds, repair and replacement.

- **Recall effectiveness:** Relates to the degree to which safety risks are mitigated through a recall. Effectiveness may be informed by measuring return, repair or disposal rates, as well as a range of other factors.

A.   Enabling a multi-faceted approach to measuring recall effectiveness

Issue: Measurement factors and tools

9.   Measuring recall effectiveness is not an easy task. Few jurisdictions have developed assessment methodologies, and the concept of "effectiveness" is understood differently within and across countries.

10.   Among the authorities measuring recall effectiveness, many use specific target return rates, which are in some instances solely based on the units placed on the market. Relying solely on the ratio between the number of units supplied and those returned,

however, may not provide the most accurate picture of a recall's performance. Some other authorities take into account factors, such as the value of a product, complaints and/or injury data.

11.   The guidance below provides best practice suggestions for implementing the following provision in the Product Safety Recommendation:

> "In their frameworks, Adherents should include measures in order that business assess and report on the effectiveness of their product recalls and adapt, if necessary, their recall strategy and report to the relevant government bodies, so that the latter can assess if the situation is properly managed or if their intervention is necessary."[2]

Guidance

12.   Governments and businesses should put in place systems to measure recall effectiveness. They should consider developing assessment tools, which take into account a variety of factors. For example, any, all or a combination of the following factors:

- the number of units placed and those still remaining on the market
- the number of units recovered from the supply chain
- the number of units recovered from consumers or repaired in the field
- the number of unreturned recalled products disposed by consumers
- the product's price and its expected lifespan
- the timespan between when a product is supplied and when it is recalled
- whether the product can be tracked and traced across supply chains
- whether customer data is available
- communication methods used and frequency of communicating with consumers
- ease of rectifying the issue (e.g. the cost and inconvenience as well as any particular challenges certain groups of consumers may face in responding) and the range of remedies offered to consumers
- the nature of the safety defect and the severity of the injury
- the number of injuries or incidents occurring post the recall announcement
- the nature and level of risk posed to consumers.

13.   When businesses report to governments on the effectiveness of their recalls, they should be transparent on the methodology used to measure the effectiveness.

B.   Facilitating recall identification and management

Issue 1: Use of technology

14.   As technology evolves, recall strategies that focus only on traditional methods to manage a recall may miss opportunities to better mitigate the impending harm that an unreturned recalled product poses to a consumer. With growing consumer adoption of

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[2] Provision 15(f), Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation, OECD/LEGAL/0459.

connected devices, businesses today have many more tools at their disposal to achieve enhanced recall effectiveness.

15.   The guidance below provides best practice suggestions for implementing the following provision in the Product Safety Recommendation:

> "In their frameworks, Adherents should encourage the continued development and use of technology as a tool to enhance consumer product safety, and ensure that appropriate steps are taken to address the risks associated with such technology, in consultation with businesses and other stakeholders."[3]

Guidance

16.   Businesses should conduct research into new technologies that facilitate better recall outcomes for consumers.

17.   Businesses should use new technologies, where appropriate, as a means to achieve recall effectiveness. This may include, where appropriate:

- identifying the need for a product recall

- encouraging convenient product registration (e.g. prior to or at the point of sale, or in the case of IoT enabled products, when they are first connected to the Internet) to facilitate direct contact with consumers for safety alerts or product recalls

- identifying and suspending the sale of a recalled product in the market

- fixing product defects remotely through software updates

- mitigating risk of harm by preventing consumers from using a recalled product (e.g. remotely switching off the device).

18.   When using technology to manage a recall, businesses should also take into account those consumers who do not use or have access to such technology. To reach all affected consumers, any technology-related initiatives should be complementary to other recall strategies, as appropriate.

Issue 2: Ease of consumer participation in a product recall

19.   The success of a recall is often dependent on the level of consumer participation. Behavioural biases, however, can often affect a consumer's decision to participate in a recall (see Annex A for a complete overview of such biases). Biases, such as inertia and the endowment effect, can influence consumers to remain at status-quo and consciously choose not to engage with recalls that impact them.

20.   Moreover, as consumers tend to be loss averse, if the perceived inconvenience associated with returning a recalled product outweighs the compensation, consumers are less likely to return or dispose of it. In addition, when consumers face complex decisions and feel they are not adequately supported during the decision-making process, they may dismiss all possible options.

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[3] Provision 7, Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation, OECD/LEGAL/0459.

21.   Furthermore, while nudging strategies may be effective for average or most consumers, they may not necessarily work for vulnerable consumers[4] who may not have the capacity to fully understand the information that is presented to them[5] (OECD, 2016[6]).

22.   The guidance below provides best practice suggestions for implementing the following provisions in the Product Safety Recommendation:

- "In their frameworks, Adherents should include measures in order that businesses issue warnings, withdraw, modify, repair or replace the product concerned or prevent consumers from using it when the need for a recall and any other corrective action is identified, as soon as possible and as appropriate."[6]

- "In their frameworks, Adherents should include measures in order that businesses provide consumers with adequate compensation as appropriate."[7]

- "In their frameworks, Adherents should include measures in order that businesses put in place mechanisms and tools appropriate to the circumstances in order to identify and contact those consumers affected by a recall without delay."[8]

Guidance

23.   Governments and stakeholders should take into account behavioural insights, including those specific to a jurisdiction, region or culture, to improve consumer participation in a product recall.

24.   Participating in a recall should be an easy process for consumers. Remedies should be practical and accessible, and should not cause substantial inconvenience, especially for vulnerable consumers.

25.   Where appropriate, businesses should consider offering incentives to motivate consumers to participate in a recall. This may include discounts, vouchers and other offers that are exclusive to those consumers impacted by a product recall. Businesses should consider offering incentives early on in a recall procedure to avoid some consumers waiting for a better offer.

26.   Businesses should provide consumers with access to readily available assistance if they require information about a product recall. This includes providing a dedicated helpline and having staff able to answer specific questions about the recall, until risk to consumers posed by the recalled product is adequately mitigated. Businesses should also consider regularly reviewing the effectiveness of communication channels and methods

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[4] Under the OECD Recommendation on Consumer Policy Decision Making (OECD, 2014[7]), the term "vulnerable consumers" is understood as those consumers who are "*susceptible to detriment at a particular point in time, owing to the characteristics of the market for a particular product, the product's qualities, the nature of a transaction or the consumer's attributes or circumstances*".

[5] The 2018 EC consumer survey revealed that vulnerable consumers are generally less aware of product recalls and prefer to be reached via traditional media rather than online channels (European Commission, 2019[2]).

[6] Provision 15(a), Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation, OECD/LEGAL/0459.

[7] Provision 15(c), Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation, OECD/LEGAL/0459.

[8] Provision 15(d), Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation, OECD/LEGAL/0459.

they use for recalls in order to improve them, for example by surveying participating consumers about their experience.

27.   Businesses should consider putting in place easy-to-use tools, such as product registration, to enable prompt and direct communication to consumers affected by a product recall. Consumer data collected via a product registration scheme by default should only be used for addressing issues with a product, and not for other purposes (such as marketing or advertising).

C.   *Facilitating a global and multi-stakeholder approach*

Issue 1: Compatibility of product safety and product recall frameworks

28.   Consumers can today purchase products that are available across jurisdictions, including via online retail and marketplaces. While this environment provides consumers with greater choice, there have been situations where a product recalled in one jurisdiction was still available for sale in another, including via e-commerce.

29.   The guidance below provides best practice suggestions for implementing the following provisions in the Product Safety Recommendation:

- "Adherents should explore, when developing their domestic consumer product safety frameworks, the compatibility with rules in other jurisdictions, as appropriate." [9]

- "Adherents should use information sharing mechanisms available at the international level, such as the OECD *GlobalRecalls* portal, to facilitate a timely response to incidents, to help detect and deter unsafe products from being made available in other jurisdictions, including among non-Adherents."[10]

- "In their frameworks, Adherents should include measures in order that businesses put in place product identifiers and tracking and traceability information, which should be made available to the relevant government bodies, as appropriate."[11]

- "In their frameworks, Adherents should encourage businesses to establish and maintain adequate production and quality control records, which should be made available to the relevant government bodies, where appropriate."[12]

<u>Guidance</u>

30.   Governments should work together to develop globally agreed practices on product recalls.

31.   Where possible, businesses and governments should use existing global product recall standards, such as those issued by international standard bodies, to facilitate swift global action during a product recall. Use of global standards should help to promote global consistency.

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[9] Provision 2, Part IV International Co-operation, Product Safety Recommendation, OECD/LEGAL/0459.

[10] Provision 5, Part IV International Co-operation, Product Safety Recommendation OECD/LEGAL/0459.

[11] Provision 15(e, Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation OECD/LEGAL/0459.

[12] Provision 18, Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation OECD/LEGAL/0459.

32.   Businesses should conduct, where relevant, a consistent recall strategy across all jurisdictions where the same product is supplied to consumers and the same risk is likely to be present, subject to applicable legislation. Where possible, governments should encourage businesses to implement consistent recall strategies.

33.   Governments should encourage businesses to use globally recognised product identifiers, including batch identification numbers, to assist in the tracking and tracing of recalled products across supply chains.

34.   Jurisdictions should contribute to global tools or channels dedicated to the sharing of information about product recalls, such as the OECD's *GlobalRecalls* portal.

Issue 2: Multi-stakeholder collaboration

35.   Recall effectiveness requires a multi-stakeholder response. Stakeholders working in isolation may give rise to mixed messages and the implementation of inconsistent strategies, which may impact consumer participation in a recall. Governments, businesses and other stakeholders working together, striving for the same goal during the recall process, can lead to better consumer engagement and increased response rates.

36.   The guidance below provides best practice suggestions for implementing the following provisions in the Product Safety Recommendation:

- "Adherents should develop, as appropriate, awareness activities aimed to alert all stakeholders about the steps they can take to identify risks and prevent injuries associated with consumer products."[13]
- "Adherents should work together, as appropriate, on the development and implementation of joint surveillance and enforcement programmes, including with non-Adherents."[14]

Guidance

37.   Governments and stakeholders should engage in a dialogue to help ensure greater transparency and co-operation during a recall.

38.   Where appropriate, businesses should proactively inform governments when a recalled product in one jurisdiction is to be recalled in others.

39.   Governments and businesses should seek opportunities to collaborate, where possible, to minimise the presence of recalled products, including with online marketplaces.

40.   Businesses, such as online platform (including in particular, online marketplaces), should co-operate with authorities and work together with their third party sellers to ensure that recalled products are not being supplied to consumers via their platforms. They should assist and, where appropriate, directly intervene on behalf of third party sellers to effectively manage a product recall by, for example, facilitating, where appropriate, direct contact with the consumers affected by a recall, and should encourage other third-party sellers of similar products to also assess whether their products may present the same or similar safety concerns.

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[13] Provision 2, Part III Consumer Product Safety Awareness, Product Safety Recommendation, OECD/LEGAL/0459.

[14] Provision 6, Part IV International Co-operation, Product Safety Recommendation OECD/LEGAL/0459.

41.   Businesses and governments should engage with consumer organisations to maximise the outreach of recall messages to consumers.

D.   *Enhancing communications to consumers*

Issue 1: Content of recall notices

42.   Recall notices can often be lengthy and complex, making it difficult for consumers to identify whether a recall applies to a product they own, and if so, what options are available for them. Some recall notices also tend to minimise the risk levels associated with the product via the use of vague and complicated language. This can cause confusion amongst consumers and may demotivate them to take action. In some jurisdictions, the main elements that should be included in a recall notice are prescribed by law or government regulations. In the absence of prescribed requirements, some jurisdictions provide further guidance to stakeholders; in many others, however, such guidance is not available.

43.   The guidance below provides best practice suggestions for implementing the following provision in the Product Safety Recommendation:

> "In their frameworks, Adherents should include measures in order that businesses communicate effectively with consumers about a product recall without delay by providing them with clear, accurate and easy-to-understand information about the affected product and its associated risk and remedies. Such communication should, where appropriate, be coordinated with relevant government bodies and should also include information relating to the rights and obligations of the consumers affected by a product recall." [15]

Guidance

44.   Governments and stakeholders should collaborate to develop guidance on the key elements that should be included in a recall notice.

45.   Governments and stakeholders should be mindful of content in existing recall notices of the same product in other jurisdictions.

46.   Businesses should apply the following principles when preparing a recall notice:

- Ensure all content is factual, easy to read, and concise.

- Ensure the title or heading of the recall notice is direct and draws attention to the announcement.

- Identify the product safety issue and risk faced by consumers using the recalled product, avoiding verbose and mixed messages.

- Describe the recalled product in plain language, including, where necessary, information about whether it is used with or is part of another product.

- Include clear and high quality images of the recalled product, and key product identifiers, such as model, batch and serial numbers.

- Provide simple instructions on how consumers can participate in a recall, including the actions they may take to update, return or dispose a recalled product.

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[15] Provision 15(b), Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation, OECD/LEGAL/0459.

- Provide contact details to enable consumers to seek further information, including through, for example, a dedicated helpline.
- Consider providing information in relevant languages when recalled products are sold globally or to culturally diverse populations.
- Businesses should also comply with any additional or specific recall information requirements of the jurisdiction where they are conducting the product recall.

Issue 2: Recall communication strategies

47.   Consumers expect that products sold in physical and online marketplaces are safe, and are generally unaware or uninterested in a product recall, making it necessary to implement effective communication strategies that are targeted and sustainable.

48.   The guidance below provides best practice suggestions for implementing the following provisions in the Product Safety Recommendation:

- "In their frameworks, Adherents should include measures in order that businesses communicate effectively with consumers about a product recall without delay by providing them with clear, accurate and easy-to-understand information about the affected product and its associated risk and remedies. Such communication should, where appropriate, be coordinated with relevant government bodies and should also include information relating to the rights and obligations of the consumers affected by a product recall."[16]
- "In their frameworks, Adherents should encourage relevant government bodies and businesses to establish mechanisms at domestic level, as appropriate, to alert all stakeholders about the existence of a product recall in their jurisdiction." [17]

<u>Guidance</u>

49.   When planning and conducting a recall communication programme, taking into account applicable personal data regulations, businesses should consider:

- using direct and personalised communication tools to nudge consumers to react to issues that impact them directly
- using recall data, such as data on the number of injuries or deaths related to the product or the number of units affected or recovered, within their communication messages, to help raise awareness of the seriousness of a product recall
- utilising multiple communication channels to promptly contact those consumers affected by a product recall, including advertising in online and offline mass media, information on the affected business' website and at point of sale, as well as more direct forms of communication to affected consumers including via connected products, loyalty and/or reward programmes and social media
- where appropriate, collaborating with influencers (i.e. a person or a brand that can help facilitate consumer engagement, such as celebrities and bloggers) to help spread messages to relevant target audiences in an engaging format
- specific communication strategies that will facilitate the participation of vulnerable consumers in a product recall

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[16] Provision 15(b), Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation, OECD/LEGAL/0459.

[17] Provision 17, Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation OECD/LEGAL/0459.

- maintaining an adequately resourced and consistent communication programme throughout the recall process until the risk is adequately reduced and/or mitigated.

50. Governments should, where possible, complement a business' recall communication programme by implementing communication strategies to help raise awareness of those recalls that are underperforming and posing serious and/or imminent risk of harm to consumers.

51. Governments should, where possible, use their existing databases (e.g. vehicle licencing databases), to effectively reach consumers during a recall, subject to any consumer data protection laws.

E.   Raising awareness of product recalls

Issue: Fostering consumer and business awareness

52. Governments and other stakeholders can play a salient role in improving the consumer product industry's approach to implementing recalls. In particular, they should be cognisant of the dangers of "recall fatigue" for consumers, and ensure that any decisions that require recalls to be undertaken are based on proper assessment of the risks faced by consumers.

53. The guidance below provides best practice suggestions for implementing the following provisions in the Product Safety Recommendation:

- "In their frameworks, Adherents should encourage government bodies, businesses and other stakeholders to work together on the development of guidelines and international standards for planning, launching and conducting recalls, promoting their use and communicating effectively to consumers about them." [18]

- "Adherents should develop global awareness campaigns on consumer product safety and encourage businesses and other stakeholders to participate in such activities." [19]

Guidance

54. Governments and stakeholders should actively raise awareness of the importance of product recalls with consumers using relevant and accessible communication channels.

55. Governments should implement communication strategies that help raise awareness and understanding of businesses' obligations when conducting a recall, including the importance of proactive recall planning.

56. Businesses should play an educative role to ensure that operators in their supply chains or their third-party operators (in the case of online marketplaces) are aware of their product safety requirements and do not sell products that are recalled at domestic or global levels.

57. Businesses should review and update their recall strategy periodically, including when introducing a new product range.

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[18] Provision 16, Part II Consumer Product Safety Policy Frameworks, Product Safety Recommendation, OECD/LEGAL/0459.

[19] Provision 7, Part IV International Co-operation, Product Safety Recommendation, OECD/LEGAL/0459.

58.   Governments should regularly review their product recall guidance to ensure it addresses current product recall trends and challenges.

Annex A. Consumer behavioural biases applied to product recalls

The following is an abridged extract on behavioural biases and their applicability to product recalls from the publication *Enhancing product recall effectiveness globally: OECD background report* (OECD, 2018[1]).

Information overload: If recalls contain too much information or consumers feel overwhelmed with information on recalls, they may disengage and not take action, especially if they are also time poor. With the growing number of product recalls in countries, consumers may suffer from "recall information" fatigue, and may not pay attention to the recall alerts that are relevant to them.

Framing effects: Consumers are influenced by how information is presented. Presenting an option in a certain way may induce consumers to evaluate the choice from a particular reference point. For example, consumers are less likely to respond to voluntary recalls if the potential hazards are not clearly stated. They are also less likely to follow instructions, including the steps they should follow to return the product, if such instructions are presented in a complex and lengthy message.

Inertia: With an inherent fear of the unknown, when consumers face complex products or a bewildering array of choices, they may ignore possible choices or choose not to choose. Consumers may also rely on simple "rules of thumb" to avoid change or are guided by the values, actions and expectations of a particular society or group.

Endowment effect: Consumers often demand much more to give up an object than they would be willing to pay to acquire it. A consumer's value of a product increases when it becomes part of their endowment, so if the perceived inconvenience associated with returning a recalled product outweighs the compensation (i.e. return, refund or replacement), consumers are less likely to return it. This is because naturally humans tend to be loss averse, even if it is in relation to a recalled product.

Over-optimism: Consumers tend to think that they are more likely to experience an outcome that is better than the average expected outcome. This may cause them to miss or ignore warnings, or negative messages. Consumers may also be more inclined to keep using unsafe products, particularly if these products have been used for a long time without injury caused to them or to someone they know.

Time inconsistency: Consumers may make choices that are not consistent across time periods due to conflicts between short-term urges and long-term interests.

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OECD (2014), *OECD Recommendation on Consumer Policy Decision Making*, OECD Publishing, Paris, http://www.oecd.org/sti/consumer/Toolkit-recommendation-booklet.pdf. [7]

OECD (2010), *Consumer Policy Toolkit*, OECD Publishing, Paris, https://doi.org/10.1787/9789264079663-en. [4]

Companion Document to the OECD Recommendation on Consumer Product Safety

The Companion Document aims to assist Adherents in their ongoing implementation of the OECD Recommendation on Consumer Product Safety [OECD/LEGAL/0459], which was adopted by the OECD Council in July 2020. The document provides additional details to clarify the Recommendation's main provisions, as well as practical guidance on ways to implement them. It also provides definitions for a number of key terms used in the Recommendation and includes background information about the Recommendation's development and references to other relevant OECD resources. It is intended that the Companion Document be updated over time as further useful guidance is identified.

This document was prepared by Thyme Burdon under the supervision of Brigitte Acoca of the OECD Secretariat. It was approved and declassified by the Committee on Consumer Policy by written procedure on 13 April 2022 and prepared for publication by the OECD Secretariat.

INTRODUCTION

1.   Between 1977 and 1989, six OECD legal instruments on consumer product safety (hereafter "the OECD consumer product safety *acquis*") were adopted by the OECD Council, on the proposal of the Committee on Consumer Policy (CCP). These include five Recommendations[1] and one Decision-Recommendation[2] (Box 1).

Box 1. OECD consumer product safety *acquis*[3]

Recommendation of the Council concerning the Establishment of Data Collection Systems Related to Injuries Involving Consumer Products (the "1978 Recommendation") [OECD/LEGAL/0160]

Recommendation of the Council concerning the Safety of Consumer Products (the "1979 Recommendation") [OECD/LEGAL/0183]

Recommendation of the Council concerning Recall Procedures for Unsafe Products Sold to the Public (the "1981 Recommendation") [OECD/LEGAL/0192].

Recommendation of the Council concerning Risk Management and Cost-Benefit Analysis in the Product Safety Field (the "1982 Recommendation") [OECD/LEGAL/0196]

Recommendation of the Council concerning Safety Measures Taken in the Interest of Children (the "1983 Recommendation") [OECD/LEGAL/0208]

Decision-Recommendation of the Council on the OECD Notification System on Consumer Safety Measures (the "1989 Decision-Recommendation") [OECD/LEGAL/0254].

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2.   Only one Recommendation (the 1981 Recommendation), however, has been the subject of a review of its implementation by the CCP between 1990 and 1992, a summary of which is contained in document [DAFFE/CP(92)3]. There is therefore limited information available on the extent to which the OECD consumer product safety *acquis* has been implemented, except in the following sources:

i. Two articles published in 1981[4] and 1986[5] suggest that product safety legislation, which was enacted piecemeal in the 1970s and had been the subject of a review in a number of jurisdictions in the 1980s, has been influenced by the OECD's product safety instruments.

ii. A CCP analytical report [DSTI/CP(2008)18/FINAL] and related questionnaire [DSTI/CP(2008)18/ADD/FINAL] published one year after work on product safety resumed within the CCP reviewed existing consumer product safety frameworks in OECD Members and selected non-Members, provides information on the implementation of the 1989 Decision-Recommendation through the creation of an Internet-based product safety information system ("Prodsafe") maintained by New Zealand until 1997.

3. Following the launch by the OECD Secretary-General in May 2016[6] of an OECD-wide standard-setting review, the CCP, via the Working Party on Consumer Product Safety (WPCPS), agreed[7] to combine the OECD consumer product safety *acquis* into a new consolidated Recommendation, with the aim to:

i. Provide a streamlined approach as to the key elements that should be at the core of consumer product safety frameworks at domestic and international levels, taking into account the complexity of global and digital supply chains and reflecting related product safety developments and emerging issues; and

ii. Enable convergence in terminology and product safety rules worldwide and promote a consistent approach across jurisdictions to increase certainty and efficiency for stakeholders.

4. After two years of drafting with the WPCPS in close consultation with the WPCPS Bureau and an informal group of experts, the Recommendation on Consumer Product Safety [OECD/LEGAL/0459] (hereafter the "Recommendation") was adopted by the OECD Council on 17 July 2020 [C(2020)71]. On this occasion, the Council abrogated the OECD consumer product safety *acquis* (which is still available on the online Compendium of OECD Legal Instruments for historical reasons).

5. Similar to the OECD consumer product safety *acquis*, the Recommendation calls for the establishment of robust product safety regulatory and self-regulatory frameworks that are scalable globally and in line with international standards, and which should:

i. Provide for a consumer right to safe products and rapid alerts when unsafe products are on the market or are the subject of a ban or a recall;

ii. Be informed by sound evidence and data sources, including if possible through the establishment of injury data collection systems, the development of risk management and assessment approaches that are systematic and comparable from one country to another, information sharing activities (through the CCP), as well as awareness initiatives; and

iii. Pay specific attention to vulnerable consumers[8].

6. In addition to updating the provisions in the OECD consumer product safety *acquis*, the Recommendation focuses on new and emerging product safety-related issue areas, such as e-commerce, online market surveillance and the impact of new technologies on product safety.

7. The Recommendation also stresses the importance of policy frameworks being robust enough to apply to the entire lifetime of a consumer product.

8.   In accordance with Article 5 b) of the OECD Convention, the Recommendation is not legally binding and it is for Adherents to determine its implementation.

SCOPE ("I. Agrees")

9.   At the outset, the Recommendation recognises that there may be different legal, policy and institutional frameworks other than consumer product safety in jurisdictions that may influence how the Recommendation is implemented. For example, there may be privacy laws or laws governing the sharing of confidential information by government bodies that may restrict some information sharing. As such, it is recognised that Adherents may implement the Recommendation in different ways.

10.   In order to remain relevant and effective, the Recommendation has a level of built-in flexibility, catering to the dynamic environment of product safety regulation. In particular, the Recommendation applies to:

    i.   A range of transactions (such as Business-to-Consumer transactions (B2C)[9]) occurring in store and via e-commerce, including via online marketplaces, which enable third party sellers to offer a variety of products for sale to consumers and/or enable or facilitate consumer-to-consumer transactions, and may assist in increasing consumers' awareness of consumer product safety, and increasingly cooperate with product safety government bodies to help identify and remove banned or recalled products from their marketplaces;

    ii. All actors in a supply chain, including those operating in more complex global supply chains involving multiple businesses responsible for different aspects of product design, manufacture, certification, distribution and maintenance; and

    iii. Consumer products, with the exception of food, drugs, and medical devices, due to their specific characteristics (consistent with the revised WPCPS' mandate[10]).

E-commerce

11.   The inclusion of consumer products sold via e-commerce has been integral in recognising that increased consumer engagement in e-commerce has been accompanied by a growing volume of unsafe products that are available for sale online. All provisions in the Recommendation apply to products sold in-store and online, where appropriate.

12.   In 2015, an OECD international online product safety sweep[11] consisting of targeted surveillance actions conducted across 25 jurisdictions revealed that of the 685 banned and recalled products identified during the sweep, 68% of those products were still available via e-commerce. Recognising these challenges, the 2016 OECD *Recommendation of the Council on Consumer Protection in E-commerce* [OECD/LEGAL/0422] (hereafter "the E-commerce Recommendation") outlines some key provisions that relate to businesses:

    i.   Ensuring that unsafe products are not offered, advertised or marketed to consumers;

    ii. Co-operating with relevant government bodies when product safety issues arise; and

    iii. Providing consumers with adequate safety information about a product so they can make an informed decision prior to purchasing the product.

13.   Likewise, the OECD *Toolkit for Protecting Digital Consumers*[12] released in 2018 under the G20 Argentinian Presidency, and the OECD background report on *Challenges to Consumer Policy in the Digital Age*[13] released in 2019 under the Japanese Presidency of

the G20, highlight the importance of online product safety and the salient role of online marketplaces in mitigating online product safety issues.

New technologies

14.   The Recommendation includes provisions that apply to consumer products incorporating new technologies (such as the Internet of Things (IoT) and Artificial Intelligence (AI)). While these technologies and connected products could help enhance consumer product safety, they may also bring new risks for consumers as highlighted in the WPCPS' report, *Consumer Product Safety in the Internet of Things*[14], OECD's publication *Artificial Intelligence in Society.*[15] To address these AI challenges, the OECD *Recommendation on Artificial Intelligence* [OECD/LEGAL/0449] was adopted in 2019 with provisions on robustness, security and safety.

DEFINITIONS

15.   The following definitions are presented to assist in the implementation of the Recommendation:

Businesses

All supply chain economic operators, including manufacturers, retailers, importers, online marketplaces (including social media marketplaces) enabling third party sellers to sell products to consumers and/or enabling or facilitating consumer-to-consumer transactions, as well as fulfilment centres. While all businesses are accountable, not all have the same obligations or responsibilities, which are dependent on their involvement in the supply chain.

Products

Goods intended for and/or likely to be used by consumers, with the exclusion of food, medical devices or drugs, as these products are, in a number of countries, subject to specific regulatory or policy frameworks. The definition includes products that incorporate software, as well as new technologies, such as the IoT and AI.

Note: In some countries however, it may be appropriate that this definition includes software depending on the scope of applicable existing consumer product safety laws. It is not the intention that this definition narrows the definition of 'products' in such laws.

Product's lifetime

A product's lifetime includes the design, manufacture, distribution, use and early disposal stages (e.g. disassembly) where consumers may be exposed to a product safety risk. It includes processes to repair or refurbish the product so that it can be re-used. It is not intended to cover final stages of disposal where there are no safety risks to consumers, but there may be other risks (e.g. occupational or environmental). In relation to safety risks pertaining to the software component of a product, this includes the product's commercial life (up to when commercial support ends).

Product safety risk

A combination of the probability of occurrence of harm and the severity of that harm.

Recall

Any corrective action, which may incorporate notification to consumers that is undertaken by businesses to address an unsafe product that has been, or is being supplied to consumers. This may be in co-operation with, or ordered or recommended by, government bodies. Remedies offered within this corrective action may include, but are not limited to, refunds, repair and replacement.

Unsafe products

Products that pose an unreasonable risk to the health or safety of consumers in reasonably normal or foreseeable use or misuse.

CONSUMER PRODUCT SAFETY POLICY FRAMEWORKS

Overall structure

16.   Section II of the Recommendation identifies the general consumer product safety principles that are indispensable to the creation and maintenance of effective consumer product safety policy frameworks. Each of them will be less effective if implemented in isolation, or if one of them is neglected. Their order and numbering reflects a logical narrative rather than an order of importance. The general principles are organised into five groups of provisions:

   i.   Business practices for safe products (II.1)

  ii.   Effective protection (II.2 to II.7)

 iii.   Information disclosures (II.8 and II.9)

  iv.   Product risk assessment and management (II.10 to II.14)

   v.   Product recalls and other corrective actions (II.15 to II.18).

Business practices for safe products (II.1)

17.   These provisions outline the primary responsibilities of all businesses that are involved in the supply of products to consumers. Below is additional information related to these provisions:

> **Provision II.1:** The proposed text is consistent with the Preamble to the 1981 Product Recall Recommendation, which states that "*Consumers have a right to expect that products put on the market are adequately safe under conditions of normal use or foreseeable misuse*"[16] as well as the E-commerce Recommendation, which states that "*Businesses should not offer, advertise or market products that pose an unreasonable risk to the health or safety of consumers*"[17]. As a result, the provision aims to call for a culture of "product safety by design" that would apply at all stages of a product's lifetime.
>
> The reference to risk in this provision relates to both safety and digital security risks during a product's lifetime.

The term "reasonably foreseeable consumer misuse" refers primarily to misuse by a consumer using the product. In principle, it does not include misuse by a third party, such as a hacker breaching software security systems and affecting the safety of a connected device, except in the absence of adequate security features in products. It is recognised that jurisdictions have criminal laws that apply to such scenarios as well as civil liability and/or common law regimes for any resulting damage suffered by consumers. Privacy laws may also apply. The issue has been addressed in some OECD legal instruments, such as the *Recommendation concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data* [OECD/LEGAL/0188] and the *OECD Recommendation on Digital Security Risk Management for Economic and Social Prosperity* [OECD/LEGAL/0415].

Products that are within complete control and responsibility of the consumer and are used in an intended way are not considered under the category of "reasonably foreseeable consumer misuse", but may fall into this category if the consumer does not initiate maintenance required by the manufacturer. Some other types of products may however, require consumer involvement in maintenance initiated by the supplier during the products' commercial lifetime. This may be the case, for example, for IoT products requiring software updates. Consumers may need to remain involved in the remote maintenance of these products (e.g. initiating a software update) when notified by the supplier. If a consumer failed to allow software updates initiated by the supplier, this could be considered an example of reasonably foreseeable misuse by the consumer.

In developing strategies to enhance consumer product safety, businesses may also consider how they can prevent the supply of counterfeit products which may pose a safety risk.

Effective protection (II.2-II.7)

18.   These provisions aim to cover the role and powers that government bodies should have to address consumer product safety issues, including appropriate investigation and enforcement powers. They also outline relevant considerations in the development and implementation of consumer product safety frameworks. Overall, they encourage all government bodies with regulatory responsibility for consumer product safety within the same jurisdiction to work together. Below is additional information related to several specific provisions:

Provision II.2: This provision, including its use of the wording "establish and maintain" is consistent with provision 53 iii) of the E-commerce Recommendation and Guideline A of Section II of the 2003 *OECD Recommendation concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders* [OECD/LEGAL/0317].

Provision II.3: This provision aims at ensuring that government bodies have the ability to publish their final decisions on consumer product safety matters. This provision recognises the importance of transparency in administrative decision-making and the benefits of public outcomes in fostering general deterrence.

Provision II.5: This provision expands the scope of the former product safety *acquis* where focus was limited to children. The use of the term "vulnerable and disadvantaged" consumers encompasses children, the elderly and people with a disability and may vary depending on the market, product characteristics, the consumer and the nature of the transaction. The 2014 *OECD Recommendation on*

Consumer Policy Decision Making [OECD/LEGAL/0403] refers to vulnerable consumers as, "…*consumers who are susceptible to detriment at a particular point in time, owing to the characteristics of the market for a particular product, the product's qualities, the nature of a transaction or the consumer's attributes or circumstances*". The use of the term varies slightly from the E-commerce Recommendation where children are distinguished from vulnerable and disadvantaged consumers.[18]

The provision also aims to encourage all stakeholders, particularly government bodies, to take into account lessons learnt from behavioural insights to ensure that the best product safety policy options and/or corrective measures are identified and adopted. The use of the term "behavioural insights" is consistent with its interpretation in the 2010 *OECD Consumer Policy Toolkit*[19] and the 2014 *OECD Recommendation on Consumer Policy Decision Making*.

Provision II.6: This provision encourages transparency and co-operation on product safety matters among businesses and between businesses and government bodies. This provision recognises that product safety matters can be dealt with more efficiently when all stakeholders work together. An example of a tool that can assist in building constructive relationships between government authorities and businesses are product safety pledges, for example those developed by the Australian Competition and Consumer Commission,[20] European Commission[21] and the Korea Fair Trade Commission and Korea Consumer Agency[22] with some online marketplaces. Such pledges may outline business commitments to product safety that go beyond their legal responsibilities and may act as important consumer trust tools, increasing consumer confidence to buy products from businesses that sign up to them. Key commitments that countries should consider including in any future pledges developed with online marketplaces are outlined in the WPCPS' Communiqué on Product Safety Pledges[23], which calls on countries to consider establishing more such pledges.

Provision II.7: This provision draws on provision 53 vi) of the E-commerce Recommendation[24] and reflects the findings in the WPCPS' report, *Consumer Product Safety in the Internet of Things*[25].

Information disclosures (II.8-II.9)

19.   These provisions aim to address the importance of clear, timely and accessible communication of product safety issues. Below is additional information related to several specific provisions:

Provision II.8: The terminology used in this provision is consistent with that outlined in provision 25 of the E-commerce Recommendation[26]. For IoT products, disclosures may also include specific information to consumers about the product, software updates, safety limitations, restrictions, and risks.

The product and the forum in which it was acquired will define what constitutes "appropriate communication channels" and "information that is easily accessible" and made "at a relevant time". Consumers shopping online, for example, should have the same safety information provided to them as they would if they were physically examining a product and its packaging in-store for warning labels, ingredient lists and other general safety information. Communication channels could also include the use of IoT products, in particular, communication via smart home and mobile devices. For example, when purchases are made via voice assistants, safety information could also be conveyed to consumers verbally via

the voice assistant. However, consumers should also have safety information available to them in writing.

The term "maintenance" in this provision may include security updates and product certification throughout a product's lifetime, especially in the case of IoT products.

Provision II.9: This provision seeks to ensure that businesses and government bodies consider, where appropriate, the use of consumer product safety communication tools and symbols that already exist at the international level to increase the probability that consumers will recognise communications using them as relating to important safety issues.

Product risk assessment and management (II.10-II.14)

20. These provisions can be divided into two groups: i) provisions which are expected to be performed by businesses (provisions II.10 and II.11), and; ii) those which are expected to be performed by product safety government bodies (provisions II.12 to II.14). This is to recognise that managing consumer product safety risks is a shared responsibility between business and government. Below is additional information relating to specific provisions:

Provision II.10: As highlighted initially in provision 1, this provision also aims to call for a culture of "product safety by design" that would apply at all stages of a product's lifetime.

Provision II.11: This provision aims to encourage the establishment of open communication channels between businesses and government bodies and recognises the capacity and capability of businesses to develop effective tools that can help monitor and assess the effectiveness of their internal product safety processes.

Provisions II.12 to II.14: These provisions recognise the salience of risk assessment and management initiatives undertaken by government bodies with consumer product safety responsibility in mitigating and managing consumer harm. The 2016 WPCPS reports *International consumer product safety risk assessment practices*[27] and *Product risk assessment practices of regulatory agencies*[28] both outline the various risk–based frameworks that are used by government bodies. The term 'policy intervention' (provision 12) includes enforcement strategies and actions as well as other types of intervention and is consistent with the use of that term in the OECD's Consumer Policy Toolkit. As access to relevant data is imperative in assessing risk, the potential for the establishment of injury data collection and analysis, if possible, (provision 14) has also been included.

Product recalls and other corrective actions (II.15-II.18)

21. These provisions aim to cover recalls and other corrective actions, such as product withdrawal or product modifications. The WPCPS *Policy guidance on maximising product recall effectiveness*[29] provides assistance in the implementation of these provisions. The policy guidance covers the following areas: i) a multi-faceted approach to measuring recall effectiveness; ii) recall identification and management; iii) a global and multi-stakeholder approach; iv) enhanced communications to consumers, and; v) increased awareness for businesses and consumers. Below is additional information related to specific provisions:

Provisions II.15 to II.18: The references relating to effective communication with consumers and adequately alerting relevant stakeholders, aim to encourage businesses to:

i.   Use direct, personalised and multiple communication channels;

ii. Consider behavioural biases[30] and be cognisant of vulnerable consumers when developing recall communication strategies; and

iii. Make recall notices simple and easy to understand with clear information about the product, the hazard and the action required by consumers.

The reference to businesses providing "compensation", where appropriate, refers to instances when participating in a product recall may cause substantial inconvenience to a consumer (e.g. covering costs such as freight or postage incurred by a consumer to return an unsafe product to a business).

Mechanisms and tools to identify and contact affected consumers may include encouraging consumers to register their products at the point of sale or inviting consumers to subscribe to alerts specifically related to product safety issues. Consumer data collected via such mechanisms should not be used for purposes other than addressing issues with a product (e.g. marketing or advertising).

Tracking and traceability functionalities could be enhanced with the use of new technologies which may help in identifying and suspending the sale of a recalled product, fixing product defects remotely or mitigating the risk of harm by preventing consumers from using a recalled product (e.g. remotely switching off an IoT product). In particular, new technologies (such as artificial intelligence) could be used to identify and block the sale and relisting of banned or recalled products on online marketplaces.

When businesses report on the effectiveness of their recalls, they should be transparent on the methodology used to measure the effectiveness.

These provisions also aim to encourage businesses and government bodies to actively raise awareness of product recalls using relevant and accessible communication channels such as domestic and global recalls databases (e.g. OECD *GlobalRecalls* portal).

CONSUMER PRODUCT SAFETY AWARENESS

22.   Section III (Provisions II.1 and II.2) recognises the importance of having access to adequate information to ensure the safety of products and the safety of consumers. Government bodies should ensure that all stakeholders have easy access to relevant safety information, including legislation and applicable provisions or standards from other bodies (e.g. standard-making organisations).

INTERNATIONAL CO-OPERATION

23.   Section IV (Provisions IV.1-IV.8) recognises the importance of international co-operation. While government bodies worldwide may implement product safety initiatives differently at a domestic level, it is acknowledged that at the core of any product safety initiative is the aim to make products safer for consumers. In this context, these provisions outline various methods of international engagement, while also encouraging government bodies to be cognisant of global product safety developments when implementing product

safety initiatives domestically. Below is additional information related to specific provisions:

Provision IV.1: This provision on information sharing replaces Provisions 1 and 2, Section I of the *1989 Decision-Recommendation* calling for a notification system of product safety legislation, bans, and severe hazards through the CCP. While recognising the importance of information sharing, it also ensures that information sharing initiatives can be conducted on a voluntary basis and remain flexible.

Provision IV.5: This provision refers to the OECD *GlobalRecalls* portal, which is an example of a digital tool that jurisdictions may wish to use to share information about product recalls in addition to national and regional alert systems (e.g. the EU Safety Gate system or the ASEAN Product Alerts system). In 2018, a joint statement[31] issued by the Argentinian presidency of the G20 and Consumers International called on countries to strengthen international cooperation in the area of product recalls, encouraging them to use existing digital tools, such as the OECD *GlobalRecalls* portal. An example of such cooperation is the integration of recalls from the Association of Southeast Asian Nations' (ASEAN) recalls portal into the OECD *GlobalRecalls* portal in 2019. Work is also under consideration to feature recalls from member-countries of the Organization of American States (OAS). The significance of the OECD *GlobalRecalls* portal has also been featured in the *Challenges to Consumer Policy in the Digital Age report[32]*, prepared in 2019 for the G20 Consumer Conference held under the Japanese presidency.

Provision IV.6: This provision aims to encourage non-OECD Members to also participate in joint surveillance and enforcement programmes, where appropriate. It also aims to ensure that when a government body identifies an unsafe product sold via an e-commerce website in another jurisdiction and the latter has the authority to take action, the government bodies should engage in cooperation as far as legally possible. This is consistent with the OECD's Implementation Toolkit on Legislative Actions for Consumer Protection Enforcement Co-operation[33], which aims to assist countries to overcome any legal barriers to cross-border enforcement co-operation.

Provision IV.8: This provision aims to address a lack of access to comparable injury data globally. Establishment of such a taxonomy should be based on a cost-benefit analysis and on the resources available across jurisdictions to develop and continuously maintain the system. This issue has been highlighted in the 1977 and the 1979 Recommendations on the safety of consumer products, the 1983 Recommendation, and the WPCPS' 2010 ten-point plan [DSTI/CP(2010)3/FINAL]. The challenge has also been noted by WPCPS delegations during the preparations for the OECD's product safety global awareness campaigns organised since 2014.

Notes

[1] Consistent with Article 5 b of the OECD Convention, OECD Recommendations are not legally binding, but practice accords them great moral force as representing the political will of Members and non-Members having adhered to them (the Adherents) and there is an expectation that Adherents will do their utmost to fully implement a Recommendation (see: https://www.oecd.org/legal/legal-instruments.htm).

[2] OECD Decisions are legally binding on Adherents who have to take the measures necessary for their implementation (see: https://www.oecd.org/legal/legal-instruments.htm).

[3] The text of the six abrogated OECD legal instruments on consumer product safety as well as additional information are available at: https://legalinstruments.oecd.org/en/.

[4] The document is available at: http://dx.doi.org/10.1787/observer-v1981-6-en .

[5] The document is available at: https://link.springer.com/content/pdf/10.1007%2FBF00380310.pdf.

[6] The OECD-wide standard-setting review was launched by means of letters sent by the Secretary-General to all Chairs of substantive Committees on 2 May 2016 and welcomed by Ministers at the 2016 Ministerial Council Meeting [C(2016)47/REV1]. The results of the first phase of the standard-setting review were presented to Ministers at the 2017 meeting of the Council at Ministerial level, at which Ministers welcomed the review and "*initiatives to increase the visibility and global implementation of OECD norms*" [C/MIN(2017)15]. Annual updates are presented to Ministers at the meeting of the Council at Ministerial level [for 2018 see C/MIN(2018)11 and for 2019 C/MIN(2019)13].

[7] The 2017 CCP's action plan for reviewing the legal instruments under its responsibility provides more background to this project [DSTI/CP(2016)11/REV1].

[8] The term 'vulnerable consumers' is understood as per the definition in the 2014 OECD Recommendation on Consumer Policy Decision Making [OECD/LEGAL/0403].

[9] While B2B transactions are not specifically identified within the scope of this Recommendation, many of the provisions can apply in cases where a business supplies a consumer product to another business for distribution to consumers.

[10] The WPCPS' mandate can be found at: https://www.oecd.org/sti/consumer/working-party-on-consumer-product-safety.htm

[11] The report, Online Product Safety – Trends and Challenges, is available at: http://dx.doi.org/10.1787/5jlnb5q93jlt-en

[12] The Toolkit is available at: https://www.oecd.org/internet/consumer/toolkit-for-protecting-digital-consumers.pdf.

[13] The Report is at: https://www.oecd.org/going-digital/topics/digital-consumers/challenges-to-consumer-policy-in-the-digital-age.pdf

[14] The report is available at: https://doi.org/10.1787/7c45fa66-en.

[15] See Chapter 4 (Public Policy Considerations) of the report for information specific to product safety and AI, available at: https://doi.org/10.1787/eedfee77-en.

[16] This text is featured in the first "Considering" of the Preamble 1981 Recommendation on product recalls, available at: https://legalinstruments.oecd.org/public/doc/180/180.en.pdf.

[17] This text is featured in the Part One, Section A on Fair Business, Advertising and Marketing Practices (provision 23) of the E-commerce Recommendation, available at: https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf.

[18] See Section B on Fair Business, Advertising and Marketing Practices (provision 18) of the E-commerce Recommendation.

[19] The OECD Consumer Policy Toolkit is available at: https://doi.org/10.1787/9789264079663-en.

[20] Information regarding the ACCC's product safety pledge can be found here: https://www.productsafety.gov.au/product-safety-laws/compliance-surveillance/australian-product-safety-pledge .

[21] Information regarding the EC's product safety pledge can be found here: https://ec.europa.eu/info/sites/info/files/voluntary_commitment_document_4signatures3-web.pdf .

[22] Information regarding Korea's product safety pledge can be found here: https://www.kca.go.kr/home/sub.do?menukey=6081&mode=view&no=1003121241 (in Korean)

[23] The WPCPS Communiqué on Product Safety Pledges is at: https://www.oecd.org/digital/consumer/communique-product-safety-pledges.pdf

[24] See provision under Part Two on Implementation Principles of the E-commerce Recommendation.

[25] The report is available at: https://doi.org/10.1787/7c45fa66-en.

[26] See provision under Part One, Section C on Online Disclosures of the E-Commerce Recommendation.

[27] The report is available at: www.oecd.org/sti/consumer/Report%20on%20International%20Consumer%20Product%20Safety%20Risk%20Assessment%20Practices.pdf.

[28] The report is available at: www.oecd.org/sti/consumer/product-risk-assessment-practices-regulatory-agencies.pdf.

[29] The policy guidance is available at: [DSTI/CP/CPS(2019)4/FINAL] and is complemented by a *Good practice note on effective presentation of product recall information on websites and apps* [DSTI/CP/CPS(2021)9/FINAL].

[30] Information on behavioural biases and their impact on product recalls are outlined in the OECD report, Enhancing product recall effectiveness globally, available at: https://doi.org/10.1787/ef71935c-en.

[31] The statement is available at: http://consumersfederation.org.au/wp-content/uploads/2018/05/G20-Consumer-Summit-statement.pdf.

[32] The report is available at: www.oecd.org/sti/consumer/challenges-to-consumer-policy-in-the-digital-age.pdf.

[33] The Toolkit is available at: https://doi.org/10.1787/eddcdc57-en.

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Legal Instruments

Since the creation of the OECD in 1961, around 460 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions** are adopted by Council and are legally binding on all Members except those which abstain at the time of adoption. They set out specific rights and obligations and may contain monitoring mechanisms.

- **Recommendations** are adopted by Council and are not legally binding. They represent a political commitment to the principles they contain and entail an expectation that Adherents will do their best to implement them.

- **Substantive Outcome Documents** are adopted by the individual listed Adherents rather than by an OECD body, as the outcome of a ministerial, high-level or other meeting within the framework of the Organisation. They usually set general principles or long-term goals and have a solemn character.

- **International Agreements** are negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.

- **Arrangement, Understanding and Others**: several other types of substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.