

L A W

on general products safety

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The Parliament adopts the present organic law.

Chapter I

GENERAL PROVISIONS

Article 1. Application field.

- (1) The Present law establishes the general legal framework to ensure products' safety that have been placed on the market of the Republic of Moldova and applies to all products specified in art.2 from this present law upon the term "product".
- (2) This law's provisions are applied to a degree when there is no specific technical regulation concerning the safety of the respective products.
- (3) In case when products' safety is covered by specific technical regulations, the present law is applied only for those aspects and risks or categories of uncovered risks of specific technical regulations, as follows:
 - a. Art.2, the term "safe product" and "dangerous product", and art. 3 para. (2)-(5) does not apply to these products concerning the risks or categories of risks foreseen by the specific technical regulations;
 - b. Art.4-9 is applied in any situation, except when there are no specific technical regulations concerning the covered aspects of the mentioned articles.

Article 2. Basic terms

For the purpose of this law, the following terms are used:

Product – any material good known under the name of product, which including the framework of services, is intended for consumers and can be used by consumers under foreseen conditions, even if it is not meant for them, and which is delivered or disposed in the framework of charged or free of charge trade activity, be it new, or used or reconditioned, regardless of the sales' method. The present term is not applied to products that are delivered as antiques or as products that must be repaired or reconditioned before their application only in the case when the contractor informs clearly the person to whom it delivers the respective product about the necessity of this reparation or reconditioning;

Safe product – any product, that under normal or reasonably foreseen application conditions, including long-lasting ones, and by case, putting into operation, installation and maintenance, does not present a risk or presents minimal risks, compatible with the application of the product and considered acceptable and corresponding to a high level of health's protection and humans' safety, taking into account:

- a) Product's characteristics, especially its composition, packing, assembling conditions and, by case, installation and maintenance;
- b) Its effect upon other products, in case when it can be foreseen in a reasonable way that it will be used together with other products;
- c) Product's presenting, labeling, any warnings or instructions concerning its application or disposal, as well as any other indication or information referring to the product;
- d) Consumers' categories exposed to the risk when using the product, especially children and elderly people.

The possibility to obtain any high levels of safety or availability for other products that present a lower level of risk does not constitute a good enough reason for considering this product as dangerous;

Dangerous product – any significant risk, including the risks of which effects are not immediate, that require a fast intervention from the public authorities;

Producer:

- a) Products' manufacturer, in case when this has premises in the Republic of Moldova, or any other person entitled to present itself as manufacturer by applying on the product its name, its trade label or any other distinctive sign, as well as the entitled person that reconditions the product;
- b) Manufacturer's representative, in case when the manufacturer has no premises in the Republic of Moldova;
- c) Product's importer, in case when the manufacturer has no representative with premises in the Republic of Moldova;
- d) Other economic agents involved in the market placement cycle, so far as their activities can influence the safety's characteristics of a product;

Products' placements on the market – action that makes available products on the market, including their storage in order to distribute them, offer them by means of sale or through any other form of transmission, charged or free of charge.

Distributor – any economic agent involved in the market placement cycle, which activity does not influence securities' characteristics of the product;

Relapse – any actions having the aim to return a dangerous product that the producer or distributor has already delivered to the consumer or put at its disposal;

Withdrawal – any action made having the aim to prevent the placement on the market of a dangerous product for consumers.

Chapter II

GENERAL SAFETY REQUIREMENT AND CONFORMITY EVALUATION CRITERIA

Article 3. General safety requirement and conformity evaluation criteria

- (1) Producers and distributors are obliged to place on the market only safe products.

- (2) A product is considered safe when it conforms to specific technical and sanitary regulations that establish essential requirements that have to be satisfied by the product, in order for it to be placed on the market.
- (3) Product's conformity with the pertinent conex standards means that a product is safe against risk and risk categories covered by applicable national technical regulations.
- (4) In other conditions than those mentioned in para.(2) and (3) from this article, the conformity of a product with general safety requirements can be evaluated taking into account, where exist:
 - a. Voluntary standards, other than those conex with national technical regulations mentioned in para. (3) from this article. The requirements of these standards have the role to ensure that products which are conforming to these voluntary standards satisfy the general safety requirement. The list of these standards is established by the regulating authorities and is published in the Official Monitor of the Republic of Moldova.
 - b. Regulating authorities' recommendations concerning products' safety evaluation;
 - c. Codes of good practice in the field of products' safety, in effect in the respective sector;
 - d. The actual level of scientific and/or technical accomplishments;
 - e. Reasonable expectations of consumers regarding products' general safety.
- (5) The conformity of a product with criteria that ensure the abidance of general safety requirement, especially with provisions from para. (2)-(4) from this article, does not withhold the competent authorities to take according measures, in order to impose restrictions upon product's placement on the market or to require withdrawal from the market or relapse from the market of the product in case when there is evidence that this one is dangerous.
- (6) The liability for adequate application of the conformity evaluation procedures, established by technical regulations, is held by the producer or by the conformity evaluation body.

Chapter III

PRODUCER'S AND DISTRIBUTOR'S OBLIGATIONS

Article 4. Producer's obligations

- (1) In the framework of their activity, producers must ensure the consumers with relevant information that will allow these to evaluate the inherent risks during the average period of application, during a period that can be reasonably foreseen or during the term of validity, when these risks are not immediately observable by consumers with according warnings; as well as to prevent such risks. The presence of warnings does not exonerate producers from fulfillment of other obligations foreseen by the present law.
- (2) In the framework of the activity, producers must take measures adequate to the characteristics of the delivered products, which would allow them:
 - a. To inform themselves upon the risks that these products could present to the consumers;
 - b. To take corresponding measures, also in case when it is necessary to avoid these risks, to order the withdrawal from the market of these products, adequate and efficient consumers' warning;
- (3) Actions specified in para. (2) of this article will include:

- a. Notification, by means of product or package, upon the identity and details concerning the producer, notification upon the product or, by case, upon the lot of products from which this is part, except the cases when omission of this information is justified by the respective technical regulations. The obligation to identify the product by means of indicating the respective lot, as well as, by case, of the way of its application, is established by specific technical regulations;
 - b. Making, when necessary, tests upon the samples of products placed on the market, analysis of complaints, notification, by the producer, of distributors upon these products' monitoring.
- (4) Actions foreseen in para. (2) point b) from the present article are undertaken voluntarily or by competent authorities' request, in conformity with the provisions of art.8 of the present law.
- (5) Relapse is used only as the last possible measure, when other actions are sufficient enough to prevent the eventual risks, in case when the producer considers necessary or when is obligated to undertake this action for a decision taken by the competent authority.

Article 5. Distributor's obligations

In the framework of their activity, the distributors are obliged:

- (1) To act with proper attention, in order to contribute to the abidance of applicable safety requirements, especially not to distribute products which they know of or which based on the held information and also as experts, should be considered non conform with these requirements;
- (2) To participate at the monitoring of safety of products placed on the market, especially by means of:
 - a. Transmission of information about the products' risks in conditions of art.6 para. (1) and (2) from the present law;
 - b. To participate at the monitoring of products' safety that have been placed on the market, especially by means of:
 - i. Transmission of information concerning products' risks in conditions of art.6 para.(1) and (2) from the present law;
 - ii. Holding and delivering document necessary to determine products' origin;
 - iii. Collaboration, in the framework of actions undertaken by producers and competent authorities, in order to avoid risks.

Article 6. Other obligations of producers and distributors

- (1) In case when producers and distributors have the knowledge or should know, based on the held information and also as experts, that some products that they placed on the market present risks incompatible with general safety requirement, they should inform immediately the competent authorities about the undertaken measures for preventing risks of consumers.
- (2) The information should include at least:
 - a. Data that allows a precise identification of the product or lot of respective products;
 - b. A complete description of the risk that this product presents
 - c. All available information for product's tracing
 - d. A description of the undertaken actions for risks' prevention

- (3) In the framework of their activity, producers and distributors must collaborate, with the competent authorities upon their request, on the taken actions for avoiding the risks presented by the products that they deliver or have delivered.
- (4) Procedures for this collaboration, including dialog procedures with the respective producers and distributors about issues concerning products' safety, are established by competent authorities.

Chapter IV

OBLIGATIONS AND SPECIFIC COMPETENCE

Article 7. Specific obligations

- (1) Regulating authorities establish safety requirements through technical regulations' development.
- (2) Competent authorities in market surveillance concerning products' conformity with the general safety requirements, named "*market surveillance authorities*", are the body of central public administration, entitled with consumers' protection functions, and other central specialized bodies of the public administration, according to the legislation.
- (3) In order to coordinate the activity of market surveillance bodies is designated the Coordinating Council in the field of Consumer Protection, which statute is approved by the Government.
- (4) Police bodies are obliged to provide, by request, to entitled representatives of market surveillance authorities, during their functions' exercise, necessary support, and by case, to accompany them.

Article 8. Competence of market surveillance authorities

- (1) For the purpose of this law, especially art. 4,5 and 6, market surveillance authority must take, by case, one of the following measures:
 - a. For any product:
 - i. Even after the product has been placed on the market as being safe, to organize adequate inspections of product's safety properties, in an adequate measure, until the final phase of consumer's application;
 - ii. To solicit all necessary information from the parties involved in the cycle of market placement;
 - iii. To take samples of the product and to make safety tests upon them;
 - b. For any product that could present risks in certain conditions:
 - i. To request labeling of the product with according warnings, in the state language, clearly formulated and easily comprehended by the consumers, about the risks that this product can present;
 - ii. During a product's placement on the market, to ensure the existence of preliminary conditions concerning the safety insurance, so that the product is safe;
 - c. For any product that can present risks to certain category of people, to give recommendations so that these people are warned in time and in an according form concerning the potential risk, including by publishing some special warnings;

- d. For any product that could be dangerous, to prohibit its placement on the market for the period of time necessary to fulfill diverse safety evaluations, test and inspections;
 - e. For any dangerous product, to prohibit its placement on the market and to take measures necessary to ensure prohibition's abidance;
 - f. For any dangerous product that has already been placed on the market:
 - i. To give guidelines, or to organize the real and immediate withdrawal of this product and to warn the consumers upon the risks that this product presents;
 - ii. To give guidelines, and to coordinate or, by case, to organize, together with producers and distributors, the relapse of the product from the consumers and its disposal in according conditions, by means of the respective economic agent's contribution.
- (2) In case when the market surveillance authorities take measures specified in para.(1) from this article, especially points (d)-(f), they have to act in such a way that the taken measures are proportional to the presented risk's severity, preventing the respective product's placement on the market. In the framework of these actions, market surveillance authorities are encouraging and support the voluntary actions taken by the producers and distributors in conformity with the obligations that they held based on this law.
- (3) Market surveillance authorities organize or take measures specified in para. (1) point (f) from this article in case when the action taken by the producers and distributors concerning their obligations' fulfillment is unsatisfactory or insufficient. The relapse is fulfilled under conditions of art.4 para. (5) from the present law.
- (4) Measures taken by market surveillance authorities according to this article are addressed, by case to:
- a. Producers;
 - b. Distributors, in limits of their activity, especially to the responsible person for the first phase of placement on the market;
 - c. Any person, in case of necessity, in order to collaborate in the framework of taken measures for avoiding risks presented by a product;
- (5) In order to ensure an efficient market surveillance, intended to guarantee a high level of protection of consumers' health and safety that makes necessary an efficient cooperation, market surveillance authorities undertake measures concerning:
- a. Establishment, periodic update and putting into effect of sectorial market surveillance and inspections programs by categories of products and risks, monitoring surveillance activities, conclusions and results of these programs and, in case of necessity, coordinating the collaboration activities in the framework of the Coordinating Council in the Field of Consumer Protection.
 - b. Monitoring and updating the scientific and technical knowledge concerning products' safety;
 - c. Periodic inspections and assessments of the control activities, of their efficiency and, in case of necessity, revising the approach and organization of the applied surveillance actions;
- (6) Market surveillance authorities ensure registration and monitoring of the received complaints from the consumers and other interested parties, notifying them about the established procedures for this purpose.
- (7) Market surveillance authorities collaborate with the European network of competent authorities about products' safety.

- (8) Market surveillance authorities can collaborate, according to their competence established by legislation, by case, with other specialized bodies with market surveillance competence, in order to develop actions for applying the present law's application. For the purpose of market surveillance, tasks, competence, organization and types of collaboration of specialized bodies are established, by case, through protocol or in the framework of the Coordinating Council in the Field of Consumer Protection.
- (9) Market surveillance authorities will ensure information's confidentiality that constitutes a commercial or professional secret, except the cases referring to safety properties of products that, in the way established by the legislation, have to be made public, if circumstances require this, to protect consumers' health and safety.
- (10) Protecting the commercial or professional secret must not withhold competent authorities to disseminate relevant information for ensuring the efficiency of market surveillance activities.
- (11) Information concerning risks that products present for consumers' health and safety must generally be accessible to the public according to the transparency requirements and not to harm the restraints necessary for inspections and investigation's control activities.
- (12) Consumers must have access, especially, to the information concerning products' identification, nature of risk and taken measures.

Article 9. Liabilities for violating the provisions of this law

- (1) Violating present law's provisions leads to disciplinary, material, public, administrative or criminal liability.
- (2) Constitutes contraventions and leads to penalties' application to economic agents as follows:
 - a. Violation of art.3 para.(1) provisions, fine from 500 to 5000 conventional units;
 - b. Violation of art.4 para.(1) provisions, fine from 300 to 3000 conventional units;
 - c. Violation of art. 4 para.(2) provisions, fine from 400 to 4000 conventional units;
 - d. Violation of art. 5, fine from 200 to 2000 conventional units;
 - e. Violation of art. 6, fine from 100 to 1000 conventional units;
- (3) Penalties are applied by the market surveillance authority, by case. The fines are poured in the state budget.
- (4) In case when the economic agent did not pay in terms of 15 days from the date when the decision stays final, this is transmitted to the banking institution, with the incaso invoice for an indisputable collection of the fine from the account. In case when there are no funds in the account, the executory document, in terms of 30 days, is withdrawn and is forwarded, with the respective evidence, to the executing officer in the way established by the Execution code.
- (5) Application of foreseen penalties in the present law does not exonerate the economic agents from the liability for the prejudice brought on by dangerous products, foreseen by the legislation in effect.
- (6) Any recommendation or decision concerning the measures foreseen by this article and in art.8 from the present law, including prohibition of a product's placement on the market, compelling its withdrawal or relapse, must indicate the legal provisions on which they are based and the necessary remedy actions, foreseen by the legislations in effect. The respective recommendation or decision is handed immediately to the respective party.

- (7) Producer, distributor will enounce their point of view upon the undertaken actions by the market surveillance authorities until the adoption of the respective guideline or decision or in terms of 15 days from the date when this was handed.
- (8) Guidelines or decisions concerning products' placement on the market prohibition or concerning compelling to relapse or withdraw the product can be disputed according to the contesting administrative procedure.
- (9) Market surveillance authorities held the liability, according to the legislation, for the correctness and objectiveness of the adopted decisions.
- (10) Measures that compel the relapse or withdrawal must encourage the distributors and consumers to contribute to the application of these measures.

Chapter V

FINAL AND TRANSITORY PROVISIONS

Article 10. Come into effect. Government's obligations.

- (1) The present law comes into effect after 3 months of the date of its publication.
- (2) The Government, in terms of 6 months after the date of this law's publication:
 - a. Will present to the Parliament proposals concerning bringing the legislation in effect in harmony with the present law;
 - b. Will bring its normative acts in harmony with the present law.

CHAIRMAN OF THE PARLIAMENT

Marian LUPU

Chisinau, 22nd of December 2006.

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