

Product and Service Safety Act

Passed with the Act of 24.03.04 (RT I 2004, 25, 167), entered into force 1.05.04

Amended with the following Acts:

22.11.2007 entered into force 01.01.2008 - RT I 2007, 66, 408

20.10.2005 entered into force 01.01.2006 - RT I 2005, 61, 474

Chapter 1

General Provisions

§ 1. Purpose and scope of application of Act

- (1) The purpose of this Act is to ensure that products placed on the market and services provided are safe.
 - (2) This Act provides for the requirements for ensuring product and service safety and provides the basis for market supervision.
 - (3) This Act applies to products, services and the organisation of market supervision insofar as this is not regulated by other Acts.
 - (4) Where products and services are subject to specific safety requirements imposed by other Acts, this Act shall apply only to the aspects and risks or categories of risks not covered by other Acts.
 - (5) The provisions of §§ 16–21 of this Act shall apply to the products provided for in § 4 of this Act.
 - (6) The provisions of the Administrative Procedure Act apply to the administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.
- (20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 2. Definitions

- (1) For the purposes of this Act, “product” means any movable which is intended for consumers or which consumers may use in a presumably reasonable manner even if not intended for them, as well as any product that is made available to consumers in the context of providing a service, that is supplied or made available, whether for consideration or not,, in the course of a

commercial or professional activity, and regardless of whether the product is new, used or reconditioned.

(2) The definition of “product” set forth in subsection (1) of this section shall not apply to second-hand products supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier clearly informs the consumer to that effect.

(2¹) Within the meaning of this Act, "service" means a service work performed or a benefit provided for a consumer which is, to a significant extent, personally used or benefited by the consumer himself or herself.

(2²) A service provider is a natural or legal person who, in the course of economic or professional activities, offers or otherwise makes available services to the consumers free of charge or against a payment.

(3) For the purposes of this Act, “market supervision” means state supervisory activity conducted by boards and inspectorates with the objective of preventing or mitigating risks to the health and property of persons arising from products placed on the market or services provided.

(4) "Placing a product on the market" shall mean the activity provided in subsection 2 (4) of the Product Conformity Attestation Act.

(5) "Consumer" shall mean the person provided in clause 2 1) of the Consumer Protection Act.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 3. Determination of safety

(1) A product is considered to be safe if the product, under normal conditions of use including duration and, where applicable, upon adherence to putting into service, installation and maintenance requirements, does not present any risk to the safety or health of persons.

(2) In determining whether a product is safe, the following factors shall be taken into account, in particular:

1) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;

2) the effect on other products, where it is reasonably foreseeable that it will be used with other products;

- 3) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other information regarding the product;
 - 4) the potential risk upon use by certain categories of consumers, in particular children and the elderly.
- (3) The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be dangerous.
- (4) "Dangerous product" means any product which does not meet the requirements provided for in subsections (1)–(3) of this section.
- (5) "Serious risk" means any risk arising from a product, including those the effects of which are not immediate, requiring rapid intervention by the market supervision authorities.
- (5¹) "A dangerous service" is deemed to be a service where a mistake related to the manner of its provision, a defect in the construction or composition of a product used for its provision, or incorrect, misleading or insufficient information provided concerning the service may cause an injury, intoxication, illness of a person or constitute another kind of a health hazard.
- (6) The Government of the Republic or a Minister authorised thereby may establish safety requirements for products and services and the procedure for attestation of their safety.
- (20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§4. Dangerous products which appear to be other than they are

- (1) “Dangerous products which appear to be other than they are” are products which, although not foodstuffs, possess a size or volume, odour, colour, appearance, form, packaging, labelling, such that it is likely that consumers, especially children, will confuse them with foodstuffs and in consequence place them in their mouths, or suck or ingest them, which might be dangerous and cause physical harm.
- (2) It is prohibited to produce, place on the market, import or export the products specified in subsection (1) of this section.

§ 5. Producer and distributor

- (1) For the purposes of this Act, “producer” is:

- 1) the manufacturer of the product, when he is established in a Member State of the European Union, and any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark, or the person who reconditions the product;
 - 2) the manufacturer's representative, when the manufacturer is not established in a Member State of the European Union;
 - 3) the importer of the product, if there is no representative established in a Member State of the European Union;
 - 4) other professionals in the supply chain, insofar as their activities may affect the safety properties of a product.
- (2) For the purposes of this Act, "distributor" means any professional in the supply chain whose economic or professional activity does not affect the safety properties of a product.

§ 6. Recall of product from consumers and withdrawal from market

- (1) For the purposes of this Act, "recall from consumers" means any measure aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers by the producer or distributor.
- (2) Upon recall of a product from consumers, the producer or distributor shall compensate the consumers for the sales price of the product.
- (3) For the purposes of this Act, "withdrawal from the market" means any measure aimed at preventing the distribution, display and offer of a dangerous product to consumers.

Chapter 2

Presumption and Assessment of Safety and Obligations of Producers and Distributors, and Providers of Services in Ensuring Safety

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 7. Presumption and assessment of safety

- (1) A product shall be deemed to be safe when, in the absence of specific European Community provisions governing the safety of the product or product category in question, the product conforms to the health protection and safety requirements of the Member State of the

European Union State in whose territory the product is marketed, such requirements being drawn up in conformity with the Treaty establishing the European Community.

(2) The safety of a product shall also be assumed if the conditions provided in subsection 6 (2) of the Technical Regulations and Standards Act have been met.

(3) If it is impossible to presume the safety of a product on the basis of the provisions of subsection (1) or (2) of this Act, product safety shall be assessed by taking into account the following:

- 1) Estonian standards transposing relevant European standards other than harmonised standards;
- 2) original Estonian standards;
- 3) European Commission recommendations setting guidelines on product safety assessment;
- 4) product safety codes of good practice in force in the sector concerned;
- 5) the state of the art and technology;
- 6) reasonable consumer expectations concerning safety.

(3¹) The safety of a service shall be assessed, taking account of:

- 1) Estonian standards transposing relevant international or European standards;
- 2) original Estonian standards;
- 3) service safety codes of good practice in force in the sector concerned;
- 4) the state of the art and technology;
- 5) reasonable consumer expectations concerning safety.

(4) Conformity of a product or service with the criteria provided for in subsections (1)–(3¹) of this section shall not bar the market supervisory authorities from taking appropriate measures to impose restrictions on the product being placed on the market, to require its recall from consumers or withdrawal from the market, or to terminate the offer or provision of a service where there is evidence that, despite such conformity, it is dangerous.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 8. Obligations of producers and service providers

(1) Producers may place on the market only products which are safe, and service providers may offer and provide services which are safe.

- (2) Producers and service providers shall provide consumers with the relevant information to enable them to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and to take precautions against those risks
- (3) The presence of warnings does not exempt any producer or service provider from compliance with the other requirements laid down in this Act.
- (4) Producers and service providers shall adopt measures commensurate with the characteristics of the products or services which they supply, enabling them to:
- 1) be informed of risks which these products or services might pose;
 - 2) choose to take appropriate action to avoid these risks including, if necessary, withdrawal of the products from the market, termination of the provision of the services, warning consumers or recall of the products from consumers.
- (5) The measures referred to in subsection (4) of this section shall include:
- 1) an indication, by means of the product or its packaging, of the identity and details of the producer and the product reference or the batch of products to which it belongs, except where not to give such indication is justified;
 - 2) the carrying out of sample testing of marketed products, if necessary, keeping a register of complaints and keeping distributors informed of such monitoring;
 - 3) other relevant measures.
- (6) Action such as that referred to in clause (5) 2) of this section shall be undertaken by the producer on a voluntary basis or at the request of a supervisory official.
- (7) Recall of a product from consumers shall take place as a last resort, where other measures would not suffice to prevent the risks involved, in instances where
- 1) the producer considers it necessary or
 - 2) the producer is obliged to do so by a market supervisory authority.
- (20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 9. Obligations of distributors

- (1) Distributors shall be required to act with due care to help to ensure compliance of products with the applicable safety requirements. Distributors shall not supply products which

they know or should have presumed, on the basis of the information in their possession and professional knowledge, to not comply with safety requirements.

(2) Distributors shall participate, within the limits of their respective activities, in monitoring the safety of products placed on the market, especially by passing on information on product risks to the producers, keeping and providing the documentation necessary for tracing the origin of products, and co-operating in the action taken by producers and market supervisory authorities to avoid risks.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 10. Informing market supervisory authorities

(1) Where producers and distributors, or service providers know or ought to know, on the basis of the information in their possession and their professional knowledge, that a product that they have placed on the market, are distributing, or a service that they are providing cannot be deemed to be safe on the basis of the provisions of § 7 of this Act, they shall immediately inform the market supervisory authority who conducts market supervision over the relevant product or service group.

(2) In the case of serious risk, the producer or distributor is required to forward the following to the market supervisory authority:

- 1) information which enables the relevant product or batch of products to be clearly identified;
- 2) a full description of the risk arising from the product;
- 3) information which enables the earlier and later possessors and suppliers of the product to be identified;
- 4) information on the measures the person has taken in order to prevent the risks;
- 5) other information that may be required by the market supervisory authority.

(3) Producers and distributors, and service providers are required to co-operate with the market supervisory authorities in order to prevent risks that may arise from products offered or delivered, or services provided to consumers by them.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

Market supervision

§ 11. Competence of market supervisory authority

- (1) Market supervision over compliance with the requirements provided for in this Act shall be exercised by the Consumer Protection Board, and other boards and inspectorates within the limits of their competence.
 - (2) Market supervisory authorities are competent to inspect product and service safety in the course of supervision, and to issue precepts and make decisions.
 - (3) Market supervisory authorities are required to co-operate with one another, and, where necessary, to exchange information.
 - (4) Co-operation between market supervisory authorities and the Tax and Customs Board shall be organised pursuant to Council Regulation 339/93/EEC on checks for conformity with the rules on product safety in the case of products imported from third countries (OJ No. L 40, 17.02.1993, pp. 1–4).
- (20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 12. Rights and obligations of officials exercising market supervision

- (1) An official exercising market supervision shall check the safety of products or services:
 - 1) on a regular basis, or
 - 2) if there is doubt whether a product or service is safe.
- (2) An official exercising market supervision has the right, with regard to any product placed on the market, to:
 - 1) monitor compliance with this Act without hindrance and without giving prior notice;
 - 2) to organise, even after its being placed on the market as being safe, appropriate checks on its safety properties, on an adequate scale, up to the final stage of use or consumption;
 - 3) check the documents certifying the conformity of a product with the safety requirements, make copies thereof, use technical equipment in order to record the situation and to require information necessary to assess the situation from all persons concerned;
 - 4) obtain products from the producer and distributor and subject them to safety checks, taking into account the procedure for compensation of the costs incurred upon product checks specified in § 13 of this Act;

5) issue precepts within the limits of their competence, impose time limits for compliance therewith and monitor such compliance.

(3) With regard to any product which is likely to present a risk under certain conditions, a supervisory official has the right to:

1) require that it be marked with clear and appropriate warnings in Estonian on the risks it may present;

2) make its marketing subject to prior conditions so as to make it safe.

(4) With regard to any product that may pose risks to certain persons, an official exercising market supervision has the right to order that such persons be given warning of the risk in good time and in an appropriate form, including through the publication of special warnings.

(5) With regard to any product that may pose risks, an official exercising market supervision has the right, for the period needed for the various safety evaluations and controls, to demand that the product be temporarily withdrawn from the market or to prohibit its display.

(6) An official exercising market supervision has the right to ban the marketing of any dangerous product, or the offer or provision of a dangerous service, and to introduce the accompanying measures required to ensure the ban is complied with.

(7) With regard to any dangerous product, an official exercising market supervision has the right

1) to order or organise its actual and immediate withdrawal from the market, and alert consumers to the risks it presents;

2) to order, co-ordinate or organise together with producers and distributors its recall from consumers and, if necessary, its destruction.

(7¹) With regard to any service provided, an official exercising market supervision has the right to:

1) monitor compliance with this Act without hindrance and without giving prior notice;

2) check the documents certifying the safety of the service, make copies thereof, use technical equipment in order to record the situation and to require information necessary to assess the situation from all persons concerned;

3) require that explicit warnings in Estonians concerning the service be given to the consumer before consumption of the service;

4) make the provision of the service subject to prior conditions so as to make it safe;

- 5) require the temporary suspension of the provision of the service or prohibit its presentation during the time needed for assessing and checking safety;
- 6) issue precepts, impose time limits for compliance therewith and monitor such compliance.
- (8) In the case of serious danger, the Tax and Customs Board has the right, with the agreement of the relevant market supervisory authority, to prohibit the release into free circulation or the export of a product.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 13. Safety assessment

- (1) In the course of market supervision, a market supervisory agency has the right to:
 - 1) obtain samples of products from the producers or distributors thereof free of charge in order to check their safety;
 - 2) order an expert assessment of the safety of a product or service, where necessary.
- (2) The costs of an expert assessment ordered to check the safety of a product shall be covered by the market supervisory authority.
- (3) If it is established that a product or service is unsafe, the producer or distributor of the product or the provider of the service shall compensate for the documented costs of the expert assessment ordered to check the safety of the product.
- (4) A product sample obtained from a producer or distributor for monitoring purposes shall be returned to the producer or distributor. If in the course of the checks, a product taken for safety assessment is partly or fully destroyed or becomes unfit for use, the market supervisory authority shall compensate for the damage caused to the producer or distributor.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 14. Market supervisory measures in proportion to risk

- (1) Market supervisory authorities shall encourage producers and distributors to take voluntary action permitted by this Act to increase the safety of products, and service providers to take voluntary action permitted by this Act to increase the safety of services.
- (2) Market supervisory authorities have the right to organise or order the measures provided for in subsection 12 (7) of this Act if the action undertaken by the producers and distributors in

fulfilment of their obligations incumbent on them under this Act is unsatisfactory or insufficient. Recall of a product from consumers shall take place if other measures do not suffice.

(3) In the case of serious risk, market supervisory authorities have the right to apply all measures listed in subsections 12 (3)–(7) of this Act.

(4) The provisions of this section and § 12 shall apply to:

- 1) the producer;
- 2) the distributor, with the limits of the distributor's activities, and in particular to the person responsible for the first stage of distribution on the Estonian market;
- 3) any other person whose activities may affect the risks arising from a product or service;
- 4) the provider of services in respect to service safety.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 15. Notifying European Commission of restrictions on placing on market of products

(1) Where measures listed in subsections 12 (3)–(7) of this Act are taken to restrict the placing on the market of products, and where a market supervisory authority imposes or intends to impose, due to serious risk arising from a products, any recommended, agreed or mandatory measures with respect to the producers or distributors of the product whereby specific conditions are prescribed for the possible placing on the market or use of the product, the relevant market supervisory authority shall, to the extent that such notification is not required under some other Act, inform the European Commission of the measures.

(2) The reasons for adopting the measures shall be specified upon notification. The market supervisory authority shall also give notice of any amendment to or repeal of such measures.

(3) If it can be presumed that the effects of the risk do not or cannot go beyond the territory of Estonia, notice shall be given only of the measures concerned insofar as they involve information likely to be of interest to Member States from the product safety standpoint, and in particular if they are in response to a new risk which has not yet been reported in other notifications.

(4) In the case of serious risk, notice shall also be given of measures provided for in §§ 8–10 of this Act voluntarily adopted by the producer or distributor of a product.

(5) The procedure for giving notice of restrictions imposed on placing products on the market shall be established by a regulation of the Government of the Republic.

§ 16. Publication of information

- (1) Information concerning the safety of products and services shall be disclosed by market supervision authorities pursuant to the procedure provided for in the Public Information Act with the specifications arising from this Act
- (2) Information available to the market supervisory authorities relating to risks to consumer health and property posed by products and services shall be public. Information on product identification, the nature of risks and measures arising from products and services, and applied measures shall also be public.
- (3) Producers and distributors, and service providers are also required to submit to the market supervisory authorities information covered by professional secrecy.
- (4) Market supervisory authorities shall not disclose information obtained for the purposes of implementing this Act which is covered by professional secrecy of a producer, distributor or service provider, except for information relating to the safety properties of products or services which justifiably must be made public in order to protect the health and property of consumers.
- (5) Market supervisory authorities are required, if necessary, to inform the public of the risks of a specific product in a daily national newspaper, through other media channels or in some other manner. .

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 17. Precept and act

- (1) An official exercising market supervision shall issue a precept for the termination of violations of the requirements of this Act or legislation established on the basis thereof, including for the withdrawal from the market of non-conforming products, recall of non-conforming products from consumers or termination of the provision of services, in which he or she shall:
 - 1) call attention to the offence and demand that it be terminated;
 - 2) where necessary, demand that activities related to the offence be suspended in part or in full, or
 - 3) demand that acts necessary for the lawful continuation of activities be performed.
- (2) Upon failure to comply with a precept provided in subsection (1) of this section, an official exercising market supervision may impose a coercive measure pursuant to the procedure

provided for in the Substitutive Enforcement and Penalty Payment Act. The upper limit for a penalty payment is 10 000 kroons.

(3) Before a precept is issued for the withdrawal from the market of products, recall of products from consumers or termination of the provision of services, or before the performance of a corresponding act, the producer, distributor or service provider shall be given the opportunity to submit objections.

(4) If a producer, distributor or service provider is not given the opportunity to submit objections before a precept is issued for the withdrawal from the market of products, recall of products from consumers or termination of the provision of services, or before a corresponding act is performed due to the fact that the market supervisory authority had to adopt the measures immediately, the opinion of the producer, distributor or service provider shall be obtained after the precept is issued or the act is performed.

(5) In a precept issued for the withdrawal from the market of products or recall of products from consumers, and upon the performance of corresponding acts, the distributors, users and consumers shall be encouraged to participate in carrying out the relevant measures.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 18. Contestation of precept or act

(1) If a person does not agree with a precept or act of an official exercising market supervision, the person has the right to file a written challenge with the Director General of the market supervisory authority within ten working days as of the date on which the person became aware of the precept or measure.

(2) Challenges cannot be filed against administrative acts or measures of the Director General of a market supervisory agency.

(3) The filing of a challenge does not relieve the person of the obligation to comply with the precept.

(4) The Director General of a market supervisory authority shall review a challenge and make a decision within fourteen working days as of the date on which the challenge is filed. The official against whose precept or act a challenge is filed shall not participate in the review of the challenge.

(5) A person who files a challenge shall be notified of the decision of the Director General of a market supervisory authority and the decision shall be delivered against a signature or sent by post with advice of delivery within two working days as of the date on which the decision is made.

Chapter 4

Liability

§ 19. Placing dangerous non-conforming products on market and provision of dangerous services

(1) A fine of up to 300 fine units shall be imposed on a producer or distributor who places a dangerous non-conforming product on the market, fails to withdraw such product from the market or fails recall such product from consumers, and a service provider who fails to comply with the demand to terminate the provision of a dangerous service.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 20. Failure to inform of risks of products and services

(1) Failure, by a producer, distributor or service provider, to give notice of risks arising from products already placed on the market or service already provided is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 30 000 kroons.

(20.10.05 entered into force 1.01.06 - RT I 2005, 61, 474)

§ 21. Proceedings

(1) The provisions of the General Part of the Penal Code and the Code of Misdemeanour Procedure apply to o proceedings in the matters of the misdemeanours provided for in §§ 19 and 20 of this Act.

(2) The following extra-judicial bodies shall conduct proceedings in matters of misdemeanours provided for in §§ 19 and 20 of this Act:

- 1) the Consumer Protection Board;
 - 2) the Technical Inspectorate;
- (22.11.07 entered into force 1.01.08 - RT I 2007, 66, 408)
- 3) Health Protection Inspectorate;
 - 4) the Labour Inspectorate.

Chapter 5

Implementing Provisions

§ 22. Products placed on market prior to entry into force of Act

Products placed on the market prior to the entry into force of this Act shall not present a risk to the health or property of persons and shall conform to the requirements applicable at the time of placing the products on the market, unless otherwise provided by law.

§ 23 [Omitted from this text]

§ 24. Transitional provision

The regulations passed on the basis of subsection 3 (1¹) of the Product Safety Act shall be in force until the repeal thereof, but for not longer than until 1 January 2005.

§ 25. Entry into force of Act

This Act shall enter into force on 1 May 2004.

¹ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ No. L 11, 15.01.2002, pp. 4–17) and Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers (OJ No. L 192, 11.07.1987, pp. 49–50).