

ELI Webinar on Guiding Principles for Updating the Product Liability Directive for the Digital Age

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WHY SHOULD THE PLD BE UPDATED? (1)

The PLD is no longer adapted to deal with goods with digital components and leave consumers in the dark when things go wrong.

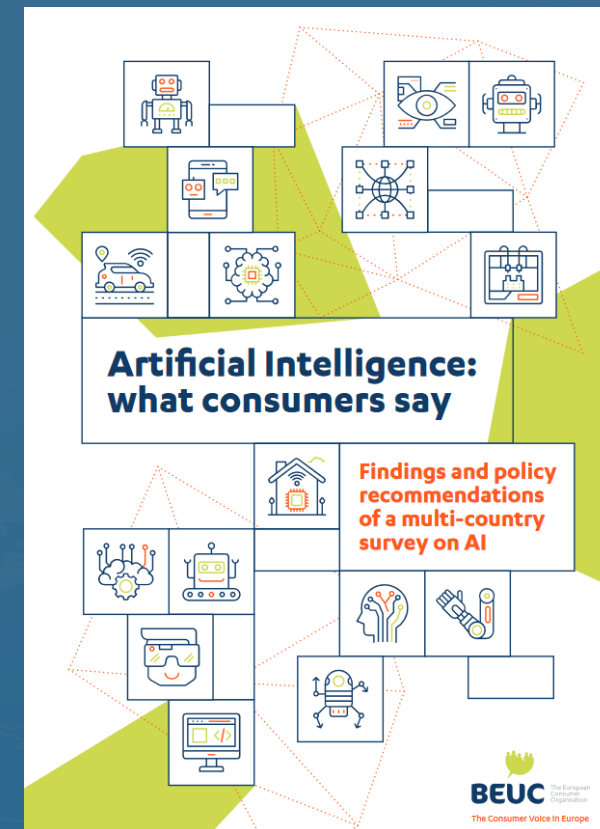
FINDINGS OF BEUC AI SURVEY (September 2020)

52% (BE, IT, PT SP) and 46% (FR, DK, DE, PL, SE):

(strongly) agree that AI is potentially dangerous because machines can fail

60% (BE, IT, PT and SP) and 49% (FR, DK, GE, PL, SE)

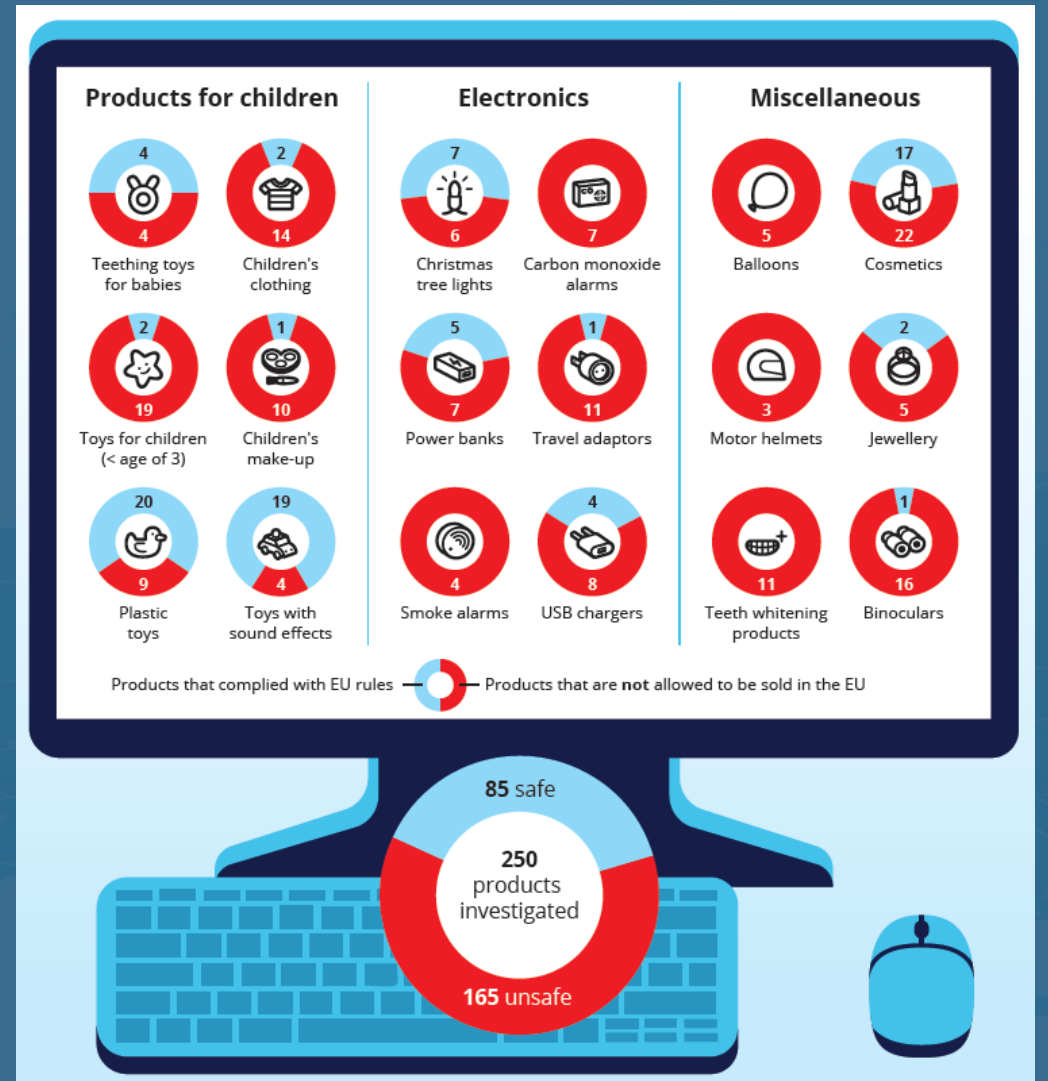
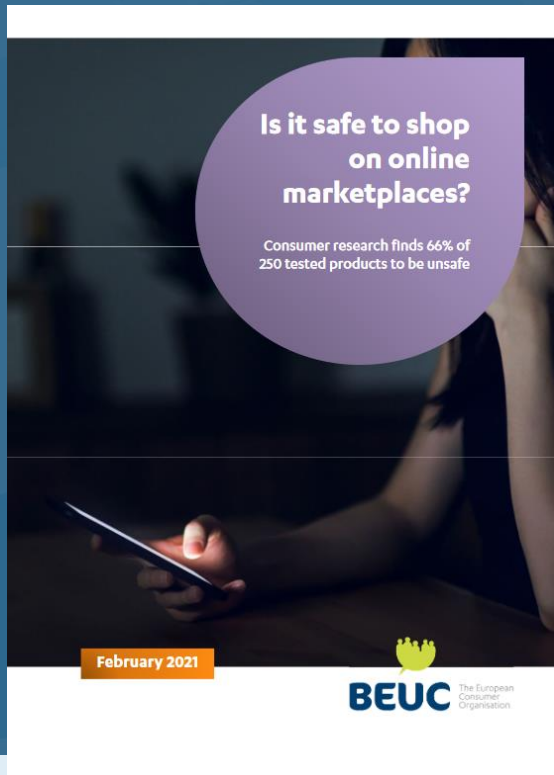
(strongly) consider that it is not clear who is liable if AI causes harm



WHY SHOULD THE PLD BE UPDATED? (2)

The PLD is no longer adapted to cope with the vast amount of defective/unsafe products sold via online marketplaces.

New study by Consumentenbond and BEUC finds that 66% of investigated products sold online are unsafe.



KEY CONSUMER PRINCIPLES FOR AN UPDATED PRODUCT LIABILITY FRAMEWORK

1. The legal framework is updated, clear and easy to navigate.

→ *Clear interplay between the different initiatives (DSA, GPSD, high-risk AI); revised PLD serving as a safety net.*

2. Consumers easily know where to go when things go wrong.

→ *Joint liability of all professionals involved in the supply chain.*

3. Liability rules follow the dynamic nature of AI-powered goods.

→ *Professionals' liability does not stop once the product is put on the market (e.g. digital content needed to be regularly updated)*

4. The notion of “defect” is broadened and no longer limited to users’ safety expectations.

→ *Products should be considered ‘defective’ when deviating from the reasonable expectations that users may have (including be GDPR-compliant, free of cybersecurity failures, etc.)*

5. Rules on the burden of proof are adapted to make it easier to probe defect and causation.

→ *Reversal of the burden of proof for the harmed party should be considered.*

6. All damage suffered can be compensated

→ *No liability threshold; compensation possible for pure economic loss, damage to data.*

7. The liability of online marketplaces distributing defective products is fully recognised.

→ Online marketplaces should be liable when they have a predominant influence or control in the transaction chain.

→ And they should bear a subsidiary liability in cases such as:

(1) The producer cannot be identified;

(2) The marketplace fails to inform the consumer in due time of the identity of the producer and does not enable communication between the consumer and the producer by providing relevant contact details;

(3) The marketplace received clear evidence about non-compliant products on its platforms;

One step in the right direction: EP resolution (October 2020) highlighted the need to revise the PLD and IMCO opinion recognised the necessity to hold online marketplaces liable under the PLD in certain circumstances.

A NEED FOR AN INTEGRATED AND MULTIFACETED APPROACH

Sales of Goods Directive

GDPR

Cybersecurity Act
(if mandatory requirements adopted pursuant to Art. 56 (2))

Normative benchmarks?

Liability grounds & liable parties

PLD

Beyond safety expectations: What are consumers' reasonable expectations regarding digital products?

Surveillance authorities to address safety related enforcement actions towards the online marketplaces.

GPSD

DSA

Online marketplaces cannot shield themselves behind the liability exemption if they take a predominant influence or control in the transaction chain.

More information?

- Read our position paper [“Product Liability 2.0: How to make EU rules fit for consumers in the digital age”](#)
- Read our report: [“Is Safe to Shop in Online Marketplaces?”](#)

Thank you!

