



How To Get Ready For The New Product Liability Laws In Europe

13 Step Checklist to improve product compliance

On 28 September 2022, the European Commission (“EC”) published its much-awaited proposals to significantly reform the EU Product Liability Directive (85/374/EEC) (“PLD”).

1

Understanding the risks imposed by the legal framework governing product liability can help businesses put in place appropriate systems and processes that will help them to minimise their exposure to costly product liability litigation.

Given the ever-growing convergence between safety and liability regimes in the products space, such developments should also be considered in the broader context of legislative developments in product regulatory/safety and digital/technology realms.

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- Implementing a specific quality and safety review of the final product with regulatory compliance and litigation risk mitigation in mind.
- Risk assess products at the design and manufacture stage with reuse and reparability in mind, including allowing for third-party specialist repairers but also consumers opting to repair.
- Implement systems and design features to identify inadequate repairs undertaken by third parties or inexperienced consumers leading to product failures. Think for example features such as the Liquid Contact Indicator used in most mobile phones.
- Incorporate into the design process features that mitigate the use of incompatible or faulty third-party spare parts.
- Robust data protection and cyber-security features should be an indelible part of the product design process, particularly on Internet of Things connected devices. This will help mitigate the dual risk of liability under the PLD and General Data Protection Regulation (“GDPR”).
- Product development should consider a product’s full lifespan and the associated liability. A reasonable starting point is the longstop period under the PLD, which is 10 years, or 15 years with latent injury. Companies should also consider how their products can be reused, repaired, re-manufactured in this context.
- Robust post-market surveillance following the release of a product to ensure any material change in product safety is monitored, escalated and addressed as appropriate, including through software or hardware mechanisms.
- For state of the art products, careful monitoring of the current state of scientific knowledge and implementing periodic reviews of historic products to ensure safety standards are maintained.

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- Comprehensive record-keeping internally, and by third-party suppliers, of periodic hardware and software updates following launch.
- Identifying reliable partners in each jurisdiction for managing corrective actions and civil liability matters.
- Review documents produced as part of product development, regulatory compliance and after-market surveillance, in particular commercially sensitive documents, having in mind the greater power of the Courts to compel disclosure.
- Online marketplaces should carefully risk assess all products sourced from outside of the EU, including ensuring that appropriate liability cover is available or terms of indemnity are built into contracts.
- Companies should check their existing insurance policies to ensure that they provide suitable coverage to reflect the broadening risks introduced by the proposed PLD, such as for software, third-party producers and e-commerce platforms.

In Practice Series

How To Get Ready For The New Product Liability Laws In Europe

In a world full of regulatory change, practical advice is required to better manage product compliance.

Compliance and Risks and Kennedys Law LLP have created the 'In Practice Series' to ensure you have access to practical insights backed by comprehensive, in-depth regulatory expertise.

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Providing you and your team with the practical insights and actionable takeaways to ensure you have the tools to build consumers safe, sustainable products in a world full of change.



Compliance and Risks is a leading market access and product compliance firm. We are the trusted market access technology provider for the world's leading brands.

Our mission is to help ensure global companies have the tools and information to build consumers safe, sustainable, products in a world full of change.

We have spent two decades honing the digital tools, expertise, and content you need to monitor, assess and prove your products' compliance, protecting your brands and helping drive your growth. We stay ahead of an ever-evolving regulatory landscape so that you can, too.

Our enterprise-grade technology solution, C2P is the key to unlocking market access. Design and build new products with full confidence that you've met all compliance obligations. Achieve, maintain and expand global market access with a smarter way of managing product compliance.

Our global team of SME's, with expertise across a diverse range of products, geographies and policy areas, collaborate with our Knowledge Partners to address questions about laws and regulations including purpose, applicability, requirements highlights and more.

Continually monitor regulatory changes around the world and keep ahead of proposed changes before they happen. Keep all compliance evidence up to date and live linked back to their Regulations, Standards and Requirements. It's easy to simplify your product compliance process with C2P.

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Stay in touch:



Kennedys has a market-leading product liability and product safety practice across Europe, Asia Pacific, the Americas and the Middle East. We provide a comprehensive service to our clients where we are able to deal with all their product-law-related issues, from cradle to grave of the product lifecycle. We act for parties along the entire supply chain and have in-depth expertise in high-profile and complex matters involving a wide range of products including: consumer goods, health, beauty and nutrition, industrial, vehicles/transport and machinery, technology and life sciences.

Our clients are manufacturers, leading distributors and retailers, as well as their insurers and reinsurers.

We are often sought out in high-stakes, international matters to assist companies navigate the ever-more complex and global nature of modern-day product law issues. In our capacity as overall strategic legal advisers in such matters, we often coordinate the input of international external legal and non-legal specialists.

We have in-depth knowledge of all aspects of product law matters across the product lifecycle. We regularly advise on product launch and development, corporate social responsibility, marketing, advertising and product claims, ongoing regulatory compliance, regulator engagement and enforcement, consumer rights and remedies, product recalls and other corrective actions, product liability and product-related contentious matters, mass tort litigation, and product law policy and legal reform

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