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How to mitigate the growing risk from consumer classactions and collective redress in Europe

8 Step Checklist to Avoid Legal Risks

In the last ten years there has been a significant growth in the use of collective redress or representative actions ("group litigation"), a legal mechanism which may stop or prevent unlawful, business practices that affect multiple claimants or compensate them for harm caused by these practices, within the EU and UK.

The growth of group litigation across Europe has potentially significant implications for businesses, increasing the scale of financial and reputational exposure from a defective product. Going forward, it will be more important than ever that businesses have regulatory compliance and civil litigation risk mitigation in mind at every stage of the research and development process.

Prevention is the best form of cure so of course ensuring that, as far as possible, compliant and safe products are released to market is paramount. To this end implementing a specific quality and safety review of any final product with regulatory compliance and civil litigation risk mitigation in mind should be common practice.
Product development processes should consider the associated civil liability from potential defect and consumer redress.
Undertaking periodic risk exposure reviews for all product lines, to include the risk from civil liability including representative action. Ideally such a review should consider the implications country-by-country, given the variance in the Directives implementation. If a product-specific risk exposure review has not taken place for a considerable period, it would be prudent to do so now in light of the implementation of the Directive and the potential for material change in risk profile.
Robust post-market surveillance following the release of a product must ensure any material change in product compliance and/or safety is monitored, escalated and addressed as appropriate, including through software or hardware mechanisms.
Track and consider the implementation of the Directive across Europe and be aware of the benefits or pitfalls in respect of the unique mechanisms available in each country and how this might benefit or hinder any case brought or defended in that jurisdiction, so informed decisions can be made if a choice of jurisdiction is possible.
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 from both this Directive and the recently proposed revision to the Product Liability Directive (for further information on the implications of this see our previous co-authored article here).
Companies should ensure existing and new insurance policies provide suitable coverage to reflect the higher potential financial exposure from representative actions that may encompass many thousands of individual claims.

In Practice Series

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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.

Stay alert and in control with Compliance & Risks and Kennedys Law LLP.

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 & Risks

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.

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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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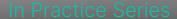






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