



## How to mitigate the growing risk from consumer class-actions 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.

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

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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.

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