Compliance & Risks

Your Guide To Regulatory Trends In Product Compliance & What To Expect In 2024

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Your Guide To Regulatory Trends In Product Compliance & What To Expect In 2024

01. About The Authors

Thomas Panter, **Legal Director, Kennedys**

Tom is a Legal Director in Kennedys London commercial team specialising in products law, with a broad practice in this area covering product safety, regulation, compliance and litigated disputes, including group (or "class") actions.

He acts for a diverse range of corporates and insurers including consumer goods, technology, life sciences, industrial and automotive sectors.

His work has an international focus touching upon the full product lifecycle from product regulatory work including global product launches, ongoing regulatory compliance, recall and dealing with product related claims, including mass tort, class action and collective redress.

01. About The Authors

Sarah-Jane Dobson, **Partner, Kennedys**

Sarah-Jane is a partner in Kennedys' London office. She is an international products lawyer, acting on regulatory, litigious and policy matters across the full product life cycle in respect of product safety, compliance and product liability issues.

Her practice is focused on multi-jurisdictional matters for corporate clients across a range of sectors including consumer goods, cosmetics, chemicals, food and beverages, life sciences, industrial and regulatory compliance and global product recalls.

Her product liability work includes managing large portfolios of international product liability claims, advising on product safety, inquests, public inquiries, judicial reviews and anti-competitive practices and advertising.
Her policy work has focused on assisting clients responding to legislative change, including Brexit, change of regimes (medical devices) and new legislation (collective redress and product sustainability).
She has advised clients in respect of submissions to law makers regarding proposed change.

01. About The Authors

Louise Forrest, **Barrister & Legal Consultant, Kennedys**

Louise is a consultant in Kennedys corporate and commercial division and works as part of their London products law and life sciences team as an international products lawyer.
Louise is a qualified Irish barrister, receiving her barrister-in-law degree from Kings Inns, Dublin in 2002. She has many years' experience across industry, practice, research and academia.

Prior to joining Kennedys, Louise led a team of international product regulatory consultants for a global provider of market access and product compliance SaaS solutions to world leading brands, helping those companies ensure product compliance. Through this work, Louise gained in depth knowledge of the changing product regulatory landscape across a wide range of regulated areas including safety, chemicals, design, energy efficiency, batteries, packaging, labelling, waste, due diligence, cybersecurity, food contact materials, environmental, social & governance, occupational, health and safety and environmental, health and safety.

Louise advises on matters across all stages of the lifecycle of the product, from product launches, product recalls and ongoing regulatory compliance. Her work is multi-jurisdictional and encompasses a wide range of products, such as electrical electronic equipment and textiles.

02. Unlocking Market Access

At Compliance & Risks, we help you keep on top of global regulatory changes and their impact worldwide. We have the right technology, regulatory content and expertise to help you unlock market access, protect revenue and elevate the role of compliance.
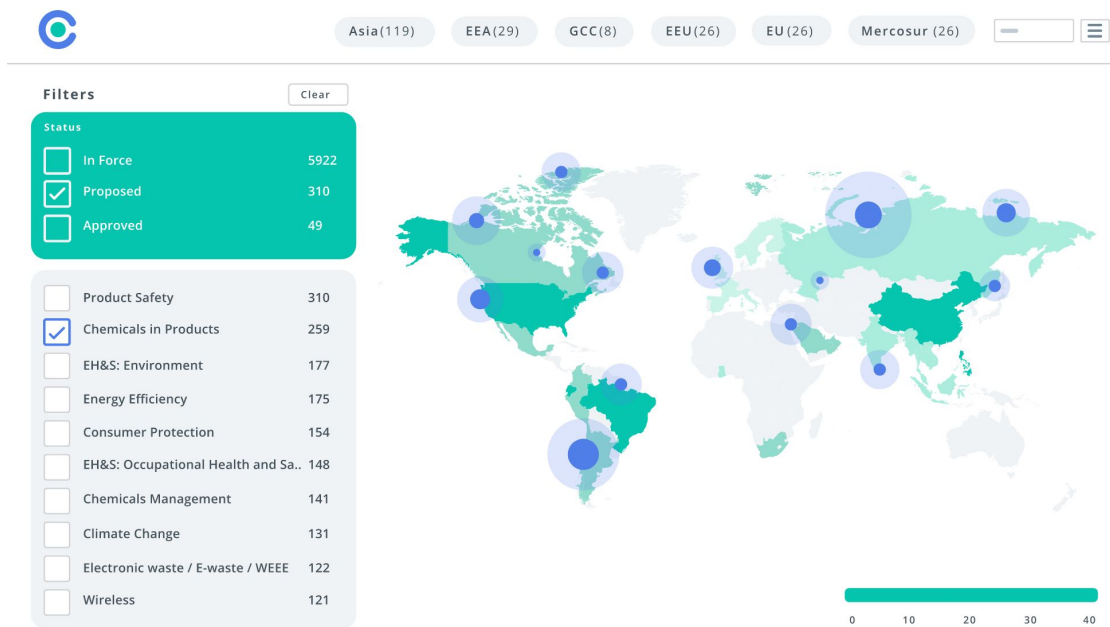
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03. Introduction

2024 will see the trend of growth in product regulation continue, with more proposals being tabled as well as long anticipated measures entering into force. Central to policymakers' agendas globally are several recurring themes: sustainability, advancements in technology, safeguarding human rights, and the ongoing priority of safety.

The EU again leads the way on many of these measures, while the UK seeks to assert its sovereignty on a number of matters. The net result is an undoubtedly complex regulatory landscape challenging for even the most seasoned product manufacturers to navigate.

Additionally, the passing of the transposition deadline for the EU Representative Actions Directive makes the EU a more worrying place to fall foul of compliance.

On December 13th, Compliance & Risks held a webinar in partnership with Kennedys LLP, covering "Regulatory Trends In Product Compliance & What To Expect In 2024" where experts examined recently enacted measures in the field of product regulation as well as new proposals.

Safety, Sustainability and Cybersecurity are the key themes for 2024. Our presenters discussed regulations such as:
- Safety
  - EU General Product Safety Regulation
  - UK Product Safety Reform
  - EU Product Liability Directive
- Sustainability
  - EU Green Claims Proposal
  - EU Right to Repair Proposal
  - EU Deforestation Free Products Regulation
- Cyber security & Artificial Intelligence
  - UK Product Security & Telecommunications Infrastructure Act
  - UK & EU approaches to AI

In response to the numerous queries posed by our engaged audience during the webinar, we've distilled the knowledge shared by our regulatory subject matter experts into this handy document.

This guide serves as your go-to resource for understanding how to navigate product compliance in 2024.

Please note that this is not legal advice and we would recommend that you seek advice for specific questions you may have - feel free to take advantage of our Ask Our Experts service

04. FAQs

Welcome to our concise guide, distilled from the regulatory shifts of 2023. Proposals surged, measures took force, and the landscape of product regulation evolved. Common themes—sustainability, technology, human rights, and safety—shaped policymakers' agendas globally.

The European Union led many initiatives, while the UK asserted sovereignty. Result? A complex terrain, challenging even seasoned manufacturers.

From understanding your obligations to grappling with the consequences of non-compliance, this guide is your key to unraveling the complexities of product compliance regulations in 2024 and beyond, ensuring you stay informed and compliant in an ever-evolving regulatory environment.

Q) What products fall under the scope of the GPS Regulation? Are B2B products included?

A) Article 1(2) of the EU General Product Safety Regulation states that it lays down essential rules on the safety of consumer products placed or made available on the market. Article 2(1) defines product as 'any item, whether or not it is interconnected to other items, supplied or made available, whether for consideration or not, including in the context of providing a service, which is intended for consumers or is likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them.' The Regulation does not specifically address the issue of B2B products, however it is worth noting that products likely to be used by consumers under reasonably foreseeable conditions even if not intended for them may come within the scope of the Regulation.

Q) What are potential Key Performance Indicators (KPIs) for measuring the success of GPSR implementation? How can companies translate GPSR compliance into measurable KPIs?

A) The key success KPI for implementing the EU General Product Safety Regulation is compliance. Given that the measure brings in a number of significant changes relating to the definition of a product, reporting obligations, product recall, risk assessments, online offers etc., understanding the legislative changes and how they will impact your businesses is imperative. A business should take the time to understand the changes being brought in and how they will, in practice, affect it. It may need to undertake a comprehensive internal review of its practices and policies with a view to updating them in line with any changes under the Regulation.

Q) Will Ecodesign for Sustainable Products (ESPR) also impact business-to-business (B2B) products?

A) Recital 11 states that to create an effective and future-proof regulatory framework, it is necessary to allow for the setting of ecodesign requirements on all physical goods placed on the market or put into service including components and intermediate products. This should allow the Commission to take into account the broadest range of products possible when prioritising the establishment of ecodesign requirements and thereby maximise their effectiveness.

Article 1 defines a product as 'any physical good that is placed on the market or put into service'.
Article 2 states that the regulation shall apply to any physical good that is placed on the market or put into service, including components and intermediate products (apart from the names exceptions such as food).
The draft regulation does not specifically address B2B products, but based on the foregoing it is possible that they could come within its remit.

Q) Are PC applications and websites (e.g., homepages) exempt from the Cybersecurity Act?

A) You refer to the Cybersecurity Act, which is EU legislation on the creation and functioning of ENISA. With regard to the UK PSTI the act predominently applies to physical devices. However, the security requirements for "relevant connectable products" will also apply to software related to such a product whether installed on the product directly or not.

Q) Does the ESPR exclude the automotive sector, and should it be incorporated into the new ELV?

A) Article 2 provides that the Regulation shall apply to any physical good that is placed on the market or put into service, including components and intermediate product, but will not apply to food, feed, medicinal products, veterinary medicinal products, living plants, animals and microorganisms, products of human origin and products of plants and animals relating directly to their future reproduction.

Therefore, there is no specific exclusion for automotive.
The recitals state that the general approach is that this Regulation will set requirements where existing legislation does not, or where it insufficiently addresses environmental sustainability aspects.

The proposal on circularity requirements for vehicle design and on management of end-of-life vehicles states that it complements and is consistent with the draft ESPR. It states that the requirements on circular design and production of motor vehicles are currently based on a specific legal framework applying to vehicles, which are set out and enforced through the 'type-approval' process.

This is therefore a separate legal framework than the one set out under the upcoming regulation on Ecodesign for Sustainable Products. Having regard to this it is likely the ESPR would only apply to the automotive sector if environmental sustainability aspects are not fully addressed via the existing specific legislation.

Q) What is the precise definition of "IoT consumer products" under the Cybersecurity Act?
For instance, a computer connected to a network via a LAN cable would likely qualify as an "IoT consumer product." However, would a portable HDD connected to that computer's USB terminal with a USB cable also fall into the category of "IoT consumer products"?

A) You refer to the Cybersecurity Act, which is EU legislation on the creation and functioning of ENISA. With regard to the UK PSTI it is important to note that the majority of provisions pertaining to product security in the PSTI do not come into force until 29 April 2024.

The PSTI applies to a "relevant connectable product".

Whether a HDD conected by USB cable is a "relevant connectable product" will ultimately depend upon consideration of its full specification and whether this satisfies the definition of being an "internet-connectable product" (see section 5(1)-(2)) or a "network-connectable product." (see s5(3)-(8)).

The specification of any potentially relevant product should be carefully considered against s5 of the PSTI before any decisions are made with respect to compliance obligations. However, a basic hard-drive with no wireless transmission or TCP/IP (or equivalent) functionality is unlikely to satisfy the definition and be subject to PSTI.

Q) Prior to the enactment of the Right to Repair Directive, was there an existing "European repair information form"? Can additional details regarding this form be found within the document or on the website?

A) Article 4(1) of the proposal introduces an obligation for repairers to provide standardised key information on their repair services via the European Repair Information Form set out in Annex I to allow consumers to assess and easily compare repair services. The form can be viewed in Annex I of the draft regulation which is found here

Q) Is it a requirement to have a UK importer address on product / packaging where UK is respecting CE now?

A) Details on the use of CE marking in the UK can be found here

Q) Does the Deforestation Regulation extend to packaging materials such as boxes?

A) Details of the products cover by the Deforestation Regulation can be found here. Of particular interest may be the section on 'How does the regulation apply to wood used for packaging?'

Q) Is third-party certification mandated by PSTI?

A) There is no requirement for 3rd-party certification. Pursuant to s9 of the PSTI manufacturers are obligated to prepare, or have prepared on their behalf, a "statement of compliance" in the form specified by the regulation confirming it has complied with the applicable securiy requirements of the PSTI.

Conclusion

This guide serves as a comprehensive roadmap through the intricate terrain of evolving product regulations. From the surge in proposals and the enactment of long-anticipated measures in 2023 to the overarching themes of sustainability, technological advancement, human rights, and safety, the regulatory landscape continues to evolve. With the proactive roles of the European Union and the United Kingdom, navigating this complex terrain poses challenges for even the most seasoned manufacturers.

Through diligent examination of enacted measures and proposals, stakeholders gain invaluable insights into compliance requirements and strategic adaptability.

As we traverse the regulatory landscape, it becomes apparent that informed compliance is not merely a necessity but a strategic imperative. Thus, armed with knowledge and foresight, stakeholders are empowered to navigate the ever-evolving product regulations with confidence and compliance.

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