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Product Safety / Regulation

Our Paris' Products Litigation team's key takeaways from the ICPHSO International Symposium 2024

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What NGOs are expecting (more specifically BEUC)

- Make sure that consumers are protected in global and digitalized markets
- Consumers need to be better protected against chemicals
- Need to reinforce the EU borders & cooperation between regulators
- Protect consumers against emerging risks
- We should not distinguish between small and large companies when it comes to safety
- We should not forget the important role of the CPC network

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The upcoming Digital Product Passport or “DPP”

- One of the first implementation of the DPP will be in Battery Regulation.

- The DPP will collect information from the whole economic operator’s supply chain, i.e. key information about the product and organization of the supply chain. More specifically, the relevant data relates to the product’s durability, reliability, upgradability, presence of substances of concern, energy use or energy efficiency, recycled content, etc.

- The economic operator will be responsible for creating and keeping up to date the DPP for its products.

- Operators must immediately engage their whole supply chain to obtain the information needed to implement the DPP, as getting suppliers engaged is no longer optional if operators intend to offer products in the EU market.

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Efforts to be implemented to get the consumers' attention

- 38% of consumers do not review safety warnings.
- The consumers who read safety warnings, for most, do not take any action.
- There is a need to educate consumers and push them to read safety information. Companies need to be creative (social media, videos, etc.).
- Regulators promote safety to consumers and expect companies to do so as well:
  - All regulators have internet pages where information is available. They have guidelines. The EU Safety Gate Portal is very useful for example.
  - All regulators create trainings and workshops for the consumers, and also webinars
  - All regulators use media and make communications to consumers, they create podcasts notably on toy safety.
  - All regulators are attempting to obtain information from the consumers, review, comments on regulation or system etc.

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Call for new rules relating to Online selling / Marketplace

This is what regulators and NGOs / Industry organizations call for:

- Ensure there is always someone responsible for the safety of the product
- Customs need to be well equipped. Europe is complex because of the number of customs/authorities but European Commission is suggesting a customs reform with a concept of European Importer and that could be the marketplaces
- Efficient enforcement: need more training and support
- Enforcement of the DSA
- Tackle fake reviews
- Render the sanctions much more significant as inappropriate listings keep on coming back despite being deleted

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Inflation of ESG-related obligations

Main trends making it difficult for companies to ensure compliance	Advice provided to companies
From voluntary to mandatory disclosure Disclosure, due diligence and data Borders controls and sanctions Extra-territoriality Stricter penalties Increased enforcement Increased litigation / class actions Regulatory tracking Horizon scanning	Establish a dedicated ESG / Sustainability team Understand the regulatory requirements Robust data collection mechanisms Regular risk assessment and mitigation Regular reporting & communication Regulatory monitoring tracking tools Regulatory enforcement Collaborate with the stakeholders Continuous education and training

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AI is here and regulation as well

- The AI Act is a product safety legislation – it does not regulate AI technology but the way AI technology is used
- The AI Act is complementary with the certification process of other Directives such as toys, machines, etc.
- The AI Act has a Life cycle approach: when the product is placed on the market and during the whole life cycle – see provisions about AI models
- The baseline for the negotiation process was not to put too much pressure on developers but there is a need to protect the consumers. It is therefore a risk-based approach
- The AI Act is innovation friendly (there are provisions on direct testing in real life conditions of AI systems while being supervised by the regulator)
- Interestingly “High risk” AI can be permitted subject to requirements and conformity assessment. But there are obligations for the developers of high risk AI: risk management, data governance and data quality, record keeping and logging, transparency, human oversight, accuracy, robustness, cybersecurity, quality management and conformity assessment.

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Best practices for AI developers – what is expected

1. Know your AI tool
2. Design the AI tool to be safe
3. Implement ongoing risk assessment and risk management protocols
4. Assess AI systems
5. Implement compliance measures and have a third-party conformity assessment
6. In the near term: need to comply with some standards within 6 months linked to quality, data, risk and software lifecycle

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Reparability & its issues

- The right to repair raises several issues, the first of which being that consumers choose to repair. Financial incentive tools to consider repair must be implemented as the replacement or the purchase of a new product may be cheaper than the repair
- Repairability needs to be possible. Should a product that suffered a fire or shock hazard be repaired?
- Repairability of some products are challenging (e.g., batteries). After-market products must be approved by the manufacturer or certified in line the standards providing for testing protocols ensuring they meet safety and performance criteria
- Consumer information is also key: a European Online Platform for Repair will allow consumers to connect with repairers, sellers of refurbished goods and purchasers of defective goods

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Transparency & challenges of regulators

- Check the regulators' websites: they regularly publish reports and guidelines on their interpretation of regulations
- Regulators openly inform the public of the industries they will target with investigations
- Regulators communicate between each other even if NGOs do regret that there would be no more coordination
- Opportunities to engage with experts and feedbacks have been limited. Experts and companies should work with the regulators on the regulations for them to be properly applied
- Unfortunately, it is still difficult to ensure that all regulators are creating a harmonized system even if standardization is key
- In the EU, during the last 5 years, 415 pieces of legislation were proposed, 361 have already been adopted, and most of the others are going to be adopted. Out of 415, 400 will probably become law. In the EU, almost all proposals become legislation
- In the US, it appears that governmental agencies and mostly the CPSC and its legislative agenda are affected by: 1° the medias; 2) the industries; 3) the consumers advocacy groups and 4) the Congress

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