

CLIENT ALERT

Brexit and U.K. Consumer Product Safety Laws

August 23, 2016

The historic Brexit vote on June 23, 2016, calls into question the future of product regulation in the U.K. but should not have an immediate effect on compliance obligations.

Status of Product Safety Law

As commentators have noted in the wake of the Brexit vote, the U.K. remains a member of the EU – preserving the legal status quo – until the EU and U.K. agree on the terms of the withdrawal pursuant to Article 50 of the Treaty of Lisbon. While the terms of the departure will take time to negotiate, the withdrawal will likely have little immediate effect on existing EU Directives, which do not apply directly to all EU Member States, but instead apply when adopted under national implementing legislation within each Member State. Examples of current EU directives implemented by the U.K. include the General Product Safety Directive (GPSD) and the Restriction of Hazardous Substances Directive (RoHS 2). Over time, however, the U.K. may decide to revise its existing laws, which could result in a divergence from the rest of Europe.

By contrast, EU Regulations, which *are* directly applicable in the Member States without national implementing legislation, will no longer formally apply in the U.K. once it departs from the EU. Examples of product regulations include the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation and the Classification, Labelling and Packaging (CLP) Regulation. After its withdrawal from the EU, and depending upon the terms of the withdrawal agreement, the U.K. may be free to adopt its own laws on those and other EU Regulations.

Future of Product Safety Laws in the U.K. and the EU

There are several options for the withdrawal, all of which could affect product safety laws in the U.K. One approach is for the U.K. to become a party on its own to the Agreement on the European Economic Area (EEA) (as are Lichtenstein, Norway and Iceland) and thus remain in the Single Market. The U.K. would (indirectly) remain bound by most of the EU product safety, consumer protection, and environmental laws. For example, REACH, the Biocidal Products Regulation, and the CLP Regulation all apply to the EEA States. Furthermore, the EEA States are required to implement in their national laws EU consumer protection directives such as the Unfair Commercial Practices Directive, the Sales and Guarantees Directive, and the Unfair Contract Terms Directive. The EEA Member States are also a part of the Rapid Alert System for dangerous non-food products (RAPEX System) and have had to implement the GPSD. The U.K.'s influence on future laws would be greatly reduced if it became an EEA member, but the overall burden on industry would be mitigated.

As an alternative, the U.K. could negotiate a bilateral agreement with the EU or individual Member States, which could have varying effects on product safety laws. Because of the long-established reciprocal importance of consumer markets in the U.K. and Europe, there is a common interest in ensuring that product safety requirements remain as streamlined as possible, thus minimizing divergence of those laws between the U.K. and Europe.

For the time being, the U.K. remains aligned with Europe on product safety, and compliance obligations have not changed. While the future of product regulation in the U.K. is uncertain, it is clear that any significant changes, including a U.K. decision to follow its own path rather than maintain established EU consumer product safety practices, will impact companies doing business in Europe. We recommend that businesses start to inventory the EU legislation and rules applicable to their activities in the U.K. to identify which may be impacted as the U.K. puts Brexit into motion.

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