

ENVIRONMENTAL REGULATORY: PRODUCT DEFENSE

Much EU legislation is enacted by the European Commission and its agencies. That legislation can affect general chemicals under the REACH Regulation (biocides, pesticides, pharmaceuticals, fuel additives, food additives) and the waste management of these products. In other words, many of our every-day products are regulated out of Brussels – and regulations are adopted on a daily basis.

As these measures proceed through the EU adoption process, affected parties have various ways to be heard by the actors intervening in the legislative process and they have rights of defense - transparency of the adoption process is a key focus of the regulatory authorities and parties should not hesitate to assert their rights.

Once the measure is adopted, those parties can also seek to challenge them before the European Courts if they believe that their rights have been infringed or that the measure is otherwise unlawful. Recently introduced rules allow more cases to be brought directly before the European courts in Luxembourg.

Whatever the contents of the adopted EU measures, all parties will need to work out exactly what changes need to be made to their business to comply fully with the new legal landscape. In all of these product defense scenarios, our team of regulatory lawyers in Brussels is well equipped to deal with your issues.

Asserting Rights of Defense

Whether it is making sure that the evaluation of your chemical is being properly conducted under REACH, or your product authorization is being correctly considered by a Member State under the EU Biocidal Products Regulation, or there is some other various scenario that concerns you, our team can assist in navigating the relevant technical, procedural and legal hurdles. Our multi-lingual team in Brussels knows how to deal with officials at all levels and how positively to

advocate your position. We often team up with highly regarded lobbyists to optimize our actions.

Litigation

Being alive to the possibility of taking legal action against acts of the institutions at EU level – whether directly in an action for annulment or through the Member State national courts in the preliminary reference procedure - is a critical tool in a company's product defense armory. Our team has considerable litigation experience at both EU and national levels and knows when and where to push the litigation button.

Compliance

Whatever the new rules look like, affected parties must make sure that they place their products on the EU market in accordance with the law. Some of the rules are far from easy to follow but the consequences of failing to comply are serious (market recall, criminal fines). Our team is well placed to advise you on regulatory compliance whether you have a one-off enquiry or need a full-blown audit of your supply chain.

Our Team

The product defense team comprises experienced regulatory lawyers, but often teams up with Crowell & Moring alumnus Peter Sellar, an external counsel who consults with Crowell & Moring. Peter is an independent Scottish Advocate who deals with a variety of EU law issues relating to chemicals, biocides and pesticides, waste and electrical equipment, fuel and toys. Our team also regularly takes advice from an external workforce with a scientific background; a good understanding of the characteristics of a product can be a key element in our advice to clients.

Representative Matters

- Represented clients before the European Chemicals Agency (ECHA) in the frame of the compliance with the REACH regulation.
- Coordinated pools of undertakings for the registrations of substances under REACH.
- Represented clients in discussions leading to the adoption of the EU biofuels legislative framework.
- Assisted a major energy company in meeting all regulatory obligations prior to the start of business in the EU.
- Assisted a bag manufacturer with the identification and management of the regulatory risk due to the presence of phthalates in products sold in the European Union
- Assisted an online reseller of clothes and toys with the implementation of all regulatory checks and duties before launching operations in the EU, including the identification of all risks under the REACH Regulation.
- Drafted an agreement for the appointment of an authorized representative for REACH purposes in the European Union.

CONTACTS



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