

The Revision of the EU General Product Safety Directive

The European Commission is in the process of reviewing the EU General Product Safety Directive 2001/95/EC (“GPSD”), which relates to non-food consumer products. A legislative proposal is anticipated for the second half of 2011.

The review of the GPSD will be substantive and will have a real impact on the regulatory landscape affecting the safety of products manufactured and sold in the EU. For example, the review is likely to change the procedure for mandating European standards, the recognition of non-EU standards in assessments made in the EU, the direct applicability of emergency measures in the Member States, the notification criteria for RAPEX notifications and the requirements in terms of product traceability and for products sold on the internet. Beyond the GPSD review per se, it is the entire legal framework on the safety of products that is being reconsidered.

In the meantime, companies should be careful to ensure they know which product safety and market surveillance provisions apply to their products. Indeed, since the entry into force of Regulation 765/2008/EC on market surveillance on 1 January 2010, products are subject to different product safety regimes in the EU depending on whether or not they are (i) “consumer products” and (ii) subject to specific EU “harmonized rules”. Essentially:

- For consumer products that are subject to harmonized EU rules, such as toys and cosmetics products, both the GPSD and Regulation 765/2008/EC apply, as well as the provisions included in the specific (toys, cosmetic) regulations in place. A case by case analysis is required to determine which provisions of each of these three sets of rules (e.g. safety definition notification requirements for products presenting a risk, rights and obligations of business operators and market surveillance authorities, etc.) is “more specific”, as this will be the applicable provision.
- By contrast, the GPSD still is the only legislation of reference for consumer products not subject to EU harmonized rules, such as children’s products other than toys, clothing, textiles or fashion items for which some European and national standards exist, but these GPSD rules are likely to change with the upcoming reform.
- For non-consumer products, such as most chemical products, Regulation 765/2008/EC applies in addition to EU harmonized rules, (e.g. REACH) but not the GPSD. But the GPSD review is likely to also affect Regulation 765/2008/EC and therefore will also be relevant for these products.

The European Commission is organizing several selective stakeholders meetings in February and March 2011 to help shape the new legislative framework. Mayer Brown has been invited to these meetings and we will therefore be able to contribute to this important debate. We would welcome your comments on how the current regime affects your business, and what changes you would like to see made: if you would like to comment, please get in touch with one of those mentioned below or your regular Mayer Brown contact.

Please view the full report.

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