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The changing face of Europe's regulations

New regulation could lead to a greater incidence of product recall and environmental damage claims for companies – both large and middle market – in Europe.

Over the past five years the frequency of product recalls has increased dramatically in line with a renewed focus on quality and safety. At the same time, environmental damage claims are also expected to become more frequent as a result of new Europe-wide legislation. In this environment, companies need to ensure they have adequate protection.

“Litigation activity over the past few years has definitely increased,” says Daniel Maurer,



Chief Underwriting Officer for Middle Market P&C, Continental Europe and Asia. “Regardless of their size, firms are being exposed to multinational litigation. One reason is much tougher regulation in Europe.”

Recall culture

The General Product Safety Directive came into force in 2004 with the intention of making sure only ‘safe’ products are placed on the EU market. The impact has already become apparent through a rapid alert system for dangerous consumer products (RAPEX) established under the Directive. It seeks to quickly prevent the use of products that could pose a serious risk to consumer health and safety. The number of alerts has significantly increased in the last few years. While product recall is regarded as the last resort, recall cases have nevertheless grown significantly since the Directive was established.

Experts believe the Directive is just one factor driving the trend. Changes within the manufacturing and processing industries have also introduced new risks into the supply chain. “Recently we’ve seen a lot



of recalls related to toys manufactured overseas and imported to Europe,” comments Thomas Stamm, Chief Casualty Underwriter, Continental Europe and Asia. The highest profile of these recalls was made by toy manufacturer Mattel, when millions of toys containing lead paint were withdrawn in 2007.

The increasing complexity of products introduces a new level of risk, explains Stamm. “In the automobile industry some parts are becoming more and more sophisticated. The seats, for instance, integrate more electronic parts than are safety relevant, which could create more failures and hence more claims.” In the past the only function of a car seat was position adjustment. Now they have built-in driver recognition, heating units and automatic seatbelts.

The pressure to produce goods more cheaply has led to more outsourcing which makes it more difficult to ensure quality standards are in place across the supply chain. “Manufacturers are under a lot of pressure,” adds Stamm. “They have to produce more at a lower cost but this potentially has an impact on the quality of the product.”

Prevent and protection

Adequate risk management practices are essential for companies seeking to prevent a product recall. Quality certificates such as ISO 9001 are important, but this is just a first step. “It’s not enough to achieve the certificate and then let the standards fall down,” says Maurer. “Standards need to be maintained and producers need to work closely with external consultants and auditors. The insurance industry definitely

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plays an important role in that – we are here to support the risk assessment or improve the processes.”

Increasingly complex production processes and heightened consumer awareness also increase the risk of a recall for the food and beverage industry. XL Insurance offers its clients in this industry a solution that includes crisis management advice by experts, from on-site security through communications to laboratory tests – and this around the clock 365 days a year. “Being prepared and having the right skills at hand can save a company’s reputation in a crisis,” stresses Stamm. XL Insurance’s solution places an emphasis on risk prevention and live crisis response. It includes an initial evaluation of existing recall and crisis management systems. He adds, “Product Recall, which had traditionally been viewed by insurance clients as ‘luxury’ coverage, is now being recognised as an increasingly valuable risk transfer solution.”

“Companies have recognised that they need to invest in setting up specific quality control measures and put crisis management plans in place to minimise the risks

of a recall,” says Stamm. As well as increased demand from Europe, he has spotted another trend. Asian producers are increasingly looking for specific coverage for the US, including product recall. Stamm notes that brokers are also seeking to expand coverages so they are worldwide rather than just on a country basis. “The international focus for brokers is essential.”

The “polluter pays principle”

Another key European legislation expected to have a significant impact on companies’ exposures across the European Economic Area member states is the Environmental Liability Directive. It increases a firm’s exposure to environmental risks. The Directive focuses on ecological damage, rather than on damage to third parties. Its objective is to implement the ‘polluter pays’ principle as well as setting standards for the clean-up of environmental damage.

Maurer has seen an increase in demand for environmental liability insurance since the Directive has been implemented. There has also been pressure on insurers to develop new products and adapt existing ones. “A lot of insurance companies came up with

solutions,” he adds. The advice for large and middle market companies is to request an extension across Europe so they are not limited to just one country for coverage.

With the first claims settlements arising from the provisions of the Directive are not expected for another two to five years, the full impact will only be felt some time down the line. (See ‘Spotlight: Environmental Liability Directive’)

Being prepared

Large-scale product recalls have illustrated that international product liability coverage is increasingly necessary for companies selling or distributing products and working with increasingly complex supply chains. The impact of new regulation is just one factor increasing companies’ exposures to the risks of a product recall or environmental liabilities. The role of insurers is to help clients protect themselves as their exposures evolve by providing early advice and loss prevention measures while ensuring adequate insurance cover is in place. The joint aim is to avoid nasty surprises. 