

The International Comparative Legal Guide to:

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A practical insight to cross-border Product Liability work



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Regulatory and Product Liability Implications of REACH for the Consumer Products Sector

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Introduction

In June 2007, the European Union (EU)'s comprehensive new regulation on chemicals - REACH - came into force across the 27 Member States, after nearly a decade of wrangling, horse-trading and intense lobbying.

REACH is a dramatic overhaul of the EU's regulation of chemical substances and of their use in downstream products. The underlying premise of REACH is that Europe's previous chemical safety regime was not fit for purpose. Of the 100,000 or so substances currently sold in the EU, the vast majority never had to be tested under previous EU legislation. Little formal data on possible human health or environmental impacts was available to national regulators, on whom the burden for testing fell. REACH is intended to fill this information gap.

As its provisions gradually come into force between now and 2018, REACH will progressively transfer onto industry the burden of providing chemical safety data, which manufacturers and importers of many substances and preparations, and some articles containing them, will have to register with the new European Chemicals Agency (ECHA) (see inset box: "REACH in a nutshell," below).

Importantly, the majority of those with registration obligations under REACH will also need to lodge pre-registrations with ECHA between 1 June and 30 November 2008 (inclusive). Failure to pre-register may mean having to discontinue manufacture or import of the substance in question (see inset box: "pre-registration").

Companies who manufacture, import or use "substances of very high concern" (SVHC) will ultimately also have to seek specific authorisation (essentially, a licence) if they wish to continue doing so. What goes on the candidate list of substances subject to authorisation (known as Annex XIV) is already turning into the next major battleground between industry and the green lobby. The candidate list is due to be published by mid-2009.

REACH does not just impact the chemicals industry. It also offers significant challenges for downstream users of chemicals, including manufacturers and importers of household and other consumer products. The potential product liability implications of the regime for some consumer products companies, in particular, should not be underestimated. REACH is, after all, intended to generate new data on chemical hazards. The European Commission (the *Commission*) has stated that "it is expected that REACH will generate new data which will help identify another 600 substances of very high concern over the next 11 years"¹ - that is, 600 substances which are not currently classified as SVHC, but which may be so classified in the years to come. The branding of hundreds of chemicals as hazardous that have not been previously classified as such may well, in turn, fuel litigation on both sides of the Atlantic.

This article seeks to map how REACH may affect EU and international consumer products companies, focusing in particular on their direct obligations under REACH and on the regime's potential impacts on the product liability and occupational health exposure of those who use chemicals in the workplace or in their products.

REACH in a nutshell

The REACH Regulation (1907/2006/EC) was adopted on 18 December 2006. It applies to most chemical substances, whether on their own, in preparations (mixtures) or used in products (or "articles"), that are manufactured or used in, or imported into, the EU in quantities of over one tonne per year. Its principal elements are as follows.

Legal entities

All obligations under REACH fall on EU legal entities, as defined under the national law of the EU Member State in which they are active. This means that:

- Companies based outside the EU do not have direct legal obligations under REACH (although their first tier customers in the EU, who import their products, may well do).
- Where a company in Member State A has a branch office in Member State B, and that branch office manufactures or imports a substance, registration and other obligations under REACH in respect of that substance may well lie with the company in Member State A rather than the branch office. This will, however, depend on whether the national law of Member State B recognises branch offices as having separate legal identity or not.
- Different legal entities in the same corporate group may each have their own, independent obligations under REACH. Although they can informally agree between themselves that one group company will take the lead in ensuring REACH compliance, they cannot legally "contract out" of these obligations.

Registration

The central requirement of REACH is that substances, on their own or in preparations, may not be manufactured in the EU, or imported into the EU, in quantities of over one tonne per year unless they have been registered. This is the principle of "no data, no market" set out in Article 5 of the REACH regulation. Substances contained in articles that are manufactured in, or imported into, the EU must also be registered if relevant tonnage thresholds are met and they are intended to be released from the article under normal or reasonably foreseeable conditions of use: see below.

Registration requires any legal entity that manufactures a substance in the EU or imports it into the EU to obtain information on the properties of that substance, to assess the risks arising from

its use and to establish how those risks can adequately be controlled, before documenting this process in a registration dossier supplied to the ECHA. Much of the information to be submitted will be supplied (for a fee) by other manufacturers and importers of the substance in question, in the context of a SIEF (see “Pre-registration”, below).

The registration dossier must include a technical dossier and, for substances manufactured or imported in quantities of ten tonnes or more per year, a chemical safety report (*CSR*) that records and summarises a chemical safety assessment (*CSA*). The *CSR* records the hazard classification of a substance and the assessment as to whether the substance is persistent, bioaccumulative, and toxic (*PBT*), or very persistent and very bioaccumulative (*vPvB*). It also includes instructions on risk management (known as “exposure scenarios”) for specific uses of substances classified as dangerous and for PBT and vPvB substances. The higher the tonnage, the more information on the intrinsic properties of the substance is required.

REACH encourages the submission of existing information wherever possible. New tests are only required when it is not possible to provide the information in any other permitted way and testing proposals may have to be pre-approved by ECHA. The aim is to reduce the amount of testing on animals and avoid unnecessary costs.

Evaluation

The Agency will evaluate a small proportion of the registration dossiers received. It will also evaluate testing proposals made by potential registrants.

Authorisation

SVHCs falling on the Annex XIV “blacklist” will be subject to the authorisation procedure before they can be used or placed on the market. Such substances will include CMRs (chemicals that are carcinogenic, mutagenic or toxic to reproduction), PBTs and vPvBs. The burden is on the EU manufacturer or EU importer of any substance in Annex XIV to convince ECHA, and ultimately the Commission, that such a substance should receive authorisation. In the case of CMRs, an authorisation will be granted if the applicant can demonstrate that the risk from the use of the substance is adequately controlled. For PBTs and vPvBs, and CMRs where the applicant is unable to meet the “adequate control” test, an authorisation may be granted if the applicant can show that the socio-economic benefits of continued manufacture/use outweigh the risks and that there are no suitable alternatives available.

Restriction

This procedure replaces the current regime for banning or restricting the use of the most hazardous chemicals. REACH prohibits the manufacture, placing on the market or use of an exhaustive list of such substances listed in its Annex XVII (which will be amended over time).

Enforcement

REACH’s legal form - a regulation - means that it took effect across the EU on 1 June 2007 without the need for its provisions to be implemented into the law of the Member States (as would be the case with a directive). However, Member States will be responsible for enforcing REACH and are required to impose “*effective, proportionate and dissuasive*” penalties for breach by 1 December 2008.

Exemptions

Certain substances will fall outside REACH (e.g. radioactive substances) or its registration requirements (e.g. substances used as food additives) or will be deemed to have been registered (e.g. active substances used in biocides). Registration is also not required for substances manufactured or imported at under one tonne/year.

What Regulatory Obligations Will REACH Impose on Consumer Products Companies?

The direct regulatory impact of REACH on consumer products companies and other downstream users of chemicals will vary widely, depending principally upon the capacity in which any given corporate entity acts in relation to any given substance or preparation.

EU-based manufacturers and importers of substances and preparations

Relatively few consumer products companies manufacture substances, so most will not need to register on this score. However, any EU legal entity that imports substances into the EU - on their own or in preparations - will face registration obligations under Article 6 of REACH. Given that common paints, solvents, inks and adhesives will generally be treated as preparations (mixtures) under REACH, these obligations may apply to a variety of consumer products businesses.

“Import” has been expressed by the Commission to mean the physical introduction of a substance, preparation or article into the customs territory of the Community, so a company on the French side of the Franco-Swiss border buying cleaning fluid directly from a company in Geneva would be that preparation’s importer. Such businesses will have to think carefully about their supply arrangements if they are to avoid being fixed with potentially burdensome registration obligations under REACH. There is also the possibility that the volume of substances imported into the EEA and EFTA will have to be counted when determining tonnage, for the purposes of registration, authorisation etc.

EU-based manufacturers and importers of articles (products) containing chemicals

EU legal entities that manufacture or import articles containing chemical substances will not have registration obligations, unless the conditions set out in Article 7 of REACH are met:

- The substance in question is intended to be released during normal and foreseeable conditions of use.
- The total amount of the substance present in the articles exceeds 1 t/a per legal entity.
- The substance has not yet been registered for that use.

The third of these conditions can, in practical terms, be disregarded for purposes of determining whether the substance needs to be pre-registered (since no registrations will have been completed by 1 December 2008, the pre-registration deadline; see inset box: “Pre-registration”).

Pre-registration

The timetable for registering substances listed on the European inventory with an EINECS number (“phase-in substances”) is staggered over an 11-year period according to perceived risk and tonnage:

- SVHC (>1 tonne), vPvBs (>100 tonnes), PBTs (>100 tonnes) and phase-in substances placed on the market in quantities greater than 1000 tonnes must be registered by 1 December 2010.
- Other substances placed on the market in quantities \geq 100 tonnes must be registered by 1 June 2013.
- Other substances placed on the market in quantities \geq 1 tonne must be registered by 1 June 2018.

However, in order to qualify for this phased timetable, and to allow continued supply and use of the substance in question pending registration, potential registrants of phase-in substances have a six-month window (1 June to 30 November 2008) in which to provide basic "pre-registration" information to ECHA. Once they have pre-registered, all manufacturers/importers of the same substance will automatically form a Substance Information Exchange Forum (SIEF), whose aim is to share data over its period of operation.

Pre-registration is therefore required by any legal entity that will face registration obligations in respect of a phase-in substance under REACH. This could include manufacturers and importers of articles (where a substance present in the article is intended to be released), as well as of substances on their own or in preparations.

It is critically important for such legal entities not to miss the window for pre-registration. If a pre-registration is not submitted, where required, the manufacturer/importer in question cannot continue to manufacture, import or supply the substance or article in question after 1 December 2008. For this reason, ECHA and national REACH helpdesks are advising EU manufacturers and importers of substances, and articles from which substances are intended to be released, to take a precautionary approach to pre-registration.

The difficulty for many consumer products companies, particularly when determining whether to pre-register or not, is that - as at the date of publication - ECHA still had not released its influential guidance document on the registration of substances in articles (being developed under the aegis of REACH Implementation Project 3.8). The RIP 3.8 guidance is likely to clarify certain current grey areas, such as:

- At what stage of processing does a raw material (e.g. wool) become an article (e.g. a textile)? REACH defines an article as any object that, during production, is given a special shape, surface or design that determines its function to a greater degree than does its chemical composition.
- In what circumstances is a substance "intended to be released" from an article? Whose intention is REACH talking about? Where a substance is released from an article in use, but that release is incidental to the main function of the article, then is this an "intended release" that would create the need to register? There are likely to be a number of borderline products where this is far from clear.

EU-based manufacturers and importers of products that contain SVHC

Following publication of the candidate list for authorisation by mid-2009, EU-based legal entities that manufacture or import articles containing SVHC must notify ECHA of the SVHC's presence where all the following conditions are met.

- The SVHC is present in the article in a concentration above 0.1 per cent (w/w).

Our experience of advising clients in relation to compliance with the RoHS Directive and the penta/octa ban (see inset box: "The greening of EU product policy") suggests that this may not be simple to evaluate.

- The total amount in the range of articles produced/imported exceeds one tonne per annum per legal entity.
- The manufacturer or importer cannot exclude exposure to humans or the environment during normal or reasonable foreseeable conditions of use and disposal of the article.

In practice, it may prove extremely difficult for any company to exclude any human health or environmental impact across

the whole product lifecycle (e.g. landfill disposal).

- The substance has not already been registered for the use in question.

The purpose of the notification provisions is to allow ECHA and the Commission to take a view on the need for future restrictions on the use of SVHCs. However, there is no confidentiality in information so notified, which is therefore likely to come into the public domain. This is reinforced by the provisions of Article 33 of REACH, which - following publication of the candidate list - will require suppliers of articles containing SVHCs meeting the 0.1 per cent w/w criterion identified above to:

- provide safe use information (including, as a minimum, the name of the relevant SVHC) to anyone who receives the article, which might include consumers; and
- identify the substance in question and provide safe use information to any consumer who requests it, free of charge and within 45 days of the request being made.

Consumer products companies who use substances or preparations in the workplace

All consumer products companies with operations in the EU will make use of chemicals in the workplace. They will therefore be treated as "downstream users" of chemicals for the purposes of REACH. These are defined as Community-based legal entities, other than the manufacturer or importer, who use a substance, either on its own or in a preparation, in the course of an industrial or professional activity.

Most downstream users will face limited obligations under REACH. Principally, they will need to satisfy themselves that the substance or preparation they are using has been registered for their intended use, or source it elsewhere if not, and then apply any risk management procedures identified in the materials supplied with it. Where the substance or preparation is supplied with a safety data sheet (*SDS*), downstream users may not use it except in accordance with any exposure scenario set out therein. If the downstream user's intended use is not covered, and the supplier is not willing to alter the SDS, then it may be forced to conduct its own Chemical Safety Assessment or find an alternative source of supply. Where the SDS indicates that the substance in question is subject to authorisation, any attempt by the downstream user to use it outside the terms of that authorisation will require the downstream user, or the supplier, to make a fresh authorisation application to ECHA.

More generally, all downstream users are required to:

- report new information they may uncover on, for example the hazards of a particular substance back upstream;
- allow workers and union representatives access to chemical hazard information in relation to workplace chemicals; and
- retain information in relation to any obligation under REACH for at least 10 years.

Consumer products companies based outside the EU

REACH is not intended to have extraterritorial effect. However, non-EU companies must still be mindful of its impact. Take the example of a US-based product manufacturer that sells its products into the EU. If substances in those products are subject to the registration or notification requirements already described, then responsibility for compliance would fall on the first legal entity to import the product into the EU - which may well be a customer, a third party distributor or some other entity (e.g. an import/export affiliate) that is ill-equipped to manage these requirements.

Article 8 of REACH offers one solution in these circumstances: the

appointment by the “non-Community manufacturer” of an “only representative” within the EU, who will then assume the actual importers’ duties under REACH. Another would be for the overseas company to re-route and channel its distribution via a trusted, EU-based affiliate or importer, which would then sell on to other European customers.

What Impact Might REACH Have on Consumer Products Companies’ Product Liability Exposure?

One group that the Commission has ignored in its assessment of the likely benefits of REACH is lawyers. REACH is likely to lead to a surge of legal challenges and even business disputes over the coming years: it is an important piece of legislation for many businesses, but a poorly drafted one. There is plenty of scope within the REACH text for interpretation and disagreement, whether between commercial entities or between regulators and the regulated.

Perhaps more directly relevant to readers of this Guide, however, will be REACH’s product liability impact. To understand what that impact might be, one must first look at the reasons why REACH was introduced.

An early, 2001 meeting of the Environment Council (made up of representatives of EU Member State governments) stated that REACH’s aim was to remedy the situation, whereby: “*Man and the environment are potentially exposed from a large number of sources to a large number of chemical substances, the hazardous properties of which have not been identified.*”² In 2005, in a speech to the American Chamber of Commerce in Brussels, the EU’s Commissioner for the Environment, Stavros Dimas, explained that: “*we have incomplete, or no safety information at all, about 99 per cent of the volume of the chemicals we use... If REACH succeeds in reducing chemicals-related diseases by only 10 per cent, which is a conservative assumption, the health benefits are estimated at more than €50 billion (\$64 billion) over 30 years. This means tens of thousands of avoided cases of infertility, cancer, skin diseases, neurological disorders and other illnesses.*”³ The EU’s own detailed consumer polling has indicated that the top environmental issue for European citizens, in terms of the information they feel they lack, is “*the impact on our health of chemicals used in everyday products*”⁴.

Consumer concern as to the supposed health effects of chemicals was ably exploited by the environmental NGOs during their lobbying for a tougher REACH regime. For example, one particularly dramatic report by Greenpeace and the World Wildlife Fund⁵, published shortly before the European Parliament’s first formal consideration of the REACH proposal in November 2005, examined the presence of “*known or suspected hazardous chemicals from eight chemical groups... in [human] umbilical cord blood*”⁶. The report, which was filled with suitably emotive imagery of babies, fetuses and pregnant women, noted that “[i]n recent years, Greenpeace has analysed a range of everyday consumer products for the presence of a number of (potentially) hazardous chemicals and looked for these same chemicals in house dust and rainwater. The results add weight to the suspicion that these chemicals can ‘leak’ from products.” Examples of chemicals in consumer products identified by the NGOs as being of concern include brominated fire retardants and polyvinyl chloride (PVC) in office computers and other electronic equipment, dichloro-diphenyltrichloroethane (DDT) in food, perfluorocarbons (PFCs) in carpets, textiles, leather, paper and board, phthalates in a variety of PVC products and the antibacterial agent triclosan in sportswear, mattresses and food cutting boards.

Such a climate clearly favours further product liability litigation. There are remarkable similarities between the list of “*toxics*” targeted by the green lobby in Europe and the “top ten” lists of household chemicals that already appear on the websites of US plaintiff lawyers advertising for claims. Those websites contain lurid language concerning the “*nerve deadening chemicals*” supposedly found in air fresheners, the “*known carcinogens*” supposedly found in carpet and upholstery shampoo, the use of antibacterial agents “*tied to liver damage*” in some cleaners, etc. There is already some indication that concerns raised in US chemicals-related product liability and occupational health litigation - which has covered substances and issues as diverse as asbestos, silica, lead paint, off-gases from welding rods, pesticides, benzene, allergens in latex gloves and household products and perfume intolerance - may be finding expression on the other side of the Atlantic. For example, in March 2005, the Dutch courts ordered two consumer associations to withdraw unproven allegations that emissions from household air fresheners could present health risks, in an action brought by an affiliate of a US consumer goods company (*LJN: AS8908, Voorzieningenrechter Rechtbank’s-Gravenhage, KG 05/64*).

The worst case scenario is that new testing and modelling conducted under REACH will provide evidence that a substance used for years in a mass market consumer product, or in the workplace, poses serious human health or environmental hazards that were not previously appreciated. As previously noted, the Commission has itself estimated that 600 substances may be newly classified as SVHC as a result of REACH. Any such hazard data will be packaged by registrants into readily understandable form (registration dossier/CSR) and - with limited exceptions - published on ECHA’s website, for all, including activist groups and plaintiffs’ lawyers, to access. The risk characterisation requirements for the CSR will also force registrants to go “on the record” as to the potential environmental and human health impacts of their chemicals under conditions of use.

Furthermore, there is a risk that the candidate list of substances for authorisation, when published, will come to represent a “shopping list” for the plaintiffs’ bar. The consumer information and labelling provisions set out in Article 33 of REACH (see above) may also allow plaintiff lawyers and other interested parties to identify which SVHC are used in which consumer products.

In the US, where, as noted, plaintiff lawyers have long targeted chemicals and household goods companies in their endless search for the next set of deep pockets, the historic and ongoing litigation concerning products containing asbestos, lead paint and even perfume allergies are unhappy indicators of what might happen next. In Europe, such litigation could provide an interesting test for the development risks/state of the art defence contained in the Product Liability Directive (85/374/EEC), on which the EU’s strict liability consumer protection regime is based. This provides a defence from strict liability where a defendant can show that “*the state of scientific knowledge and technical knowledge at the time when he put the [relevant] product into circulation was not such as to enable the existence of the defect [in that product] to be discovered*” (Article 7(e) of the Product Liability Directive). Conversely, a consumer products company supplies products in the EU at its own risk, from the moment that data on a potential product defect becomes accessible to the global scientific community. REACH is likely to mean that the ability to invoke the development risks defence in respect of a safety issue caused by the presence of a chemical in a product will fall away the moment that data on that issue is published on ECHA’s database. This is just one reason why it will become increasingly important for product manufacturers on both sides of the Atlantic to monitor the state of the science as REACH begins to bite.

REACH may also oblige some consumer products companies doing business in Europe to change the formulations of their products and/or the instructions for use that they supply to consumers. The principal risk here is once again for multinationals, whose operations straddle both the EU and more litigious markets such as the US. New product formulations or instructions for use, based on hazard information that may well be readily accessible on ECHA's website, might provide *prima facie* evidence of a "reasonable alternative design" for the purposes of US product liability litigation. Moreover, an argument that "*what is good enough for European consumers should be good enough for Americans*" might play well with a US jury. Ensuring cross-border consistency of product formulation and quality becomes even more important under REACH than it has been in the past.

The Commission has said it hopes that REACH will lessen long term product liability risks, as the use of potentially more hazardous substances declines. That is of course probable. However, for some, the same may not be true of litigation risk in the short to medium term.

How Might REACH Impact Consumer Product Companies' Commercial Relationships?

A more practical challenge posed by REACH for consumer products companies may be in ensuring the continued supply of the substances that they (or their component suppliers) need for product manufacture. The Commission has estimated that REACH will lead to around 2 per cent of existing chemicals being substituted out or otherwise withdrawn from the market. There are a number of ways in which this may happen:

- REACH may see new, EU-wide restrictions on the uses of particular substances.
- Substances on the aforementioned Annex XIV list will be subject to authorisation. Uses which do not receive authorisation will have to cease.
- A manufacturer or importer may simply decide that the expense and burden of complying with REACH do not justify the continued manufacture of the substance in, or its importation into, the EU. Where demand for a substance for a particular use is small, the manufacturer/importer might similarly decide not to register for that use.

In most cases, it will clearly be in the commercial interest of manufacturers, importers, distributors of chemicals and their customers to work together to achieve registration and thereby ensure security of supply. Businesses may seek to work out a variety of solutions based on their relative resources and bargaining power (e.g. tying suppliers of key chemicals into long term, fixed price contracts). In the longer term, the negotiation of other terms of commercial contracts may also be influenced by REACH:

- Warranties: customers may attempt to obtain express guarantees from their chemicals suppliers that their substances will be registered, that they will be fit for the buyer's intended use and that any data supplied to ECHA or others will be materially accurate.
- Intellectual property/confidentiality: customers may have to supply sensitive information on end uses to their suppliers, who may then share it with other chemical producers and importers in the context of a SIEF/registration consortium. In such circumstances, the limits of the use of that information would need to be defined.
- Risk allocation: as discussed, REACH may increase some businesses' product liability exposure and apportionment of these risks may be addressed by way of warranties, indemnities or insurance requirements.

Ensuring Compliance and Mitigating Risks

REACH may well be, in the words of *The Economist*, "*the biggest regulatory behemoth to appear for years*"⁷, but it is but one of many pieces of legislation that have changed the regulatory framework for consumer products in Europe (see inset box: "The greening of EU product policy"). Ensuring compliance with this myriad of legislation is an increasing challenge both for EU industry and for overseas businesses who require access to the EU market.

A year after REACH's coming into force, exactly how the new regime will work in practice, and its full ramifications, remains unclear. As noted, the final output of certain of the REACH Implementation Projects is still awaited. Meanwhile, the provisions of REACH are subject to rolling review by the Commission and the European Parliament and further changes to the legislative text are likely in the years to come. There are, however, three important areas of work for consumer products companies who may be affected by REACH.

First, it is critical for EU consumer products companies to assess now whether they will have registration obligations under REACH (most likely, as a result of their importation of preparations or their manufacture or import of articles containing substances which are intended to be released). If so, they must be in a position to pre-register, where required, by 30 November 2008 at the latest. As noted elsewhere, failure to do so may threaten those companies' ability to continue supplying their products.

Second, all companies, wherever they are based in the world, should consider whether they can reduce their use of chemicals which are likely to be classified as SVHC once the Commission has released its candidate list for authorisation. For many businesses, this will involve no more than continuing existing product stewardship policies. However, the list - once published - will place real pressure on global industry to phase out the use of the substances it contains. Among other things, publication will give the environmental NGOs and the plaintiffs' bar a list of targets for future action. It will also trigger notification obligations for SVHCs in articles and may require EU suppliers of such articles to change product labelling and to start responding to requests for information from consumers (or those posing as consumers) under Article 33 of REACH (see above).

Third, once the REACH regime is fully up and running, it will be important for consumer products companies that do use substances in the workplace and/or in their products to keep abreast of any new information on the hazards of those substances that may appear on the ECHA database or otherwise be generated by REACH. Reacting quickly to any such data is likely to assist the defence of any future product liability or occupational health litigation related to the substance in question.

The greening of EU product policy

REACH is just one of a large number of legislative initiatives undertaken by the EU since 2000 with the objective of improving the safety of consumer products and lessening their environmental impact. Key measures have included the following.

- 2000's End of Life Vehicles (ELV) Directive (2000/53/EC). The ELV Directive requires that last owners must be able to dispose of their vehicles free of charge from 2007 (and requires producers to pay all or a significant part of the free take-back from this date), sets rising reuse, recycling and recovery targets and restricts the use of hazardous substances in both new vehicles and replacement vehicle parts.

- 2001's revised General Product Safety Directive (2001/95/EC). The GPS Directive obliges producers and distributors of consumer goods to ensure their safety and immediately to notify the authorities and take appropriate corrective action (including recall) when an unsafe product has reached the market.
- 2002's Waste Electrical and Electronic Equipment (WEEE) Directive (2002/96/EC). The WEEE Directive aims to minimise the impact of electrical and electronic goods on the environment, by increasing re-use and recycling and reducing the amount of WEEE going to landfill. It seeks to do so by making producers responsible for financing the collection, treatment, and recovery of waste electrical equipment, and by obliging distributors to allow consumers to return their waste equipment free of charge. The operation, and possible expansion of, the WEEE regime is being considered by the Commission in 2008.
- 2002's related Directive on Restrictions of the use of certain Hazardous Substances in electrical and electronic equipment (RoHS) (2002/96/EC, as amended by Directive 2003/108/EC). RoHS prohibits the placing on the market, as from 1 July 2006, of equipment containing more than the specified limits of lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ethers (PBDE). The Commission's current consultation on the expansion of RoHS may include another 46 substances, including PVC, within its remit.
- 2003's Directive banning the marketing and use of penta and octa bromodiphenyl ether substances at concentrations above 0.1 per cent by weight (Directive 2003/11/EC).
- 2005's Energy-using Products (EUP) Directive (2005/32/EC). The EUP Directive establishes a legal framework for the setting of eco-design requirements to improve the environmental performance of EUPs throughout their lifecycle. Various Commission studies are currently examining a number of domestic and other products, with a view to establishing priorities for the "daughter directives" that are expected to be published under the EUP Directive.
- 2006's Batteries Directive (2006/66/EC). The Directive imposes a partial ban on the placing on the market of nickel-cadmium batteries and sets new restrictions on the disposal of batteries and accumulators.

Endnotes

- 1 See the Questions & Answers document at http://ec.europa.eu/enterprise/reach/faq_en.htm (under "Which are the most dangerous substances? How many are there?").
- 2 European Council. 2001. Conclusions from Environment Council. 7 June 2001.
- 3 Stavros Dimas, EU Commissioner for the Environment. "Climate Change and REACH". Speech to the American Chamber of Commerce in the EU, Brussels, 19 July 2005.
- 4 European Commission. April 2005. Special Eurobarometer survey, "The attitudes of European citizens towards environment".
- 5 "A Present for Life: hazardous chemicals in umbilical cord blood", WWF and Greenpeace, September 2005.
- 6 Greenpeace press release, "Man made chemicals in Maternal and Umbilical cord blood", 8 September 2005.
- 7 The Economist. 11-17 November 2006.

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Paul is a partner based in London. He specialises in environmental law, products regulation and liability and insurance issues associated with each.

He has worked on a large number of high-profile cases, including medical and pharmaceutical licensing and litigation, food safety, the health aspects of mobile phone technology, nuclear engineering and occupational health, genetically modified food cases, vehicle components disputes, rail transport engineering and safety matters, and defective aviation components. He has extensive experience of due diligence and risk / liability allocation in international M&A transactions.

Paul was named as one of the leading environmental and products lawyers in London in the 2006 edition of Chambers Guide to the UK Legal Profession and, in the 2006 edition of Who's who Legal, as "the most highly-nominated of all England-based practitioners in the environment field". Paul works in English and French.

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Andrew is a senior associate in the firm's EPR and product risk and liability groups. Since commencing work with the firm in September 1999, Andrew has been involved in significant regulatory, advisory and litigation work for a number of clients.

His experience includes advising clients on preparing for compliance with REACH; on product safety and recall issues arising from defective components in consumer products and foods; and on the environmental and products regulation applicable to a wide range of client businesses. He has particular expertise in the interplay between general product and more specific sectoral legislation at an EU level.

In addition to being qualified to practice in England and Wales, Andrew has a Masters' degree in modern European languages. He works in English, French and written German. During his time with the firm, he has enjoyed secondments to the firm's offices in Paris and New York.

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