



MAAK ADVOCATEN. OVERVIEW PRODUCT LAW DEVELOPMENTS 2024.

MAAK Advocaten NV is an international Product Compliance law firm based in Amsterdam, the Netherlands. Our law firm has a strong focus on serving the legal needs of International players in the manufacturing industry (in Dutch: “*maakindustrie*”). Our Dutch law firm offers specialized service legal advice in the strategic fields of the industry. With this sector-focus, we are familiar with the daily business and legal challenges of our clients and seek to make thoughtful use of our legal acumen in support of our clients’ strategic and commercial needs.



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A. MATERIAL COMPLIANCE / SUBSTANCE LAW

1. NEW MICROPLASTICS BAN IN NO. 78 ANNEX XVII REACH REGULATION

The EU legislature adopted [Regulation 2023/2055](#) on September 25, 2023, prohibiting the placing on the market of substances and mixtures intentionally containing microplastics that release microplastics during their use (link to our blog post [here](#)). The microplastics ban was implemented by adding entry 78 "Synthetic Polymer Microparticles" to [Annex XVII of the REACH Regulation](#).

The ban initially applies only to polymers falling under the microplastics definition according to column 1 of entry 78. Natural, biodegradable, or soluble polymers are not covered, among others. An important provision is found in paragraph 6 of column 2 of entry 78. This creates special

transition periods for various uses. As a result, the microplastics ban is structured as a staggered ban over time. For those uses for which no special transition periods are ordered, the ban has been in effect since the regulation came into force, i.e., since October 17, 2023. This includes, for example, products containing microbeads or – partly – loosely sold glitter (so-called glitter ban).

2. CURRENT DEVELOPMENTS REGARDING THE PFAS RESTRICTION PROPOSAL

On January 13, 2023, the Federal Republic of Germany, Denmark, the Netherlands, Norway, and Sweden submitted [a proposal](#) to restrict Per- and Polyfluoroalkyl Substances (PFAS) to the European Chemicals Agency (ECHA). The proposed restriction aims to address the risks to human health and the environment posed by the use of PFAS. The restriction proposal concerns around 10,000 Per- and Polyfluoroalkyl substances (PFAS). Thus, the proposed REACH regulation targets not individual substances but an entire group of substances.

Note: In addition to the aforementioned restriction proposal, there is a process for an EU-wide restriction of PFAS in firefighting foams. SEAC and RAC expressed support for a PFAS restriction in firefighting foams in their opinions. We closely monitor the [PFAS restriction proposal](#), as well as the entire PFAS regulation development.

The consultation (Have your say) on the restriction proposal started on March 22, 2023. In the context of Have your say, which ended on September 25, 2023, a total of 5,600 comments were submitted by more than 4,400 organizations. Following Have your say, the "Forum for Exchange of Information on Enforcement" (Enforcement Forum) published its opinion on the enforceability of the planned

regulation in October. The Enforcement Forum highlighted a number of practical challenges (details can be found [here](#)).

What's next?

The next steps are the opinions of the Risk Assessment Committee (RAC) and the Socio-economic Analysis Committee (SEAC) on the PFAS restriction proposal. After completion, the opinions will be forwarded to the European Commission. The Commission will then decide together with the Member States on a possible restriction.

3. ROHS - STANDSTILL REGARDING THE DECISION ON THE EXTENSION OF ROHS LEAD EXEMPTIONS

In our client information from February 2023, we already reported on the current status regarding the EU Commission's decision on a possible extension of [RoHS](#) exemptions for lead. The exemptions regulated in Annex III, paragraphs 6(a), 6(a)-I, 6(b), 6(b)-I, 6(b)-II, 6(c), 7(a), 7(c)-I, and 7(c)-II of RoHS, for which corresponding extension applications have been submitted, still apply, as the EU Commission has still not made a decision on the extension applications. Existing RoHS exemptions remain valid until the EU Commission has decided on the renewal application. It is currently difficult to assess when the EU Commission will make a decision. Therefore, economic operators benefiting from lead exemptions should monitor further developments. An overview of the validity of RoHS exemptions and the status of ongoing extension applications [can be obtained](#) from an Excel table maintained by the EU Commission.

B. PRODUCT ENVIRONMENTAL LAW

1. ENTRY INTO FORCE OF THE EU BATTERY REGULATION

On August 17, 2023, [Regulation \(EU\) 2023/1542](#) (Battery Regulation) entered into force and will replace Directive 2006/66/EC (Battery Directive), which is currently in force, on August 18, 2025.

The Battery Regulation represents a novelty in EU product legislation, as the regulation combines three separate regulatory areas in one legislative act. Thus, the Battery Regulation first establishes essential product requirements and a CE marking obligation for batteries in product legislation and is therefore to be classified as a CE legal act. Furthermore, the Battery Regulation regulates supply chain due diligence for the first time, aiming to minimize the environmental and human rights risks associated with the production of certain batteries. The requirements of the Battery Regulation go even further in this regard than the [German Supply Chain Due Diligence Act](#). For example, Article 48(2) Battery Regulation provides for a review of the established strategies for fulfilling due diligence obligations by a notified body (audit obligation). Moreover, the EPR obligations regarding waste batteries are also subject to the Battery Regulation. EPR obligations generally include registration, take-back, reporting, and information obligations.

For more information on the new Battery Regulation, please contact the Product Compliance team of MAAK advocaten.

Many practical questions arise, especially regarding the requirements set out in Article 11 Battery Regulation concerning the removal and interchangeability of device batteries, LMT

batteries (e.g., for e-bikes), and individual LMT battery cells. In this context, the EU Commission has meanwhile published the final version of the [JRC report](#). This document provides practical interpretation guidelines for selected requirements of Article 11 Battery Regulation. It can already be seen that the Battery Regulation will lead to extensive action requirements, especially for manufacturers, importers, and distributors of batteries.

The EPR obligations regulated in Chapter VIII of the Battery Regulation largely correspond to the EPR obligations already regulated in the Battery Directive, so that no extensive changes in the national battery laws of the Member States are to be expected in this respect. However, the Battery Regulation introduces new battery categories, which may require re-registration in the national battery registers by August 18, 2025. The Battery Regulation provides for different transitional periods for the various regulatory areas and battery-specific requirements. Thus, the EPR obligations under Chapter VIII of the Battery Regulation will apply from August 18, 2025. From August 18, 2025, the new due diligence obligations under Chapter VII of the Battery Regulation must also be fulfilled. The obligation to carry out a conformity assessment procedure and a CE marking, on the other hand, already applies from August 18, 2024. However, it should be noted that many of the essential battery requirements will not apply immediately on August 18, 2024, but will require specification by delegated acts, the elaboration of which may take several years, see, e.g., Article 9 Battery Regulation regarding the requirements for the performance and durability of general-purpose device batteries.

2. DRAFT EU PACKAGING REGULATION MODELLED ON THE EU BATTERY REGULATION

Is the EU heading towards a paradigm shift in packaging regulations? Let's delve into the proposed [EU Packaging Regulation](#) and its potential impact on businesses.

What's the Scope of the EU Packaging Regulation?

The proposed EU Packaging Regulation, reminiscent of the EU Battery Regulation, aims to address the ubiquitous presence of packaging in nearly every product. This ambitious move heralds significant implications for businesses, necessitating thorough compliance measures.

Key Features of the Proposed Regulation

- a. Replacing [Directive 94/62/EC](#): The new regulation seeks to supplant Directive 94/62/EC entirely. Unlike its predecessor, it sets forth specific requirements for packaging, mandating compliance by packaging producers through a conformity assessment process.
- b. Combining Packaging EPR Duties with CE Requirements: In a groundbreaking approach, the EU Packaging Regulation amalgamates packaging-related Extended Producer Responsibility (EPR) duties, such as registration, reporting, information, and take-back obligations, with CE (Conformité Européenne) requirements. This mirrors the structure of the EU Battery Regulation, streamlining regulatory frameworks across sectors.
- c. Omission of CE Mark for Packaging: Notably, the draft regulation refrains from imposing a CE marking obligation on packaging. The EU Commission justifies this decision by citing potential confusion regarding the reference point for the CE mark, as it could inadvertently extend to the packaged product itself from a third-party perspective.

Current Status and Future Prospects

As negotiations unfold in the Trilogue process, the finalization of the regulation remains pending. Anticipated to conclude in the coming months, these deliberations are crucial for shaping the regulatory landscape. Consequently, the enactment of the EU Packaging Regulation is projected to materialize no earlier than the third or fourth quarter of 2025.

Conclusion

The proposed EU Packaging Regulation marks a significant departure from traditional approaches, aligning with the overarching regulatory objectives of enhancing sustainability and consumer protection. While its implementation poses challenges, businesses must closely monitor developments and prepare for impending compliance requirements to navigate the evolving regulatory terrain effectively.

3. THE ECO-DESIGN REGULATION (ESPR): NEARING THE FINISH LINE

Is the EU poised to revolutionize product design standards? Let's delve into the impending Eco-design Regulation and its far-reaching implications.

A Paradigm Shift in Product Regulation

In December 2023, the European Commission, Council, and Parliament concluded negotiations on the [proposed Eco-design Regulation](#), marking a significant milestone in EU policymaking. The preliminary text of the regulation has been unveiled, signaling the eventual replacement of the existing Eco-design [Directive 2009/125/EC](#). Notably, the scope of the regulation is substantially broadened, extending beyond energy-related products to encompass a wide array of goods. While specific performance and information requirements will continue to hinge

on product-group-specific implementing acts, existing measures will persist.

Objectives of the Regulation

Aligned with the 2009 directive, the core objective of the regulation remains the promotion of energy and resource efficiency in product design. However, the new regulation seeks to elevate standards by fostering durability, reliability, reusability, retrofitability, and repairability of products. In a bid to empower consumers and businesses in their purchasing decisions, plans are underway to introduce a digital product passport containing information on the ecological sustainability of products. Furthermore, consensus has been reached among institutions on prohibiting the destruction of textiles and shoes, with intentions to expand this prohibition to additional product categories over time.

Anticipated Implementation

The Eco-design Regulation is poised to come into effect by the end of the second quarter of 2024, heralding a new era in product governance. As the regulatory landscape undergoes transformation, stakeholders must prepare to adapt to evolving compliance requirements and seize opportunities for innovation and sustainability.

Conclusion

The impending Eco-design Regulation represents a pivotal step towards fostering greener and more sustainable products within the EU market. By integrating diverse environmental considerations into product design, the regulation endeavors to drive positive change while empowering consumers to make informed choices. As businesses navigate the regulatory landscape, proactive engagement and strategic planning will be essential to capitalize on emerging opportunities and ensure compliance with evolving standards.

C. PRODUCT SAFETY LAWS

1. INTRODUCTION OF AN EU PRODUCT SAFETY REGULATION

What does the upcoming EU Product Safety Regulation entail and when will it come into effect?

Replacing [Directive 2001/95/EC](#), the [EU Product Safety Regulation \(GPSR\)](#) is scheduled for implementation on December 13, 2024, signaling a significant overhaul of the legal framework governing consumer product provision in the Union market. This regulation introduces several novel features, primarily targeting the provision of non-harmonized consumer products, necessitating substantial practical implementation efforts.

Key Innovations in the GPSR

One notable innovation is the requirement for product labeling with the "electronic address" (e.g., email or website) of the manufacturer/importer. Moreover, manufacturers will now be obligated to ensure barrier-free complaint mechanisms for consumers, enhancing accessibility and responsiveness to consumer concerns.

Anticipated Changes in National Legislation

Although the GPSR does not mandate implementation through national laws, adjustments to national Product Safety Acts are expected in response to the new EU regulation. These adaptations will likely align national legislation with the overarching principles and requirements set forth by the GPSR, ensuring consistency and coherence in consumer product safety standards across the Union.

Conclusion:

The impending introduction of the EU Product Safety Regulation represents a significant step towards bolstering consumer protection standards across the Union market. By modernizing regulatory requirements and enhancing transparency in product labeling and consumer complaint mechanisms, the EU aims to foster trust and confidence in the safety of consumer goods.

As businesses navigate the evolving regulatory landscape, proactive engagement and compliance with both EU and national legislation will be pivotal. Such measures are essential not only for ensuring consumer safety but also for fostering innovation and maintaining market competitiveness in an increasingly dynamic and consumer-centric marketplace.

2. NEW EU MACHINERY REGULATION: KEEPING PACE WITH TECHNOLOGICAL ADVANCEMENTS

On June 29, 2023, the new [EU Machinery Regulation](#) was published in the Official Journal of the European Union and subsequently came into effect on July 19, 2023. However, the Regulation will only be applicable starting January 14, 2027, replacing the outdated [Directive 2006/42/EC](#) in the process. With this new regulation, the EU legislature aims to adapt the basic safety requirements for machinery to the latest technological developments.

Key Changes and Implications:

- a. **Adaptation of Safety Requirements:** The new regulation focuses on adapting the basic safety requirements for machinery, particularly concerning the use of software and AI, as outlined in Annex III of the Machinery Regulation.
- b. **Electronic User Manuals:** For the first time, the Machinery Regulation introduces the option of

providing electronic user manuals for B2B machinery, along with specifying obligations for importers, distributors, and authorized representatives, following the model of the "New Legislative Framework."

c. Transitional Provisions: Machinery placed on the market before January 14, 2027, in compliance with Directive 2006/42/EC, may still be sold after this date. However, all other machinery must comply with the new Machinery Regulation requirements from January 14, 2027, as per Article 52(1) of the regulation.

These changes signify the EU's commitment to ensuring the safety and compatibility of machinery with evolving technological landscapes. Businesses involved in manufacturing, distribution, and sales of machinery must prepare to align with the new requirements to maintain compliance and ensure consumer safety.

For more information and guidance on navigating the regulatory landscape of product compliance, consult with the Product Compliance team of MAAK Advocaten.

3. INTRODUCTION OF "COMMON CHARGER" FOR CERTAIN RADIO EQUIPMENT

USB-C is set to become the standard for smartphones and certain other devices that can be charged with a cable. In principle, the requirements will apply from December 28, 2024 (e.g., for smartphones). However, for notebooks, this new charging standard will only apply from 2026 onwards. Thus, national law must implement [Directive \(EU\) 2022/2380](#) amending [Directive 2014/53/EU](#) on the harmonization of the laws of the Member States relating to the placing

on the market of radio equipment (Radio Equipment Directive or RED). Even before the amendment, the Radio Equipment Directive provided for the possibility of defining categories and classes of radio equipment by means of delegated acts, which must be designed to be compatible with standardized chargers. Initially, industry standardization was voluntary, leading to a reduction in the variety of chargers from 30 to just three types. However, since this was deemed insufficient by the Commission, standardization in connection with Annex Ia of the Radio Equipment Directive has now been mandatorily established and must be implemented EU-wide.

Key Points to Note:

- a. USB-C Standardization: The amendment mandates USB-C as the standard charging interface for smartphones and certain other devices, promoting interoperability and consumer convenience.
- b. Phased Implementation: While the requirements come into effect from December 28, 2024, for smartphones, notebooks will transition to the new charging standard from 2026 onwards, allowing manufacturers time to adapt.
- c. EU Directive Implementation: Member States are required to implement EU Directive (EU) 2022/2380 into national law, aimed at harmonizing regulations concerning radio equipment across member states.
- d. Mandatory Standardization: Previously voluntary, the standardization of chargers is now compulsory under the Radio Equipment Directive, ensuring uniformity and compatibility across the EU.

4. EU CONSTRUCTION PRODUCT REGULATION (EU-CPR) NEARING COMPLETION

In March 2022, the European Commission presented the [draft](#) of a new EU Construction Product Regulation (EU-CPR). On December 14, 2023, the "political" trilogue negotiations were concluded. Compared to the Commission's draft, the previous regulatory concept regarding the scope of application was adopted, meaning products effectively fall within the scope if there is a harmonized technical specification for the respective product. Additionally, the Commission's originally extensive discretion was reduced in favor of European standardization organizations.

Key Developments:

- a. **Scope of Application:** The regulatory framework maintains that products fall within the scope if there is a harmonized technical specification, as per the original concept.
- b. **Role of Standardization Organizations:** The influence of European standardization organizations has been enhanced, diminishing the Commission's initial wide-ranging authority.
- c. **Performance Criteria:** Harmonized technical specifications will not only cover performance criteria relating to the basic requirements for construction works but also product requirements, as initially proposed in the Commission's draft.
- d. **Outstanding Issues:** Remaining points of contention include regulations on procurement law and the relationship with the new Eco-design Regulation.
- e. **Next Steps:** The final agreements must be incorporated, and the text consolidated. The new regulation is expected to be adopted by Parliament in April 2024.

These developments signify a step forward in streamlining regulations governing construction products within the EU. By aligning with harmonized technical specifications and enhancing the role of standardization organizations, the aim is to promote consistency, efficiency, and compliance across member states.

5. BREXIT UPDATE: CURRENT STATUS

In August 2023, the Department of Business and Trade (DBT), acting on behalf of the British government, announced its intention to continue accepting the CE marking for certain product categories or regulatory areas beyond the year 2024. This includes machinery, radio equipment, electrical and electronic equipment (particularly concerning electromagnetic compatibility and low voltage), pressure equipment, and lifts (the complete list can be viewed [here](#)). However, some legal acts or areas are not covered by this announcement, such as construction products, medical devices, and in vitro diagnostics.

Key Points to Note:

- a. **Continued Acceptance of CE Marking:** The British government, through the DBT, intends to accept the CE marking for specified product groups or regulatory areas post-2024, ensuring continuity in conformity assessment processes.
- b. **Exclusions:** Certain product categories, including construction products, medical devices, and in vitro diagnostics, are not covered by this announcement, requiring separate compliance measures.
- c. **Pending Implementation:** It's important to note that this announcement is currently in the form of a press release and may require implementation into national law.

While this announcement provides clarity for businesses involved in affected product categories,

it's essential to stay updated on any developments regarding the implementation of this policy into national law.

D. RECENT DEVELOPMENTS IN AI, DATA AND IT SECURITY LAW

1. NEW DEVELOPMENTS REGARDING THE AI REGULATION

In December, the EU reached a political agreement on the AI Regulation during the trilogue negotiations. A final text for the agreement has not yet been produced, and work on this is expected to continue until February 9. Further steps in the EU legislative process will follow, with the AI Regulation (or AI Act) likely to come into effect in Q2 2024. With this, the EU has initiated the world's first law regulating Artificial Intelligence (AI). The definition used in the AI Regulation is based on the revised [OECD definition](#), which is broad but sufficiently precise to distinguish between simple software systems and AI applications. The obligations under the AI Regulation primarily target AI manufacturers, drawing inspiration from product safety law. However, users and importers of AI also have responsibilities when using AI. In addition to prohibiting certain AI, requirements are set for the use of high-risk AI and Generative AI. For high-risk AI, a risk impact assessment for the use of such systems will be required in the future, both for the manufacturer and the user.

2. UPDATES ON THE CYBER RESILIENCE ACT

Another European legal act on which the EU reached a political agreement in trilogue negotiations at the end of last year is the [Cyber Resilience Act \(CRA\)](#). This regulation focuses on IT security requirements for connected products. A preliminary consolidated version of the agreed text is now available, suggesting that the CRA is likely to come into force in Q2 as well. The CRA is an EU regulation, meaning that after a transition period of 36 months, it will be directly applicable to the recipients of the CRA. The CRA obliges manufacturers of IoT products (unless already covered by certain special provisions) to ensure IT security for software and hardware in the IoT ecosystem throughout the entire life cycle of the IoT product. Additional obligations apply to importers and distributors. IT security requirements must be considered in the design, planning, development, and production stages ("Security by Design"). The supply chain is also included in these requirements. After entering the market, the manufacturer must provide support and security updates for the ongoing IT security of the IoT product. For market entry, the CE marking will attest to the product's conformity with the IT security requirements of the CRA. Here, the Cyber Resilience Act follows the New Legislative Framework. Special provisions apply to high-risk AI systems as defined in the AI Regulation and open-source software.

These developments mark significant strides in regulating AI, data, and IT security, demonstrating the EU's commitment to ensuring the responsible and secure development and use of these technologies.

3. ENTRY INTO FORCE OF THE DATA ACT

Another European law of significant relevance to manufacturers, service providers of connected services in the IoT ecosystem, and providers of downstream services of IoT products is the [Data Act](#) (Regulation 2023/2854). This regulation came into effect on January 11, 2024, and after a transitional period of 20 months starting from September 12, 2025, it becomes directly applicable law. The Data Act grants users of IoT the right to access the data generated through the use of IoT. This right of access is free of charge for the user and applies to all manufacturers offering IoT products on the European market. Access to the data must be granted not only to the user but also to third parties designated by the user. For this access, the manufacturer or data holder may demand a fair, reasonable, and non-discriminatory fee. These "FRAND" conditions are borrowed from the licensing of standard essential patents. The reasonable compensation in this sense should essentially cover the costs of data transmission and generation for SMEs and non-profit research institutions. Additionally, the Data Act introduces a clause control for abusive contract clauses for data sharing between companies, particularly in the B2B sector. Finally, in the event of "exceptional necessity," the Data Act imposes an obligation on the data holder to disclose data generated by IoT products to the public authorities.

These provisions under the Data Act aim to balance the rights and obligations of IoT users, manufacturers, and data holders, ensuring fair access to IoT-generated data while also safeguarding against abuse and promoting transparency.

E. SUSTAINABILITY AND DUE DILIGENCE IN THE SUPPLY CHAIN

1. CS3D - EUROPEAN CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

The [draft Corporate Sustainability Due Diligence Directive](#) (CS3D), often somewhat misleadingly referred to as the European Supply Chain Act, is nearing its final stages. On December 13, the Council, European Parliament, and Commission successfully concluded their trilogue negotiations on the directive. Confirmation of the compromise text by the Parliament and EU member states is typically a formality and is expected to occur by the end of March 2024. The directive originates from a Commission proposal published in February 2022.

The directive is more far-reaching than current national law, specifically the German Supply Chain Due Diligence Act ([LkSG](#)). Due to the CS3D, more companies will be obligated, and higher requirements will be placed on them in some cases. In principle, the CS3D will apply to large companies with more than 500 employees and a global net turnover of over 150 million EUR. For companies operating in certain high-risk sectors, the CS3D will apply from 250 employees and a net turnover of 40 million EUR. Under certain conditions, companies domiciled outside the EU also fall within the scope of the directive. Additionally, companies' liability for breaches of due diligence obligations will be tightened. According to the directive, they can no longer only face regulatory sanctions or fines; under certain conditions, they can also be held civilly liable.

Publication of the CS3D in the EU Official Journal and its entry into force are expected by the end of the second quarter of 2024.

These developments underscore the increasing importance of corporate sustainability and due diligence in supply chain management.

Companies should proactively prepare for compliance with the CS3D to mitigate risks and demonstrate their commitment to responsible business practices.

2. DRAFT OF THE GREEN CLAIMS DIRECTIVE

The EU Commission released a [draft](#) Green Claims Directive in early 2023, aiming to combat "greenwashing." The directive seeks to establish common criteria against greenwashing and misleading environmental statements (Green Claims). It is closely linked to regulations on unfair commercial practices, which already address this issue to some extent. Currently, the legal requirements for environmental statements are still poorly defined. For consumers, it's often unclear which companies genuinely consider climate and environmental impacts and which merely use them for advertising. The Green Claims Directive aims to clarify when an environmental statement is misleading. According to the directive, companies will be obligated to make environmental statements only if they can be substantiated, meaning their Green Claims must be based on scientific standards. The directive also includes provisions regarding environmental labels. Public labeling systems will only be permitted if developed at the EU level, while private labels must be approved in advance.

The directive will apply to all companies that are not SMEs (with fewer than 10 employees and a turnover or balance sheet total of under 2 million euros). However, it will take some time for the

directive to come into effect. The European legislative process is not expected to conclude before summer 2024. After the directive is adopted, member states will have 18 months to transpose it into national law. Only then will companies be obligated to comply.

3. CRITICAL RAW MATERIALS ACT (CMRA): EU REGULATION ON CRITICAL RAW MATERIALS

Under significant political pressure, swift action was taken: After the Commission presented its [draft](#) regulation known as the "CRMA" in March 2023, the Council and Parliament reached a compromise before Christmas, to which the Parliament has already agreed. Council approval is expected shortly, after which the CRMA will be published in the EU Official Journal.

The CRMA regulates a total of 34 critical raw materials, with 17 identified as strategic resources. The EU aims to enhance the security of the internal market's supply of critical/strategic raw materials and reduce dependencies on individual importers through the CRMA.

By 2030, the EU intends to cover 10% of its annual consumption of each strategic raw material through extraction capacities within the EU, 40% through processing capacities within the EU, and 25% through recycling capacities within the EU. Projects that significantly contribute to securing the EU's supply of strategic raw materials may be recognized as strategic projects, benefiting from various privileges regarding regulatory approvals.

Large companies (> 500 employees and > €51 million in revenue) using strategic raw materials for manufacturing various products will be obligated to undertake risk prevention measures. Companies distributing products across 13 different categories must label their products concerning the use of permanent magnets;

additional obligations regarding minimum recycled content may be introduced within the next 3 years.

4. REGULATION ON DEFORESTATION-FREE SUPPLY CHAIN (EUDR) ENACTED

In June 2023, the Regulation on [Deforestation-Free Supply Chains](#) (Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the provision of certain raw materials and products associated with deforestation and forest degradation on the Union market and their export from the Union, and repealing Regulation (EU) No 995/2010) was published in the EU Official Journal. The regulation introduces extensive new due diligence obligations in the supply chain, addressing manufacturers, importers, and traders of products containing relevant raw materials such as rubber or timber. The regulation generally applies to most market participants from December 30, 2024.

The regulation aims to curb global deforestation and forest degradation and reduce the European Union's contribution to greenhouse gas emissions and biodiversity loss. To achieve this goal, the regulation combines typical elements of product law with typical elements of supply chain compliance. The result is a regulation with far-reaching due diligence obligations, the non-compliance of which is strictly sanctioned with a sales ban.

A particular challenge for affected companies is likely the short-term information gathering on the deforestation-free status of relevant raw materials. Therefore, it is advisable to assess the impact early and, if necessary, start gathering information promptly.

5. CORPORATE SUSTAINABILITY REPORTING DIRECTIVE (CSRD)

The [Corporate Sustainability Reporting Directive](#) (CSRD) 2022/2464/EU was published at the end of 2022, significantly expanding the scope of sustainability reporting. Now, not only capital market-oriented companies but also "large companies" are included. The thresholds for determining company size were recently adjusted by the delegated directive 2023/2775. A company is considered "large" if it meets two of the following three criteria: total assets > €25 million, net turnover > €50 million, and more than 250 employees. As a result, many companies will be subject to reporting obligations for the first time, starting with the 2026 financial year for the year 2025.

Reporting must be done according to the European Sustainability Reporting Standards (ESRS) developed by EFRAM. The first 12 reporting standards (ESRS = EFRAM) were issued by delegated regulation on July 31, 2023 (published in the EU Official Journal on December 22, 2023), see [Delegated Regulation \(EU\) 2023/2772](#). These extensive standards, found in Annex I of the regulation, are directly applicable European law. A second set of ESR standards (then as sector-specific standards) is expected to follow by mid-2024.

Companies subject to reporting obligations for the first time in 2025, and have not previously prepared sustainability reports on a voluntary basis, should start preparing for sustainability reporting as soon as possible. The first step is to assess materiality to identify reporting areas. The CSRD still needs to be transposed into national law.

6. DEVELOPMENTS REGARDING THE TAXONOMY REGULATION

Closely linked to sustainability reporting are the obligations under the [Taxonomy Regulation 2020/852/EU](#) dated June 18, 2020. Both legal acts' scopes are aligned by reference in Article 1(2)(c) of the Taxonomy Regulation to Directive 2013/34/EU, which in turn was amended by the CSRD. This means that companies falling under the CSRD also fall under the scope of the Taxonomy Regulation. The Taxonomy Regulation also includes reporting obligations (see Article 8 Taxonomy). Non-financial companies, firstly, must specify the proportion of their turnover generated from products or services associated with economic activities classified as economically sustainable according to the Taxonomy Regulation. Secondly, they must particularly specify the proportion of their investment expenditure associated with economic activities classified as environmentally sustainable. These reporting obligations are simultaneously subject to sustainability reporting and sustainability auditing.

What legislative acts have been issued in recent years to specify the requirements of the Taxonomy Regulation?

Over the past years, a series of legislative acts have been issued to specify the requirements of the Taxonomy Regulation, which must be observed. In chronological order, these include:

- a. [Delegated Regulation \(EU\) 2021/2139](#) laying down technical assessment criteria concerning environmental objectives 1 and 2 (climate change mitigation and adaptation)
- b. [Delegated Regulation \(EU\) 2021/2178](#) laying down the content and presentation of information to be disclosed concerning environmentally sustainable economic activities

- c. [Delegated Regulation \(EU\) 2022/1214](#) amending Regulations 2021/2139/EU and 2021/2178/EU
- d. [Delegated Regulation \(EU\) 2023/2485](#) supplementing Regulation 2021/2139 by establishing additional technical assessment criteria for environmental objectives 1 and 2
- e. [Delegated Regulation \(EU\) 2023/2486](#) laying down technical assessment criteria concerning environmental objectives 3 to 6 (sustainable use of water and marine resources, transition to a circular economy, prevention and reduction of environmental pollution, and protection and restoration of biodiversity and ecosystems)

7. AGREEMENT ON DIRECTIVE ON BUILDING ENERGY EFFICIENCY IN TRILOGY PROCEDURE

On December 7, 2023, significant progress was made in the trilogue procedure, leading to an [agreement](#) on the essential content of the new directive on building energy efficiency. With only the approval in the EU Parliament and publication in the EU Official Journal pending, the directive is set to come into effect in 2024. The directive will particularly establish requirements for the overall energy efficiency of buildings and the reduction of greenhouse gas emissions from buildings. The directive's provisions apply to both new constructions (see Article 7) and existing buildings (Article 8). All new buildings must become "zero-emission buildings" by January 1, 2030, in accordance with Article 9b of the directive. Regarding existing buildings, there is a requirement for renovation only when they undergo significant refurbishment. However, for non-residential buildings, one requirement is that 16 percent of the poorest-performing properties must be renovated by 2033, as stated in Article 9. The new directive will replace [Directive 2010/31/EU](#) at a yet-to-be-determined time.

What are the key obligations and timelines set forth in the new directive?

- a. All new buildings must achieve "zero-emission" status by January 1, 2030.
- b. Renovation obligations for existing buildings apply primarily to those undergoing significant refurbishment.
- c. Non-residential buildings must renovate 16 percent of the poorest-performing properties by 2033.
- d. The new directive will replace Directive 2010/31/EU, enhancing and updating the regulatory framework for building energy efficiency.

8. ENTRY INTO FORCE OF REGULATION (EU) 2023/956 (CBAM REGULATION)

Published in the EU Official Journal on May 16, 2023, [Regulation \(EU\) 2023/956](#) (CBAM Regulation) establishes a CO₂ border adjustment mechanism system. Implementation occurs gradually, starting with a transitional phase since October 2023. The regulation will be fully applicable from January 1, 2026.

Who does the CBAM Regulation apply to and what are CBAM goods?

The CBAM Regulation applies to economic operators importing goods listed in Annex I of the regulation (CBAM goods) originating from a third country into the customs territory of the Union. It also applies to CBAM goods listed in Annex I if imported after processing and manufacturing under customs control. Annex I includes goods such as iron and steel or aluminum and various other products with particularly energy-intensive production processes.

What are the obligations during the current transitional phase and after full application?

During the current transitional phase, only documentation and reporting obligations apply, which are further specified by the CBAM Implementing [Regulation 2023/1773](#) of September 15, 2023 (CBAM Implementing Regulation). The obligation to submit a "CBAM report" applies to every importer or indirect customs representative who imports CBAM goods in a specific quarter of a calendar year. They must submit a report to the Commission within one month after the end of the quarter, containing information about the goods imported during that quarter, as regulated by Article 35(2) of the CBAM Regulation.

From January 1, 2026, the CBAM Regulation mandates the purchase of CBAM certificates from the competent CBAM authority upon import of certain goods (Annex I). These certificates are intended to cover the so-called "grey emissions" embedded in the goods, as outlined in Article 22 of the CBAM Regulation.

F. CIVIL LAW AND MISCELLANEOUS

1. PLANNED REVISION OF THE PRODUCT LIABILITY DIRECTIVE

The existing EU Product Liability Directive, in place since 1985, is set to undergo amendments. Trilogue negotiations between the Commission, Council, and Parliament commenced at the end of 2023. The current status of the legislative process can be accessed [here](#). According to the Commission, it is necessary to adapt the directive to the challenges posed by new technologies. Specifically, software is proposed to be explicitly designated as a product within the scope of product liability law. However, the Commission's draft also entails tightening the liability risks for economic operators. The directive's scope is

expanded in terms of personnel, liability caps, and deductibles are proposed to be removed.

Additionally, an adjustment of the burden of proof rules is planned. Relief options for economic operators are intended to be restricted. At the same time, they may be judicially obliged to provide evidence to the injured party needed to substantiate their claim.

What is the stance of the European Council and Parliament regarding the Commission's proposal?

Both the European Council and Parliament have internally decided to enter trilogue negotiations with only minor adjustments to the Commission's proposal. Particularly, the essential points are likely to remain largely unchanged. It is thus foreseeable that the product liability rules will be tightened disproportionately at the expense of economic operators.

What are the anticipated timelines and implications for national law?

The completion date of the trilogue negotiations is currently unclear. However, it is certain that the national law will subsequently be required to make adjustments in the field of national product liability law.

This revision aims to modernize and enhance the effectiveness of product liability regulations in response to technological advancements and evolving consumer expectations, ensuring greater protection for consumers while balancing the interests of economic operators.

2. CURRENT STATUS OF THE “RIGHT TO REPAIR”

Trilogue negotiations for the proposed "[Directive on common rules to promote the repair of goods](#)" are set to commence in December 2023. Following the Commission's introduction of a draft "Directive on common rules to promote the repair of goods" in March 2023, both Parliament and

Council have now established their positions. The legislative initiative aims to provide consumers with improved opportunities and incentives to utilize repair services, thereby promoting product longevity.

What are the anticipated impacts on manufacturers and retailers?

Despite discrepancies in the institutions' positions, it is already foreseeable that manufacturers and retailers of certain products will need to adjust to heightened obligations. Currently unclear is whether the directive will only cover products already subject to ecodesign requirements, the duration of the implementation period, and the design of the planned online platform for contacting repair services.

What potential adjustments are being discussed regarding the EU Sales of Goods Directive?

Uncertainty also surrounds the potential adjustments within the EU Sales of Goods Directive. Discussions include limiting the buyer's choice to repair or replacement and extending the warranty period after repair. Parliament has additionally advocated for consumers to be able to approach the manufacturer for repairs, not just the seller.

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