

# STATE OF THE NATION 2024

GUEST CONTRIBUTION

ED TURTLE, JULIA GREAVES  
& EMERALD HOCKLEY - COOLEY LLP





## NOT ALL FUN AND GAMES WITH TOY SAFETY REFORMS

Significant changes are on the horizon for toys sold on the EU market. Proposed revisions to the regulatory regime under the Toy Safety Directive (TSD) would herald the biggest shakeup in more than 15 years, including much stricter chemicals requirements, a new Digital Product Passport, broader safety requirements, and obligations around accident reporting. At the same time, policymakers are also making changes to the EU's product liability framework which are likely to have an impact on the risks of doing business in the EU.

### Revision of the TSD

The TSD was introduced in 2009 and implemented in each European Economic Area (EEA) Member State, including the UK. The directive covers any product which has been [“designed or intended, whether or not exclusively, for use in play by children under 14 years of age.”](#) with certain exceptions.

The EU plans to replace the TSD with a new Toy Safety Regulation (TSR), which will apply automatically in all Member States, reducing any national variations or interpretations. The TSR is currently in proposal form and a draft will be subject to negotiation among the European Parliament, Council, and Commission before the final text is agreed upon and passed into law.

### Expanding the scope of safety

The proposed TSR clearly expands the concept of “safety” beyond physical health and safety to include foreseeable risks to “psychological and mental health, well-being, and cognitive development of children.” This expansion intends to capture new risks posed by digital technologies in toys, particularly connected products. It is similar to changes seen in the EU's new General Product Safety Regulation (2023/988) (GPSR), though the requirements under the TSR appear broader.

Indeed, there is a risk that as drafted, the scope of risks in the TSR is too broad to be implemented without ambiguity. In particular, it is unclear if manufacturers are required to consider only the potential impact for medically-recognised mental health conditions or whether conditions such as

emotional upset or anxiety would also be in scope, and if so, how they would be defined. Equally unclear is the extent to which these obligations extend to areas where potential impacts are not well understood—such as digital addiction. It is hoped that legislators will seek to narrow and clarify stakeholders' obligations before the TSR is finalised. However, it seems likely that manufacturers will need to take a broader view of the potential risks posed by their products when selling them in the EU.

### New accident-reporting obligations

The proposed TSR includes requirements for manufacturers or importers to provide consumers with a communication channel to file complaints concerning the safety of toys and to report any accidents or safety issues they have experienced directly to the manufacturer or importer of the product. This builds on the accident-reporting requirements introduced in the GPSR and is likely to increase the flow of feedback from consumers to manufacturers. EU policymakers also hope it will allow them to take more effective enforcement action. In cases where data is made public, this change is also likely to increase the possibility of claims against manufacturers and distributors.

### Chemical restrictions

Alongside a broader concept of safety, the draft TSR introduces much more stringent rules on harmful substances. Toys are already subject to stricter rules around chemicals than many other products. The proposed TSR goes even further by expanding the current ban on substances which are carcinogenic, mutagenic, or toxic for reproduction (CMRs) to include a broader range of chemicals, with limited derogations.

Certain permitted limit values will also be tightened, and manufacturers will need to consider the risks of the presence of chemicals when assessing the safety of their products. The TSR's restrictions on endocrine disruptors have been subject to particular pushback from the toy industry. Many of the chemicals caught in scope are widely used in toys and, in many cases, it has been suggested that the evidence base for any safety risk is limited. At the same time, some groups are lobbying for even stronger restrictions. It remains to be seen what balance is struck in the final legislation.

### New labelling requirements

Under the TSR proposal, all toys will need to be labelled with an “electronic address” in addition to a postal address at which the manufacturer can be contacted. This is another requirement shared with the GPSR.

All toys, including those sold online, will also need to be accompanied by a Digital Product Passport (DPP), which will replace the Declaration of Conformity. The DPP will electronically register details including the product's compliance with all applicable requirements as well as certain traceability and sustainability credentials for access by businesses, authorities, and consumers. In practical terms, there will be technical systems screening the DPP at every external border in the EU, with a view to identifying non-compliant products imported from a third country.

### Application

Depending on how long the negotiations take, it is estimated that the new TSR will enter into force in late 2024 or 2025. However, this timeline may be affected by the European elections in June 2024. The current proposal includes a 30-month transition period, which means the regulation is likely to apply by 2027-2028 unless the implementation period is shortened during the final discussions. Given that the significant changes proposed are likely to necessitate changes to the design of toys, as well as the packaging and processes used to market them, manufacturers, distributors, and other stakeholders in the toy supply chain should already be thinking about the steps they will need to take to comply with the new requirements.

There is an open question as to whether the UK will follow in the EU's footsteps and revise its own toy legislation, which is currently based on the TSD. The UK government has so far been slow to make changes to existing legislation following Brexit but has expressed a desire to maintain a high level of harmonisation with the EU. Watch this space.



## Changing liability landscape

In December 2023, the European Union reached a provisional agreement for the revision of the Product Liability Directive (PLD), which is the preferred way of making product liability claims in the EU. The rule has been virtually unchanged for nearly 40 years.

The proposed reforms expand the scope of claims that can be brought and the range of damages that can be recovered under the PLD. The reform of the directive will have significant implications for toy manufacturers and distributors.

For toys with digital elements, the concept of “defect” will be extended to cover cybersecurity risks, connectivity risks, and software updates (or lack of updates). In addition, the scope of damages will be expanded to cover data loss.

For all toys, the scope of recoverable damages has widened to cover “medically recognised harm to psychological health.” There are also changes to the burden of proof which are designed to make it easier for claimants to be successful. Among these revisions is a new presumption that a product is defective if it does not comply with relevant EU product safety regulations. This makes ensuring product compliance an essential step in mitigating product liability risk.

Finally, the updated PLD expands the range of defendants against whom product liability claims can be brought. Online marketplaces and fulfilment service providers in certain cases, as well as any entities who “substantially modify” a product outside the original manufacturer’s control, will all have some degree of liability.

## Looking ahead

The toy sector will need to keep on top of these considerable changes. The expanded obligations will fundamentally reshape the compliance and liability landscapes in the EU for manufacturers, importers, distributors, and other stakeholders. Everything from component parts and sourcing to postmarket monitoring will need to be evaluated.

For further insight on European product safety spanning the Automotive, Medical device, Pharmaceutical, Food and drink, and Consumer product industries, download the full edition of the **Recall Index report**:

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