

The new EU product safety regime in practice

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19 June 2008

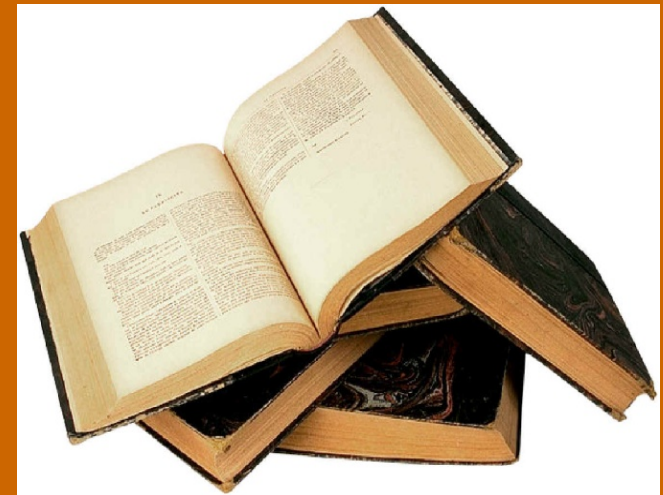
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The challenging climate of EU product safety

- The “new” GPSD:
 - products must be safe
 - safe products present no risks
 - producers:
 - must notify unsafe products immediately
 - must be ready to deal with risks posed by products
 - regulators: (inconsistent) lords of the realm
 - consumers: know more, use more, expect more, get more protection



The theory



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Products must be safe...

“... any product which, under normal or reasonably foreseeable conditions of use...does not present any risk or only the minimum risks compatible with the product’s use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons...”

→ Very low threshold



Producers must notify authorities...

“where producers know or ought to know... that a product that they have placed on the market poses risks to the consumer that are incompatible with the general safety requirement, they shall immediately inform the competent authorities...”

- Immediate = 3-10 days
- Obligation to notify authorities in every member state where product marketed

Producers must deal with risks...

- By being informed of risks, and
- By taking appropriate action to deal with them, including
 - warning consumers
 - withdrawing products
 - recalling products
- What is appropriate is not defined

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Regulators are unpredictable and powerful...

- Powers include abilities to:
 - organise product surveillance/market testing
 - require provision of information about a product
 - require warnings on products
 - enter premises and seize products
 - suspend supply of products
 - order recall of products
- No centralised enforcement of product safety measures



The GPSD creates criminal offences

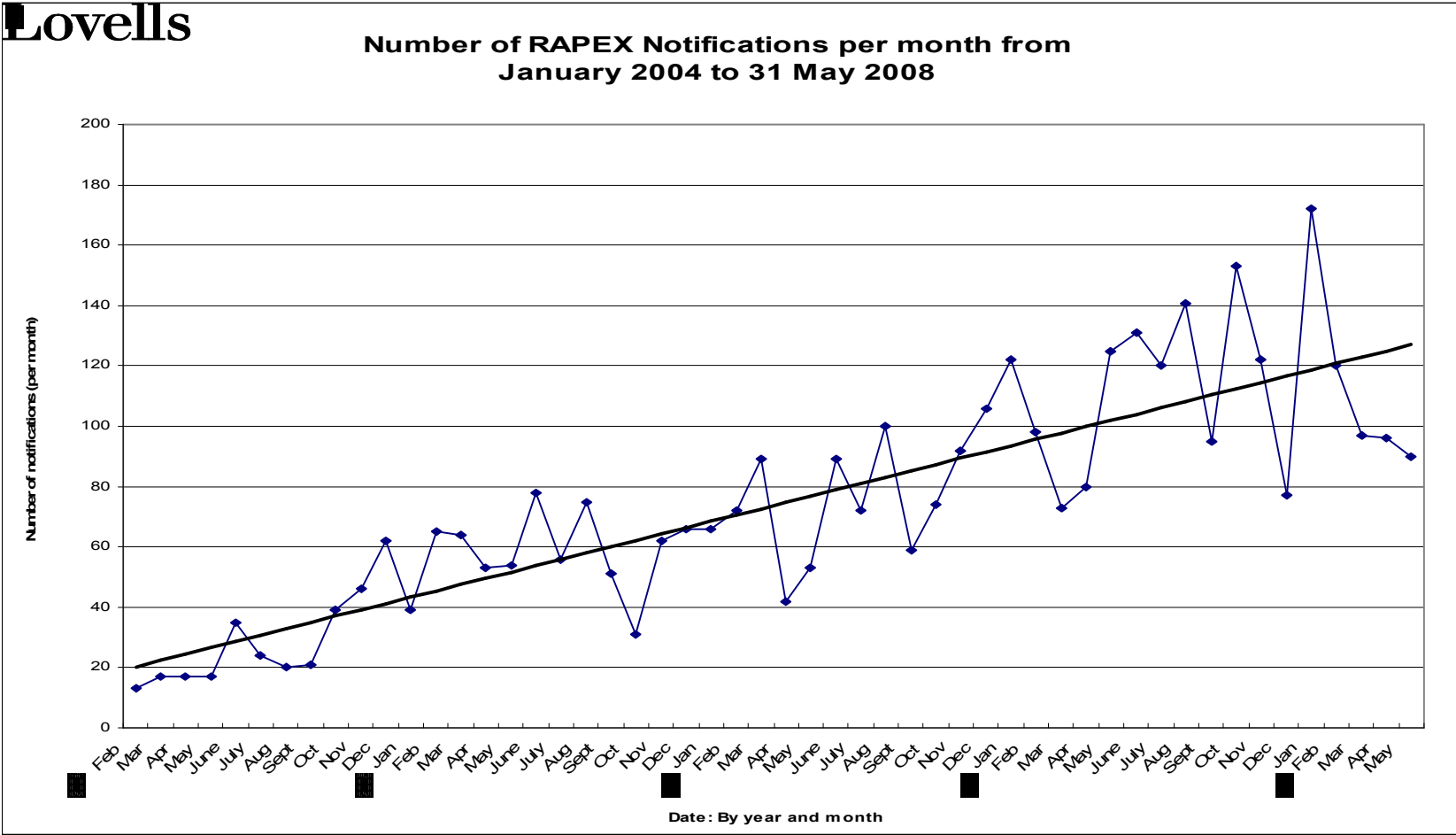
- An offence to breach the general safety obligation and/or the notification obligation
 - Penalties vary from country to country, but include:
 - Fines...up to €2m
 - Forced business closure...up to 5 years
 - Imprisonment...up to 20 years
- ... all of these bring significant risk to reputation



The practice



Recalls often the only option



Regulatory intervention almost certain

Charlemagne | Brussels rules OK

How the European Union is becoming the world's chief regulator



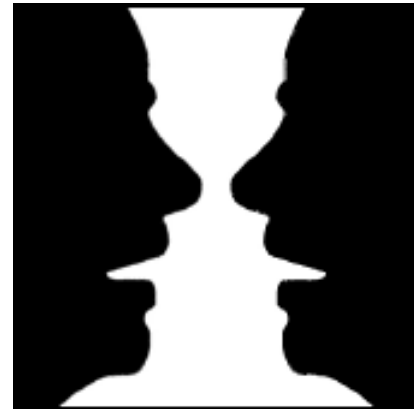
consumer and industry demands for certainty. If you manufacture globally, it is simpler to be bound by the toughest regulatory system in your supply chain. Self-regulation is also a harder sell when it comes to global trade, which involves trusting a long line of unknown participants from far-flung places (talk to parents who buy Chinese-made toys).

A gripping new book* by an American, Mark Schapiro, captures the change. When he began his research, he found firms resisting the notion that the American market would follow EU standards for items like cosmetics, insisting that their American products were already safe. But as the book neared completion, firm after firm gave in and began applying EU standards worldwide, as third countries copied European rules on things like suspected carcinogens in lipstick. Even China is leaning to the European approach, one Procter & Gamble executive tells Mr Schapiro, adding wistfully: "And that's a pretty big country."

The book records similar American reactions to the spread of EU directives insisting that cars must be recycled, or banning toxins such as lead and mercury from electrical gadgets. Obey EU

More disputes, more prosecutions, more claims

- Disputes with supply-chain partners more likely
- Prosecutions more likely
- Kick-on product liability effects



Why consumer product recalls in the EU are now more difficult than in the US...

United States (CPSA)	European Union (GPSD)
Risk reportable if product fails to comply with standard, creates substantial product hazard, or unreasonable risk of injury	Risk reportable if product fails to present no risk, or only minimum risk
Central reporting authority	No centralised reporting authority
Consistent approach throughout US	No guarantee of consistency from national authorities (in fact <i>inconsistency</i> virtually guaranteed)
Some protection for confidential information	Little effective protection for confidential information (in fact, presumption of public disclosure)

Other factors relevant to the landscape

- Protectionism is the Commission's buzzword
- New legislative measures to tighten up product safety
 - A new safety "package" to harmonise product safety enforcement
 - New directives in various industry sectors: low voltage electricals, motor vehicles, machinery, toys
- Globalisation of product safety enforcement

