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Fighting Early Obsolescence: New EU Directive Extends Liability Risks

On 6 March 2024, the EU published directive 2024/825/EU, intended to bolster consumer rights in the face of environmental challenges. The directive seeks to clarify companies' liability concerning information obligations related to early obsolescence and software updates.

Key Provisions of the Directive

The directive expands the list of prohibited unfair commercial practices, specifically addressing the issue of early obsolescence. The new rules, once incorporated into national laws, will prohibit the following practices:

- Promoting goods with artificially limited life spans (early obsolescence), *e.g.*, software designed to slow smartphone response or hardware designed to fail after a certain period. Notably, even unintentional manufacturing flaws leading to premature product failure fall within the scope of this prohibition. Promoting such products is strictly forbidden, provided that the trader is informed about the product's inherent flaws.
- Withholding information about any negative impact of a software update. In addition, a software company must not present an update as necessary if the upgrade only enhances functionality features.
- Making misleading claims about a product's durability, repairability or expected life span under normal conditions of use.
- Encouraging premature replacement or replenishment of consumables, *e.g.*, setting a printer to trigger cartridge replacement prompts before a cartridge is actually empty.
- Conveying the false impression that third-party accessories may harm the functionality of the goods. Conversely, if third-party accessories pose any potential harm, companies must duly inform consumers.

Notably, while France, for example, already treats early obsolescence as a criminal offense — carrying penalties of up to two years of imprisonment and substantial fines, the EU directive does not directly enforce a ban on premature expiration of goods. Nevertheless, the directive introduces a strong deterrent by prohibiting the promotion of products featuring durability-reducing attributes, thereby rendering early obsolescence significantly less appealing in practice. EU member states could impose additional, stricter requirements than those provided in the directive and follow the example of the existing French law.

By 27 March 2026, EU member states are required to incorporate the directive into national law.

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Liability Risks

The directive requires EU members states to implement at least the following consequences for companies' failure to comply with these new provisions:

i. If the prohibited practice affects several EU member states, national officials will fine the company up to 4% of the annual turnover in the states where the prohibited practice occurs.

ii. Competitors and affected consumers may claim compensation for damages.

Obligations of Executive Board Members

Management board members can use the next two years to prepare their organization's risk management and compliance systems for the anticipated legal requirements of the implemented directive, especially by:

- Educating employees about prohibited behaviors through trainings.
- Setting the right "tone from the top," which highlights environmental concerns.
- Including early obsolescence in company risk analysis.
- Implementing effective control systems to ensure full legal compliance in product manufacturing.
- Establishing a mechanism for employees to seek clarification from the compliance or legal department.

By designing internal control systems in a forward-looking and comprehensive manner, management can avoid lengthy, costly and reputation-damaging legal disputes. Ideally, compliance management systems would prevent all significant legal violations, but in reality, no system can ensure full compliance with complete certainty. However, in the event of violations, well-designed control systems allow management to prove that the company has done everything necessary to prevent such breaches. In case of an investigation against the company, this may lead to leniency or at least a reduction in sanctions.

For executive board members, staying alert to any indications of misconduct, investigating suspicions and immediately remedying any identified violations is also crucial. In this way, board members can reliably exclude their own criminal responsibility and civil liability.