



K&L | GATES

Environment, Health and Safety:
Ensuring Your Company's UK and
European Operations are Compliant
with New EU Regulations and
Enforcement Measures

What is the threat to your company's compliance record and good standing?

The fields of environment, health and safety law have been undergoing significant regulatory change in the European Union. Adoption of the REACH Regulation (Registration, Evaluation and Authorisation of Chemicals) has radically altered the European chemicals policy, the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) has been incorporated into EU legislation, waste and energy efficiency legislation has been amended and a variety of directives and regulations are being reviewed and updated as a result.

This means that manufacturers, importers, distributors and end users of materials in the EU have to ensure not only that their output and operations are compliant with rapidly changing EU and national laws but also that their facilities meet all relevant requirements. Your company must be ready to prove that your operations are environmentally sound, that you have implemented appropriate risk management practices and that you have met energy efficiency obligations. Failure to meet these requirements can have significant adverse operational and financial impact on your business.

What is the cost of non-compliance?

EU and national authorities have initiated a range of enforcement actions to verify compliance – from document checks to site inspections and even supply-chain compliance reviews.

Penalties for breach of duties imposed by environmental and chemical legislation include:

- Fines for companies (possibly including non-EU parents)
- Fines and/or imprisonment for senior management
- Unlimited liability for environmental clean-up
- Indefinite closure of facilities

In today's climate, your company must not only keep pace with rapidly changing regulatory requirements but also be fully prepared for enforcement initiatives by EU Member States, and potential litigation from third parties.



How can K&L Gates' regulatory team help?

K&L Gates' team has combined its knowledge of environmental, insurance coverage and health and safety law to design a flexible on-site review and training programme. This is specifically geared towards UK and European operations in the manufacturing sector and focuses on the most significant risks and potential liabilities. K&L Gates can help your company stay one step ahead of the regulators. Summarised below, our programme can be tailored to your company's specific requirements, can be provided over one or two day long sessions (or longer if your company's circumstances so require) and can include:

Audit

- Thorough assessment of your company's operations, manufacturing process and products
- Risk management
- Review of response readiness to demonstrate compliance to relevant authorities in the event of an investigation
- Assessment of the operations of a target company in an M&A scenario (due diligence)

Compliance review

- Review of compliance documents provided by your company in advance
- Incident handling
- Mock inspections, including industrial accident and response assessment

Training

- Detailed training on legislative requirements applicable to your company and/or specific facilities
- Workshops comparing best practices of different departments/operations of your company
- Training on how to respond to site/product audits:
 - What inspection or investigation your production facility may face
 - How to react when approached by enforcement agents
- Whether your facility/site contamination risk assessment is viable
- Insurance coverage assessment
- Insurance/risk mitigation evaluation

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What will our team cover?

Review of Facilities and Operations

Advice on permits and planning issues:

- Environmental permits
- Monitoring and reporting arrangements
- Operations to ascertain permits required/ any redundant permits that can be surrendered
- Planning permissions and planning agreements
- Potential for repayment of unspent payments under planning agreements
- Development potential
- Neighbour issues/complaints (if any)

Assessment and advice on site remediation liability:

- Data on current and former sites
- Examination of leases and past transaction documentation to identify latent liabilities/ obligations
- Planning permissions to ascertain compliance with planning conditions relating to remediation
- Terms and conditions for remediation contracts/investigations
- What to look for when taking on a new site
- What insurance can and cannot do for you

Review and update of policies relating to all major accident hazards:

- COMAH/Seveso II
- Hazardous substances consents
- Accident plan under Seveso II legislation

Asbestos review of statutory site assessment/management plan.

Insurance Coverage

Review of key insurance policies:

- Directors & Officers, Environmental, Public Liability and Material Damage/Business Interruption
- Assess extent of cover available to respond to a pollution event and for costs in dealing with regulatory intervention

Accessing cover:

- Advice on when and how to notify claims and circumstances in advance of problems arising so that your company is ready to take appropriate steps if necessary
- Practical guidance on presentation of claims, including on document retention/ presentation, should an insured event arise so as to advance claims under responsive policies

Review of internal communication of information from across your company's organisation to your company's risk/insurance department:

- For disclosure purposes in the context of insurance renewals
- To identify claims and circumstances as they arise so that these can be reported to insurers in accordance with policy terms

Managing Risk: Health and Safety Compliance

Assessment of your company's existing strategy for complying with the regulatory regime imposed by the (UK) Health and Safety at Work Act (or equivalent) including review of:

- Your company's Safety Management System
- Safety Management System's practical application, including its integration into your company's supply chain

Review of your company's preparedness for handling a major incident involving the (UK) Health and Safety executive (or equivalent) and, in the case of a fatality, the police and practical guidance on incident planning, including liaison with your company's insurers.

Guidance and training where areas of improvement are identified, with a view to minimising corporate risk.

Product Assessment: REACH and CLP Regulations

Assessment of your company's existing strategy for compliance with REACH:

- Tracking tonnages, document retention, communication down the supply chain
- Identification of obligations in respect of Substances of Very High Concern, including notification to ECHA
- Identification of obligations under evaluation, authorisation and restriction requirements
- Audit of current inventory of manufactured substances, preparations and raw materials consumed for status of REACH and CLP compliance

Tailored advice depending on whether your company is a manufacturer, an importer or an Only Representative.

Assessment of your company's existing strategy for compliance with the CLP Regulation:

- Appropriate classification of substances/mixtures
- Notification to ECHA inventory
- Labelling under the new global harmonised system
- Packaging obligations

Review of documents necessary for compliance with REACH and CLP and assessment whether your document retention policy is appropriate:

- Proof of REACH registration/C&L notification by legal entity or suppliers
- Tracking the presence of Substances of Very High Concern up the supply chain
- Transport documents, including bills of lading and any other customs documentation
- Assessment of adequacy of written communication down the supply chain
- Advice on Safety Data Sheets and Chemical Safety Reports

Waste and Energy

Assessment of your company's products and advising whether they are wastes, by-products or substances:

- By-product characterization and regulation
- Compliance with storage and transport requirements for waste (including hazardous waste)
- Due diligence procedures for waste product off-takers

Review of scope and drafting of the environmental indemnities in your company's contractual relationships.

Carbon Reduction Commitment Energy Efficiency Scheme (CRC)/Climate Change Agreements applicability to your company and assessment of your company's compliance.

Micro-generation opportunities: feed-in-tariffs, planning and lease issues.

Energy security and energy contracts review.

Recycling opportunities and obligations for your company and advice on the applicable legislation.

The programme can be **tailored** to suit your company's needs and a range of different price options are available.

How to tailor the programme to suit your company's needs and how much it will cost.

We can provide you with a range of different pricing options based on the areas on which you require advice. As well as providing hourly rates, we can quote the following:

- Day rates
- Blended rates
- Fixed pricing options for particular modules
- Follow-up tasks
- Document hosting/extranet
- Expand to cover European/worldwide operations

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