

From the initial idea to the finished product – focusing on product safety from the very beginning is an important feature.

Modern risk management is comprehensive and illuminates all weaknesses in the company, including production processes.

Product safety is a booming area. This is not just due to attention-grabbing recall campaigns and processes, but also to the new safety machinery and product safety act passed in Germany.

It could have happened anywhere. A machine stops working in the middle of a production process. The responsible employee discovers a small foreign body that has become jammed. The jiggles and pulls until the thing comes loose – with terrible consequences: the unprotected machine starts up again and catches the man in its grip. A few months later he dies of his serious injuries.

This case shook the medium-sized manufacturer out of his misplaced feeling of complacency based on excellent products, high quality standards and good business. No one had thought of fitting a blocking mechanism to this product. This despite the fact that such a device is required by the EU machinery directive. The district attorney's office, employer's liability insurance association and commercial supervisory authorities become involved and compensation claims are pursued in court. In a major case the product series will be subject to an international recall and will be overhauled. In such a case, the costs will be covered by product liability insurance. Otherwise smaller companies can quickly be threatened with financial decline or even ruin. A drastic example perhaps, but one that can occur all too often, as the many recall campaigns in Germany and beyond testify. Product safety is a subject that now requires greater public attention in these days of distributed and internationally networked business. In Germany, a law that is expected to come into force on 1 April 2004 is arousing great attention: the regulations introduced by the German government for technical equipment and consumer products, known as the »GPSG« (Equipment and Product Safety Law)

will set the bar even higher for safe products, according to specialist in administration law Dr. Thomas Klindt (see page 5) and Dr. Hermann Buitkamp from TÜV Product Service: »We are now receiving clearer indications of how manufacturers must ensure safety when a product is used correctly, but also in the event of foreseeable incorrect usage.«

The key points at a glance

GPSG encompasses Equipment Safety Law (GSG) and Product Safety Law (ProdSG), eliminates the much-criticized multiplicity of rules and implements the EU product safety directive dating from 2001 as national law (see page 7). Business, public bodies and, above all, the consumer will all benefit from the new regulations. The grounds stated for the text of the law specify: »In line with moves towards deregulation and the minimizing of bureaucracy, the new GPSG law will be a comprehensive law to ensure safety and health in connection with the marketing of technical products.« Much will be taken from the old laws, but some central aspects are new.

Area of application of GPSG legislation

The new GPSG legislation applies to systems that require monitoring, such as

- boiler systems or elevators (the wording has been taken directly from the text of the legislation),
- all technical products not covered by special laws (e.g. furniture, playground equipment, prams or mountain bikes)

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»GPSG: 75 percent of the journey to a safe product«

- and is also applicable when a special law does not contain regulations of the same value.
- It governs the introduction and exhibition of products (according to the definition, this covers both technical equipment and consumer products).
- Technical equipment are all so-called work-related devices, in other words machinery that is exclusively used for work, as well as accessories and protective equipment.
- Consumer products: These include commodities and other products that are intended for consumers or that »could be used by consumers under reasonably foreseeable conditions, even if they are not intended for consumers«. This also covers products such as drinks machines or fitness equipment which consumers could use in the service sector. About 90 percent of all products for consumers are covered by the GPSG, estimates Dr. Hermann Buitkamp of TÜV Product Service.

Comprehensive catalog of requirements

Legislators have used the GPSG to tighten up the regulations for introducing products. The key aspects are as follows:

- A product may only be brought into circulation if it does not endanger the safety and health of users. This applies both to proper use and to foreseeable incorrect use. »That's the way things should be,« says attorney Dr. Thomas Klindt, »because the extent of mistakes made with consumer products is always a source of danger and accidents.« For details of the act in this context, see page 8.
- GPSG applies to businesses (not to private sales at flea markets, for example) and irrespective of whether the products are new, used, reconditioned or considerably modified when placed in circulation. The old GSG law only covered the first time a product was introduced into circulation.
- »The importance of standards is considerably strengthened in the context of the introduction of products,« say Joachim Geiß and Wolfgang Doll of the Ministry for Economic Affairs. To put it in a nutshell: if a product is produced in accordance with a recognized standard or technical specification, then it assumed to have conformity and is deemed safe.
- »Manufacturers, agents and importers« must inform users so that they can recognize and protect themselves against the dangers a product can pose.
- Every product must bear the name of the manufacturer; if the manufacturer is not from within the European Union, then the name of the agent or importer is required. Manufacturers, agents or importers must also take precautions to enable them to respond appropriately to dangers. This ranges from consumer information to recalls.
- If your product poses a danger to safety and health, then »manufacturers, agents and importers« must immediately inform the authorities and must cooperate with them.
- This duty to inform also applies to dealers, who thus come more under the spotlight. Traders may not bring any product into circulation that they know or »must know on the basis of the information available to them or their experience« (§ 5 paragraph 3) not to meet the legal requirements for a safe product.
- The responsible authorities should develop a »systematic procedure« for monitoring the market more efficiently. This includes safety-related technical product inspections, as well as the extended right to ban products, to require their withdrawal or recall or to publish official warnings against them. According to specialist attorney Dr. Thomas Klindt this is »a catalog that is more stringent than almost anything the competition can come up with«. For CE labeling and the GS mark see page 6.

Product liability is not excluded


Thus, the new GPSG law offers new approaches to product safety, but doesn't represent a major step forward for consumers. »Unsafe products can still reach the market,« says Siegfried Mösch, Director of the TÜV Product Service Certification Center. →

Working safely with the GS certificate. Durst Phototechnik AG (see photo of flat bed printer RHO 160 o.r.) in Italy has chosen safety and has all its products certified according to the German standard.

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- Product Safety Forum
In response to the huge demand evident at the kick-off event, TÜV Akademie and TÜV Product Service are organizing the 2nd Munich Product Safety Forum on 6 and 7 May 2004. Planned topics:
- New Equipment and Product Safety Law
 - Changes to the EU low voltage guidelines
 - Minimum requirements for user guide manuals
 - New accreditation act, CB procedure and new trends
 - Packaging to prevent theft
 - Market monitoring
 - Performance capability and goods tests
 - Added value through certification

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Product safety: New legislation entails new requirements

Whether for furniture, accessories or children's toys, the new equipment and product safety law is applied across the board.

This is because there is no provision for a general inspection and certification by an impartial entity, even though over 80 percent of products fail their initial inspection.

The CE label (see page 6) offers little help in this regard because although it is mandatory for many products in the EU, it does not represent any certification. Thus, it is more important than ever for manufacturers, importers and dealers to place particular emphasis on safe products (see also tips for businesses on page 8).

Another very important point: Those who follow every aspect of the GPSG are still not free from liability claims. That's because German product liability law goes beyond this and takes account of other legal principles, such as product liability law and, above all, the Civil Code. These usually provide the basis for product liability claims for compensation under civil law. In addition, »responsible people such as managing directors or QM directors can expect personal criminal proceedings to be taken against them in the event of physical injuries or accidental killing,« says attorney Dr. Thomas Klindt. These are more than just words of comfort from a legal expert: »Anyone complying with the GPSG has covered at least 75 percent of the journey to a safe product.« Caution is also necessary at an international level. Country-specific rules on product safety and liability and the associated requirements for licenses, certificates and labels are very varied and require an intensive study of the materials (see also page 7).

And how do companies react to the legal challenges posed by EU safety directives and the GPSG? »Our products are already subject to a specific ordinance and are inspected and documented for safety and the results are regularly analyzed and evaluated,« explains engineer Harald Krieg of the Light Technology Department at the Arnold & Richter Cine Technik Group. Modern test equipment and certification in line with ISO 9001:2000 has also

enabled a very high quality standard to be achieved, according to the manager of the test laboratory in Stephanskirchen, Bavaria. In addition, the Light Technology Division intends to have all its current products internationally certified.

The management of Durst Phototechnik AG in Brixen, South Tyrol, Italy, is also fully convinced that prevention pays for itself. They have all their machinery certified according to equipment safety law and have never been confronted with liability claims due to deficient product safety. Internal measures and external consultation services ensure that product safety is incorporated at every stage, from the initial concept to the finished product; in addition there is a continuously involved central contact. This is why Durst welcomes the »more stringent legal requirements because they will separate the sheep from the goats«, explains Albert Prosch, who is responsible for product engineering.

Avery Dennison Germany GmbH is based in Eching, southern Germany, and also emphasizes the importance of product safety. Internal and external experts are included in the process as early as the development phase. Compliance with the relevant directives and production audits according to ISO 9001:2000, special design reviews and risk and threat analysis and special supplier controls are further points of emphasis when it comes to product safety. According to Holger Pleier, who, as a development engineer, has shared responsibility for product safety, »manufacturers will become more aware of their responsibilities in the future«. Thus the hope exists not just at Avery Dennison that »equally high standards will be set throughout the world and that they will be subject to continuous monitoring by the legislators in the relevant countries. ■

Tested and certified: Avery Dennison, a producer of labeling machines among other things, chooses product safety above all else.

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→ Interview with Dr. Thomas Klindt, attorney

? The new Equipment and Product Safety Act (GPSG) is expected to become effective in April 2004. Is the standard for safe products than much higher?

! High safety requirements for products already existed in the form of the Equipment Safety Act (GSG) and Product Safety Act (ProdSG), however in many cases these were simply ignored by industry. All regulations have now been brought together under the GPSG. Safety questions are largely dictated by European law (machinery directive, toy directive, PSA directive, etc.). Nonetheless, the bar has now been raised thanks to the public awareness aroused by the introduction of the GPSG. The new law also makes it clearer how manufacturers are required to guarantee safe usage, not just when a product is used correctly, but also in the event of foreseeable incorrect use.

? Does this mean that manufacturers and dealers will now have to pay more attention to ensuring that products are safe?

! That's right! For the simple reason that market monitoring authorities now have improved control options. Industry can expect more product controls, while dealers are coming more clearly under the scrutiny of the authorities as part of the sales chain.

? So the new law is good news for consumers. Does the same apply to businesses?

! In the final analysis the answer is yes. That's because if controls are inadequate, then it pays to regard safety as an area where savings can be made, so that the prices charged by serious manufacturers can be undercut; there is a risk of a downward spiral of poor safety. Thus, a state-sponsored requirement for greater product safety also helps producers who are working hard to provide safe products. Furthermore, it is in the interests of manufacturers to avoid product liability risks. Anyone who complies with the new GPSG legislation has already covered most of the ground for legal protection against product liability claims. Don't forget, the eventual aim is to have even more stringent product liability laws.

? So we should regard GPSG legislation as a major step in the direction of safe products?

! This is a modern consumer protection act that has many interfaces that allow for economic control by the authorities. We shall have to wait and see how positive this turns out to be. Something I find particularly noteworthy about consumer products is the obligation on companies to monitor the market so as to identify the risks that arise. In addition, the law also requires reasonable protective measures in the event of a crisis, such as consumer warnings and product recalls. This constitutes no less than a legal requirement for companies finally to set up their own internal »risk management«. This can only be recommended as a voluntary measure because there is nothing more terrible than unprepared, improvised recalls of unsafe products!

? Are there any points of criticism from your point of view?

! Yes! I am critical of the fact that manufacturers of consumer products are required to inform the authorities immediately on their own initiative when product risks are identified. This »obligation to blacken one's own name« is unhelpful, particularly because the same law requires recall precautions. This makes it more difficult to organize product recalls and interruptions to sales with the necessary degree of calmness. Furthermore, the cooperative obligations between the various Federal States are inadequate. This means that there is still no guarantee that products with the same construction from different competitor companies will receive identical safety assessments from the responsible local market monitoring authorities. It can also happen that one distributor is subject to huge interventions by the state while his competitor can continue to sell his (identical) product unimpeded. This has nothing to do with intelligent consumer protection, but constitutes an unalloyed distortion of competition. The situation is and will remain unsatisfactory as long as there is no statutory responsibility for decision-making. It is astonishing the way Germany is treated by the legislature as an industrial location.

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