PANORAMIC

PRODUCT RECALL 2024

Contributing Editor

Sarah-Jane Dobson

Kennedys Law LLP

LEXOLOGY

Product Recall 2024

Contributing Editor

Sarah-Jane Dobson

Kennedys Law LLP

Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights, including into product safety laws and enforcement; notification requirements; corrective actions and recalls; authorities' recall and corrective powers; repercussions for liability in court proceedings, and related disclosure requirements; and recent trends.

Generated on: March 27, 2024

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research

Explore on **Lexology**

Switzerland

Annemarie Lagger
Walder Wyss Ltd

Summary

AUTHORITIES' RECALL AND CORRECTIVE POWERS

Corrective actions
Government recalls
Voluntary versus mandatory recalls
Publication of warnings, corrective actions and recalls
Costs
Challenging decisions

IMPLICATIONS FOR PRODUCT LIABILITY CLAIMS

Repercussions for liability in court proceedings
Disclosure of information

UPDATES AND TRENDS

Key developments of the past year

PRODUCT SAFETY LAWS

Product safety legislation

1 What basic laws govern the safety standards that products must meet in your jurisdiction?

The Swiss safety standards that products must meet are governed (1) by sector or product-specific regulations and (2) a few horizontal framing regulations that are subsidiary applicable cross-sectoral to all products.

The most common sector-specific federal regulations for specific product categories are, for instance, as follows.

- the Federal Act on Foodstuffs and Utility Articles and implementing ordinances, such as:
    - the Federal Council's Ordinance on Foodstuffs and Utility Articles;
    - the Federal Department of Home Affairs' Ordinance on the Safety of Toys; and
    - the Federal Department of Home Affairs' Ordinance on Cosmetic Products;
- the Federal Act on Medicinal Product and Medical Devices and implementing ordinances, such as the Federal Council's Ordinance on Medical Devices; and
- the Federal Act on Electrical Light and Heavy Current Installations and implementing ordinances, such as:
    - the Federal Council's Ordinance on Electrical Low Current Installations; and
    - the Federal Council's Ordinance on Electromagnetic Compatibility.

Horizontal framing regulations that are subsidiary applicable cross-sectoral to all products are:

- the Federal Product Safety Act and the implementing Federal Council's Ordinance on Product Safety;
- the Federal Act on Technical Barriers to Trade and the Federal Council's Ordinance on the Placing of Products on the Market according to Foreign Regulations; and
- the Federal Act on Product Liability.

Law stated - 12 March 2024

Basic pre-launch requirements

2 What basic steps and safety requirements must be satisfied before a product can be marketed in your jurisdiction?

Before placing a product on the Swiss market, the manufacturer (or any other responsible person under the applicable product safety legislation, eg, an importer) must ensure that the product, under normal or reasonably foreseeable conditions of use, does not endanger, or pose only a minor risk to, the safety and health of users and third parties (cf article 3, paragraph 1 of the Swiss Product Safety Act). The product must comply with the essential health and safety requirements in place under the applicable Swiss law, laws or regulations for such specific product. If no such regulations exist, the product must comply with the state of the art and technology (cf article 3, paragraph 2 of the Swiss Product Safety Act).

In several product areas, Swiss product safety law is harmonised with EU law. The harmonised regulations are mentioned in the Agreement between the Swiss Confederation and the European Community on the mutual Recognition of Conformity Assessment (MRA). In these areas, products that comply with the relevant EU regulations are also considered marketable in Switzerland, and conformity declarations issued by European Notified Bodies are deemed valid also in Switzerland. However, it is advisable to clarify in each individual case what legal requirements apply and whether such requirements are harmonised with EU law.

The EU has updated the regulations on medical devices. As a consequence, Switzerland has aligned its legislation with these EU provisions. These changes would require an update of Chapter 4 of the MRA to ensure continued harmonisation between the EU and Switzerland of the technical regulations pertaining to medical devices. The European Commission, however, has so far rejected such an update due to institutional disputes between the EU and Switzerland. Since 26 May 2021 for medical devices, and since 26 May 2022 for in vitro diagnostic medical devices, the EU has classified Switzerland as a third country for the purposes of the medical device sector, meaning that previously existing trade facilitations under the MRA are suspended for medical devices. Following the institutional differences between the EU and Switzerland, the Swiss government (ie, the Federal Council) adopted measures to mitigate these negative effects. The mitigation measures entered into force contemporaneously with the end of the harmonisation for medical devices on 26 May 2021. They comprise, inter alia, unilateral recognition of medical devices that have been certified in compliance with the EU Medical Devices Regulation for the purposes of access to the Swiss market.

Law stated - 12 March 2024

Guidance

3 Is there any guidance on the application of the product safety legal framework, or related commentary around its effectiveness?

There is no general guidance on the application or implementation of the product safety legal framework (such as the Guide to the implementation of directives based on the New Approach and the Global Approach, the 'Blue Guide'). Rather, different sources, such as case law, legislative materials or legal doctrine, or all of these, must be consulted for the specific applicable provision.

Law stated - 12 March 2024

ENFORCEMENT OF PRODUCT SAFETY LAWS

Regulators

4 Who enforces the product safety laws in your jurisdiction? If there are multiple regulators, how do their activities intersect and to what extent do they cooperate?

The enforcement of product safety laws in Switzerland is generally sector-specific. Depending on the sectoral law, enforcement is the responsibility of either the respective cantonal authority or a specific federal authority. The main regulators and their interactions are as follows:

- The State Secretariat for Economic Affairs coordinates the enforcement of Swiss product safety legislation in agreement with the competent sector-specific enforcement bodies (eg, in the event that there are multiple regulators) and is, additionally, the surveying regulatory enforcement authority in several product sectors.
- The Federal Inspectorate for Heavy Current Installations is responsible for the technical supervision and inspection of electrical installations and electronic devices.
- The Swiss Council for Accident Prevention is responsible for personal protective equipment, specifically with regard to traffic, sport and household needs, and for machines, though with regard to recreational use only.
- The Swiss Accident Insurance Institution is the competent enforcement body for personal protective equipment, elevators, machines and other products with regard to operational use.
- The Swiss Agency for Therapeutic Products (Swissmedic) is in charge of the market surveillance of medicinal products and medical devices.
- The respective cantonal bodies – for example, cantonal inspectorates or laboratories – are generally competent to enforce the Swiss Foodstuffs and Utility Articles legislation (including toys, cosmetic products or food contact materials).

As regards the extent of cooperation, the federal or cantonal product safety regulators are generally obliged to provide each other with information and documents to the extent necessary for the enforcement of product safety legislation (cf article 21 of the Federal law on Technical Barriers to Trade (THG)). Under certain circumstances, the competent enforcement authority may also request from, or provide to foreign authorities or institutions information and documents (cf article 22 of the THG). Accordingly, if a regulator detects or is notified about, a product safety risk, for example, it is generally obliged to notify other relevant regulatory authorities in Switzerland and may also notify the respective bodies abroad.

Law stated - 12 March 2024

Enforcement actions and penalties

5 What enforcement actions are available to the regulatory authorities? What penalties may they impose for non-compliance with product safety laws?

The enforcement actions available to the regulatory bodies and the applicable sanctions or penalties result from the respective applicable product safety regulation. If a product does not comply with the applicable regulatory requirements, the competent enforcement authority is generally entitled to order appropriate administrative measures (cf article 10, paragraph 2 of the Product Safety Act). This may be the order of a sales stop, a public warning, an export stop, or even the withdrawal or recall and destruction of the product if a product poses an immediate and serious risk to the safety or health of users (cf article 10, paragraph 3 of the Product Safety Act). Further, the competent enforcement authority may impose criminal sanctions in the case of non-compliance. However, enforcement bodies are rather reluctant to initiate criminal proceedings and tend to do so only in cases of clear intention.

Law stated - 12 March 2024

Enforcement process and procedures

6 What is the typical process for enforcement actions and what procedures are involved? What rules govern enforcement actions?

The relevant procedural rules for enforcement actions in Switzerland are governed by the applicable federal or cantonal administrative procedural laws. Typically, before taking an enforcement action (eg, ordering a recall), the competent authority would formally raise a complaint towards a non-compliant manufacturer (or other responsible party), wherein the manufacturer is notified about the non-compliance and is granted the right to be heard within a specific deadline. Depending on the safety risk, the party is granted a shorter or longer deadline to exercise the right. Usually the authority does not engage in any informal exchanges before taking action. Once the manufacturer or responsible party has exercised its right to be heard, the authority issues an order that can be challenged with an appeal to the superior administrative body or the administrative court. However, this process for enforcement action may vary depending on the applicable product regulations.

Law stated - 12 March 2024

Enforcement trends

7 How prevalent is enforcement action under the product safety laws? Have there been any notable recent examples of enforcement actions?

In Switzerland, enforcement actions under product safety laws are common, particularly in the foodstuffs or electronic goods industry, where manufacturers or other responsible parties are frequently controlled by the authorities. As the respective administrative procedure and the appeal procedure generally is not public, there are few public court

cases. Also, many producers tend to cooperate with the authorities so as not to fall in the authority's disgrace or to minimise the damage to reputation.

Law stated - 12 March 2024

Challenging enforcement actions

8 What mechanisms are available to companies to challenge the imposition of enforcement actions?

Depending on the applicable administrative or criminal procedural laws, companies may challenge the imposition of enforcement actions by filing an appeal to the appeal authority (eg, a superior authority or a court).

Law stated - 12 March 2024

NOTIFICATION REQUIREMENTS

Criteria for notification

9 What events or conditions trigger a requirement to notify the product safety authorities of issues discovered in products, or known incidents of personal injury or property damage?

Generally, a producer or any other person placing a product on the market is obliged to notify the competent product safety authorities if he or she discovers or has reason to believe that the product is dangerous for the safety or health of the users or bystanders (article 8, paragraph 5 of the Product Safety Act).

Law stated - 12 March 2024

Notification time limits

10 What are the time limits for notification?

Article 8, paragraph 5 of the Product Safety Act stipulates that the notification must be made immediately after the justified suspicion of a safety defect or at latest after the discovery of a safety defect. The product safety laws do not provide for a specification of the term. However, according to administrative guidelines on the notification obligation, the notification should be made within one to two days depending on the safety risk at stake (cf FAQ on the Swiss Product Safety Act, State Secretariat for Economic Affairs SECO). In practice, however, this very short deadline is rarely met and it is exceptionally rare, that enforcement authorities investigate on the timeliness of the notification or even punish a notifying company for a late filing.

Law stated - 12 March 2024

Competent authority for notification

11 To which authority should notification be sent? Does this vary according to the product in question?

The authority to which a notification should be sent varies depending on the product in question. However, in case where the competence is unclear or where time is of essence, notifications may also be sent to the State Secretariat for Economic Affairs SECO, which then forwards the notification to the competent authority.

Law stated - 12 March 2024

Form and content of notification

12 What form should notification take? What product information and other data should be provided in the notification to the competent authority?

The notification should be made in writing. Generally, the authorities ask notifying companies to submit a completed notification form, which may be found on the authorities' websites. However, this is not a statutory requirement and the notification is deemed valid if it is filed without the form (eg, by simple notification letter). According to article 8, paragraph 5 of the Product Safety Act, the notification should include information that enables the precise identification of the product, a comprehensive description of the danger emanating from the product, all available information on the supply chain and a description of the measures that have been taken in order to avert the danger, such as warnings, sales stop, withdrawal or recall of the product.

Law stated - 12 March 2024

Obligations to provide updates after initial notification

13 What obligations are there to provide authorities with updated information about risks, or respond to their enquiries following an initial notification?

Article 11 of the Product Safety Act contains the obligation to cooperate in the enforcement of the Act to the extent this is necessary. This includes the duty to provide the enforcement authority with all necessary information free of charge and to hand over the required evidence and documents.

Law stated - 12 March 2024

Penalties for failure to notify

14 What are the penalties for failure to comply with notification obligations?

Failure to comply with the notification obligations is criminally sanctioned with a fine up to 40,000 Swiss francs in case of intention, or a fine up to 20,000 Swiss francs in case of negligence. Sector-specific provisions remain reserved.

Law stated - 12 March 2024

Public disclosure of notification information

15 Is the content of the notification publicly disclosed by the authorities? Is commercially sensitive information contained in the notification protected from public disclosure, or are the authorities otherwise bound by confidentiality?

The content of the notification is publicly disclosed on the website of the Federal Consumer Affairs Bureau (FCAB). The FCAB also sends push notifications to the media and other interested parties (consumer organisations). It is important to note that the FCAB drafts the publication in its own wording, taking only the relevant information from the notification. However, the notifying company is usually given the opportunity to review, amend and sign off the wording in cooperation with the FCAB.

As regards sensitive information (business secrets), the authorities are bound to confidentiality, unless their observations are significant for the safety of products or for the exchange of experience on safety-related measures (article 12 of the Product Safety Act). In one case (BGE 1C_299/2019), the Federal Supreme Court ruled that this duty to confidentiality is subsidiary to a person's right to access official documents and to obtain information on the content of such documents under article 6, paragraph 1 of the Federal Act on Freedom of Information in the Administration (FoIA). Thus, interested parties (eg, media) may request the disclosure of information on submitted notification information from an authority. However, the FoIA does not give an unlimited right to information. For example, more stringent statutory requirements apply if the information concerned was voluntarily disclosed to the authority on a confidential basis by third parties, or if the information concerns business secrets, or if the disclosure would impair the court's freedom of opinion (article 7 of the FoIA).

Law stated - 12 March 2024

Use of information in prosecution

16 May information notified to the authorities be used in a criminal prosecution?

Yes. Information notified to the authorities may be used in a criminal prosecution under Swiss law.

Law stated - 12 March 2024

Information sharing between regulators

17 Is notification information shared with other regulators?

Yes. The federal or cantonal product safety regulators are generally obliged to provide each other with information and documents to the extent necessary for the enforcement of the product safety legislation (cf article 21 of the Federal law on Technical Barriers to Trade (THG)). Provided that the statutory circumstances are met, the competent enforcement authority may also request information and documents from foreign authorities or institutions (cf article 22 of the THG). Thus, if a regulator detects or is notified about a product safety risk for instance, it is generally obliged to notify other relevant regulatory bodies in Switzerland and may also notify the respective bodies abroad.

Law stated - 12 March 2024

CORRECTIVE ACTIONS AND RECALLS

Criteria for corrective action

18 | What criteria are applied to determine when a matter requires a product recall or other corrective action?

Whether or not a corrective action (ie, a withdrawal or recall) is required is determined based on the risk emanating from the product in question. Article 8, paragraph 5 of the Product Safety Act requires a producer or any other person placing a product on the market to take adequate corrective action if it discovers or has reason to believe that its product presents a risk to the safety or health of users or third parties.

Law stated - 12 March 2024

Scope of corrective action

19 | What criteria are applied to determine the scope of a corrective action?

Swiss product safety law does not provide for actual criteria to determine the scope of a corrective action. In practice, the enforcement authorities generally require that the measure taken is appropriate to avert the safety risk. It is noteworthy that Swiss enforcement authorities are not bound to any European guidance on corrective actions, such as the European PROSAFE guidance 'Product Safety in Europe: a guide to corrective actions and recall', as Switzerland is not part of the European Union. However, as Swiss product safety law is harmonised with EU law to a large extent, Swiss enforcement authorities generally consider such guidance in their decision finding.

Law stated - 12 March 2024

Traceability requirements

20 | What requirements exist for the traceability of products to facilitate recalls?

Article 8, paragraph 2 of the Product Safety Act contains the producer's or importer's duty to take adequate measures to ensure that, during the stated or reasonably foreseeable period of use of the product, the product is traceable. Sector-specific provisions generally require manufacturers to affix a serial number or a lot number on the product to facilitate the traceability of the product or specify retention periods for certain documents. In general, companies are well advised to have traceability systems and procedures in place to be prepared for requests from authorities.

Law stated - 12 March 2024

Consumer messaging

21 What are the legal requirements to publish consumer notices, warnings or other information to product users or to suppliers regarding product issues and associated hazards, or to notify consumers of recalls?

Article 8, paragraph 2 of the Product Safety Act contains the producer's or importer's duty to take adequate measures to avert potential dangers emanating from the product during its stated or reasonably foreseeable period of use. This includes, if appropriate, notifying consumers, publishing warnings or otherwise informing the consumers of potential hazards.

Law stated - 12 March 2024

Content of recall notices

22 Are there any requirements or guidelines for the content of corrective action or recall notices?

There are no specific legal requirements or guidelines for the content of corrective action or recall notices. Generally, article 8, paragraph 2 of the Product Safety Act requires that the manufacturer or importer takes adequate measures to avert potential dangers emanating from the product during its stated or reasonably foreseeable period of use. A corrective action is deemed adequate if it is appropriate to avert the product hazard. However, there is no in-depth guidance, such as it is available with the PROSAFE guide under EU law, for instance. In practice, it is nevertheless advisable for manufacturers or other responsible parties to follow the PROSAFE guide, as the Swiss authorities may also take it into consideration or at least follow its principles.

Law stated - 12 March 2024

Mode of communication

23 What media must be used to publish or otherwise communicate warnings or recalls to users or suppliers?

Under Swiss law, there are no specific rules as to which media must be used to publish or otherwise communicate warnings or recalls to users or suppliers. As manufacturers or importers must take adequate measures to avert the product danger, any media suitable to reach as many affected consumers as possible is appropriate (eg, social media, daily newspapers, trade journals, radio broadcasts, etc).

Law stated - 12 March 2024

Time frame

24 Do any laws, regulations or guidelines specify targets or a period after which a recall is deemed to be completed?

No. Under Swiss product safety law, there are no regulations or guidelines specifying targets or periods after which a recall is deemed to be completed.

Law stated - 12 March 2024

Consumer remedies

25 What remedies must be offered to consumers affected by a product corrective action or recall? Are there any requirements for how these remedies are offered to consumers?

Generally, Swiss product safety law does not require a manufacturer or other responsible party to offer any consumer remedies on its own in case of a recall or other corrective action. However, certain sector-specific provisions provide for more far-reaching after-market obligations than those of the general Federal Product Safety Act. For example, the after-market obligations under the Construction Products Act are not limited to the immediate defence against risks (eg, withdrawals or recalls), but also require economic operators to take corrective measures if necessary.

Generally, the Swiss Commercial Code contains several material warranty claims that a buyer can assert towards the seller (eg, the manufacturer) in case of a recall (eg, recission of the contract, reduction of the sales price or repair).

Law stated - 12 March 2024

Returned products

26 Are there any requirements for proof of disposal of returned products subject to recall or corrective action? Are there any reasons why such products should be retained by the manufacturer responsible?

No. Under Swiss product safety law, there are no specific requirements for proof of disposal of returned products subject to recall or corrective action. However, in case of disposal, it is advisable to keep a proof of disposal (eg, a printed confirmation of the disposal point) as

the competent enforcement authority may require thereof. Generally, it is advisable to keep samples of the affected product batch (defective and non-defective products) for reasons of evidence.

Law stated - 12 March 2024

Penalties for failure to recall a product

27 | What are the penalties for failure to undertake a recall or other corrective actions?

In the case of failure to undertake a recall or other corrective action, the enforcement authorities might regard this as a violation of article 3, paragraphs 1 and 2 of the Product Safety Act, which stipulates that only safe products may be placed on the Swiss market. If this results in a safety risk for the user, the party responsible – if he or she acted intentionally – is liable to a custodial sentence not exceeding one year or to a monetary penalty. If the party responsible acts commercially or with the intention of making a profit, the penalty is imprisonment for up to three years or a fine. Further sector-specific regulations remain reserved.

Generally, criminal liability is primarily attributed to (a) specific individual(s) and not to the company. Consequently, sanctions are usually imposed on specific individuals who are responsible for breaking the law. Only if it is not possible to attribute an act to a specific individual due to the inadequate organisation of a company will the offence be attributed to the company itself.

Property benefits unlawfully obtained through criminal offences can be confiscated.

Law stated - 12 March 2024

AUTHORITIES' RECALL AND CORRECTIVE POWERS

Corrective actions

28 | What powers do the authorities have to compel manufacturers or others in the supply chain to undertake a recall or to take other corrective actions?

Article 10, paragraph 2 of the Product Safety Act empowers the competent enforcement authority to take appropriate measures in case the inspection of a product reveals that the product does not comply with the legal requirements. The authority has a wide margin of discretion when issuing rulings on product safety (confirmed in case law, eg, by the Federal Administrative Court in its decision C-3805/2020). In principle, it may therefore take any measure as long as it is necessary and appropriate to avert the specific product risk. This includes banning the placing on the market or export of products, issuing public warnings and the power to impose specific recall action plans. However, in practice, the authority generally leaves it to the concerned economic operator to select and take the appropriate measure(s). It generally only takes action if the economic operator itself does not act within the time limits set by the authority.

Law stated - 12 March 2024

Government recalls

29 Can the government authorities organise a mandatory product recall where a producer or other responsible party has not already done so?

Yes. The Product Safety Act lists exemplary measures that the authority may take if such measure is necessary for the protection of the safety or health of the product users or bystanders. The list specifically names the issuance of a withdrawal or recall or the warning of the public (article 10, paragraphs 3 and 4 of the Product Safety Act).

Law stated - 12 March 2024

Voluntary versus mandatory recalls

30 Are product recalls generally undertaken voluntarily or mandatorily in your jurisdiction?

In general, product recalls are undertaken on a voluntary basis in Switzerland. This way, the concerned economic operator gets ahead of the authorities and retains control of the recall process. In most of these cases, the authority would probably have ordered a recall itself if the economic operator failed to recall the products or decided against a recall.

Law stated - 12 March 2024

Publication of warnings, corrective actions and recalls

31 Can the government authorities publish warnings or other information to users or suppliers?

Yes. The Swiss Product Safety Act explicitly empowers the authority to warn the public of a dangerous product and to publish information on the dangerousness of the product or the corrective actions taken in case the concerned economic operator does not (or does not promptly) take the effective measures (article 10, paragraph 4 of the Product Safety Act). The concerned publications are generally made on the official public website of the Federal Consumer Affairs Bureau (FCAB). The FCAB also issues push notifications to subscribes (eg, consumers or media). The FCAB in general cooperates with the economic operator and allows it to review and sign off the specific wording before publishing the text on its website.

Law stated - 12 March 2024

Costs

I

32 Are any costs incurred by the government authorities in relation to product safety issues or product recalls recoverable from the producer or other responsible parties?

Yes. The authorities may recover costs for the inspection of products (only if the product does not comply with the legal requirements), for the edition of conformity declarations and technical documents and for all other decrees and measures taken to avert the product risk and that are caused by the concerned economic operator (article 27 of the Ordinance on Product Safety). The fees are calculated according to the time required (typically 200 Swiss francs per hour, by way of example) or are based on the General Fee Ordinance. Different fees may be charged in accordance with sector-specific regulations.

Law stated - 12 March 2024

Challenging decisions

33 How may decisions of the authorities in respect of corrective actions or product recalls be challenged?

The decisions of the authorities may be challenged by means of an objection or an appeal before the superior administrative authority or administrative court. As the authority has considerable discretionary powers when issuing rulings on product safety, the appellate authority must also respect the authorities' rooms for manoeuvre in matters of discretion, ie, the appellate authority must correct inappropriate decisions but can leave the authority the choice between serval appropriate solutions. In particular, the appellate authority exercises restraint in the review of lower-instance assessments if it comes to reviewing the exercise of discretion in areas in which highly specialised technical, scientific or economic knowledge is examined (confirmed by the Federal Supreme Court in its decisions 135 II 296, E.4.4.3 and 133 II 35, E.3 or by the Federal Administrative Court in its decision C-3805/2020, E.2.2). It should be noted that, depending on the case, the appeal does not have suspensive effect, which in practice makes it factually impossible to prevent the measure (eg, a recall or a public warning).

Law stated - 12 March 2024

IMPLICATIONS FOR PRODUCT LIABILITY CLAIMS

Repercussions for liability in court proceedings

34 Are the civil courts in your jurisdiction likely to view a corrective action, recall or consumer warning as an admission of liability for defective products?

Generally, yes. This makes it important for the concerned economic operator to have on record (eg, in the notification text to the authority) that the decision to take corrective action was a precautionary measure. Economic operators generally wish to make this remark also in public warnings. However, the Swiss authorities do generally not allow economic operators to make these comments as it could cause the addressees to take the recall less seriously.

Law stated - 12 March 2024

Disclosure of information

35 Can communications, internal reports, investigations into product issues or planned corrective actions be disclosed in product liability actions? Are there mechanisms to compel regulators to publish information regarding their handling of a corrective action, recall or notification?

Yes. Every person has the right to inspect official documents and to obtain information from the authorities on the content of official documents under article 6, paragraph 1 of the Federal Act on Freedom of Information in the Administration (FoIA). Thus, a party to a product liability proceeding may request the disclosure of communications, internal reports, investigations or information on corrective actions and may use such disclosed information for evidence purposes. However, the FoIA does not give an unlimited right to information. For example, more stringent statutory requirements apply if the information concerned was voluntarily disclosed to the authority on a confidential basis by third parties, or if the information concerns business secrets, or if the disclosure would impair the court's freedom of opinion (article 7 of the FoIA).

Law stated - 12 March 2024

UPDATES AND TRENDS

Key developments of the past year

36 Are there any emerging trends or hot topics in product recall and associated litigation in your jurisdiction?

On 13 December 2024, Regulation (EU) 2023/988 on general product safety, amending Regulation (EU) No 1025/2012 and Directive (EU) 2020/1828, and repealing Directive 2001/95/EC and Directive 87/357/EEC will enter into force. The regulation replaces the general product safety directive from 2001 and provides for a new EU framework for general product safety in the context of digitalisation and e-commerce. The State Secretariat for Economic Affairs, the responsible Swiss authority, is currently analysing Regulation (EU) 2023/988 on general product safety and will partially revise the Swiss Product Safety Act and the Swiss Product Safety Ordinance accordingly. However, no public documents or information regarding this partial revision are available as at the time of writing.

Law stated - 12 March 2024

walderwyss attorneys at law

Annemarie Lagger annemarie.lagger@walderwyss.com

Walder Wyss Ltd

Read more from this firm on Lexology