



**Baker
McKenzie.**

Supply Chain, Product and ESG Compliance and Liability

27 September - 1 October 2021

Annual Compliance Conference



Product Liability & Regulation Risk Management: Horizon Scanning Developments and Challenges in the EU and UK

Thursday 30 September

4.00 - 5.00 pm BST / 5.00 - 6.00 pm CEST / 11.00 am - 12.00 noon EDT

Speakers



Kate Corby
Partner,
London (Chair)



Greg McQuade
Legal Counsel at
Dyson



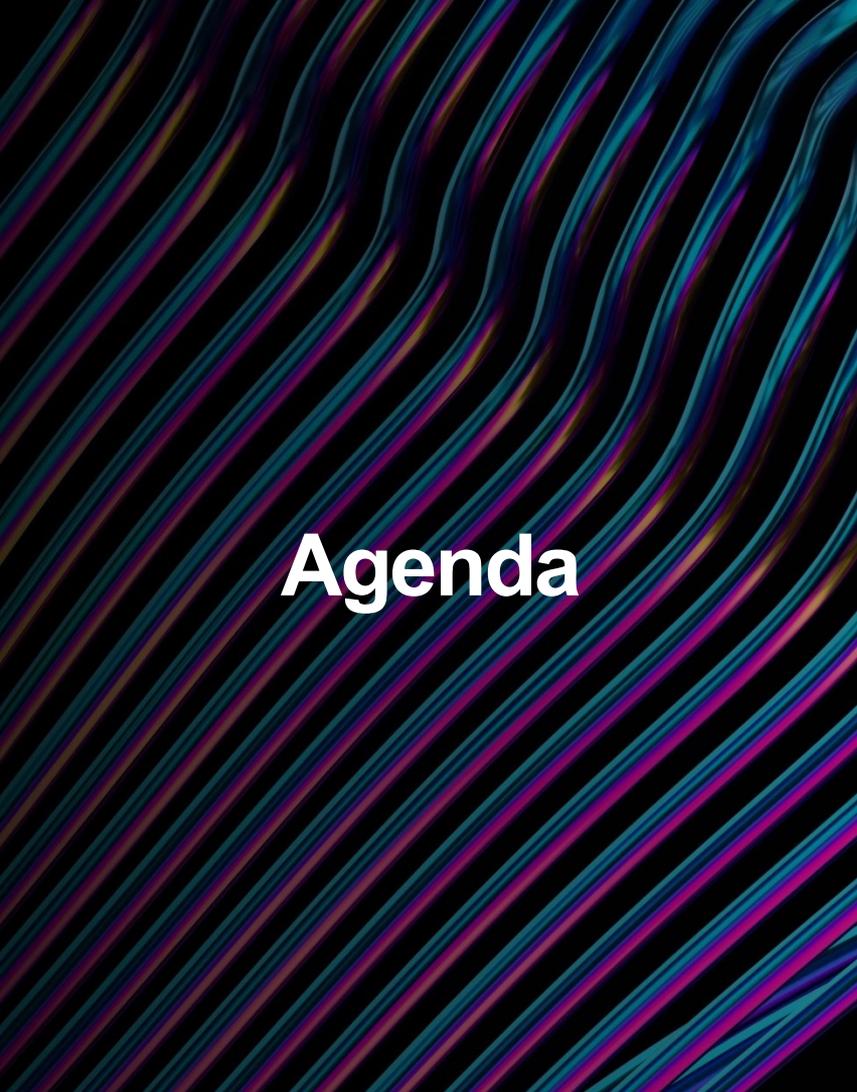
Anneclaire Mohr
Senior Regulatory
Counsel at Intel



**Peter
Stankewitsch**
Senior Counsel,
Frankfurt



Jo Redmond
Senior Associate,
London



Agenda

Introduction

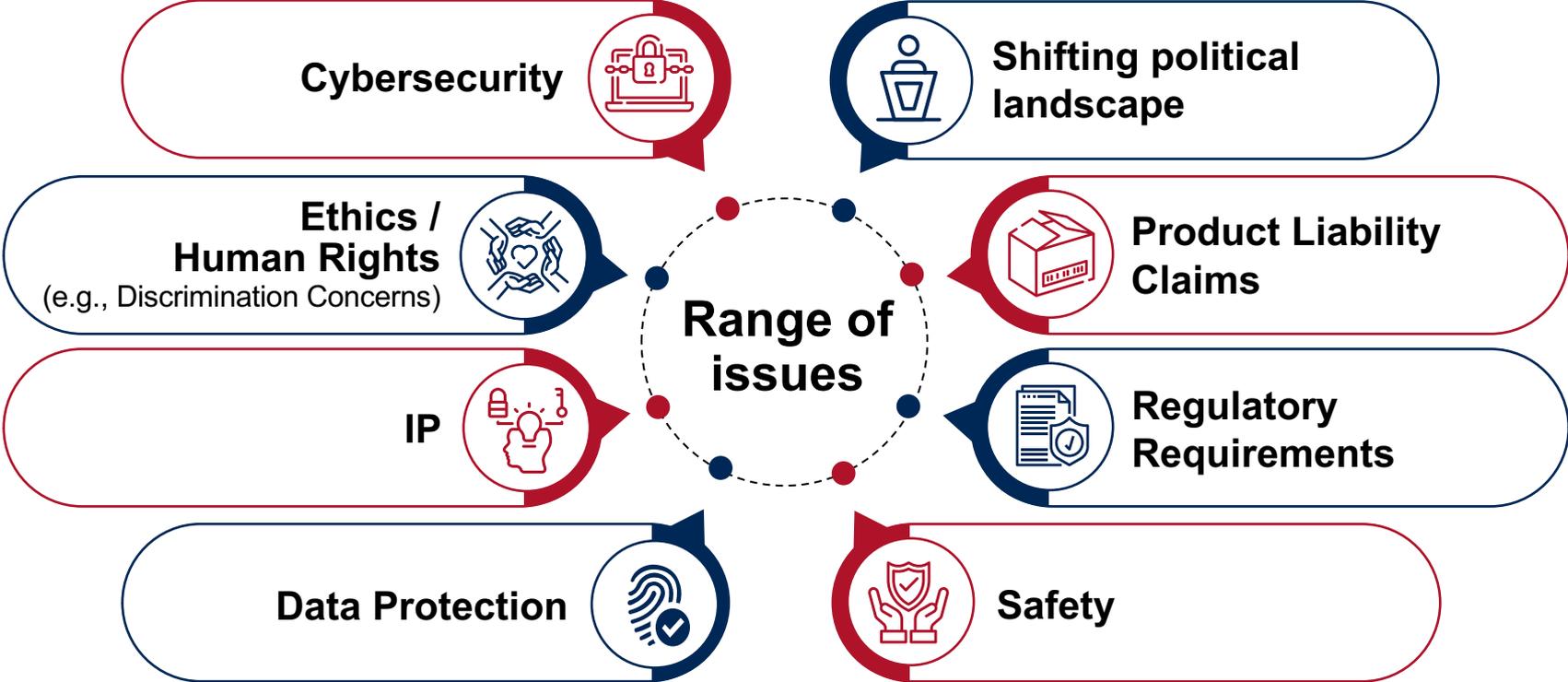
Update on Product Regulatory Developments
(EU and UK)

Update on Product Liability Developments
(EU and UK)

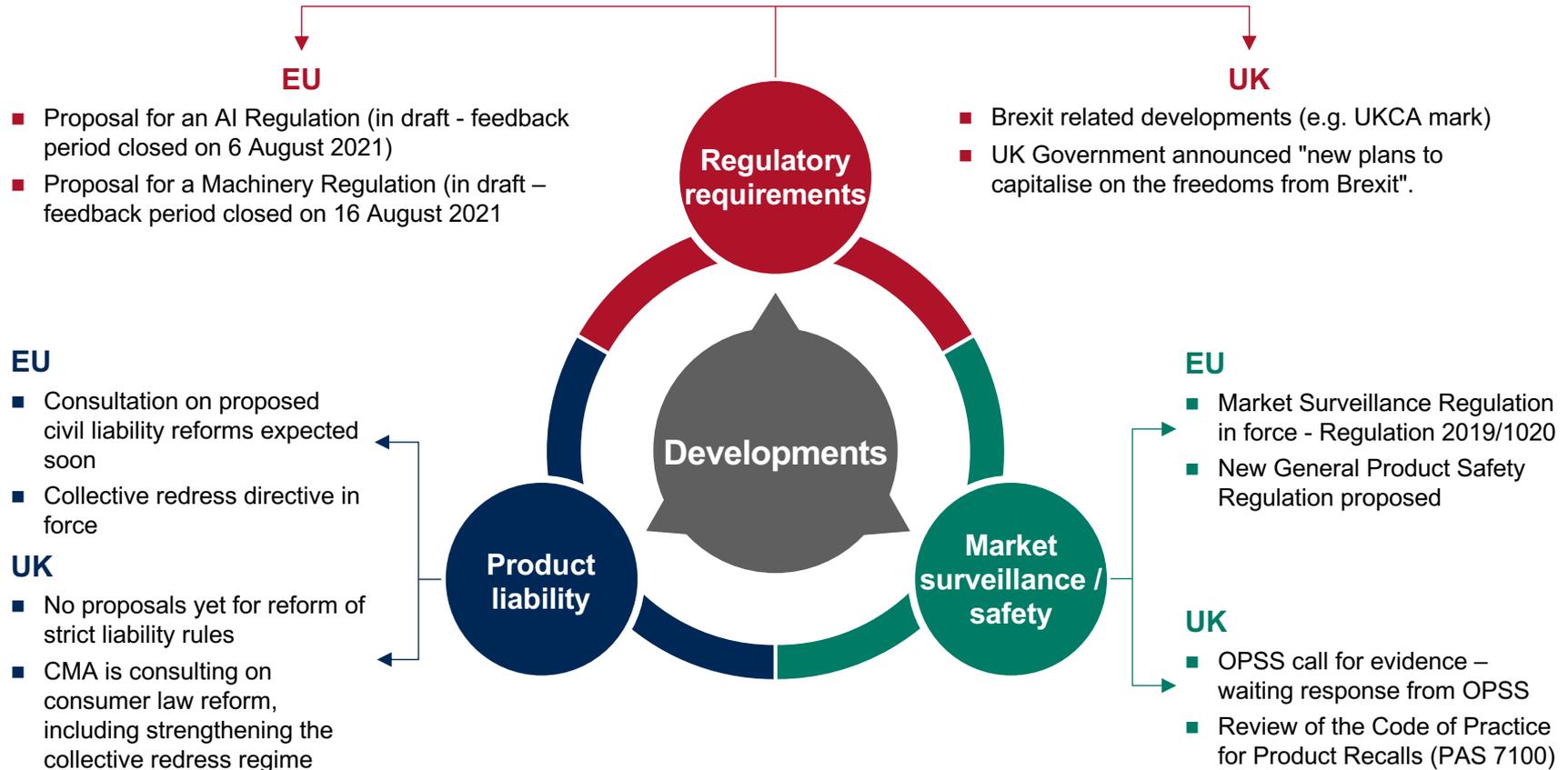
Panel Discussion - A Practical Perspective

Any Questions?

Legal and Other Issues



EU / UK Developments



Product Liability – Management Horizon Scanning

The **Status Quo** and **Latest Developments** in the EU

Product Liability Directive of 1985 only aimed at a **harmonisation of strict liability rules** in case of **personal injury** and damage to the **property of consumers**



Revision to be expected, in particular regarding digital products

Liability based on fault under **national torts laws**, as well as **contractual liability**, remains almost entirely an issue of local laws

- a **product liability risk assessment** can only be done at local law level



Influence of harmonized product regulation on liability under national laws

Proposal to introduce harmonized rules on liability for AI

Procedural means to enforce product liability (e.g. class actions, discovery) have not been harmonized in the EU either



Directive on Representative Actions

Proposal to alleviate burden of proof

Product Liability Directive and Digital Products

ECJ Judgment C-65/20 of 10 June 2021 ("KRONE")

 Austrian citizen claimed compensation for physical harm suffered due to misprint in health advice published in the "Kronen-Zeitung" newspaper ("grated horseradish poultices to be applied 2-5 hours")

- Is a newspaper "defective" if it contains inaccurate health advice?

 ECJ rejects the application of the PLD to services incorporated into a physical product unless they concern either the **presentation** or the **use** of that product

- Does this apply to embedded software accordingly, so that strict liability may only be triggered if the software deals with the product itself, not if it contains additional information (inaccurate navigation data; medical diagnostics software embedded in a medical device)?
- Would the service/software provider qualify as (co-)manufacturer?

Revision of the Product Liability Directive 85/374/EEC

The EC Inception Impact Assessment of 30 June 2021

 EC Initiative "Adapting liability rules to the digital age and circular economy":
2018 Evaluation of the PLD, installation of Expert Groups on Liability and New Technologies,
White Paper on AI and EC report on AI, IoT and Robotics

 EC considers several options for amending the PLD, which may also be combined:

- Extension of the PLD to digital products, to defects resulting from later product changes or from interactions with other products and to cybersecurity risks
- Extension of the PLD to cover non-material damages (e.g. data loss, privacy infringements, environmental damage)
- Strict liability regime for operators/users of AI systems (possibly limited to certain risk profiles)
- Alleviate burden of proof for defectiveness of the product that caused the damage
- Joint liability for interacting products

 Public consultation planned for Q3/2021, proposal for a directive planned for Q3/2022



**EU Directive
2020/1828 of 25
November 2020 on
Representative
Actions for the
Protection of the
Collective Interests
of Consumers**

Only framework for national laws on class actions to be pursued by "qualified entities" that are active in the protection of consumer interests for at least 12 months prior to their actual designation by the home Member State

Covers actions for injunction and redress (compensation, repair, replacement, etc.) against the infringement of specific EU legislation by businesses ("traders") that harm the collective interests of consumers (e.g., Product Liability Directive)

Apart from side issues (no punitive damages; strict rules on funding; suspension of limitation period), the Directive leaves the main characteristics up to national laws (opt-in or opt-out system; number of consumers; certification of class)

- National rules to be published by 25/12/22, to be applied by 25/06/23

Possibility of cross-border representative actions, representation of foreign consumers, joinder of qualified entities from different Member States

- Class action-friendly jurisdictions might attract EU-wide consumer claims

Managing Risk

1

Key risk areas for your business?

- Identify (legal & non-legal)
- Assess & understand

2

How can contractual terms help?

- Map the flow of risk up and down the supply chain and identify risks cannot contract out of
- Use of terms re provision of information & audit
- Consider insurance

3

Minimise the risk of products being defective in the first place

- Understand risk points in design & manufacturing process and regulatory requirements
- Identify and address quality and safety issues as soon as possible if arise

The background features a complex, abstract pattern of glowing, wavy lines. The lines are primarily in shades of cyan, blue, and purple, with some yellow and orange highlights. They flow and curve across the frame, creating a sense of movement and depth. The overall effect is reminiscent of a digital or liquid environment.

Questions



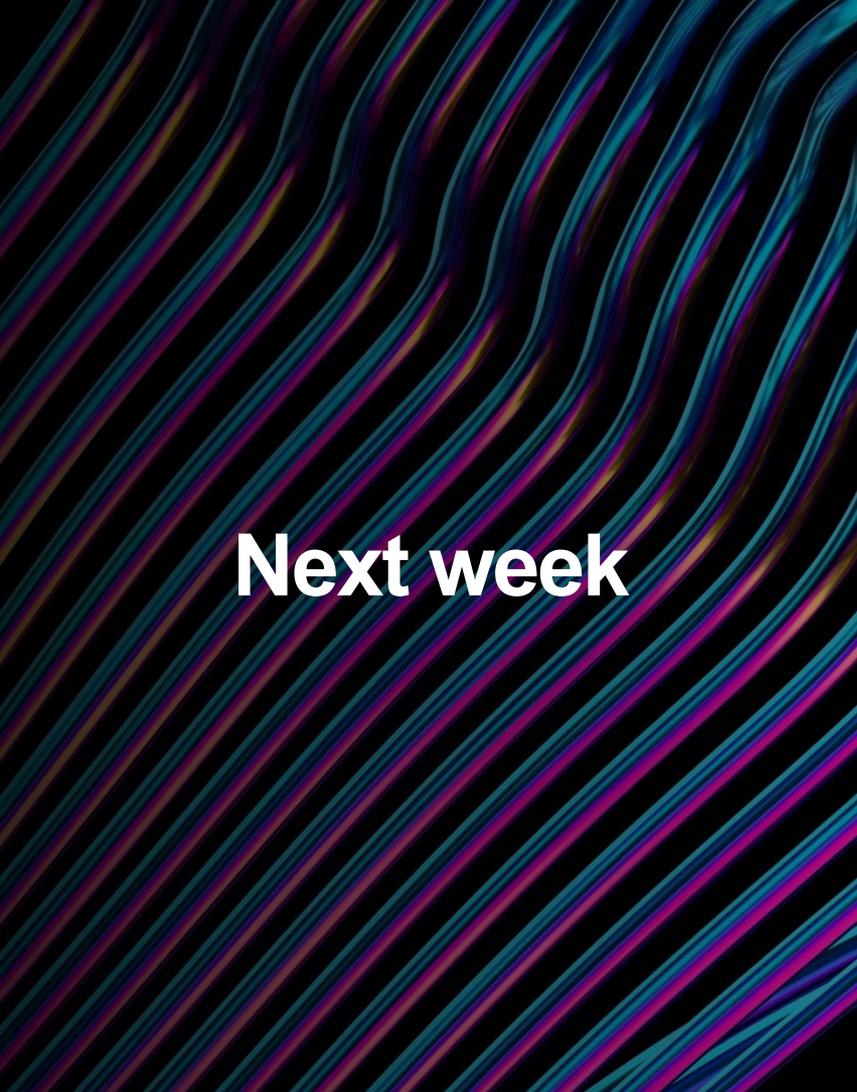
Catch up on- demand

Managing ESG Risks in the Supply Chain

Supply Chain Due Diligence for ESG Risks Panel Discussion

Sustainability: The Claims You Make

Product Liability & Regulation Risk Management: Horizon Scanning Developments and Challenges in the EU and UK



Next week

**Tuesday 5 October,
3.00 - 4.30 pm BST
4.00 - 5.30 pm CEST
10.00 - 11.30 am EDT**

Key EU, UK and US Sanctions
Update

**Wednesday 6 October,
3.30 - 5.00 pm BST
4.30 - 6.00 pm CEST
10.30 am - 12.00 noon EDT**

Key EU, UK and US Exports
Controls Update

**Thursday 7 October,
2.00 - 3.00 pm BST
3.00 - 4.00 pm CEST
9.00 - 10.00 am EDT**

Foreign Investment Review: The
New UK National Security &
Investment Act

**Thursday 7 October,
4.00 - 5.30 pm BST
5.00 - 6.30 pm CEST
11.00 am - 12.30 pm EDT**

Foreign Investment Review:
Global Developments



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