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Environmental Compliance in the EU_Status and Trends

ROBERTO SCALESE: Good morning. The Association of Corporate Counsel and SmartPros Legal and Ethics welcomes you to today's broadcast, Environmental Compliance in the EU, Status and Trends.

[The instructions provided here were intended for attendees of the live webcast when it was originally broadcast.]

Our presentation today will be moderated by John Angelo. John is senior corporate counsel for Koch Chemical Technology Group. And now, I'll turn it over to John. Take it away.

JOHN ANGELO: Welcome to the Association of Corporate Counsel's International Legal Affairs Committee webcast entitled Environmental Compliance in the EU, Status and Trends. My name, as mentioned, is John Angelo, and I'll be the moderator for today's presentation. I'm Senior Corporate Counsel for Koch Chemical Technology Group LLC and I also serve as the 2009-2010 chair for the ACC International Legal Affairs Committee.

We have an outstanding presenter with us today, Ms. Elizabeth Shepherd. Elizabeth is a partner in Eversheds LLC Regulatory Group specializing in non-contentious environmental health and safety law. She advises on all aspects of such laws and on issues such as waste, pollution prevention and control, and contaminated lands. She advises a number of major corporations on climate change and greenhouse gas emissions trading. She also advises regularly on environmental regulatory aspects of waste to energy projects. Her clients include the Atomic Energy Authority, Centrica PLC, Yorkshire Electricity, and Midlands Electricity. Today's webcast participants are invited to review Elizabeth's complete professional biography at www.eversheds.com. We thank Elizabeth for being with us here today.

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JOHN ANGELO: And now, let me turn the presentation over to our speaker. Elizabeth, take it away.

ELIZABETH SHEPHERD: Thank you very much, John. Well hello, everyone. I'd like to turn on to look at the first slide. I'm going to start by putting the EU into context.

Looking at the EU now, we have 27 member states. It's quite easy to forget that it's not actually one system of law. The theory might be one single locket with one set of rules, but the reality is

that the EU leaves each of our member states to decide when and often how to implement environmental regulation which is EU driven.

The results can be 27 sets of widely differing rules on the same subject matter, so you can't assume that a rule from one member state will necessarily be the same as another, so that's the first challenge which we face. However, looking at the common environmental themes, there are some themes which emerge in environmental compliance. These have come through in recent years.

Now, the first theme we have is tighter environmental regulations. We're really seeing the EU trying to drive up environmental standards. There's an increasing emphasis on sustainability—and this is going to be a trend throughout my presentation—and in particular in the areas of producer responsibility in carbon reduction.

The third theme we have is that businesses are increasingly recognizing that there are competitive advantages in being green. Customers nowadays are increasingly mindful of environmental concerns and sustainability issues, and that is really driving forward the environmental agenda nowadays.

And the fourth theme which has emerged is that “polluter pays” has been with us for us time and “polluter pays” continues as a rolling theme across environmental law, and that's what I'm going to be drawing out; one of the themes for today's presentation.

Just looking at an overview of what I'm talking about today on the next slide, the themes I've talked about should become apparent. The three key areas I'm going to be covering are first of all sustainable production. Secondly, I'm going to be looking at climate change. And thirdly, I'm going to be looking at something called the Environmental Liability Directive.

I'm going to be starting with looking at sustainable production in more detail on the next slide. The European approach is very much based around lifecycle compliance. Lifecycle compliance, the goods and products, has become a very key issue, and it's so fundamental that noncompliance often means that products cannot be sold in the EU, so no compliance, no market. It's as serious as that.

Now, producer responsibility means three essential things. First of all: Responsible for end of life costs. Who takes responsibility for products when they become waste at the end of their lives? Secondly: Responsible design. So, in other words, the impact of the product on the environment and cost. And thirdly: Energy conservation.

We've seen producer responsibility across a range of product carriers from waste of electrical and electronic goods to ends like vehicles, energy-using products, chemicals, batteries, and packaging. There's only time to look at a few of those today.

I'm going to start off with packaging. I'm starting with packaging because this was the first piece of EU legislation on producer responsibility in the EU. It was introduced in 1997 so it's not new, but it's only in the last few years, with increasing emphasis on sustainability and concern about the products, that we've seen the regulators taking enforcement seriously.

Now, the packaging regulations affect everyone in the packaging chain, from the manufacturer of the packaging to the person who fills it, the importer—that's whether the importer is in the EU or is working between member states—and the seller of the packaged goods, including Internet sales. All of these people have obligations to recover and recycle a certain amount of packaging waste. And the actual amount that they have to recover and recycle depends on a number of factors including the amount of packaging, the handling per year, and the activity they're performing on it, in the sense of are they the manufacturer, the packer, the filler, the importer or the seller.

It's important to remember that the EU is not one market for this purpose. Each individual member state has its own packaging waste regulation, so even if you're moving products from the UK to France to Germany to Spain, every EU member state has its own legislation on this which has to be complied with.

Now, this is the first example of the variations from member state to member state. For example, the qualification criteria are different across member states. Now a weird example: In the UK, a business is qualified if it has a turnover of more than two million pounds per annum and it handles more than 50 tons of packaging materials per annum. In other member states it can be quite different. To take another example, in Poland, there aren't any qualification thresholds. Businesses have to comply irrespective of the amount of packaging they handle; all [of] their sales figures. It's important to look at this on a jurisdiction-by-jurisdiction basis.

How do businesses comply? Well, they comply in one of two ways. They can either go for individual registration with the regulator, which is the Environment Agency in the UK, but there are different regulatory bodies in each jurisdiction. And if a business goes for individual compliance, it means it has to organize its own recovery and recycling arrangements, and it has to produce enough packaging waste recovery notes from an accredited reprocessor to be able to demonstrate to the regulator that it has met its obligations. Now, that's quite a tough call, and so many businesses go for the alternative compliance route, which is joining a compliance scheme, which usually means that the compliance scheme takes away the legal obligation from the business. [That's] not always the same in every jurisdiction, but certainly in the UK if you join a compliance scheme, you pay your fees to the compliance scheme, and the compliance scheme sorts out the recovery and the recycling. So, that's a very attraction option for many businesses.

I thought I'd just mention the green dot mark, which is important in some jurisdictions. You'll find it clearly on packaging in many EU countries. In some countries—for example, the Czech Republic and France—businesses which join certain compliance schemes have to display the green mark or the green dot symbol on their packaging to show that they've made a contribution towards recovery and recycling. But in other countries—for example, the UK—it's not a recycling symbol as such, but it's a trademark, so it's not mandatory to display it, but many businesses want to display the green dot mark for packaging purposes. So, as I mentioned before, for companies supplying groups into distant member states or from one member state to another, it is a major challenge and it's essential to have an organized approach.

Moving onto the trends in packaging. Enforcement is increasing. As I said before, the regulations have been around for some time, but for a good five or six years, really not a lot happened.

Nowadays, it's not difficult for businesses to build up quite a considerable liability, as it's an annual obligation with fines for every year of non-compliance. The Environment Agency in the UK quite often carries out routine checks into company accounts, and there are cases where those routine checks have led to prosecution. There are concerns about prosecution. There are also concerns about the adverse PR which can follow any prosecution activity and no one wants that.

Now, at the same time as the package waste regulations, the regulators are looking to enforce another set of laws which runs parallel; it's laws which bound businesses from using unnecessary packaging. It must be essential packaging only; in other words, the minimum necessary for safety, hygiene, and acceptance by the consumer. Now, as you can imagine, there can be tensions here between commercial and environmental considerations, and they're not always easy to reconcile. And I put an Easter egg on the slide because that's a classic example of where what might suit the consumer and be attractive to the consumer and make the "I can sell better" isn't always environmentally the best option. It's a case of steering a sometimes difficult course between these two concerns.

Now, moving onto waste electrical and electronic equipment, we had the 2002 WEEE Directive, as well call it, which introduced a key change in responsibility for manufactures and retailers of electrical and electronic equipment. The WEEE Directive basically places responsibility for the cost of collection, recovery, and recycling of WEEE on manufacturers and importers of the equipment into the EU or, again, between member states.

Now, retailers also have responsibilities. Retailers have to provide like-for-like take back of WEEE when they sell electrical and electronic equipment or they can join the Take Back Scheme. The whole idea is to increase the reuse, recovery, and recycling of WEEE and reduce ultimately the amount of waste going to landfills.

Now, the WEEE Directive requires each member state to implement the law separately. And the reality is that although the principles were set in 2002 at the EU level, we've ended up with 27 slightly different laws and so it won't wash when looking at different jurisdictions.

Now, the key obligation here is the same across all member states; in other words, producers pay for collection and recovery costs at end of life. Payment is currently on the market share by weight basis. In any particular compliance year, each producer has to pay for a set percentage of the treatment costs of WEEE, and that percentage is equal to that producer's market share by weight during the calendar year. Now, in the UK, producers have to join the compliance scheme. In other EU states, there are compliance schemes, but there isn't always an obligation to join them; it does vary from state to state.

There are quite onerous data reporting requirements, given that the market share calculation, which I just mentioned, is on the weight of market goods by all producers. And fees are based on weight and the amount of WEEE collected at designated collection sites. In the UK, there are designated collection sites are household waste sites where consumers take their end-of-life products.

What does the future hold for WEEE? Well, nothing stays the same for very long in the EU. Last December, proposals were made for a new WEEE Directive. I'll just summarize on this slide what the key issues are. Key proposals are that, rather than having a fixed collection target of four kilograms of WEEE per inhabitant of each member state, there will be a variable target for each member state based on the average weight of product sold in the previous two years. This rate is likely to vary from state to state, so there will not be one comparable rate across the EU. [The] net effect is that it is likely to be a higher collection of countries in the UK, probably pushing up recycling and recovery targets and inevitably costs.

And one other point is that member states are to encourage producers to pay for separate collection of WEEE from householders rather than just picking up the WEEE which ends up at the collection point. So, you can imagine that is potentially quite onerous for producers in terms of the logistics and the costs, which will flow from it. So, the overall conclusion of that is that costs are likely to increase for anyone involved in that sector across the EU.

Linked to WEEE is ROHS, which stands for Restriction on Hazardous Substances Directive. It's similar to WEEE in that it applies to the same products, and usually where there are legal issues around WEEE, ROHS is quite close behind. ROHS basically prohibits manufacturers from using certain prohibited substances above certain concentrations within their electrical and electronic equipment. The prohibited substances include lead, mercury, cadmium, and hexavalent chromium.

Now, in general terms, manufacturers are currently compliant with ROHS by issuing declarations of compliance to their customers. That's on the basis they would have obtained similar declarations of compliance from their component's suppliers up the supply chain. Now, that's fine, but quite a number of companies are finding that they do need more detailed due diligence if it's a high-risk product or the product is being sourced from an area of the world which may not be quite as attentive to standards of safety as we are in the EU and other parts of the world. So, more detailed due diligence is sometimes appropriate.

Now, what the future holds for ROHS is, again, it's moving on. It too is changing, and there is a proposed new ROHS Directive. The proposals are to extend laws to two categories of products; medical devices and monitoring and control equipment, which has so far been within WEEE but outside ROHS, so the aim is to make them consistent. In addition, the idea is for ROHS compliance to fall within the CE marketing scheme rather than businesses having to rely on declarations of compliance. The proposal is with the CE marketing system, which indicates to customers that products meet certain designated minimum safety standards in the EU, the idea is that the CE Marketing Scheme should cover ROHS as well as another safety issue. So, that might mean effective businesses reviewing their compliance strategies. And there is also likely to be a review of certain technical exemptions as part of the process. So, that's ROHS.

Moving onto energy using products. The Energy Using Products Directive is a framework directive which is fairly high-level and generic, but it does illustrate the trends across the EU. Now, an energy-using product is a product powered by electricity, but to qualify for the directive, there has to be a significant volume of sales: 200,000 units per year. The product itself

must have significant environmental impact and there must be significant potential for improvement.

The main features of this legislation—the principles behind it—are the requirements for eco-design, and this is on the next slide. In other words, integration of environmental aspects at a very early stage in the product design, which includes specific requirements for some by-power consumption of electrical equipment and also a lifestyle approach. These aren't compliance requirements, but what we're finding is that businesses are keen to be ahead of this compliance curve, so not just from a compliance perspective, but also to meet the expectations of their customers. We're finding that businesses in this sector are aware that their customers are evermore carbon conscious, and the fact is that the carbon impact of the product is featuring more and more in consumers' buying choices, so these compliance requirements are really the minimum standards that businesses are looking to comply with.

Now, moving onto REACH, which is rather different again. This affects the chemical sectors. It's a massive piece of EU legislation. It stands for Registration Evaluation Authorization and Restriction of Chemicals. It was introduced in 2006 at the EU level to address the concern that there was too little safety data available on chemicals which were already on the market, whereas, ironically, manufacturers of new chemicals had to comply with very onerous data requirements. So, REACH replaced the existing framework with a completely new system, which places the burden on industries to prove that a particular substance is safe. If it is not safe, it will not be registered and it will have to be withdrawn from the market, so again: No registration, no market. The whole system is overseen by The European Chemicals Agency, a new body, which was set up in Helsinki for this very purpose.

Now, looking at the next slide, which tells you the impacts of REACH; it affects anyone based in the EU who imports or manufacturers over one ton per year of substances or who imports from manufacturers articles containing substances with over one ton of earth chemicals per year. It means if you are based outside the EU, and your customers import your products into the EU, your customers are responsible for complying with REACH. The obligation is on the importer, which is a very onerous obligation. Now, it's for that reason that the legislation allowed manufacturers outside the EU to appoint only representatives in the EU to fulfill all of the REACH requirements on behalf of their customers. They don't have to appoint WEEE-only representatives, but from the commercial perspective, it takes the regulatory burden off of the customers in the EU, and so, for commercial reasons, many businesses are choosing to take up this option if they're based outside the EU.

I've mentioned downstream users because REACH obviously has an impact on downstream users. Anyone who is using a chemical which is caught by REACH is strongly recommended to review when that chemical is going to withstand the scrutiny that REACH will introduce, and if not, to make alternative plans for alternative supplies and substances.

Now, because REACH is such a massive project, there is a phased implementation, which is shown on the next chart. There's quite a lot to absorb there, so I'll just point out the main features, which are: the date of registration depends on the volume of substances which are being dealt with, and these dates apply to substances which were preregistered on or before December

1, 2008. If they were existing substances already on the market, which were preregistered before that date, then they have this phased-in timescale for registration depending on the volume of substance in question. And so, I'll move on from that because the detail is actually on the slide.

Now, the final piece of producer responsibility legislation, which I'm going to touch on, is the Batteries Directive. It's the latest piece of legislation in the EU. It came into force in the EU on September 26, 2008 and this applies to anyone who places batteries of any type—whether portable or industrial—on the EU market. And it includes batteries inside appliances such as computers, toys, and so on, so the impact is quite wide ranging. It follows the same principles as WEEE and ROHS in that battery producers are responsible for end-of-life costs. There are restrictions on heavy metal contents. There are registration requirements for battery producers, and batteries have to be marked with a crossed-out wheelee bin and labeled to indicate what their capacity is. And so, there are a number of boxes to check in relation to batteries.

Although the directive contemplates a fairly uniform approach to implementation across member states, again, the registration process and deadlines are different in each member state. Like the packaging legislation I talked about earlier, the precise requirements vary and have to be checked.

So, I'm going to leave producer responsibility now and I'm going to move onto my next big topic, which is sustainability and carbon.

Now, concerns about climate change are very much driving EU policy and compliance. As part of the EU Climate and Energy Package of the EU, the EU leaders agreed last year on a 20% reduction in greenhouse gases by 2020, compared with 1990, or a gain of 30% reduction if a global climate agreement can be reached. Next month sees the meeting of many countries—hopefully 192, but I know we've got 60 signed up so far—coming to Copenhagen to try to set new targets from carbon emissions. It seems [to be] the successor to the 1997 Kyoto Protocol, which was the first global treaty to combat climate change, which expires in 2012.

I want to talk next about the EU Emissions Trading Scheme, or EU ETS, which is one major initiative which came out of Kyoto. It's targeted at the more polluting factors and it began in 2005. It's the largest multinational emissions-trading scheme in the world so far. Under EU ETS, member states in the EU agree on national caps for CO₂ emissions, and allowances are allocated on a plant-by-plant basis to industrial operators. Currently, operators receive those allowances free from their member states as part of the National Allocation Plan. If an operator needs more, it can buy allowances from others, and that might be from other operators and carbon traders or the government. Alternatively, if an operator has received more free allowances than it needs, then it can sell them, hence the trading concept.

We are now in Phase II of EU ETS, which expires in 2012. We have had some issues with the scheme so far. Just to take one example, there was no allocation of allowances in Phase I, as the result of which, there was a dramatic fall in the price of carbon in 2006, which wasn't helpful. So really, there has been the opportunity over the last few years to review what was needed going forward.

So, the future: There are to be some changes for Phase III onwards which starts in 2013, and those changes are set out in the revised EU ETS Directive. Now, the main changes are that there will first be a centralized EU-wide cap on emissions rather than the current system of national allocation plans being set by individual member states, so it'll be an EU-wide approach. That cap, as always happens with caps, will reduce annually towards the 20% target on a year-on-year basis, and there's going to be a significant increase in auctioning levels. The idea is that businesses will be more aware of the cost of carbon and it will be better integrated into business decisions. As an example, it is going to be 100% auctioning for the power sector in the UK and across most of the EU, and for other sectors there's going to be 20% auctioning, rising to 70% auctioning in 2020 and 100% auctioning in 2027, so by 2027 the whole process will be done by auction.

Now, there will also be longer phases. For example, 2013-2020, and there will be subsequently eight-year phases. New sectors are going to be brought into the scheme—for example, the Aviation Sector—from January 1, 2012 and the allowances are going to be held in a single EU registry, not member state national registries. So, the same theme is bringing it all under one EU umbrella. And in September 2010—so not far off—allocations to installations for Phase III starting in 2013 will be published. So, that's at the EU level.

Moving onto the next slide, I'm going to talk about carbon reduction commitments. I mention that because while the EU ETS covers more polluting industries, to date, there has not been an emissions trading scheme anywhere in the EU for non-intensity energy users. Now, this is set to change in the UK from April 2010 when the UK introduces carbon reduction commitment, or CRC, which is a new mandatory carbon trading scheme which will catch the large but non-polluting sector, such as retail banks, office based businesses, public sector, education [and] property owners. I could go on, but it's basically anyone who uses a reasonable amount of energy year on year. Now, at the moment the CRC is only applying to the UK, and it's been introduced in the UK because it's the latest scheme for the UK governments ambitious CO2 reduction plans.

Now I said it would affect the larger organization. The criterion for qualification is that it will affect any organization which used more than 6,000 megawatts hours of electricity during half-hourly meters in 2008. Just to give you a feel for what that is roughly in terms of costs, it's any business which spend more than £500,000 worth on electricity in 2008, so £500,000 sterling in 2008. Once a business qualifies on a group basis in 2008, then it qualifies for CRC for the introductory phase. There are two phases, the introductory phase is April 2010 to March 2013, and in that period there will be an unlimited number of allowances and a fixed price of £12 per ton of CO2 emitted. But from 2013 onwards, there will be caps phases in which the number of allowances will be limited and there will be an auction process for getting hold of the allowances, so obviously the price will be determined by market demand.

Now, moving on to how to comply on the next slide. Businesses will have to buy allowances to cover their projected energy usage on a year-on-year basis. I just said before that qualification is based on electricity usage in 2008, but once you're in the scheme, you have to buy allowances to cover your electricity, gas, and fuel oil usage going forward. You will not have to buy allowances for 2010 to 2011, but from April 2011 you'll have to work out how many allowances

and buy them accordingly. Now, you buy allowances at the beginning of the year; at the end of the year, businesses surrender the allowances equal, hopefully, to the actual energy usage in the 12-month period.

I've mentioned that revenues are recycled. There is a recycling process based on position of respective businesses in a performance league table. A performance league table will be published by the government each year based on a number of quite complicated metrics, but all touching on improvement in energy efficiency over the relevant period. Businesses will be ranked according to how they have performed, and then they will receive annual bonus or they will pay a penalty based on their position in that league table. The league table is not set to base at present. It is everybody according to energy performance. Because this is a compliance issue—it's a compulsory compliance issue—there are inevitably penalties for breach.

So, this is a big issue in the UK at present, and businesses are concerned as to how it's going to affect them. There are all sorts of issues around landlords and tenants; basically, whoever pays the electricity bill is the business that has the CRC obligations, but there are lots of complex rules about that. There are rules about franchises and there are rules about what happens if the parent company of a UK group is based overseas. If the parent company of the group is based overseas—outside the UK, even in Europe—then that outside parent must nominate a UK-based company to comply with CRC in respect to all of its UK-based emissions.

That's it, in a nutshell. That's all I have time to say on CRC for the moment, but looking to the future, if CRC works in the UK, it is likely that it will be a template for other member states. And the point here is really we're not just really looking at the polluting industries anymore; it is affecting all sectors.

Green taxes are likely to play an important role in driving energy reduction forward. And we're certainly seeing this in the UK and other EU member states. Looking at the fiscal incentives for green technology, fuel taxes, taxes on new cars, and I think there's an increasing part to play in green taxes for the green agenda. Of course, the focus on renewables is likely to increase. We've had a new directive on renewable energy this year with have ambitious targets for member states, so much so that EU is targeted to reach a 20% share of energy from renewable sources by 2020 and a 10% share of renewable energy specifically in the transport sector. There are challenging times ahead really and it's only heading in one direction. That's all I want to say today about carbon.

I'm going to move onto my third big topic—my final big topic—which is Environmental Liability Directive. The reason I want to mention this it adopts the traditional principle of “polluter pays” on an EU-wide basis. The directive was issued in 2004, but it has taken time for the principles to be introduced in the different member states. The legislation forces polluters to present a remedy and environmental damage caused by their activities. Now, it's applies to serious damage to EU-protected species and habitat or damage to sites of special scientific interest, in other words SSSIs, serious damage to water, and land contamination which adversely affects human health.

The key points of this on the next slide are that if activity is causing imminent danger, operators must prevent or remediate environmental damage. And in some cases, the practical reality of this is this is making them take action before they really have a chance to assess whether they are, in fact, the responsible party, [and] whether they should be doing the remediation. Operators have to self-report as soon as possible, and that's a complete change [from] the previous UK approach where we have not had to date an obligation to self report unless there's been a breach of a permit.

There is strict liability for some offenses; in other words, liability without a regulator having to show that there was force or negligence. And that applies to any business operating what they call hazardous activity. It usually means an activity which has a permit to permit it to be carried out; in those circumstances, just strict liability. In other areas, liability, albeit not strict, is not retrospective; it only applies to damage after April 30, 2007. And there are some defenses. Those defenses include what it would call a third-party defense. In other words, the environmental damage was caused by a third party and it occurred despite appropriate safety measures being enforced.

Another defense is the permit defense, which is basically that an emission or event is expressly authorized by a permit. Another defense is state-of-arts defense. In other words, the best practice was used at the time. The other defense is that there is no causal link. In other words, contamination was caused by too many different operators to be able to determine a causal link between the damage in question and any one particular operator.

Now, in many jurisdictions, there is an overlap between this legislation and existing legislation. Certainly in the UK we've had the contaminated land regime for some time, which enables local authorities—the regulators—to require cleanup in certain specific circumstances. We've also had the water resources regulation, which, again, allowed the regulators to step in in certain circumstances. I think the difference here is that there is a change of emphasis in that it's placing the obligation on operators to be more proactive in coming forward and remediating damage in certain circumstances and also self reporting. The general rule is that where there is an overlap with existing legislation, then the directive will only apply where other regimes do not cover the issue, or they cannot cover it provisionally quickly. So, the directive applies unless other regimes achieve the same outcome sufficiently and quickly.

So, moving onto my various conclusions. I hope I've been able to demonstrate there is a continuing raft of EU legislation. This is an area where there are always initiatives coming out of Europe.

In addition to what I've described, there's an ongoing focus on waste. We have the waste legislation, which is constantly looking to clarify, for example, what is waste and what is a byproduct and therefore should not be treated as waste. We have the Water Framework Directive, which I have't mentioned specifically, but I'll just briefly touch on. Again, legislation is coming out designed to improve the quality of waterways by designating certain areas as river basin areas and introducing standards of water quality.

There's a constant flow through of EU legislation in this area. It's a major challenge to meet the compliance requirements across member states. As I've said [on] a number of occasions, but it's worth reinforcing, it can be very different both in terms of qualification criteria and the procedures if the business does qualify. So, that is a challenge.

We're seeing producer responsibility extending across other sectors, and really that's not such a surprise bearing in mind that it is an extension of "polluter pays," which I've described as a fundamental principle of environmental law, so that's an understandable extension. The commercial reality is that businesses nowadays are looking to go beyond the minimum compliance levels and be seen to not just to comply, but to more than comply in a world which is nowadays very environmentally aware, very sustainability conscious, and is aware that environmental law is a growing area at which has to be complied to. There are usually criminal functions when these legislations are not complied with. There are market issues; if you don't comply, increasingly you cannot market your products. That's something that demonstrates the trends of EU compliance in the environmental complex.

Now, that completes my presentation for today. Thank you very much for listening. I'd like now to hand it back to John.

JOHN ANGELO: Thank you very much, Elizabeth, for that excellent presentation. For our participants on the webcast this morning, please feel free to forward any questions that you might have for Elizabeth. We do have a couple already.

Elizabeth, if you wouldn't mind, we have a question regarding the practicality of all of this. From a practical perspective, how do you comply with all of the regulations that differ across the EU? What are your recommendations in that regard?

ELIZABETH SHEPHERD: Good question. I think if you have a business which is operating across a number of EU locations, it's very important to identify what the legislation's impact is on it, and then look at it very clinically on a member state by member state basis and work out what the obligations are. Now, where you're only talking about one or two member states, it isn't as much of a problem, but certainly there are many businesses which are operating across, count them, 27 member states. We often see that, and there it becomes effectively a project management exercise, either allocating resource internally within the business to managing the compliance program, and/or an external source where the legal or whatever to make sure there is compliance, because it's also a moving feast because you have to register, for example, with packaging. You might be joining a compliance scheme in each member state. But it's then a question of submitting data annually to the relevant body, understanding what data you have to submit, and keeping on top of the situation every year basically, so it is quite a challenge. It has to be done, but what we're seeing is it's increasingly a challenge, particularly with Internet sales, which makes cross-border trading so much easier, but at the same time brings us compliance headaches.

JOHN ANGELO: Very good. A second question we have pertains to directives and regulations within the EU and what is the difference between the two?

ELIZABETH SHEPHERD: It can be quite confusing. A directive essentially is a piece EU legislation which is issued as a general edict by the European Commission, but it's not immediately effective on member states. An EU directive has to be implemented separately by each member state, and there is usually a date by which member states must have implemented that legislation into their national law.

Now, it can take some time. I know, certainly with the Environmental Liability Directive, the EU is close to bringing proceeding against certain jurisdictions for failing to implement the legislation on time, and certainly steps had to be taken to accelerate the process. With the Batteries Directive, for example, it's been a program of implementation and I think we're just about there, but it doesn't come into force immediately.

Regulations, however, are immediately effective. I think REACH is one example where there are some aspects which are immediately effective but don't require each member state to bring them into force separately, so that is the essential difference between the two. I have to say that within the EU, most of the time we are dealing with directives which can make life a little difficult and extend the process, but that's how it is.

JOHN ANGELO: Thank you very much. I'm not seeing any other questions at the present time, so again, I would like to thank Elizabeth for her time and her excellent presentation here today. This will conclude today's webcast. I would also like to thank Eversheds LLC for sponsoring our webcast today and the ACC International Legal Affairs Committee over this past year.

Once again, let me remind all of our participants that this and other ACC webcasts are recorded and are available for about a year after the presentation date. Information on accessing these webcasts is available in your materials. Also, if your question did not get answered during this presentation, answers will be posted at a later date by ACC on the Web site.

I also want to thank our participants for attending this webcast and would again request that they do not forget to complete the survey. Finally, I would encourage everyone to consider attending as many ACC CLE opportunities as may be listed on the ACC website, including the 2010 ACC annual meeting in San Antonio, Texas, which will be held on October 24-27 in 2010. If you'd like to learn more about ACC CLE opportunities or ACC membership, please visit the ACC website at www.acc.com.

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JOHN ANGELO: Again, thanks to all of our participants for joining us here today. This will conclude our presentation and you may now log off. Thanks again.