BRIEFING
EU Legislation in Progress

European Parliament

Revised Product Liability Directive

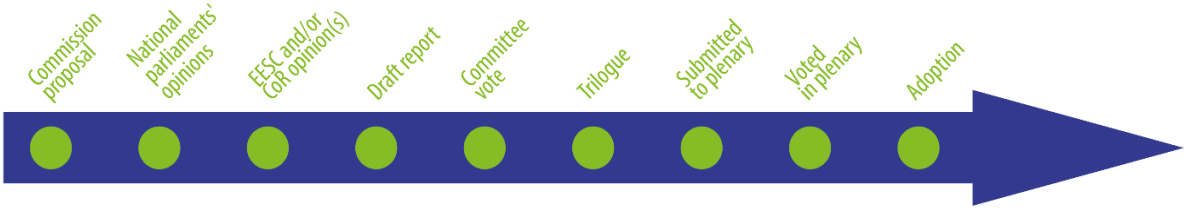
OVERVIEW

As products have become more complex in the digital age, the need for a new directive on liability of defective products has arisen. The new directive will revise the existing Product Liability Directive, adopted nearly 40 years ago in 1985.

The directive brings the European Union's product liability regime up to speed with the digital age, circular economy business models and global value chains by ensuring that consumers receive compensation for defective products, including those manufactured outside the EU. It introduces new provisions to address liability for products such as software (including artificial intelligence systems) and digital services that affect how the product works (e.g. navigation services in autonomous vehicles). It also alleviates the burden of proof for victims under certain circumstances.

The new directive on liability of defective products was published in the EU's Official Journal on 18 November 2024. It entered into force on 9 December 2024. Member States must transpose the directive into their national laws and implement the changes by December 2026.

Proposal for a directive of the European Parliament and of the Council on liability for defective products		
Committees responsible:	Internal Market and Consumer Protection (IMCO) and Legal Affairs (JURI) (jointly under Rule 58)	COM(2022) 495 28.9.2022 2022/0302(COD)
Rapporteurs:	Vlad Botoș (Renew, Romania) and Pascal Arimont (EPP, Belgium)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Shadow rapporteurs:	Krzysztof Hetman (EPP, Poland) Maria Manuel Leitão Marques (S&D, Portugal) René Repasi (S&D, Germany) Karen Melchior (Renew, Denmark) Marcel Kolaja (Greens/EFA, Czechia) Sergey Lagodinsky (Greens/EFA, Germany) Eugen Jurzyca (ECR, Slovakia) Kosma Złotowski (ECR, Poland) Emmanuel Maurel (The Left, France)	
Procedure completed:	Directive (EU) 2024/2853 OJ L, 2024/2853, 18.11.2024	



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Introduction

The transformation to a digital economy and society is changing the economic reality of the single market. New emerging technologies (e.g. cleaning robots and medical health apps) already benefit our society and economy, but also present potential risks.

Certain features of digital technologies, such as the intangibility of digital products, their dependence on data, their complexity and connectivity, pose challenges in applying liability rules. So do features specific to artificial intelligence (AI), such as autonomous behaviour, continuous adaptation, limited predictability and opacity. This creates legal uncertainty for businesses and may make it difficult for consumers and other injured parties to obtain compensation for damage caused by products and services that use these technologies.

Circular business models in which products are repaired, recycled, refurbished or upgraded are increasingly common and central to the EU's efforts to achieve sustainability and waste-reduction goals. In its 2020 circular economy action plan, the European Commission announced a sustainable product policy to provide high quality, functional and safe products designed for reuse, repair, manufacturing and recycling. However, existing product liability rules do not define who should be liable for defects resulting from changes to products after they are put into circulation.

Modern supply chains sometimes involve economic operators whose novel form (e.g. fulfilment service providers, such as e-commerce platforms) means that they do not fit easily into traditional supply chains under the existing liability legal framework.[1] One of the challenges is creating a level playing field between EU and non-EU manufacturers by making sure compensation is available to consumers for defective products imported directly from outside the EU.

Existing situation

When the Product Liability Directive (PLD) was adopted in 1985, the Commission saw a need to harmonise the fragmented legal protection on damage caused by defective products. The PLD introduced a common set of rules enabling harmonisation and an equal level of protection for consumers throughout the single market, using the concept of no fault-based producer liability for damage caused by defective products. **No fault-based liability** means that the liability does not depend on manufacturer fault or negligence (also called 'strict liability', where producers are responsible for defective products, regardless of whether the defect is their fault). This form of liability differs from **fault-based liability regimes** where an injured person can make a claim for damage caused by products and services based on a person's conduct by generally proving: (i) existence of damage, (ii) fault of the liable person, and (iii) causality between that fault and the damage. To be compensated under the PLD no-fault liability regime, the burden of proof for the injured person consists in showing only that: (i) the product was defective; (ii) damage was suffered; (iii) a causal link exists between the damage and the product's defectiveness.

The current PLD sets an EU **liability regime** for financial compensation claims for death, personal injury, or material damage caused by an item or product intended for private use. The injured person has three years within which to seek compensation from the date on which they became aware of the damage, the defect and the identity of the producer. An expiry period protects the producer, who is no longer liable once 10 years have elapsed since the product was put on the market.

Parliament's starting position

On 20 October 2020, the European Parliament adopted a legislative-initiative resolution on a civil liability regime for artificial intelligence. In this resolution, Parliament called on the Commission to put forward a proposal for a regulation laying down rules on the civil liability claims of natural and legal persons against operators of AI systems.

Council and European Council starting position

The major goals set in the European Council's 2019-2024 strategic agenda included becoming a world leader in the circular economy and digitalisation of the economy and society. Product safety, cybersecurity and ensuring a level playing field in all aspects of the single market to ensure its competitiveness featured in the programme, although product liability was not explicitly mentioned.

Preparation of the proposal

The Commission's proposal built on the Commission's evaluation of the directive, as well as collecting evidence and views from a broad range of stakeholders. Furthermore, the Commission held a public consultation and carried out a study, as well as an impact assessment on product liability. The expert group on liability and new technologies also prepared a report on 'Liability for Artificial Intelligence and other emerging technologies'.

EPRS published an implementation appraisal of the existing PLD in October 2022, as well as an initial appraisal of the Commission impact assessment of the proposal to review the PLD in January 2023.

The changes the proposal would bring

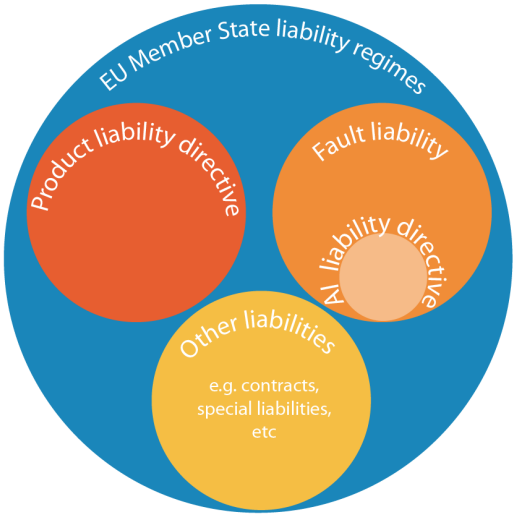
Principle and objectives

On 28 September 2022, the Commission published two complementary draft directives to adapt the existing liability rules to new digital technologies, including AI, and the circular economy:

- The proposed directive on liability for defective products (revised PLD), a revision of the PLD, aimed to modernise the existing EU harmonised regime on **no fault-based liability** for manufacturers of defective products. The revised PLD will repeal and replace the current PLD.
- The proposed directive on adapting non-contractual civil liability rules to artificial intelligence (AI liability directive) aimed to ensure broader protection for damage caused by AI systems by alleviating the burden of proof in compensation claims pursued under national **fault-based** liability regimes (proposal withdrawn from the Commission 2025 work programme).[2]

According to the Commission, no overlap was intended between claims brought under the proposed no fault-based PLD and the withdrawn fault-based AI liability directive. The PLD proposal was also complementary to existing **EU liability** and **EU safety legislation**.

Figure 1 – Liability regimes in the EU



Source: European Commission, 2022.

EU liability legislation

On **contractual liability,**[3] the Sale of Goods Act and Digital Content and Services Directive give consumers the right to 'remedy'[4] when goods, including digital content or services, do not conform to contract or work properly. However, those laws cover contractual liability, whereas the revised PLD no-fault liability regime concerns rules allowing a compensation claim irrespective of a contractual link between

victim and liable person (**extra-contractual liability**).

Moving to **data**, the General Data Protection Regulation (GDPR) concerns data processors and controllers' liability for 'material' or 'non-material' damage caused by data processing that infringes the GDPR. The revised PLD instead focuses on 'material' damage alone, such as loss or corruption of data.

EU product safety legislation

Product safety legislation aims to ensure that only safe products are placed on the EU internal market, by setting essential safety requirements. However, this type of legislation contains no specific provisions on liability and refers to the application of the PLD when a defective product causes damage. For instance, the Machinery Regulation and General Product Safety Regulation aim, in their respective fields, to address the risks of digitalisation in the area of product safety, but not liability. As another example, when AI systems – as defined under the Regulation on Artificial Intelligence (AI Act) – do not meet the safety requirements set in the AI act, the revised PLD will apply if the defective product causes physical harm, property damage or data loss. The same can be said about the recently adopted cyber-resilience act, which builds on existing rules to encourage manufacturers and software developers to mitigate cybersecurity risks through respect for essential cybersecurity and vulnerability handling requirements.

The revised PLD makes clear that all these mandatory safety requirements should be taken into account when a court assesses if a product is defective.

Scope

The revised PLD sets a wider definition of 'product' and a broader scope of liable parties than the existing PLD.

To adapt to the digital age, the proposal covered: **(i) Software** (including software updates) – whether embedded or standalone, including AI systems; **(ii) Digital manufacturing files** – enabling the automated control of machinery or tools, such as 3D printers; **(iii) Digital services** – where these

Whether software (including apps) was covered under the existing PLD had always been controversial.[i] For instance, there was controversy as to whether software should qualify as a **product in the sense of the directive**,[ii] or whether it was part of either the **services** or of the **intangible goods** category,[iii] which fell outside the scope of the existing PLD.[iv]

[i] D. Wuyts, The product liability directive – more than two decades of defective products in Europe, 2014, and BEUC position paper on the Review of Product Liability Rules, 2017.

[ii] See Article 2 of the existing PLD. A product has to be distinguished from a service and must be understood as 'all movables even if incorporated into another movable or into an immovable'.

[iii] See pages 53-54 of the Commission staff working document on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, 2018: 'The definition of "product" as per article 2 of the Directive is related to the concept of "movable". This has been interpreted as meaning that only tangible goods shall be considered products [...] the non-tangible nature of some new technological developments (software, applications, Internet of Things, Artificial Intelligence systems) makes it difficult to classify them as products rather than services'.

[iv] K. Alheit, The applicability of the EU Product Liability Directive to software, 2001.

are necessary for products to function as components of the product with which they are interconnected or integrated (e.g. navigation services in an autonomous vehicle).

With the aim of not hampering innovation: (i) free and open-source software developed or supplied outside the course of commercial activity, as well as (ii) the source code of software, were excluded from the definition of products covered under the proposal. As far as the broader scope of the proposal compared to the existing PLD on liable parties is concerned, Article 8 of the revised PLD

lists the types of **'economic operators'** which can be held liable for defective products, by introducing a layered approach to liability depending on the different qualification of the economic operator. Among the list of economic operators are: (i) the manufacturer of a product or component, (ii) the provider of a related service, (iii) the authorised representative, (iv) the importer, and (v) the fulfilment service provider or the distributor. The **manufacturer** should be liable for damage caused by a defect in their product or components. An innovation introduced in the revised PLD is considering **any economic operator who has substantially modified the product** outside the control of the manufacturer liable for any defect. Such a party is then considered as a manufacturer.

When a manufacturer is **established outside the EU**, the revised PLD further attributes liability for a defective product to the **importer** and the **authorised representative in the EU**. As a last resort, the **fulfilment service provider** (offering at least two of: warehousing, packaging, addressing and dispatching of a product, without having ownership of the product), will be held liable when the importer and authorised representative in the EU are based outside the EU.

Distributors of a defective product (offline and online sellers) can also be held liable upon request by a claimant and when the distributor fails to identify any of the above operators.

Online platforms shall be liable in respect of a defective product on the same terms as such economic operators when performing the role of manufacturer, importer or distributor.

Main provisions

The nature of damage: Psychological health and destruction or corruption of data

Under the existing PLD, the producer is liable for defective products which have caused death, personal injury, or material damage.

The revised PLD expands the definition of damage, by including material losses resulting from: (i) death or personal injury, including medically recognised damage to psychological health; (ii) property damage with no minimum or maximum threshold for claims; and (iii) destruction or corruption of data that are not used for professional purposes.

The revised PLD also extends the 10-year liability period to 25 years for latent health injuries (where the symptoms of a personal injury are ' according to medical evidence, slow to emerge').

Product defects

In certain circumstances, liability will continue to apply when a defect came into being after a product has already been placed on the market or put into service. This entails: (i) software updates under the manufacturer's control, (ii) failure to address cybersecurity vulnerabilities, and (iii) machine learning. This differs from the exclusion of liability under Article 7(b) of the existing PLD, which exempts the manufacturer from liability when 'it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards'. In short, developers continue to be responsible for emerging technologies that learn independently and for deployment updates or lack thereof.

Alleviation of the burden of proof: Presumption of causality and right to disclosure of evidence

The burden of proof remains with the injured person, who must prove the product was defective, that he/she suffered damage, and the causal link between the damage and the defect. However, the revised PLD obliges the manufacturer to disclose necessary information in court when the injured person has presented facts and evidence sufficient to support the '**plausibility of the claim for compensation**'. This obligation on the manufacturer is always subject to protection of trade secrets and confidentiality. In addition, the revised PLD eases the burden of proof for the injured person by establishing a **presumption of defectiveness and causal link** under certain conditions.

Defectiveness is presumed when: (i) a manufacturer fails to comply with the obligation to disclose information; (ii) a product does not comply with mandatory safety requirements; (iii) damage is caused by an obvious product malfunction.

A causal link is presumed when: (i) damage is typically consistent with the defect in question; or (ii) technical or scientific complexity causes excessive difficulty in proving liability (e.g. 'black box' AI systems).

The manufacturer retains the right to contest the existence of difficulties in achieving the burden of proof, or to rebut the presumptions.

Defences available for economic operators

The revised PLD contains several defences available to economic operators to escape liability, as does the current PLD. The exemptions from liability for which economic operators carry the burden of proof are, for example, when: (i) they did not put the product into circulation; (ii) the defect did not exist when they placed the product on the market; (iii) the defectiveness that caused the damage is due to compliance of the product with legal requirements; or (iv) the state of technical knowledge at the time of placing the product on the market made it impossible to discover the defect (i.e. the 'development risk defence').

Compared to the Commission proposal, where the '**development risk defence**' would no longer have been subject to Member State derogations, the revised PLD allows Member States to derogate from it. This means that they have discretion to omit this exemption when implementing the revised PLD.

Exemptions from liability would not apply in the case of product defects within the manufacturer's control, linked to (i) a related service, (ii) software including software updates or upgrades, (iii) a lack of updates or upgrades necessary to maintain safety, or (iv) a substantial modification of the product.

Advisory committees

The European Economic and Social Committee (EESC) adopted its opinion on 24 January 2023. It supported the measures put forward in the proposal, including addressing artificial intelligence (AI) through a no-fault liability regime. However, the EESC called for the proposal to be aligned with the *acquis communautaire* on the definitions and hierarchy of liability. It also asked for clarification of the notion of 'substantial modification' of the product in line with the Blue Guide.[5]

National parliaments

The subsidiarity deadline for national parliaments to issue opinions on the proposal was 12 December 2022. A contribution was received from the German Bundesrat.

Stakeholder views[6]

Scope and type of damage

The Computer and Communications Industry Association (CCIA) applauded the IMCO and JURI committees' amendments to the Commission's original proposal, such as the clarification of what counts as material damages, aligning the definition of psychological damage with international standards and narrowing the scope of loss and corruption of data. However, the CCIA warned that including software and AI under the PLD's definition of a 'product' should not increase insurance costs or stifle innovation. Digital Online Tech Europe (DOT Europe) welcomed the committees' improvements to the text, but maintained its reservations regarding the inclusion of standalone software and the concept of immaterial harm within the scope. Allied for Startups also advised the exclusion of open-source as well as standalone software from the scope and stressed that extending

the definition of damage to data loss or corruption will prove extremely challenging for economic operators. Digital Europe considered that including data loss and corruption in the definition of damage would potentially create open-ended liability for economic operators. It therefore welcomed the proposed introduction of a threshold for such type of damaged to avoid frivolous claims. The EU consumer protection organisation, BEUC, welcomed the inclusion of software as a product and that data loss can be considered as damage for which manufacturers can be liable. The Irish Council for Civil Liberties favoured the inclusion of software as a product, stressing that consumers could hold companies liable for damage caused by software, including third party software. The European Data Protection Supervisor (EDPS) noted that the PLD proposal would not appear to apply in cases of damages stemming from AI systems produced and/or used by EU institutions, bodies and agencies, and therefore recommended to amend the text accordingly.

Product defectiveness

DOT Europe was in favour of the committees' attempts to clarify the presumption of product defectiveness, but also stressed how the lack of clarity on the notion of 'technical or scientific complexity' could create some ambiguity. As no product can ever be fully cyber-secure, Orgalim (representing Europe's technology industries) recommended that a product should be considered defective under the PLD for cybersecurity vulnerabilities only when it does not comply with mandatory cybersecurity requirements under EU or national law. The Software Alliance (BSA) also requested clarification of the concept of defectiveness and suggested aligning the timeline related to the responsibility of manufacturers for defects that should have been solved via updates with the proposed CRA (e.g. expected product lifetime or a period of five years, whichever is shorter). According to BSA, this solution would reflect realities of software development and maintain consistency between the PLD and CRA.

Liability of online marketplaces

On online marketplaces, BEUC feared that the proposed new rules to hold online platforms liable for defective or illegal products sold on them are subject to conditions limiting their effective application. In contrast, DOT Europe argued that marketplaces have neither access nor control over products. Therefore, imposing liability for them would put marketplaces at a disadvantage compared to other sales channels in Europe. The CCIA recommended that marketplaces should not be liable for defective products sold on their platforms when no other economic operator can be identified. According to the CCIA, recent EU legislation confirmed that marketplaces do not have to vet all products listed by traders. Therefore, extending liability to them means punishing them for products they have never seen. BusinessEurope stressed that the existing EU legal framework on product safety already ensures sufficient consumer protection for products bought online.

Modernisation or hampering innovation?

Given that digital products are increasingly complex, opaque and can take decision autonomously when powered with AI, BEUC called for a modernisation of the EU liability rules. In contrast, DigitalEurope noted that existing liability rules have been in force for over 30 years, have functioned well and have accommodated many technological changes. According to DigitalEurope, there was not enough evidence to justify major changes, particularly specific obligations for AI. In fact, very few AI lawsuits are currently ongoing. Representing European companies in the mechanical engineering industry, the Verband Deutscher Maschinen- und Anlagenbau e.V. (VDMA) argued that the existing technology-neutral liability regime already solves issues with current AI use cases. New liability rules should therefore target only specific and high-risk use cases.

Burden of proof, development risk defence and substantial modification

As trilogue negotiations began, some EU industry representatives shared a concern that the scope of the alleviation of the burden of proof should have been significantly narrowed. They suggested a reciprocal obligation to disclose evidence where the defendant can also request disclosure of relevant information from the claimant. The American Chamber of Commerce to the European Union (AmCham EU) raised concerns regarding the unintended consequences of the alleviation of the burden of proof. According to AmCham EU, while the proposal does not intend to reverse the burden of proof, the presumption of defectiveness and causality effectively amount to a reversal of the burden of proof for products that are particularly technically or scientifically complex. Digital Europe flagged that what a claimant must do and prove before alleviating the burden of proof should be clarified, and that more safeguards should be put in place to protect trade secrets in the disclosure of evidence. The Irish Council for Civil Liberties instead warned against placing the burden of proof of emerging technology defectiveness on victims rather than manufacturers. This is because, in a world of highly complex and obscure AI systems, gathering evidence against operators and identifying who is responsible for the defect is a challenge in itself. The council commended that manufacturers will be held liable for product defects as long as the product is under the manufacturer's control (e.g. through software updates), but demanded the removal of the development risk defence. BusinessEurope supported the shift in responsibility for a defective product from the manufacturer to other economic operators when they make a 'substantial modification' of the product already placed on the market.

Academic views

Inclusion of software under the product liability coverage

A report by the Centre on Regulation in Europe (CERRE) favoured the inclusion of software under the scope of the revised PLD. Indeed, CERRE warned that differentiating between tangible (e.g. hardware) and intangible (e.g. software) products did not make sense in the digital age. Cabral shared the same concern by advocating the extension of the PLD to cover software in general. Indeed, Cabral stated that software plays a necessary part in the functioning of certain products today and should probably be considered part of such products.[7] Wagner praised the proposal to extend the product concept to software, including 3D printing programmes and product-related digital services, as necessary changes to adapt the current PLD to the digital age.[8] Dheu et al. welcomed the clear integration of software and digital manufacturing in the scope of the proposal as a positive outcome of the revised PLD. The qualification of software as a product also seems to cover AI products, even though the proposal does not mention AI directly.[9]

Contrary to this view, but recognising the lack of clarity, Koch et al. took the position that the existing PLD already extends to products with digital content, such as when operating software is installed on a physical item;[10] case law and jurisprudence has largely taken this approach. It could be argued that a product does not need to be tangible, considering that the existing PLD already covers electricity.[11] Nonetheless, Koch et al. acknowledged the existing PLD's lack of clarity and its possible application gaps regarding standalone software bought separately from any tangible items, such as apps installed on tablets or smartphones. Hacker suggested that the exclusion of free and open-source software – developed or supplied outside the course of commercial activity – from the definition of a product should be made binding by including it in Article 4(1) of the PLD and not only in recital 13.[12]

Scope of damage

Dheu et al. supported the inclusion of harm to psychological health and of loss or corruption of data – including when not used exclusively for professional purposes – as part of damage suffered by

natural persons under the coverage of the revised PLD. Wagner underlined how the inclusion of digital data within the scope of protection of the revised PLD is a welcome acknowledgment of the changing landscape of property in the digital era. Cabral stressed the importance of compensating non-pecuniary damage (e.g. psychological health), considering how close the new emerging technologies will work to human beings. On this point, Koch et al. clarified that the revised PLD regime on non-pecuniary damage should explicitly state that such damage should always be linked to pain and suffering triggered by bodily injury, and not to stand-alone immaterial harm, such as purely emotional distress.

Burden of proof and disclosure of evidence

According to one expert, considering the technical complexity and the opacity ('black box') of the systems used in emerging technologies, it might be difficult for injured parties to prove a product's defectiveness, or the link between the latter and the damage suffered.[13] Following this approach, de Bruin argued that injured parties would have to acquire a thorough understanding of the '(mal)functioning' of a software to prove defectiveness.[14]

Dheu et al. therefore praised the proposal's provisions where an injured party can benefit from rebuttable presumptions of defectiveness or causality under certain conditions. According to them, such provisions will be effective in lowering some of the obstacles encountered by victims when bringing a claim against a manufacturer of AI systems. de Bruin also suggested reversing the burden of proving the defect when there is (i) disproportionate difficulty, or (ii) costs to establish the level of a safety of a complex product. Some academics have even advocated completely reversing the burden of proof in the context of digital technologies such as AI (e.g. from injured person to manufacturer). In this case, the victim's obligation to prove the defect should be removed and victims should only be required to prove the damage. It would then be for the producer to prove that the product was not defective when the damage occurred.

The CERRE report advocated lowering the standard of proof for the injured party under the new PLD. According to the report, this could be achieved by (i) imposing cost-shifting rules to collect expert evidence, which are currently borne by victims as well as (ii) requesting evidence disclosure duties of manufacturers, which would allow victims to understand the functioning of the emerging technologies system.

Hacker argued that the PLD should contain a pre-trial disclosure possibility. According to the author, the disclosure process contributes to effective enforcement as the potential claimant otherwise would likely be barred from gathering the necessary information to make an informed and rational decision about whether to sue the potential defendant.[15]

Concept of economic operator too broad and mandatory insurance obligations

Dheu et al. warned that the notion of 'liable economic operator' under the revised PLD is rather confusing and too broad. By including many different actors (e.g. manufacturers, the importer, the authorised representative and online platforms) as 'economic operator', the new proposal extends the liability regime beyond the 'realm of pure manufacturing'. Because such a modification would change the nature of the existing PLD, Dheu et al recommended that policymakers reflect on the long-term consequences of this choice.

A European Law Institute Innovation Paper proposed introducing mandatory insurance schemes for economic operators or compensation funds in the proposed product liability package.[16] According to Dheu et al., such schemes might solve the potential insolvency problem for the liable party and ensure victims receive effective compensation.

Legislative process

The **Council** adopted its common position in June 2023. The Council proposed, inter alia:

- **Scope of application** – to add raw materials (such as gas and water) within the definition of a product.
- **Presumption of defectiveness** – to clarify that the defectiveness of a product is determined by reference to the safety that the 'public at large' is entitled to expect and that warnings or other information provided with a product cannot by themselves make an otherwise defective product safe (e.g. liability cannot be circumvented simply by listing all conceivable side effects of a product).
- **Cascade of attributable liability** – to further establish that manufacturer includes any person who presents themselves as the manufacturer by affixing, or authorising a third party to affix, their name, trademark or other distinguishing feature.
- **Development risk defence** – to leave the exemption afforded to manufacturers for scientifically and technically undiscoverable defects subject to Member State derogations, as under the existing PLD.
- **Compensation period** – to extend the expiry period from 15 to 20 years for compensation to which an injured person is entitled, in cases where the symptoms of a personal injury are slow to emerge.

In **Parliament**, the file was assigned jointly (under Rule 58) to the Committee on Internal Market and Consumer Protection (IMCO) and the Committee on Legal Affairs (JURI), with Vlad Botoș (Renew, Romania) and Pascal Arimont (EPP, Belgium) appointed as rapporteurs. The committees adopted a joint report (33 votes in favour, 2 against and no abstentions) on 9 October 2023 and decided to enter into negotiations with the Council. Parliament confirmed the decision to enter into negotiations in plenary in October, and a first trilogue meeting was held on 23 October 2023. Parliament's position included substantial amendments to the Commission's text, including:

- **scope of application** – adding raw materials in the definition of a product, similarly to the Council;
- **damages** – clarifying that medically recognised harm to psychological health should be confirmed 'by a court-ordered medical expert' and that the destruction or irreversible corruption of data that is not used for professional purposes should not be compensated if the economic value of the damage is below €1 000 (e.g. setting a threshold to limit the potential risk of excessive litigation);
- **assessment of defectiveness** – considering a product defective when it does not provide the safety that an average person (instead of the 'public at large') is entitled to expect, particularly taking account of the standard of safety applicable to the product in question;
- **cascade of attributable liability** – allowing Member States to compensate persons who suffer damage caused by defective products via national schemes (which should not be funded by public revenue), when victims fail to obtain compensation because no economic operator is held liable, the operator is insolvent or has ceased to exist;
- **exemption for micro or small enterprises producing software**– introducing a new exemption from liability in the case of a manufacturer of software that, at the time of the placing on the market of that software, was a micro or small enterprise[17] provided that another economic operator would be liable for damaged caused by that software.

The co-legislators reached a provisional agreement on this file on 14 December 2023. The main changes include:

- **extending the definition of 'product'** to digital manufacturing files and software. Free and open-source software that is developed or supplied outside the course of a commercial activity is excluded from the scope of the directive;

- including **medically recognised damage to psychological health** as well as **destruction or irreversible corruption of data** in the definition of damage;
- including **non-material losses** resulting from the damage within the right to claim compensation;
- **alleviating the burden of proof**, which would remain on the injured person;
- **extending the liability period to 25 years in exceptional cases** when symptoms are slow to emerge;
- introducing a **cascade of attributable liability** for economic operators.

Parliament voted on the new legislation in March 2024 and the Council voted on it in October 2024. The directive was formally signed on 23 October 2024 and published in the Official Journal on 18 November 2024. The new rules will apply to products placed on the market as of 24 months after the directive comes into force (9 December 2026).

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

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European Parliament, Liability for Defective Products, Legislative Observatory (OEIL).

ENDNOTES

1 Article 4(13) of the revised PLD defines fulfilment service providers as any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching of a product, without having ownership of the product, with the exception of postal services.

2 See T. Madiega, Artificial intelligence liability directive, EPRS, European Parliament, February 2023.

3 Contractual liability is liability arising from a refusal or neglect to honour the commitments made under a contract. Not fulfilling, or only partially fulfilling, obligations results in harm (or damage).

4 I.e. replacement, repair or reimbursement.

5 A product which has been subject to important changes or a major overhaul after it has been put into service must be considered as a new product if: i) its original performance, purpose or type has changed, without this being foreseen in the initial risk assessment; ii) the nature of the hazard has changed or the level of risk has increased, compared to the relevant EU harmonisation legislation; iii) the product is made available (or put into service if the applicable legislation also includes putting into service within its scope). This has to be assessed on a case-by-case basis and, in particular, in view of the objective of the legislation and the type of products covered by the legislation in question.

6 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

7 T. Cabral, Liability and artificial intelligence in the EU: Assessing the adequacy of the current Product Liability Directive, 2020.

8 G. Wagner, Liability Rules for the Digital Age – Aiming for the Brussels Effect, 2023.

[9] O. Dheu et al., The European Commission's Approach To Extra-Contractual Liability and AI – A First Analysis and Evaluation of the Two Proposals, 6 October 2022.

[10] A. Koch et al., Response of the European Law Institute to the Public Consultation on Civil Liability – Adapting Liability Rules to the Digital Age and Artificial Intelligence, 2022.

[11] M. Ebers, Liability For Artificial Intelligence And EU Consumer Law, 2021.

[12] P. Hacker, The European liability directives – Critique of a half-hearted approach and lessons for the future, 2023.

[13] C. de Meeus, The Product Liability Directive at the Age of the Digital Industrial Revolution: Fit for Innovation?, 2019.

[14] R. de Bruin, Autonomous Intelligent Cars on the European Intersection of Liability and Privacy, 2016.

[15] ibid. 18

[16] European Law Institute Innovation Paper, Guiding Principles for Updating the Product Liability Directive for the Digital Age, January 2021.

[17] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

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