DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council on Liability for defective products
(COM(2022)0495 – C9-0322/2022 – 2022/0302(COD))

Committee on the Internal Market and Consumer Protection
Committee on Legal Affairs

Rapporteurs: Pascal Arimont, Vlad-Marius Botoş

(Joint committee procedure – Rule 58 of the Rules of Procedure)
Symbols for procedures

* Consultation procedure
*** Consent procedure
***I Ordinary legislative procedure (first reading)
***II Ordinary legislative procedure (second reading)
***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in bold italics in the left-hand column. Replacements are indicated in bold italics in both columns. New text is indicated in bold italics in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in bold italics. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in bold italics and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on liability for defective products
(COM(2022)0495 – C9-0322/2022 – 2022/0302(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2022)0495),

– having regard to Article 294(2) and Article 114 TFEU of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0322/2022),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of ... 1,

– having regard to Rules 58, 59 and 40 of its Rules of Procedure,

– having regard to the joint deliberations of the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs under Rule 58 of the Rules of Procedure,’

– having regard to the report of the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs (A9-0000/2023),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive
Recital 3

1 [OJ C ..., p. ... / Not yet published in the Official Journal].
(3) Directive 85/374/EEC needs to be revised in light of developments related to new technologies, including artificial intelligence (AI), new circular economy business models and new global supply chains, which have led to inconsistencies and legal uncertainty, in particular as regards the meaning of the term ‘product’. Experience gained from applying Directive 85/374/EEC has also shown that injured persons face difficulties obtaining compensation due to restrictions on making compensation claims and due to challenges in gathering evidence to prove liability, especially in light of increasing technical and scientific complexity. This includes claims for damages related to new technologies, including AI. The revision will therefore encourage the roll-out and uptake of such new technologies, including AI, while ensuring that claimants can enjoy the same level of protection irrespective of the technology involved.

(8) In order to create a genuine internal market with a high and uniform level of consumer protection, and to reflect the case law of the Court of Justice, Member States should not be, in respect of matters within the scope of this Directive, maintain or introduce more, or less, stringent provisions than those laid down in this Directive. For matters other than those regulated by this Directive, national procedural rules should apply in so far as...
they do not undermine the effectiveness and objectives of the system of product liability provided for under this Directive.

Or. en

Amendment 3

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) It is becoming increasingly common for digital services to be integrated in or inter-connected with a product in such a way that the absence of the service would prevent the product from performing one of its functions, for example the continuous supply of traffic data in a navigation system. While this Directive should not apply to services as such, it is necessary to extend no-fault liability to such digital services as they determine the safety of the product just as much as physical or digital components. Such related services should be considered as components of the product to which they are inter-connected, when they are within the control of the manufacturer of that product, in the sense that they are supplied by the manufacturer itself or that the manufacturer recommends them or otherwise influences their supply by a third party.

Or. en

Amendment 4

Proposal for a directive
Recital 16

(15) It is becoming increasingly common for digital services to be integrated in or inter-connected with a product in such a way that the absence of the service would prevent the product from performing one of its functions, for example the continuous supply of traffic data in a navigation system. While this Directive should not apply to services as such, it is necessary to extend no-fault liability to such digital services as they determine the safety of the product just as much as physical or digital components. Such related services should be considered as components of the product to which they are inter-connected, when they are within the control of the manufacturer of that product, in the sense that they are supplied by the manufacturer itself or that the manufacturer authorises them or otherwise influences their supply by a third party.

Or. en
(16) In recognition of the growing relevance and value of intangible assets, the loss or corruption of data, such as content deleted from a hard drive, should also be compensated, including the cost of recovering or restoring the data. As a result, the protection of consumers requires compensation for material losses resulting not only from death or personal injury, such as funeral or medical expenses or lost income, and from damage to property, but also for loss or corruption of data. Nevertheless, compensation for infringements of Regulation (EU) 2016/679 of the European Parliament and of the Council, Directive 2002/58/EC of the European Parliament and of the Council, Directive (EU) 2016/680 of the European Parliament and of the Council and Regulation (EU) 2018/1725 of the European Parliament and of the Council is not affected by this Directive.


43 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of


Amendment 5
Proposal for a directive
Recital 17

Text proposed by the Commission

(17) In the interests of legal certainty, it should be clarified that personal injury includes medically recognised damage to psychological health.

Amendment

(17) In the interests of legal certainty, it should be clarified that Member States should also be able to consider that personal injury includes medically recognised damage to psychological health, that is to say an effect on the victim’s psychological health that affects the victim’s general state of health as confirmed by a court-ordered medical expert.

Or. en

Amendment 6
Proposal for a directive
Recital 18

Text proposed by the Commission

(18) While Member States should

Amendment

(18) While Member States should

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provide full and proper compensation for all material losses resulting from death, or personal injury, or damage to or destruction of property and data loss or corruption, rules on calculating compensation should be laid down by Member States. Furthermore, this Directive should not affect national rules relating to non-material damage.

Amendment 7
Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Products which are not intended to be placed on the market or, where relevant, to be put into service, due to them, for example, being intended only for personal use or for use only in a controlled and confined setting, but which appear on the market or are put into service after, for example, being stolen, should be excluded from the scope of this Directive.

Or. en

Amendment 8
Proposal for a directive
Recital 22

Text proposed by the Commission

Amendment

(22) In order to protect the health and property of consumers, the defectiveness of a product should be determined by reference not to its fitness for use but to the lack of the safety that the public at large is entitled to expect. The assessment of

(22) In order to protect the health and property of consumers, the defectiveness of a product should be determined by reference not to its fitness for use but to the lack of the safety an average person is entitled to expect and that is also required
defectiveness should involve an objective analysis and not refer to the safety that any particular person is entitled to expect. The safety that the public at large is entitled to expect should be assessed by taking into account, inter alia, the intended purpose, the objective characteristics and the properties of the product in question as well as the specific requirements of the group of users for whom the product is intended. Some products, such as life-sustaining medical devices, entail an especially high risk of damage to people and therefore give rise to particularly high safety expectations. In order to take such expectations into account, it should be possible for a court to find a product defective without establishing its actual defectiveness, where it belongs to the same production series as a product already proven to be defective.

under Union or national law. The assessment of defectiveness should involve an objective analysis and not refer to the safety that any particular person is entitled to expect. The safety that an average person is entitled to expect should be assessed by taking into account, inter alia, the intended purpose, the objective characteristics and the properties of the product in question as well as the specific requirements of the group of users for whom the product is intended. Some products, such as life-sustaining medical devices, entail an especially high risk of damage to people and therefore give rise to particularly high safety expectations. In order to take such expectations into account, it should be possible for a court to find a product defective without establishing its actual defectiveness, where it belongs to the same production series as a product already proven to be defective.

Amendment 9
Proposal for a directive
Recital 23

Text proposed by the Commission

(23) In order to reflect the increasing prevalence of inter-connected products, the assessment of a product’s safety should also take into account the effects of other products on the product in question. The effect on a product’s safety of its ability to learn after deployment should also be taken into account, to reflect the legitimate expectation that a product’s software and underlying algorithms are designed in such a way as to prevent hazardous product behaviour. In order to reflect that in the digital age many products remain within the manufacturer’s control beyond the moment at which they are placed on the

Amendment

(23) In order to reflect the increasing prevalence of inter-connected products, the assessment of a product’s safety should also take into account the effects of other products on the product in question. The effect on a product’s safety of its ability to learn after deployment should also be taken into account, to reflect the legitimate expectation that a product’s software and underlying algorithms are designed in such a way as to prevent hazardous product behaviour. In order to reflect that in the digital age many products remain within the manufacturer’s control beyond the moment at which they are placed on the
market, the moment in time at which a product leaves the manufacturer’s control should also be taken into account in the assessment of a product’s safety. A product can also be found to be defective on account of its cybersecurity vulnerability.

Amendment 10
Proposal for a directive
Recital 24

Text proposed by the Commission

(24) In order to reflect the relevance of product safety and market surveillance legislation for determining the level of safety that the public at large is entitled to expect, it should be clarified that safety requirements, including safety-relevant cybersecurity requirements, and interventions by regulatory authorities, such as issuing product recalls, or by economic operators themselves, should also be taken into account in that assessment. Such interventions should, however, not of themselves create a presumption of defectiveness.

Amendment

(24) In order to reflect the relevance of product safety and market surveillance legislation for determining the level of safety that an average person is entitled to expect, it should be clarified that mandatory safety requirements, including safety-relevant cybersecurity requirements, and interventions by regulatory authorities, such as issuing product recalls, or by economic operators themselves, should also be taken into account in that assessment. Such interventions should, however, not of themselves create a presumption of defectiveness.

Amendment 11
Proposal for a directive
Recital 30

Text proposed by the Commission

(30) In light of the imposition on economic operators of liability irrespective

Amendment

(30) In light of the imposition on economic operators of liability irrespective
of fault, and with a view to achieving a fair apportionment of risk, the injured person claiming compensation for damage caused by a defective product should bear the burden of proving the damage, the defectiveness of a product and the causal link between the two. Injured persons, are, however, often at a significant disadvantage compared to manufacturers in terms of access to, and understanding of, information on how a product was produced and how it operates. This asymmetry of information can undermine the fair apportionment of risk, in particular in cases involving technical or scientific complexity.

It is therefore necessary to facilitate claimants’ access to evidence to be used in legal proceedings, while ensuring that such access is limited to that which is necessary and proportionate, and that confidential information and trade secrets are protected. Such evidence should also include documents that have to be created ex novo by the defendant by compiling or classifying the available evidence.

Proposal for a directive
Recital 31

Text proposed by the Commission

(31) Therefore, in proceedings relating to an action for compensation for damage caused by a defective product, at the request of a claimant who presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of the claim for compensation, and where there are reasons to believe that strictly relevant additional evidence lies in the control of the defendant, without which the claimant is unable to prove the claim for compensation, national courts should be able to order the defendant to disclose
such evidence, in accordance with national procedural law. At the request of the defendant, national courts should also be able to order the claimant to disclose strictly relevant evidence, in accordance with national procedural law. The requested disclosure of evidence should be limited to what is necessary and proportionate, and should be such as to ensure that confidential information and trade secrets are protected. Such evidence should also include documents that have to be created ex novo by the defendant by compiling or classifying the available evidence.

Or. en

Amendment 13
Proposal for a directive
Recital 32

Text proposed by the Commission

(32) In respect of trade secrets within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council\(^{48}\), national courts should be empowered to take specific measures to ensure the confidentiality of trade secrets during and after the proceedings, while achieving a fair and proportionate balance between the interest of the trade-secret holder to secrecy and the interest of the injured person. This should include at least measures to restrict access to documents containing trade secrets or alleged trade secrets and access to hearings to a limited number of people, or allowing access to redacted documents or transcripts of hearings. When deciding on such measures, national courts should take into account: (i) the need to ensure the right to an effective remedy and to a fair trial; (ii) the legitimate interests of the parties and, where appropriate, of third parties; and (iii)

Amendment

(32) In respect of confidential information and trade secrets within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council\(^{48}\), national courts should be empowered to take all necessary measures to ensure their confidentiality during and after the proceedings, while achieving a fair and proportionate balance between the interest of the trade-secret holder to secrecy and the interest of the injured person. This should include at least measures to restrict access to documents containing trade secrets or alleged trade secrets and access to hearings to a limited number of people, or allowing access to redacted documents or transcripts of hearings. When deciding on such measures, national courts should take into account: (i) the need to ensure the right to an effective remedy and to a fair trial; (ii) the legitimate interests of the parties and, where appropriate, of third parties; and (iii)
any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.


Amendment 14

Proposal for a directive
Recital 33

Text proposed by the Commission

(33) It is also necessary to alleviate the claimant’s burden of proof provided that certain conditions are fulfilled. Rebuttable presumptions of fact are a common mechanism for alleviating a claimant’s evidential difficulties, and allow a court to base the existence of defectiveness or causal link on the presence of another fact that has been proven, while preserving the rights of the defendant. In order to provide an incentive to comply with the obligation to disclose information, national courts should presume the defectiveness of a product where a defendant fails to comply with such an obligation. Many legislative and mandatory safety requirements have been adopted in order to protect consumers and the public from the risk of harm. In order to reinforce the close relationship between product safety rules and liability rules, non-compliance with such requirements should also result in a presumption of defectiveness. This includes cases in which a product is not equipped with the means to log information about the operation of the product as required under Union or national law. The same should apply in the case of obvious malfunction, such as a

Amendment

(33) It is also necessary to alleviate the claimant’s burden of proof provided that certain conditions are fulfilled. Rebuttable presumptions of fact are a common mechanism for alleviating a claimant’s evidential difficulties, and allow a court to base the existence of defectiveness or causal link on the presence of another fact that has been proven, while preserving the rights of the defendant. Many legislative and mandatory safety requirements have been adopted in order to protect consumers and the public from the risk of harm. In order to reinforce the close relationship between product safety rules and liability rules, non-compliance with such requirements should also result in a presumption of defectiveness. This includes cases in which a product is not equipped with the means to log information about the operation of the product as required under Union or national law. The same should apply in the case of obvious malfunction, such as a
equipped with the means to log information about the operation of the product as required under Union or national law. The same should apply in the case of obvious malfunction, such as a glass bottle that explodes in the course of normal use, since it is unnecessarily burdensome to require a claimant to prove defectiveness when the circumstances are such that its existence is undisputed.

Amendment 15
Proposal for a directive
Recital 34

Text proposed by the Commission

(34) National courts should also presume the defectiveness of a product or the causal link between the damage and the defectiveness, or both, where, notwithstanding the defendant’s disclosure of information, it would be excessively difficult for the claimant, in light of the technical or scientific complexity of the case, to prove its defectiveness or the causal link, or both. In such cases, requiring proof would undermine the effectiveness of the right to compensation. Therefore, given that manufacturers have expert knowledge and are better informed than the injured person, it should be for them to rebut the presumption. Technical or scientific complexity should be determined by national courts on a case-by-case basis, taking into account various factors. Those factors should include the complex nature of the product, such as an innovative medical device; the complex nature of the technology used, such as machine learning; the complex nature of the information and data to be analysed by the claimant; and the complex nature of the causal link, such as a link between a glass bottle that explodes in the course of normal use, since it is unnecessarily burdensome to require a claimant to prove defectiveness when the circumstances are such that its existence is undisputed.

Amendment

(34) National courts should also alleviate the burden of proving the defectiveness of a product or the causal link between the damage and the defectiveness, or both, where, notwithstanding the defendant’s disclosure of strictly relevant information, it would be excessively difficult for the claimant, in light of the technical or scientific complexity of the case, to prove its defectiveness or the causal link, or both. In such cases, requiring proof would undermine the effectiveness of the right to compensation. Therefore, given that manufacturers have expert knowledge and are better informed than the injured person, the claimant should be required to prove only that the product contributed to the damage and, where the claimant’s difficulties relate to proving defectiveness, that it is highly likely that, the product was defective, or where the claimant’s difficulties relate to proving the causal link, that its defectiveness is a highly likely cause of the damage. Technical or scientific complexity should be determined by national courts on a case-by-case basis,
pharmaceutical or food product and the onset of a health condition, or a link that, in order to be proven, would require the claimant to explain the inner workings of an AI system. The assessment of excessive difficulties should also be made by national courts on a case-by-case basis. While a claimant should provide arguments to demonstrate excessive difficulties, proof of such difficulties should not be required. For example, in a claim concerning an AI system, the claimant should, for the court to decide that excessive difficulties exist, neither be required to explain the AI system’s specific characteristics nor how these characteristics make it harder to establish the causal link. The defendant should have the possibility to contest the existence of excessive difficulties.

taking into account various factors and after consultation of experts in the relevant field. Those factors should include the complex nature of the product; the complex nature of the technology used, such as machine learning; the complex nature of the information and data to be analysed by the claimant; and the complex nature of the causal link, such as a link between a pharmaceutical or food product and the onset of a health condition, or a link that, in order to be proven, would require the claimant to explain the inner workings of an AI system. The assessment of excessive difficulties should also be made by national courts on a case-by-case basis. While a claimant should provide arguments to demonstrate excessive difficulties, proof of such difficulties should not be required. For example, in a claim concerning an AI system, the claimant should, for the court to decide that excessive difficulties exist, neither be required to explain the AI system’s specific characteristics nor how these characteristics make it harder to establish the causal link. The defendant should have the possibility to contest the existence of excessive difficulties.

Or. en

Amendment 16
Proposal for a directive
Recital 35

Text proposed by the Commission

(35) In order to maintain a fair apportionment of risk, and to avoid a reversal of the burden of proof, a claimant should nevertheless, in order to benefit from the presumption, be required to demonstrate, on the basis of sufficiently relevant evidence, that it is likely that, where the claimant’s difficulties relate to
proving defectiveness, the product was defective, or that, where the claimant’s difficulties relate to proving the causal link, its defectiveness is a likely cause of the damage.

Amendment 17
Proposal for a directive
Recital 36

Text proposed by the Commission

(36) In the interest of a fair apportionment of risk, economic operators should be exempted from liability if they can prove the existence of specific exonerating circumstances. They should not be liable where they can prove that a person other than themselves has caused the product to leave the manufacturing process against their will or that compliance with mandatory regulations was the very reason for the product’s defectiveness.

Amendment

(36) In the interest of a fair apportionment of risk, economic operators should be exempted from liability if they can prove the existence of specific exonerating circumstances. They should not be liable where they can prove that a person other than themselves has caused the product to leave the manufacturing process against their will or that compliance with legal requirements was the very reason for the product’s defectiveness.

Amendment 18
Proposal for a directive
Recital 38

Text proposed by the Commission

(38) The possibility for economic operators to avoid liability by proving that a defect came into being after they placed the product on the market or put it into service should also be restricted when a product’s defectiveness consists in the lack of software updates or upgrades necessary to address cybersecurity vulnerabilities and

Amendment

(38) The possibility for economic operators to avoid liability by proving that a defect came into being after they placed the product on the market or put it into service should also be restricted when a product’s defectiveness consists in the lack of security updates or upgrades necessary to address cybersecurity vulnerabilities and
maintain the product’s safety. Such vulnerabilities can affect the product in such a way that it causes damage within the meaning of this Directive. In recognition of manufacturers’ responsibilities under Union law for the safety of products throughout their lifecycle, such as under Regulation (EU) 2017/745 of the European Parliament and of the Council\(^49\), manufacturers should also be liable for damage caused by their failure to supply *software* security updates or upgrades that are necessary to address the product’s vulnerabilities in response to evolving cybersecurity risks. Such liability should not apply where the supply or installation of such *software* is beyond the manufacturer’s control, for example where the owner of the product does not install an update or upgrade supplied for the purpose of ensuring or maintaining the level of safety of the product.


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**Amendment 19**

**Proposal for a directive**

**Recital 39**

*Text proposed by the Commission*

(39) In the interests of a fair apportionment of risks, *manufacturers* should also be exempted from liability if they prove that the state of scientific and technical knowledge, determined with

**Amendment**

(39) In the interests of a fair apportionment of risks, *economic operators* should also be exempted from liability if they prove that the *general* state of scientific and technical knowledge,
reference to the most advanced level of objective knowledge accessible and not to the actual knowledge of the manufacturer in question, while the product was within their control was such that the existence of defectiveness could not be discovered.

determined with reference to the most advanced level of objective knowledge accessible and not to the actual knowledge of the economic operator in question, while the product was within their control was such that the existence of defectiveness could not be discovered.

Amendment 20
Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Situations may arise in which the acts and omissions of persons other than a potentially liable economic operator contribute, in addition to the defectiveness of the product, to the cause of the damage suffered, such as a third party exploiting a cybersecurity vulnerability of a product. In the interests of consumer protection, where a product is defective, for example due to a vulnerability that makes the product less safe than the public at large is entitled to expect, the liability of the economic operator should not be reduced as a result of such acts or omissions. However, it should be possible to reduce or disallow the economic operator’s liability where injured persons themselves have negligently contributed to the cause of the damage.

Amendment

(41) Situations may arise in which the acts and omissions of persons other than a potentially liable economic operator contribute, in addition to the defectiveness of the product, to the cause of the damage suffered, such as a third party exploiting a cybersecurity vulnerability of a product. In the interests of consumer protection, where a product is defective, for example due to a vulnerability that makes the product less safe than an average person is entitled to expect, the liability of the economic operator should not be reduced as a result of such acts or omissions. However, it should be possible to reduce or disallow the economic operator’s liability where injured persons themselves have negligently contributed to the cause of the damage.

Amendment 21
Proposal for a directive
Recital 43
(43) Given that products age over time, and that higher safety standards are developed as the state of science and technology progresses, it would not be reasonable to make manufacturers liable for an unlimited period of time for the defectiveness of their products. Therefore, the liability should be subject to a reasonable length of time, that is 10 years following placing on the market, without prejudice to claims pending in legal proceedings. In order to avoid unreasonably denying the possibility of compensation, the limitation period should be 15 years in cases where the symptoms of a personal injury are, according to medical evidence, slow to emerge.

(43) Given that products age over time, and that higher safety standards are developed as the state of science and technology progresses, it would not be reasonable to make manufacturers liable for an unlimited period of time for the defectiveness of their products. Therefore, the liability should be subject to a reasonable length of time, that is 10 years following placing on the market, without prejudice to claims pending in legal proceedings. In order to avoid unreasonably denying the possibility of compensation, the limitation period should be 20 years in cases where the symptoms of a personal injury are, according to medical evidence, slow to emerge.

Or. en

Amendment 22
Proposal for a directive
Recital 45

Text proposed by the Commission

(45) In order to facilitate harmonised interpretation of this Directive by national courts, Member States should be required to publish relevant court judgments on product liability.

Amendment

(45) In order to facilitate harmonised interpretation of this Directive by national courts, Member States should be required to publish relevant court judgments on product liability. Those judgments should be compiled in an easily accessible and publicly available database, set up and maintained by the Commission.

Or. en

Amendment 23
Proposal for a directive
Article 1 – title
**Text proposed by the Commission**

Subject matter

**Amendment**

Subject matter *and objective*

**Amendment 24**

Proposal for a directive

Article 1 – paragraph 1 a (new)

**Text proposed by the Commission**

The objective of this Directive is to contribute to the proper functioning of the internal market, while ensuring a high level of consumer protection, and to remove divergences between the legal systems of Member States related to the liability of economic operators for damage suffered by natural persons caused by defective products.

**Amendment 25**

Proposal for a directive

Article 4 – paragraph 1 – point 4

**Text proposed by the Commission**

(4) ‘related service’ means a digital service that is integrated into, or interconnected with, a product in such a way that its absence would prevent the product from performing one or more of *its* functions;

**Amendment**

(4) ‘related service’ means a digital service that is integrated into, or interconnected with, a product in such a way that its absence would prevent the product from performing one or more of *the* functions *the product had as part of its original design*;

Or. en
Amendment 26

Proposal for a directive
Article 4 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘damage’ means material losses resulting from:

(a) death or personal injury, including medically recognised harm to psychological health;
(b) harm to, or destruction of, any property, except:
   (i) the defective product itself;
   (ii) a product damaged by a defective component of that product;
   (iii) property used exclusively for professional purposes;
(c) loss or corruption of data that is not used exclusively for professional purposes;

Amendment

Deleted

Or. en

Amendment 27

Proposal for a directive
Article 4 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

(7a) ‘making available on the market’ means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

Amendment

Or. en
Amendment 28
Proposal for a directive
Article 4 – paragraph 1 – point 9

Text proposed by the Commission

(9) ‘making available on the market’ means any supply of a product for
distribution, consumption or use on the
Union market in the course of a
commercial activity, whether in return for
payment or free of charge;

Amendment

Deleted

(9) ‘making available on the market’

Or. en

Amendment 29
Proposal for a directive
Article 4 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘manufacturer’ means any natural
or legal person who develops,
manufactures or produces a product or
has a product designed or manufactured,
or who markets that product under its
name or trademark or who develops,
manufactures or produces a product for
its own use;

Amendment

(11) ‘manufacturer’ means any natural
or legal person who:

(a) develops, manufactures, produces
a product or

(b) has a product designed, or
manufactured, or who markets that
product under its name or trademark,

(c) or who develops, manufactures or
produces a product for its own use;

Or. en
Amendment 30
Proposal for a directive
Article 4 – paragraph 1 – point 12

*Text proposed by the Commission*

(12) ‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on its behalf *in relation to specified tasks*;

*Amendment*

(12) ‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on its behalf *for the purpose of this Directive*;

Or. en

Amendment 31
Proposal for a directive
Article 5 – paragraph 2 – point b

*Text proposed by the Commission*

(b) a person acting on behalf of *one or more* injured persons *in accordance with Union or national law*.

*Amendment*

(b) a person acting on behalf of injured persons, *in accordance with Directive (EU) 2020/1828 of the European Parliament and of the Council*\(^1a\).


Or. en

Amendment 32
Proposal for a directive
Article 5 a (new)
Article 5a
Damage

1. For the purpose of this Directive, ‘damage’ means material losses resulting from:
   (a) death or personal injury,
   (b) harm to, or destruction of, any property, except:
      (i) the defective product itself;
      (ii) a product damaged by a defective component of that product;
      (iii) property used exclusively for professional purposes;

2. This Article shall not affect national rules relating to non-material damage.

Amendment 33
Proposal for a directive
Article 6 – paragraph -1 (new)

Text proposed by the Commission

-1. A product shall be considered defective when it does not provide the safety an average person is entitled to expect and that is also required under Union or national law.

Amendment 34
Proposal for a directive
Article 6 – paragraph 1 – introductory part
A product shall be considered defective when it does not provide the safety which the public at large is entitled to expect, taking all circumstances into account, including the following:

In assessing the defectiveness of a product, all circumstances shall be taken into account, including:

Amendment 35

Proposal for a directive
Article 6 – paragraph 1 – point a

(a) the presentation of the product, including the instructions for installation, use and maintenance; (a) the presentation of the product, including the instructions for installation, use and maintenance if they are directly related to the damage that occurred;

Amendment 36

Proposal for a directive
Article 6 – paragraph 1 – point b

(b) the reasonably foreseeable use and misuse of the product; (b) the intended use of the product;

Amendment 37

Proposal for a directive
Article 6 – paragraph 1 – point c
Text proposed by the Commission

(c) the effect on the product of any ability to continue to learn after deployment;

Amendment

(c) the effect on the product of any ability to continue to learn after it is placed on the market or put into service;

Amendment 38

Proposal for a directive
Article 6 – paragraph 1 – point d

Text proposed by the Commission

(d) the effect on the product of other products that can reasonably be expected to be used together with the product;

Amendment

(d) the effect that other products might have on the product to be assessed, where, at the time of placing on the market or putting into service, it can reasonably be expected, that the product will be used with other products, including the interconnection of those products;

Amendment 39

Proposal for a directive
Article 6 – paragraph 1 – point f

Text proposed by the Commission

(f) product safety requirements, including safety-relevant cybersecurity requirements;

Amendment

(f) mandatory product safety requirements, including safety-relevant cybersecurity requirements under Union or national law;
Amendment 40
Proposal for a directive
Article 6 – paragraph 1 – point h

Text proposed by the Commission

(h) the specific expectations of the end-users for whom the product is intended.

Amendment

deleted

Or. en

Amendment 41
Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that national courts are empowered, upon request of an injured person claiming compensation for damage caused by a defective product (‘the claimant’) who has presented facts and evidence sufficient to support the plausibility of the claim for compensation, to order the defendant to disclose relevant evidence that is at its disposal.

Amendment

1. Member States shall ensure that in proceedings relating to an action for compensation for damage caused by a defective product, at the request of a claimant who has presented a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of the claim for compensation, and that there are reasons to believe that strictly relevant additional evidence lies in the control of the defendant without which the claimant is unable to prove the claim for compensation, national courts may order the defendant to disclose such strictly relevant evidence, in accordance with national procedural law.

Or. en

Amendment 42
Proposal for a directive
Article 8 – paragraph 1 a (new)
Amendment 43
Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

3. When determining whether the disclosure is proportionate, national courts shall consider the legitimate interests of all parties, including third parties concerned, in particular in relation to the protection of confidential information and trade secrets within the meaning of Article 2, point 1, of Directive (EU) 2016/943.

Amendment

3. When determining whether the disclosure requested by a party is necessary and proportionate, national courts shall consider the legitimate interests of all parties, including third parties concerned. They shall, in particular, consider:

Or. en

Amendment 44
Proposal for a directive
Article 8 – paragraph 3 – point a (new)

Text proposed by the Commission

(a) the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence;

Amendment

Or. en
Amendment 45
Proposal for a directive
Article 8 – paragraph 3 – point b (new)

Text proposed by the Commission

Amendment

(b) the scope and cost of disclosure, especially for any third parties concerned, including the need to prevent non-specific searches for information which is unlikely to be of relevance for the parties to the procedure;

Or. en

Amendment 46
Proposal for a directive
Article 8 – paragraph 3 – point c (new)

Text proposed by the Commission

Amendment

(c) whether the evidence in relation to which disclosure is sought contains confidential information or trade secrets as defined in Article 2, point 1, of Directive (EU) 2016/943, especially concerning any third parties, and, where that is the case, what arrangements are in place for protecting such confidential information or trade secrets.

Or. en

Amendment 47
Proposal for a directive
Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall ensure that, where a defendant is ordered to disclose information that is a trade secret or an

4. Member States shall ensure that, where a defendant is ordered to disclose information that is confidential
alleged trade secret, national courts are empowered, upon a duly reasoned request of a party or on their own initiative, to take the specific measures necessary to preserve the confidentiality of that information when it is used or referred to in the course of the legal proceedings. 

information, a trade secret or an alleged trade secret, national courts take all measures necessary to preserve the confidentiality of that information when it is used or referred to in the course of the legal proceedings in accordance with Directive (EU) 2016/943.

Amendment 48
Proposal for a directive
Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that those from whom disclosure is sought are provided with an opportunity to be heard before a national court orders disclosure under this Article.

Amendment 49
Proposal for a directive
Article 9 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the defendant has failed to comply with an obligation to disclose relevant evidence at its disposal pursuant to Article 8(1);

Amendment 50
Proposal for a directive
Article 9 – paragraph 2 – point c
(c) the claimant establishes that the damage was caused by an obvious malfunction of the product during normal use or under ordinary circumstances.

Amendment (c) the claimant establishes that the damage was caused by an obvious malfunction of the product during use as intended by the manufacturer or under ordinary circumstances.

Or. en

Amendment 51
Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

3. The causal link between the defectiveness of the product and the damage shall be presumed, where it has been established that the product is defective and the damage caused is of a kind typically consistent with the defect in question.

Amendment

3. The causal link between the defectiveness of the product and the damage shall be presumed, where it has been established that the product is defective and the damage caused is typically consistent with the defect in question.

Or. en

Amendment 52
Proposal for a directive
Article 9 – paragraph 4 – subparagraph 1 – introductory part

Text proposed by the Commission

Where a national court judges that the claimant faces excessive difficulties, due to technical or scientific complexity, to prove the defectiveness of the product or the causal link between its defectiveness and the damage, or both, the defectiveness of the product or causal link between its defectiveness and the damage, or both, shall be presumed where the claimant has demonstrated, on the basis of sufficiently

Amendment

Where, notwithstanding the disclosure of evidence in accordance with Article 8, a national court judges, after a thorough consultation with experts in the relevant field, that due to technical or scientific complexity the claimant faces excessive difficulties, to prove the defectiveness of the product or the causal link between its defectiveness and the damage, or both, the defectiveness of the product or causal link
relevant evidence, that:

between its defectiveness and the damage, or both, shall be presumed where the claimant has demonstrated, on the basis of sufficiently relevant evidence, that:

Or. en

**Amendment 53**

**Proposal for a directive**

**Article 9 – paragraph 4 – subparagraph 1 – point b**

*Text proposed by the Commission*  
(b) it is likely that the product was defective or that its defectiveness is a likely cause of the damage, or both.

*Amendment*  
(b) it is *highly* likely that the product was defective *in such a way that the defectiveness is a highly likely cause of the damage.*

Or. en

**Amendment 54**

**Proposal for a directive**

**Article 10 – paragraph 1 – point d**

*Text proposed by the Commission*  
(d) that the defectiveness is due to compliance of the product with mandatory regulations issued by public authorities;

*Amendment*  
(d) that the defectiveness is due to compliance of the product with legal requirements;

Or. en

**Amendment 55**

**Proposal for a directive**

**Article 10 – paragraph 1 – point e**

*Text proposed by the Commission*  
(e) in the case of a manufacturer, that the objective state of scientific and technical knowledge at the time when the
technical knowledge at the time when the product was placed on the market, put into service or in the period in which the product was within the manufacturer’s control was not such that the defectiveness could be discovered;

product was placed on the market, put into service or in the period in which the product was within the manufacturer’s control was not such that the defectiveness could be discovered;

Or. en

Amendment 56
Proposal for a directive
Article 10 – paragraph 2 – point b

Text proposed by the Commission
(b) software, including software updates or upgrades; or

Amendment
(b) software, including software updates or upgrades for the expected product lifetime or for a period of five years after the placing on the market or putting into service, whichever is shorter; or

Or. en

Amendment 57
Proposal for a directive
Article 10 – paragraph 2 – point c

Text proposed by the Commission
(c) the lack of software updates or upgrades necessary to maintain safety.

Amendment
(c) the lack of security updates or upgrades necessary to maintain safety for the expected product lifetime or for a period of five years after the placing on the market or putting into service, whichever is shorter.

Or. en
Amendment 58
Proposal for a directive
Article 13 – title

Text proposed by the Commission

Exclusion or limitation of liability

Mandatory nature

Amendment

Amendment 59
Proposal for a directive
Article 14 – paragraph 3

Text proposed by the Commission

3. By way of exception from paragraph 2, where an injured person has not been able to initiate proceedings within 10 years due to the latency of a personal injury, the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a limitation period of 15 years.

Amendment

3. By way of exception from paragraph 2, where an injured person has not been able to initiate proceedings within 10 years due to the latency of a personal injury, the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a limitation period of 20 years.

Or. en

Amendment 60
Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

2. The Commission may set up and maintain a publicly available database containing the judgments referred to in paragraph 1.

Amendment

2. The Commission shall set up and maintain an easily accessible and publicly available database containing the judgments referred to in paragraph 1.

Or. en
EXPLANATORY STATEMENT

Introduction
The Co-Rapporteurs welcome the Commission’s proposal for a Directive on liability for defective products (hereafter: PLD). Ensuring that persons, who suffer physical injury or damage to property due to defective products, have possibilities to claim compensation, is an important element of EU liability legislation.

Since the adoption of the Product Liability Directive in 1985, there have been considerable changes with regard to the kinds of products available on the market in light of new market trends and global value chains. The green and digital transitions are also radically transforming the world of products. Today many products are digital products and they include embedded software. Many products are also refurbished products. As regards the distribution of products nowadays, more and more sales are concluded online via market places and other online platforms. These novelities have created challenges with respect to the liability regime that the PLD from 1985 has put in place.

An updated liability framework that addresses these new challenges and that removes divergences between the legal systems of Member States, which may distort competition and affect the movement of goods within the internal market, is therefore necessary to ensure a high level of consumer protection in the Union.

Fair allocation of risk
The Co-Rapporteurs believe that the PLD needs to strike the right balance between the interests of injured persons and those of economic operators liable for defective products. Ensuring a fair allocation of risk is essential in their view for the revision of the rules of the PLD.

By aligning the rules in the Union to get a fair compensation when defective products cause harm, the Co-Rapporteurs want to strengthen the level of consumer protection across the EU. At the same time, the new legal framework should enhance legal certainty for economic operators in the internal market, without overburdening them, thereby preventing a decline of innovative products in Europe, higher consumer prices and less product variety.

The Co-Rapporteurs therefore commit to striking the right balance and ensuring a proportionate product liability framework for economic operators and consumers. In their vision, strengthening consumer rights through harmonisation and ensuring an innovation friendly liability regime, which is fair to economic operators go together.

Damages recognised under the PLD framework
The Co-Rapporteurs acknowledge that the digitalisation requires adaptations of the liability framework. They support the recognition of damages, which foresee compensation for material losses resulting from death or personal injury, such as funeral or medical expenses or lost income, and from damage to property. They also recognise that Member States may consider that personal injury includes medically recognised damage to psychological health amounting to an effect on the victim’s psychological health that affects the general state of health as confirmed by a court-ordered medical expert.

The Co-Rapporteurs consider that loss or corruption of data are appropriately dealt with under

**Defectiveness of a product**
The Co-Rapporteurs consider that a product should be considered defective when it does not provide the safety, which an average person is entitled to expect, taking into consideration in particular the standard of safety applicable to the product in question. Moreover, in assessing the defectiveness of a product, all circumstances should be taken into account, including the effect that other products might have on the defective product, where, at the time of placing on the market or putting into service, it can reasonably be expected, that it will be used with other products.

**Disclosure of evidence and the alleviation of the burden of proof**
Acknowledging that the burden of proof can be more fairly shared between injured persons and manufacturers, especially in technically or scientific complex cases, the Co-Rapporteurs oppose however a general reversal of the burden of proof. In order to facilitate the claimant’s burden of proof, the Co-Rapporteurs estimate that a court-ordered disclosure of evidence, without which the claimant is unable to prove the claim for compensation, should be made possible when it is necessary and proportionate. The interests of all parties should be taken into account for this assessment, and confidential information and trade secrets within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council, deserve special protection by ensuring their confidentiality. Moreover, the Co-Rapporteurs pursue to alleviate the claimant’s burden of proving the defectiveness on a case-by-case basis, where it can plausibly be presumed that it was highly likely that the product was defective and that it was highly likely that this defectiveness caused the damage.
ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

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