New Product Liability Directive

Fit for the digital age and circular economy

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Valentina SUPERTI, Director & Amaryllis VERHOEVEN, Head of Unit, DG GROW
I. Directive’s place in the EU’s **product safety and liability framework**

**EU PRODUCT SAFETY LEGISLATION**

- Machinery Regulation*
- AI Act*
- General Product Safety Regulation*
- Cyber-resilience Act*
- Measuring Instruments Directive
- Radio Equipment Directive
- Toy Safety Directive
- Medical Devices Regulation
- ... and any other product safety legislation

**Product Liability Directive**
Compensation when product is defective and causes damage

*Proposed in 2021-22, not yet finally enacted.*
II. Main principles of the current PLD remain unchanged

- All “movables”
- Death, personal injury or damage to property
- Lack of safety that the public is entitled to expect
- No need to prove fault: strict liability
- Including component manufacturer / own-brand / Importer

The manufacturer is liable for damage caused by a defect in their product. The injured person must prove the damage, the defect, and the causal relationship.
III. Aim of the revision

Modernise product liability rules, as a complement to modernised product safety:

1. Adapt to the digital age
2. Adapt to circular economy
3. Adapt to global value chains (levelling the playing field between EU and non-EU manufacturers)
4. Make it easier for injured people to prove liability and get full compensation
Manufacturers are liable for all unsafe products, tangible and intangible, including:

- **Software**: whether embedded or standalone, including **AI systems**
- **Digital services** where these are necessary for products to function
- **Exception**: open-source software when outside a commercial activity

Liability **continues** also after products are placed on the market:

- For **software upgrades/updates (under the manufacturer’s control)**
- For failure to address cybersecurity risks and machine learning

**Data loss and corruption** added as material damages
2. Adapt to the circular economy

- The rules address **substantially modified or upgraded** products stemming from circular economy business models.

- A product is considered substantially modified in **accordance with safety legislation**.

- An **exemption** of liability will be provided to remanufacturers if the defectiveness resides in a part that was not linked to the substantial modification.
3. Adapt to global value chains

If the **manufacturer is not established** in the EU, the following can be held liable:

- Importers and authorised representatives
- Fulfilment service providers (only if no importer or authorised representative)
- Distributors, unless they identify another EU-based liable person
- Online marketplaces that intermediate sales, but only if they act like distributors (in line with the DSA) and only if they fail to identify another EU-based liable person

This creates a **level playing field** between EU and non-EU manufacturers
4. Make it easier to prove liability and get full compensation

• **Burden of proof** remains on injured person, but is eased:
  • Manufacturers obliged to **disclose necessary information** in court, subject to protection of trade secrets / confidentiality
  • **Presumptions** of defectiveness/causal link where:
    • a) the manufacturer fails to disclose information
    • b) the product does not comply with safety requirements,
    • c) the product obviously malfunctions,
    • d) the damage is typically consistent with the defect **OR**
    • e) technical or scientific complexity causes excessive difficulties to prove liability (e.g., ‘black box’ AI systems or pharmaceuticals)

• Extension of 10-year period of liability to 15 years for **latent health injuries**

• **Removal of EUR 500 threshold** to ensure full compensation of victims
IV. Complementarity between the revised PLD and the AI liability initiative

**Scope**
Special strict liability regime based on maximum harmonisation:
- for natural persons,
- against manufacturers,
- for material damages,
- caused by any defective product (incl. software and AI systems).

EU Member States liability regimes

- **Product Liability Directive**
  - Minimum harmonisation of targeted elements of national tort-based regimes relating to the burden of proof (similar measures as PLD):
    - Access to information
    - Presumption of causal link
  - Applies only in cases in which an AI system is involved and if national law allows it:
    • for any wrong doing,
    • against any natural or legal person,
    • for any type of damage.

- **Fault Liability**
  - **AI Liability Directive**
  - Special strict liability regime based on maximum harmonisation:
    • for natural persons,
    • against manufacturers,
    • for material damages,
    • caused by any defective product (incl. software and AI systems).

- **Other liabilities** (e.g. contract, special liabilities, etc.)
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on liability for defective products

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Contact: Grow-G3@ec.europa.eu