

Liability for defective products

2022/0302(COD) - 12/10/2023 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs adopted the report presented by Pascal ARIMONT (EPP, BE) and Vlad-Marius BOTO (Renew, RO) on the proposal for a directive from the European Parliament on liability for defective products.

The relevant committees recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

Subject matter

The report specifies that this Directive lays down common rules on the liability of economic operators for damage suffered by natural persons caused by defective products and is aimed at ensuring that such persons are entitled to compensation.

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.

This Directive does not apply to free and open-source software, unless such software is offered in exchange for a price.

Damage

Members maintain that 'damage' means material losses resulting from:

- death or personal injury, including medically recognised damage to psychological health;
- damage to, or destruction of, any property, with exceptions;
- destruction or irreversible corruption of data that are not used for professional purposes, provided that the material loss exceeds EUR 1 000.

Guidance

Member States should ensure that competent national consumer protection authorities and bodies provide all relevant information and tailored guidance to affected consumers to enable them to effectively exercise their right to compensation. Market surveillance authorities should regularly exchange relevant information with national consumer protection agencies and bodies to ensure a high level of consumer protection.

Defectiveness

A product should be considered defective when it does not provide the safety that an average person is entitled to expect or when this is required by Union or national law.

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

- the characteristics of the product, including its labelling, design , technical features, composition, packaging, any other information regarding the product and the instructions for assembly, installation, use and maintenance;
- the reasonably foreseeable use of the product, taking into account the expected lifespan of the product;
- the effect on the product of any ability to acquire new features or knowledge after it is placed on the market or put into service;
- 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;
- any recall of the product or any other relevant intervention decided by a regulatory authority or by an economic operator relating to product safety.

Responsibility of economic operators

Member States should ensure that, where a defective component has caused the product defect, the manufacturer of the defective component can also be held liable for the same damage, unless the defect is due to the design of the product in into which the component has been incorporated or to the instructions given by the manufacturer of this product to the manufacturer of the component.

Any natural or legal person who modifies a product substantially outside the control of the manufacturer and then makes it available on the market or in service should be considered a manufacturer of the product.

Where the victim does not obtain compensation because none of the economic operators can be held liable under the Directive, or because the economic operators responsible are insolvent or have ceased to exist, Member States will be able to use existing national sectoral compensation schemes or establish new ones to compensate injured parties who have suffered damage caused by defective products.

Disclosure of evidence

In legal proceedings to adjudicate on compensation for damage caused by a defective product, at the request of a claimant who has presented facts and evidence sufficient to support the plausibility of the claim for compensation, national courts should be able to order the defendant to disclose relevant evidence that is at its disposal. At the request of the defendant, national courts should also be able to order the claimant to disclose relevant evidence that is at its disposal.

The requested disclosure of evidence should be limited to what is necessary and proportionate, and should be carried out in such a way as to ensure that trade secrets.

Burden of proof

A national court should presume the defectiveness of the product or the causal link between the defectiveness of the product and the damage, or both, when:

- the national court considers that the claimant faces excessive difficulties, due to technical or scientific complexity to be able to prove the defectiveness of the product or the causal link between its defectiveness and the damage, or both; and
- the claimant establishes, on the basis of relevant evidence, that it is possible that the product contributed to the damage, and it is possible that the product is defective or that its defectiveness is a possible cause of the damage, or both.

Right of recourse

Where more than one economic operator is liable for the same damage, any economic operator that has compensated the injured person or was ordered to do so by an enforceable judgment will have a right of recourse against any other jointly and severally liable economic operator.