

Liability for defective products

2022/0302(COD) - 12/03/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 543 votes to 6, with 58 abstentions a legislative resolution on the proposal for a directive of the European Parliament and of the Council on liability for defective products.

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

Subject matter and objective

The proposed Directive lays down common rules on the liability of economic operators for damage suffered by natural persons and caused by defective products, and on compensation for such damage. Its objective is to contribute to the proper functioning of the internal market while ensuring a high level of protection of consumers and other natural persons.

The Directive should apply to products placed on the market or put into service after 2 years from the date of entry into force of this Directive. It should not apply to **free and open-source software** that is developed or supplied outside the course of a commercial activity.

Damage

The right to compensation should apply in respect of only the following types of damage:

- **death or personal injury**, including medically recognised damage to psychological health;
- **damage to, or destruction of, any property**, except: (i) the defective product itself; (ii) a product damaged by a defective component that is integrated into, or inter-connected with, that product by the manufacturer of that product or within that manufacturer's control; (iii) property used exclusively for professional purposes;
- **destruction or corruption of data** that are not used for professional purposes.

The right to compensation should cover all material losses resulting from the abovementioned damage. The right to compensation should also cover **non-material losses** resulting from the damage, in so far as they can be compensated for under national law.

Defectiveness

A product should be considered defective if it does not provide the safety that a person is entitled to expect or that is required under Union or national law. In assessing the defectiveness of a product, all circumstances should be taken into account, including:

- the presentation and the characteristics of the product, including its labelling, design, technical features, composition and packaging and the instructions for its assembly, installation, use and maintenance;
- the effect on the product of its ability to continue to learn or acquire new features after it is placed on the market or put into service;

- the reasonably foreseeable effect on the product of other products that can be expected to be used together with the product, including by means of inter-connection;
- any recall of the product or any other relevant intervention by a competent authority or by an economic operator referred to in Article 8 relating to product safety;
- in the case of a product whose very purpose is to prevent damage, any failure of the product to fulfil that purpose.

Liability of economic operators

Those liable for damage: (a) the manufacturer of a defective product; (b) the manufacturer of a defective component, where that component was integrated into, or inter-connected with, a product within the manufacturer's control and caused that product to be defective, and without prejudice to the liability of the manufacturer; and (c) in the case of a manufacturer of a product or a component established outside the Union, the importer of the defective product or component; the authorised representative of the manufacturer; and the fulfilment service provider.

Disclosure of evidence

At the request of an injured person who is claiming compensation in proceedings before a national court for damage caused by a defective product and who has presented facts and evidence sufficient to support the plausibility of the claim for compensation, the defendant is required to disclose relevant evidence that is at the defendant's disposal.

Member States should ensure that, at the request of a defendant that has presented facts and evidence sufficient to demonstrate the defendant's need for evidence for the purposes of countering a claim for compensation the claimant is required, in accordance with national law, to disclose relevant evidence that is at the claimant's disposal. The disclosure of evidence is **limited to what is necessary and proportionate**.

Burden of proof

The defectiveness of the product should be **presumed** where: (i) the claimant demonstrates that the product does not comply with mandatory product safety requirements laid down in Union law or national law that are intended to protect against the risk of the damage suffered by the injured person; (ii) demonstrates that the damage was caused by an obvious malfunction of the product during reasonably foreseeable use or under ordinary circumstances.

A national court should presume the defectiveness of the product or the causal link between its defectiveness and the damage, or both, where, despite the disclosure of evidence and taking into account all the relevant circumstances of the case, the claimant faces **excessive difficulties**, in particular due to technical or scientific complexity, in proving the defectiveness of the product or the causal link between its defectiveness and the damage, or both.

Right of recourse

Without prejudice to national law concerning rights of contribution or recourse, Member States should ensure that where two or more economic operators are liable for the same damage pursuant to this Directive, they can be held so liable jointly and severally.

Expiry period

Liability should be subject to a reasonable length of time, namely **10 years** from the placing of a product on the market, without prejudice to claims pending in legal proceedings. The expiry period should be extended to **25 years** in cases where the symptoms of a personal injury are, according to medical evidence, slow to emerge.