

Liability for defective products

2022/0302(COD) - 18/11/2024 - Final act

PURPOSE: to adapt product liability rules to the digital age and the circular economy.

LEGISLATIVE ACT: Directive (EU) 2024/2853 of the European Parliament and of the Council on liability for defective products and repealing Council Directive 85/374/EEC.

CONTENT: this directive establishes common rules relating to the **liability of economic operators for damage caused to natural persons by defective products and to the repair of this damage**. The directive will apply to products placed on the market or put into service after 9 December 2026.

The new liability rules better take into account that nowadays many products have digital features and that the economy is becoming increasingly circular. In this context, the new directive extends the definition of “product” to digital manufacturing files and software. Also online platforms can be held liable for a defective product sold on their platform just like any other economic operators if they act like one.

Right to compensation

Any natural person who suffers damage caused by a defective product is entitled to compensation. The right to compensation should apply in respect of only the following types of damage: (i) death or personal injury, including medically recognised damage to psychological health; (ii) damage to, or destruction of, any property; (iii) destruction or corruption of data that are not used for professional purposes.

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: (i) the presentation and the characteristics of the product, including its labelling; (ii) the effect on the product; or (iii) 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.

Liability of economic operators

The manufacturer of a defective product, as well as the manufacturer of a defective component, will be held liable for damage, when this component was integrated into a product or interconnected with it under the control of the manufacturer and caused the defect of the product.

To ensure that consumers are compensated for damage caused by a product manufactured outside the EU, the company importing the product or the representative of the foreign manufacturer established in the EU may be held liable for damage caused.

Any natural or legal person that substantially modifies a product **outside the manufacturer’s control** and thereafter makes it available on the market or puts it into service will be considered to be a manufacturer of that product.

Disclosure of evidence

The directive simplifies the right to compensation by ensuring that an injured person who claims compensation before a national court can request access to relevant evidence at the disposal of the manufacturer in order to be able to prove their claim.

Burden of proof

Member States will ensure that a claimant is required to prove the defectiveness of the product, the damage suffered and the causal link between that defectiveness and that damage.

The defectiveness of the product will 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.

When the injured consumer is faced with **excessive difficulties** to prove the defectiveness of the product or the causal link between its defectiveness and the damage, a court may decide that the claimant is only required to prove the likelihood that the product was defective or that its defectiveness is a likely cause of the damage.

Right of recourse

Where more than one economic operator is liable for the same damage, an economic operator that has compensated the injured person will be entitled to pursue remedies against other economic operators liable in accordance with national law.

Expiry period

Liability will 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.

ENTRY INTO FORCE: 8.12.2024.

TRANSPOSITION: 9.12.2026 at the latest.