

# TECHNOLOGIES INNOVATION

Proposal for a Directive on Liability  
for Defective Products

VdA EXPERTISE



October 2022



**On the 28th of September, the European Commission adopted two Proposals for Directives; one on **Liability for Defective Products (PLD II)** and another on **AI Liability**.**

The PLD II will replace the 37 years old Directive 85/374/EEC – Product Liability Directive (PLD) – adapting current liability rules to the digital age, circular economy and global value chains,, by specifically regulating liability for self-learning systems and defects caused by software updates, including data loss, and ensuring that consumers are protected regardless of whether the manufacturer is inside or outside the EU.

Moreover, the AI Liability Directive, complements the civil liability EU regime, creating a set of rules regulating damages caused by AI systems, promoting trust, legal predictability for businesses and ensuring compensation to victims.

**1. Overview**

The main goals of the PLD II are to: 1) ensure that liability rules reflect the nature and risks of products in the digital age and circular economy; 2) ensure there is always a business in the EU that can be held liable; 3) ease the burden of proof in complex cases and restrictions on making claims; 4) ensure better alignment with related legislation and case-law. In addition, the Directive promotes harmonisation of national law.

Generally, the Directive adapts the subject matter and scope of product liability to the digital age, by using definitions that either clearly include technological products/services or are technology neutral.

**2. Main Provisions**

Subject	Overview
Right to compensation	A right to compensations is recognised to: <ol style="list-style-type: none"> <li>Any natural person who suffers <b>damage</b> caused by a defective product;</li> <li>A person that <b>succeed</b> or was <b>subrogated</b> to the right of the injured person;</li> <li>A person acting on <b>behalf</b> of one or more injured persons</li> </ol>
Defectiveness	A product is defective if it does not provide the safety the public, at large, is entitled to expect. This Proposal introduces new circumstances to be taken into account to determine defectiveness, such as self-learning abilities that may impact the safety of the product
Burden of Proof	As a general rule, the claimant has to prove the <b>defectiveness</b> of the product, the <b>damage</b> suffered and the <b>causal link</b> between the defectiveness and the damage. Nevertheless, the Proposal introduces situations where the defectiveness of the product and the causal link can be <b>presumed</b> , as in the case of products of great technical or scientific complexity. All presumptions are <b>rebuttable</b> .

Subject	Overview
<b>General Provisions on Liability</b>	<ul style="list-style-type: none"> <li>• When several economic operators are liable for the same damage they can be held liable <b>jointly or severally</b>;</li> <li>• There shall not be a reduction of liability if the damage is also caused by an <b>omission</b> of a third party;</li> <li>• Liability can be <b>reduced</b> if the injured person is also at <b>fault</b> for the damage;</li> <li>• <b>Liability cannot be limited or excluded</b> by a contractual provision or national law;</li> <li>• General liability limitation period of <b>3 years</b>, however, not after <b>10 years of product's placement on the market</b>, except in exceptional circumstances where it can be <b>15 years</b>.</li> </ul>
<b>Transparency</b>	Member States should publish any <b>final judgement by national courts</b> relating to this Directive or on product liability.

### 3. Conclusion & Next Steps

Overall, Proposal extends the scope of application of the EU product liability rules to cover both defective physical and digital products, allowing injured parties to claim compensation for damages caused by those defective products, such as property loss or data loss. Moreover, the rules in the Proposal make damage claims more accessible for consumers, by alleviating the burden of proof and creating obligations to disclose information, ultimately, decreasing information asymmetries between consumers and businesses.

The Proposal will be subject to further negotiations and will need to be adopted by the European Parliament and the Council before coming into force.

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