



## Questions and answers on the revision of the Product Liability Directive

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### 1. Why do product liability rules need to be updated?

For nearly 40 years, the Product Liability Directive (PLD) has provided a legal safety net for citizens to claim compensation when they suffer damage caused by defective products. However, the PLD dates back to 1985 and does not cover categories of products emerging from new digital technologies, like smart products and artificial intelligence (AI). Similarly, the current rules are unclear about how to determine who would be liable for defective software updates, defective machine learning algorithms or defective digital services that are essential for a product to operate. The current rules are silent on who is liable when a business substantially modifies a product that is already on the market or when a product has been directly imported from outside the Union by a consumer. This makes it difficult for businesses to assess the risks of marketing innovative products and leaves victims of damages without the possibility of compensation for an increasing number of products. The revision of the PLD will ensure that the new rules for product liability are adapted to new types of products to the benefit of both businesses and consumers.

### 2. What products will be covered by the revised rules?

The revised product liability rules will apply to all products, from garden chairs to cancer medicines, from agricultural products to advanced machinery but also to software updates. Like other products, defective software and AI systems could also cause harm, for example if they are embedded in, a cleaning robot, or placed on the market as a digital product in its own right, like a medical health app for a smartphone. The new PLD makes explicit that injured people can claim compensation if software or AI systems cause damage.

The new rules also consider products stemming from circular economy business, namely business models in which products are modified or upgraded. The proposal creates the legal clarity that industry needs in order to embrace circular business models. The rules of the PLD (including the possible presumptions) would apply to remanufacturers and other businesses that substantially modify products in case these products cause damage to a person, unless they show that the defect relates to an unmodified part of the product.

### 3. How do the new rules ensure a better protection for consumers?

The new rules allow people to claim compensation for harm caused by a defective product, including personal injury, damage to their property or data loss. People can also claim compensation if the property that was damaged was used for professional as well as private purposes, such as a company cargo bike or home office equipment. To reflect the fact that product safety can be affected by software updates, upgrades and digital services; people will now also be able to claim compensation when these are defective and cause harm.

The new rules also help to put people claiming compensation on an equal footing with manufacturers, by requiring manufacturers to disclose information and by alleviating the burden of proof in complex cases, e.g. certain cases involving pharmaceuticals or AI.

### 4. Are there limits on the level of compensation that can be claimed under the new rules?

The revision modifies the current rules by removing the existing lower threshold and upper ceiling that has prevented people being fully compensated for the damage they suffer.

### 5. Can you use the PLD to get compensation for infringements of fundamental rights?

People will be able to bring a claim for damages against the manufacturer if the defective product has caused death, personal injury, including medically recognised psychological harm, damage to property or data loss.

The new rules do not allow compensation for infringements of fundamental rights, for example if someone failed a job interview because of discriminatory AI recruitment software. The draft AI Act currently being negotiated aims to prevent such infringements from occurring. Where they

nevertheless do occur, people can turn to national liability rules for compensation, and the proposed [AI Liability Directive](#) could assist people in such claims.

## **6. What are the changes for companies?**

Already today, companies are obliged to compensate people injured by defective products. In addition, the new PLD will now require companies to disclose evidence that a claimant would need to prove their case in court. This is to address the asymmetry of information between the manufacturer and consumer: manufacturers know much more than consumers about how the product in question was produced and brought to market.

## **7. Who is liable for defective products manufactured outside the EU?**

The existing PLD makes importers liable for defective products manufactured outside the Union. This is because it would have been too difficult for consumers to seek compensation from companies outside the Union.

Today's global value chains allow consumers to buy products from outside the Union directly, without an importer. That is why the new PLD will allow consumers to seek compensation from the non-EU manufacturer's representative. Thanks to the [Market Surveillance Regulation](#) and the upcoming revision of the General Product Safety Regulation, this will mean that, there will be an EU-based liable person from whom to seek compensation.

Distributors (offline and online sellers) can also be held liable if they fail to give the name of the EU-based liable person to the injured person on request. This applies to online marketplaces too, but only if they present themselves to the consumer as a distributor.

## **8. What is the relationship between this new PLD and the AI Act?**

In April 2021, the Commission published a proposal for a [Regulation on artificial intelligence](#) (AI Act). The AI Act sets out rules to ensure AI systems meet high safety requirements, including logging by design and cybersecurity features. This is similar to what other EU safety legislation does for other products, such as machinery, radio equipment or consumer products in general. The revised PLD makes clear that all these mandatory safety requirements, including those set out in the AI Act, should be taken into account when a court assesses if a product is defective. The revised PLD crucially also makes clear that software, including AI systems, is a product. Therefore, if AI systems are defective and cause death, personal injury, property damage or data loss, injured people can use the PLD to claim compensation. The revised PLD will give businesses the legal certainty and level playing field they need to invest in AI technologies, and will give consumers the protection they need to encourage the uptake of AI-enabled products in the future.

## **9. What is the relationship between this Directive and the proposed AI liability Directive?**

The PLD makes manufacturers strictly liable for harm caused by their defective products – this covers the full range of products, including software and AI systems. However, the PLD does not exist in isolation and victims often have a choice on which legal basis they want to make a claim. All Member States have fault-based liability regimes that require injured people to prove somebody's fault caused the harm they suffered. If a victim seeks compensation under such national fault-based liability rules (e.g. for harm not covered by the PLD such as infringements of fundamental rights or claims against users of products rather than against the manufacturer) and the claim concerns damage caused by an AI system, the proposed AI Liability Directive could, on certain conditions, help claimants overcome the difficulties they might otherwise face because of the opacity of the AI system involved.

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