















Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Awaiting Council's 1st reading position
Liability for defective products	
Subject 4.60.06 Consumers' economic and legal interests 4.60.08 Safety of products and services, product liability	
Legislative priorities Joint Declaration 2022 Joint Declaration 2023-24	

Key players			
European Parliament	Joint Committee Responsible		Rapporteur
	 Legal Affairs Internal Market and Consumer Protection		Appointed
		 ARIMONT Pascal	31/01/2023
		 BOTOȘ Vlad-Marius	31/01/2023
		Shadow rapporteur	
		 HETMAN Krzysztof	
		 LEITÃO-MARQUES Maria-Manuel	
		 REPASI René	
		 MELCHIOR Karen	
		 KOLAJA Marcel	
		 LAGODINSKY Sergey	
		 JURZYCA Eugen	
		 ZŁOTOWSKI Kosma	
		 MAUREL Emmanuel	
	 Legal Affairs Internal Market and Consumer Protection		

<p>Council of the European Union</p> <p>European Commission</p> <p>European Economic and Social Committee</p>	Committee for opinion	Rapporteur for opinion	Appointed
	ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
	Commission DG	Commissioner	
	Internal Market, Industry, Entrepreneurship and SMEs	BRETON Thierry	

Key events			
28/09/2022	Legislative proposal published	COM(2022)0495	
17/10/2022	Committee referral announced in Parliament, 1st reading		
16/03/2023	Referral to joint committee announced in Parliament		
09/10/2023	Vote in committee, 1st reading		
09/10/2023	Committee decision to open interinstitutional negotiations with report adopted in committee		
12/10/2023	Committee report tabled for plenary, 1st reading	A9-0291/2023	Summary
16/10/2023	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
18/10/2023	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
22/02/2024	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE758.731 GEDA/A/(2024)000537	
11/03/2024	Debate in Parliament		
12/03/2024	Decision by Parliament, 1st reading	T9-0132/2024	Summary

Technical information	
Procedure reference	2022/0302(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Rules of Procedure EP 58
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Awaiting Council's 1st reading position
Committee dossier	CJ24/9/11492

Documentation gateway

Document attached to the procedure		SWD(2022)0315	28/09/2022	EC	
Legislative proposal		COM(2022)0495	28/09/2022	EC	
Document attached to the procedure		SEC(2022)0343	29/09/2022	EC	
Document attached to the procedure		SWD(2022)0316	29/09/2022	EC	
Document attached to the procedure		SWD(2022)0317	29/09/2022	EC	
Economic and Social Committee: opinion, report		CES4922/2022	25/01/2023	ESC	
Committee draft report		PE745.537	05/04/2023	EP	
Amendments tabled in committee		PE746.997	04/05/2023	EP	
Amendments tabled in committee		PE747.001	04/05/2023	EP	
Committee report tabled for plenary, 1st reading/single reading		A9-0291/2023	12/10/2023	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2024)000537	24/01/2024	CSL	
Text agreed during interinstitutional negotiations		PE758.731	24/01/2024	EP	
Text adopted by Parliament, 1st reading/single reading		T9-0132/2024	12/03/2024	EP	Summary

Liability for defective products

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.

Liability for defective products

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 manufacturers 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 manufacturers 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 defendants disposal.

Member States should ensure that, at the request of a defendant that has presented facts and evidence sufficient to demonstrate the defendants 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 claimants 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.

Transparency				
LEITÃO-MARQUES Maria-Manuel	Shadow rapporteur	JURI	24/10/2023	Video Games Europe
LEITÃO-MARQUES Maria-Manuel	Shadow rapporteur	JURI	27/09/2023	Video Games Europe
LAGODINSKY Sergey	Shadow rapporteur	JURI	14/09/2023	Handelsverband Deutschland
ARIMONT Pascal	Rapporteur	JURI	13/09/2023	Handelsverband Deutschland
ARIMONT Pascal	Rapporteur	JURI	27/06/2023	Google
REPASI René	Shadow rapporteur	IMCO	26/06/2023	Independent Retail Europe (formerly UGAL - Union of Groups of Independent Retailers of Europe)
BOTO? Vlad-Marius	Rapporteur	IMCO	26/06/2023	Google
REPASI René	Shadow rapporteur	IMCO	09/06/2023	Bitkom e.V.
LEITÃO-MARQUES	Shadow	JURI	02/06/2023	Video Games Europe

Maria-Manuel	rapporteur			
REPASI René	Shadow rapporteur	IMCO	02/06/2023	American Chamber of Commerce to the European Union