Product Liability Directive: European industry calls for a major rethink

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European industry is extremely concerned about the lack of balance in the proposed Product Liability Directive (PLD) revision. Without rebalancing, the proposal will undermine European competitiveness and open the door to a litigation culture in Europe. This would, in turn, hinder investment in innovation and ultimately negatively impact consumers.

The current framework, which acts as a safety net for consumers when things go wrong, has worked well since 1985 because it successfully balances the interests and rights of businesses and consumers. Maintaining this balance while ensuring the framework keeps pace with technological developments, so citizens have trust in the digital age and companies have the legal certainty to invest and innovate is crucial.

As it stands, the proposed revision to the PLD would sweep away existing checks and balances and create a one-sided, litigation-friendly regime. The impact of the changes will significantly raise litigation risk, legal complexity and uncertainty for European businesses. There will be immense pressure, particularly for smaller companies, to settle cases rather than fight unmeritorious claims. Ultimately, the primary beneficiaries of the far-reaching change to the PLD will be lawyers and commercially motivated third-party litigation funders rather than European consumers.

The expanded scope to include digital products, combined with the *de facto* reversal of the burden of proof, disproportionate disclosure of evidence provisions and removal of compensation thresholds, present a genuine concern for all companies. As trilogues begin, we urge policymakers to rethink their approach to achieve an effective modernisation of the product liability framework:

- **Limit the alleviation of the burden of proof:** A cornerstone of the current PLD is that the claimant must prove the damage, the defect and the causal link between the two. This is a vital part of our European civil justice system. We are deeply concerned by broad exceptions to this concept linked to undefined terms, which, *de facto,* lead to a reversal of the burden of proof.[1] The scope of the alleviation should be significantly narrowed, and clarification must be provided as to what claimants must do and prove before any liability can be presumed. Failure would inevitably lead to excessive litigation and potentially non-legitimate claims.
- **Safeguards for disclosure of evidence:** The new disclosure rules lack sufficient safeguards to protect businesses against abusive discovery exercises or disclosure of commercially sensitive data or trade secrets. They represent a huge and costly legal risk for companies even before they get to trial. There is a real risk that businesses will be pressured into settling weak claims to avoid these costs. Disclosure of evidence must, therefore, be limited to only what is strictly necessary and proportionate. There should also be a reciprocal right for defendants to request relevant information from the claimant.
- **Scope fit for purpose:** Including software in a strict liability regime brings new questions, such as how to apply the concept of defectiveness. We believe more investigation into the effects of this extension is needed, as there is now greater legal exposure for software developers. Expanding the definition of damage to include data loss or corruption is a significant shift in the concept of safety, creates potentially open-ended liability for economic operators, will drive up prices and potentially restrict availability. As the Parliament proposed, a threshold should be introduced to prevent frivolous claims, and it should be clarified what should be compensated.

Modernising the product liability framework to account for new technological advances should not come at the expense of innovation or the European civil justice system's effective, fair and legally certain functioning. We therefore call for a reassessment of the far-reaching measures proposed in the revised PLD and the consequences European businesses and consumers could face from it.

[1] The vague concept of “excessive difficulties” of proving defectiveness would shift the burden of proof disproportionately onto the defendant, systematically allowing claimants to succeed without strong evidence. In addition, the Parliament added the concept of “possibility” of defectiveness to Art. 9(4)1b, which lowers the threshold for presumption to an absolute minimum.