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The new European Product Liability Directive and
it's expected impact on exposures under general
liability (and other) policies

The new European product Liability Directive

On 8 December 2024, the European Union adopted significant changes to the Product Liability Directive, modernizing a framework that had been largely unchanged for decades.

Introduction

The reform is designed to align product liability rules with the realities of today's digital age, the growing importance of the circular economy, and the increasing number of direct consumer purchases from outside the EU. The revised Directive will apply to all products placed on the market or put into service after 9 December 2026.

This article explores the anticipated impact of these changes on liability insurance claims in France, Belgium, the Netherlands, and the United Kingdom. The central question is whether the new Directive will materially alter exposures, costs, or claims behavior – both from the perspective of insurers and the parties involved.

Software and AI as a product

One of the most notable changes introduced by the revised Directive is the broadened definition of a “product.” In addition to traditional goods, the scope now explicitly includes raw materials such as gas and water, electricity, and digital manufacturing files. Most importantly, software is now recognized as a product in its own right, defined to cover operating systems, firmware, computer programs, applications, and AI systems – regardless of how they are delivered or used, so including software as a service (SaaS). This definition extends not only to the software itself but also to associated services and updates, marking a significant shift in how liability may arise in the digital age.

France

In France, the scope of the product liability regime was progressively extended to include various categories of products such as second-hand goods, digital products and software. The clear inclusion of new technologies is obviously welcome but raises questions in respect of integrated products. Clarifications will be necessary and may result in contradictory case law.

Belgium

The inclusion of software within the definition of “product” clarifies prior uncertainty in Belgian legal literature, while the explicit addition of AI systems broadens the scope of liability. A notable consequence is potential liability for non-professional data loss caused by defective software or malfunctioning AI. Since general liability policies often exclude data loss or pure economic loss, insurers may need to revisit policy wordings to prevent gaps or overlaps with cyber and technology E&O insurance.

Netherlands

For the Dutch insurance market, the broadened definition of “product” represents a relatively limited change, as software was already generally considered a product. The inclusion of AI systems is a significant clarification, and notably, associated services now also fall within the scope, departing from the previous principle that services were excluded. Providers of such services and their insurers should be aware of this change, ensuring that coverage extends appropriately, including beyond pure financial loss, where relevant.

UK

Due to the fact the United Kingdom is no longer a member of the European Union, it is not obliged to implement the revised Product Liability Directive (PLD) into domestic legislation. However, it is likely to inform any changes that will be made to domestic legislation and will, in any event, impact UK businesses that operate within the EU.

The broader definitions bring clarity around claims for data loss as digital services and AI software have been brought into the product safety arena, which arguably better reflects the complexities of the modern era. Insurance policies will need to be reviewed to ensure that there is cover for losses arising from digital products, whether under a general liability policy or a more specific cyber policy.

Broader scope of liable parties

Another key reform concerns the expansion of the circle of potentially liable parties. The Directive introduces the concept of the “market participant,” significantly widening liability beyond the traditional “producer.” This category now includes not only manufacturers of products or components, but also providers of associated services, authorized representatives, importers, fulfillment service providers, and distributors – and in some cases even online platforms.



To ensure that injured parties can effectively claim compensation, particularly when manufacturers are based outside the EU, the Directive establishes a tiered system of responsibility. Liability first falls on the EU-based manufacturer of the defective product or component. If no such manufacturer is present, claims may be brought against the importer or authorized representative. In the absence of either, the obligation shifts to fulfillment service providers, and finally, if necessary, to distributors – unless the distributor promptly identifies another EU-based market participant who can be held liable.

France

The number of companies potentially liable will increase to favor the victims' indemnification within the EU. Because liability of the economic operators is joint and several, their insurers are increasingly exposed to a risk of complex recovery actions that could be initiated in various jurisdictions and subject to different statutes of limitations. In France, for example, subrogation claims and recourse actions are governed by distinct rules.

Belgium

Combined with recent Belgian Supreme Court case law holding that claims based on marketing of a defective product fall exclusively under the strict product liability regime, the broadened scope of potentially liable actors increases the likelihood that Belgian policyholders will be involved in disputes under this regime. For insurers, ultimate exposure will depend

on liability allocation in distribution and service agreements, and coverage terms may need to be adjusted to reflect an increased exposure.

Netherlands

The change from “producer” to the broader concept of “market participant” naturally means that more parties can be held liable, and their liability insurers may therefore face claims more frequently. This includes not only claims from consumers but also from other jointly liable market participants and their liability insurers. Although under Dutch law jointly liable parties can in principle seek recourse from one another based on their respective shares of the damage, contractual clauses such as indemnities and exclusions often establish a different allocation. As a result, in practice, parties with the weakest bargaining power may bear disproportionate losses, even where their causal contribution is minimal.

An important change for Dutch first-party insurers is that the Dutch legislator intends to repeal article 6:185 DCC from article 6:197 DCC (the so-called “Temporary Regulation on Recourse Rights”). This means that, unlike the current situation, Dutch first-party insurers that have compensated consumers for damage will be able to exercise recourse based on the Directive's protections, whereas at present they are limited to the general tort-based claim, which is frequently not sufficient with respect to all market participants in the chain.

UK

The broadening of the scope of liable parties means additional members of the supply chain will fall under the PLD, this includes those in the UK making products which are available in the EU market. Existing policies will need to be reviewed to check whether they cover the new liability.

Claims exposures are likely to increase as the potential risk of cross-border claims may be higher. Risk management strategies will need to be updated, and some UK businesses will need to enter into contractual arrangements with EU partners/representatives in order to comply with their obligations.

Legal presumptions in the benefit of the claimant

The revised Directive eases the claimant's evidentiary burden by introducing rebuttable presumptions in product liability cases. Under the new rules, a product is presumed defective if the defendant fails to provide access to relevant evidence, if it does not comply with mandatory safety standards, or if it malfunctions under normal use. Presumptions also apply where technical or scientific complexity makes proof excessively difficult, as long as the claimant can make the defect or causal link plausible.

These measures aim to rebalance the information gap between claimants and manufacturers, improving access to compensation in complex disputes. At the same time, fairness is preserved by allowing defendants to rebut such presumptions.

France

In accordance with the CJEU's case law, plaintiffs before French courts can already prove defectiveness and/or causation through presumptions and "signs" provided that these signs are precise, reliable and consistent. Yet, the presumptions set out by the New Product Liability Directive go beyond and will likely expose the defendants and their insurers to higher risks of adverse findings, especially when it is considered that the matter is "technically" or "scientifically" complex.

Belgium

The introduction of rebuttable presumptions lowers the evidentiary burden for claimants, increasing the likelihood of liability findings. This may translate into a higher volume of claims and incentives to settle, particularly in technically complex cases. In addition, defendants who seek to rebut such presumptions will likely need to rely on court-appointed experts. Since expert proceedings are often lengthy and costly in Belgium, insurers should factor this into premiums, reserves and coverage conditions.

The Netherlands

For the Dutch insurance market, the most impactful change in the revised Directive is that if market participant fails to provide relevant evidence, the product is presumed defective. Insurers will therefore even more than before depend on their insureds to maintain proper internal documentation, such as development files, and to provide it in a timely manner. In the Netherlands, courts were already able to assist claimants through presumptions, reversed burdens of proof, and heightened evidentiary obligations, so the other evidentiary presumptions are largely a formalization rather than a radical change.

UK

Again, this currently only applies to those UK businesses that operate in the EU, but the lower evidentiary threshold of the PLD is likely to mean that more claims will

succeed. In particular, claims involving products which have complex or technical issues are more likely to be found in favour of the claimant.

Furthermore, the presumptions set out in the PLD may make it easier for a claimant to demonstrate an underlying defect, which in turn is likely to increase the defendants' increasing exposure to claims. There is also an increased risk for defendants who do not cooperate with disclosure, as courts may infer liability in the absence of evidence under the PLD.

Overall, there is likely to be a higher claim frequency, with claims becoming more difficult to successfully defend, as claimants have more scope to involve others in the supply chain and are less likely to be defeated by issues such as lack of proof, which has previously been a barrier to success for some claimants.

Disclosure of evidence

The Directive introduces a harmonized right of access to evidence in product liability proceedings, establishing minimum standards that Member States must implement, while allowing them to provide even greater protection if they choose. Claimants seeking compensation for damage caused by a defective product may request the court to order the defendant to disclose all relevant evidence in their possession. Access is limited to what is necessary and proportionate, with courts required to balance the legitimate interests of all parties, including the protection of confidential information and trade secrets. Courts may also require that evidence be presented in an accessible and understandable form.

France

There is no duty to disclose evidence under French law. A party can file a request for production of documents. The conditions are, however, quite strict, notably because the requested documents must be precisely identified. The disclosure of evidence should be made easier under

the New Product Liability Directive but it is unsure how these rules will be interpreted and applied by French courts considering the prohibition of fishing expeditions.

Belgium

The new disclosure rules go beyond existing Belgian mechanisms, which are limited to the compelled disclosure of existing documents under Articles 877 et seq. of the Judicial Code, without empowering courts to order compilation of new evidence. For insurers, this may require budgeting for higher costs of producing technical material, as well as potential premium adjustments. Insurers may also wish to anticipate shortcomings in insureds' record-keeping by introducing specific obligations or coverage exclusions.

Netherlands

In the Netherlands, the implementation of the Directive is largely already reflected in the newly introduced Articles 194 and 195 of the Dutch Code of Civil Procedure, enacted earlier this year. These provisions allow claimants to request access to relevant evidence while including safeguards to prevent "fishing expeditions," ensuring that requests are specific, proportionate, and balanced against the legitimate interests of the parties.

UK

As set out above, this will currently only apply to UK businesses that operate within the EU.

This reciprocal right to disclosure will help to ensure defendants are not unfairly prejudiced and can have access to the key documentation in order to defend any claims. However, with the increased access to evidence, claimants may be more likely to substantiate their claims. Claimants who were previously finding it difficult to access to technical information can now apply to the courts to require disclosure of relevant evidence.

Insurers and insureds will need to ensure they are prepared for more extensive disclosure obligations and consider if current policy wordings cover the potential increased exposure caused by the potential ramifications of a failure to comply with such obligations.

Conclusion

The revised European Product Liability Directive modernizes liability rules to reflect today's digital and interconnected market. It broadens the definition of "product" to include software, AI systems, and associated services,

and expands the circle of potentially liable parties throughout the supply chain. Claimants benefit from lowered evidentiary burdens through rebuttable presumptions and enhanced access to evidence, making it easier to substantiate claims. As a result, businesses and insurers face greater potential exposures, increased complexity in allocating liability, potentially higher costs to meet disclosure obligations and to rebut evidentiary presumptions, and a greater need to ensure that risk management, documentation, and insurance coverage are adequate to meet these evolving obligations.

Worth noting: The new directive removes the EUR 500 threshold for material damage, which previously excluded low value property claims from the product liability regime. This change is likely to increase the number of small individual claims brought directly under the product liability regime, but it could also encourage consumers to pool their claims through collective redress mechanisms, thereby increasing exposure for market participants – an important risk for liability insurers to be aware of

What's Changing? The New European Product Liability Directive at a Glance

Digital Age, Digital Products

"Product" now includes software, AI systems, and digital services. Updates and related services are also covered, extending liability beyond traditional goods. Companies and insurers should review and, if needed, expand coverage for digital exposures.

Liability Across the Supply Chain and Including those who reintroduce products

Liability extends to more actors – manufacturers, service providers, importers, distributors, fulfillment partners, and online platforms. And also to anyone substantially modifying or reintroducing a product.

As a result, insurance coverage and risk management practices should be reviewed, commercial contracts should clearly allocate responsibilities, and insurers should expect more complex, cross-border claims.

Claimants Get a Boost

Rebuttable presumptions lower the evidentiary burden. If a company fails to provide relevant evidence, a product may be presumed defective, particularly in complex or technical cases.

Transparency & Evidence

Claimants gain a harmonized right to request key evidence. Businesses and insurers must prepare for greater documentation and disclosure duties – and potential cost increases linked to compliance and rebutting presumptions.

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