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Product Liability Is Changing: The Litigation Implications of the EU's New Directive

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The revised Product Liability Directive changes the rules of the game for product liability disputes. From identifying potentially liable parties to accessing evidence and challenging claims, businesses will face a new legal landscape, as the 9 December 2026 transposition deadline approaches.

A defective product can trigger far more than a compensation claim. It can raise questions about who is liable, what evidence must be disclosed and whether a defense available in one EU Member State will remain available in another. Directive (EU) 2024/2853 replaces the EU's 1985 product liability framework, adapting it to digital technologies, increasingly complex supply chains and the evidential challenges associated with modern products. For businesses, the implications extend beyond product compliance: the Directive may influence how claims are brought, defended and ultimately resolved.

1. Who May Be Liable? Look Beyond the Manufacturer.

Modern products rarely reach the market through a simple supply chain. Reflecting this reality, the Directive broadens the range of economic operators that may be held liable, depending on the circumstances. These may include manufacturers, importers, authorized representatives, fulfilment service providers and certain online platforms. The framework also expressly covers software and digital manufacturing files and recognizes certain related digital services within its scope. For claimants, identifying the appropriate defendant may require a closer examination of the roles played by multiple entities in the development, manufacture and distribution of a product. For defendants, the allocation of responsibilities across the supply chain may become central to the defense and to subsequent recourse proceedings.

2. The Evidence Game Is Changing.

In product liability litigation, the decisive question may be not only what went wrong, but who holds the evidence needed to prove it. Articles 9 and 10 introduce mechanisms that may materially affect the evidential position of claimants and defendants.

Under Article 9, courts may order the disclosure of relevant evidence held by a party, subject to specified conditions, including necessity and proportionality. Appropriate consideration must also be given to confidentiality and trade secrets. The mechanism is available to both claimants and defendants, subject to the applicable requirements. Article 10 establishes rebuttable presumptions concerning defectiveness and causation in defined circumstances. These include certain failures to comply with disclosure obligations, non-compliance with applicable product safety requirements, manifest malfunction and cases involving excessive technical or scientific complexity, provided the statutory conditions are met. The claimant retains the burden of establishing the elements of

the claim, subject to these presumptions. Where a presumption applies, however, the claimant may be able to establish the relevant element without proving it directly in the ordinary manner. The defendant retains the opportunity to challenge the application of the presumption and to rebut it with appropriate evidence.

This may change the dynamics of litigation. Technical documentation, testing records, product versions, software updates, incident reports and records of product modifications may become central to the parties' respective cases. Further, where appropriate and proportionate, courts must also be able to require that disclosed evidence be presented in an easily accessible and understandable manner. This may require businesses not merely to produce existing documents, but also to organize, classify or explain complex technical material in a form that can be meaningfully assessed in the proceedings.

The ability to preserve, retrieve and interpret this material may influence the prospects of success, the cost of proceedings and the commercial assessment of a dispute. Evidence management is therefore not merely an operational concern. It may become a critical factor in determining how effectively a claim can be pursued or defended.

3. Can Businesses Still Rely on Existing Defenses?

The Directive retains established grounds of exemption from liability, including the development risk defense. Under Article 11(1)(e), an economic operator may rely on this defense, subject to the applicable conditions, where it proves that the objective state of scientific and technical knowledge was insufficient to discover the defectiveness at the relevant time. The assessment encompasses the time when the product was placed on the market or put into service, as well as the period during which it remained within the manufacturer's control.

However, Article 18 permits Member States, subject to specific conditions, to retain or introduce measures excluding the development risk defense in defined circumstances. These measures are subject to substantive safeguards and notification requirements.

This is an important qualification for the Directive's harmonizing effect. Although the general framework is common, a permitted national measure may affect the availability of a defense in a particular jurisdiction. Businesses operating across borders should therefore avoid assuming that the same defense will necessarily be available in every relevant market. For litigators, these rules may raise threshold questions that determine the viability of a claim: which liability regime applies and whether a particular defense remains available.

4. One EU Framework. Different Litigation Risks.

Article 3 establishes full harmonization in the matters governed by the Directive. Member States cannot generally maintain or introduce divergent product liability rules, whether more or less stringent, unless the Directive expressly permits them to do so.

Full harmonization does not, however, eliminate every source of national variation. Article 2(4) preserves certain rights under national law, including contractual liability, non-contractual liability based on grounds other than the product defectiveness addressed by the Directive and qualifying special liability systems. National law also remains relevant to certain matters, including compensation for non-material losses, rights of recourse and the suspension or interruption of limitation periods. Article 9(7) preserves national rules on pre-trial disclosure, while Article 18 expressly permits a limited form of national derogation.

The distinction matters in cross-border disputes. The relevant analysis must separate substantive rules harmonized at EU level from national choices expressly permitted by the Directive and matters left to national law. Each may affect the

parties' legal position in different ways. The approaching transposition deadline makes this assessment particularly important. The common deadline does not, in itself, establish that every Member State has completed the legislative process or that the practical consequences will be identical across jurisdictions. For businesses supplying products in multiple markets, the applicable national implementing measures may therefore be material to the assessment of litigation exposure.

5. The Bottom Line: Compliance Is Only Part of the Picture.

The new Product Liability Directive does not make liability automatic. It does, however, change the legal and evidential framework in which liability will be contested. For claimants, the identification of potentially liable parties, access to evidence and the availability of statutory presumptions may shape the formulation and substantiation of claims. For defendants, the ability to challenge defectiveness and causation, establish available defenses and address disclosure requests may prove decisive.

In the new product liability landscape, the challenge is not simply to determine when liability may arise, but to understand who may bear it, what evidence may determine the outcome and which defenses will remain available. Litigation readiness may prove as important as product compliance.

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