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The Directive on liability for defective products

1. Introduction

Directive .../... of ... of the European Parliament and of the Council on liability for defective products (the “**PLD**” or the “**Directive**”)¹ repeals [Council Directive 85/374/EEC of 25 July 1985](#) (the “1985 PLD”)².

The PLD includes the following chapters: (i) General provisions; (ii) Specific provisions on liability for defective products; (iii) General provisions on liability; and (iv) Final provisions.

The Directive is not just an adaptation. It is a substantial modification of the existing regime. As the preamble notes, it was necessary to adapt the system established by the 1985 PLD to the new reality of the European Union (“**EU**”) market concerning the changes that have taken place in the way products are manufactured, distributed and used and, in particular, to adapt the EU product liability regime to new developments in the fields of emerging digital technologies and the digital world³. In addition, a harmonised regime has been further developed by establishing common rules for legal proceedings in the event of damage caused by defective products, including rules on presumptions.

The purpose of this Legal Briefing is to explain the main elements of the new Directive. It also includes an annex comparing the two sets of rules.

2. Scope of application of the new PLD

It applies only to goods placed on the market from the moment that Member States must have fulfilled their transposition obligation⁴.

1. The Directive was adopted by the Plenary of the European Parliament on 12 March 2024 and is awaiting translation and publication in the Official Journal of the European Union. The official final text of the Directive is available at: [Texts adopted - Liability for defective products - Tuesday, 12 March 2024 \(europa.eu\)](#).

2. Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, 29/33.

3. Recital (3) of the PLD.

These rules do not affect the protection included in the EU rules on the protection of personal data, of rights arising from national rules on contractual or non-contractual liability or any special liability regime prior to 30 July 1985, or of the rights of persons injured under national rules on contractual or non-contractual liability for reasons other than the defectiveness of a product.

Specifically, the Directive applies to:

- i) Products: These may be tangible or intangible (software, such as operating systems, firmware, computer programs, applications and artificial intelligence systems)⁵.
- ii) Software: This includes software regardless of the form in which it is provided or used and regardless of whether it is stored on a particular device or accessed through cloud technologies or communication networks or even whether it is provided through a “software as a service” model⁶. This also includes digital manufacturing files (files containing the functional information needed to produce tangible items through automated machine control)⁷.
- i) Related services: These are those digital services (including software updates and upgrades) that are integrated or interconnected with a product in such a way that their absence would prevent the product from performing one of its functions. Related services will be considered components of the products to which they are interconnected as long as they are under the control of the manufacturer of that product, i.e. when they are integrated or interconnected, or supplied by the manufacturer of the product or when the latter authorises their supply by a third party⁸.

4. The date included in Article 2 of the PLD coincides with the date by which Member States should have transposed the Directive under Article 22 of the PLD.

5. Recital (13) of the PLD.

6. Recitals (13) and (14) of the PLD.

7. Recital (16) of the PLD.

8. Recital (18) of the PLD.

The Directive does not apply to “digital information” or “digital files” (including multimedia files and electronic books); to the source code of computer programs, or to free and open source software that is developed or supplied outside the course of a commercial activity⁹.

3. Implementation of the new PLD. Transitional regime

Member States have 24 months to transpose the PLD into national law 20 days after its official publication in the Official Journal of the EU¹⁰.

Therefore, the rights and obligations included in the Directive will take effect when the national law is transposed.

The 1985 PLD will be repealed 24 months after the date of entry into force of the new PLD. However, the liability regime of the 1985 PLD will continue to apply to products that were placed on the market or put into service before the entry into force of the new PLD.

4. Essential elements for determining liability for defective products

4.1. Right to compensation

The right to compensation is established in favour of any natural person who suffers damage caused by a defective product, or in favour of those individuals who are subrogated to his right or act on behalf of one or more injured persons¹¹. Accordingly, the PLD further recognises that to the extent provided for by national law, the right to compensation of injured persons

9. Recitals (13) to (15) of the PLD.

10. Article 22 of the PLD.

11. Article 5 of the PLD.

12. Recital (27) of the PLD.

13. Recitals (22) and (25) of the PLD.

should benefit both direct victims and indirect victims, i.e., those persons who have suffered loss and damage as a result of the harm suffered by a direct victim of a defective product¹².

The PLD specifies that this right to compensation may not cover damage to goods used exclusively for professional purposes¹³. In this regard, where consumers’ personal data is not used for professional purposes, its destruction, loss or corruption will be compensable, unless such data can be recovered free of charge¹⁴.

In addition, while Member States must provide full and adequate compensation for losses suffered in cases of death, personal injury, damage to property or destruction of property and loss, destruction or corruption of data, it is necessary for Member States themselves to establish the rules for calculating the corresponding compensation¹⁵.

4.2. Damage

Damage, in addition to death, personal injury and property damage, includes medically recognised and certified damage to mental or psychological health¹⁶. It also includes the destruction or corruption of data that is not used for professional purposes¹⁷.

Compensation for non-material damage will only be payable if it is compensable under national law.

Finally, it specifies that the concept of damage provided for in the Directive does not affect national legislation concerning compensation for damage arising from other liability regimes¹⁸.

14. Recitals (20) and (22) of the PLD.

15. Recital (23) of the PLD.

16. Recital (21) of the PLD.

17. Article 6 of the PLD.

18. Article 6(3) and Recital (24) of the PLD.

4.3. Defective product

The definition of a defective product is one of the most significant changes. A general rule has been introduced, stating that a product is defective when it “*does not provide the safety which a person is entitled to expect or that is required under Union or national law.*”¹⁹

The PLD establishes all the circumstances that will be taken into account (although it is not an exhaustive list) to determine whether a product is defective. In particular, it includes: the labelling of the product, its design, its technical characteristics, its composition, its packaging, as well as its assembly, installation, use and maintenance instructions. It also includes the “reasonable misuse” of the product; the safety requirements of the product and the failure of a product intended to prevent damage to achieve that purpose; the effects on the product's ability to continue to acquire new properties once placed on the market or put into service; as well as the effects that interconnected products may have on each other²⁰.

4.4. Liable economic operators

The rules on liable economic operators have been considerably expanded. Thus, the following may be liable, depending on the situation²¹:

- i) the manufacturer of a defective product²² including software developers²³;
- ii) the manufacturer of a defective component, “*where that component was integrated into, or inter-connected with, a product within the manufacturer's control and caused that product to be defective*”, without prejudice to the manufacturer's liability²⁴;

19. Article 7 of the PLD.

20. Recitals (30) to (34) of the PLD.

21. Article 8 and Recitals (36) to (41) of the PLD.

22. Article 8(1)(a) of the PLD.

23. Recital (13) of the PLD.

24. Article 8(1)(b) of the PLD.

25. Article 8(2) of the PLD.

- iii) those who substantially modify a product outside the manufacturer's control and then make it available on the market²⁵;
- iv) in cases of manufacturers established outside the EU, the importer or their authorised representative and the fulfilment service provider who performs two of the following functions: warehousing, packaging, addressing and dispatching of the product. In these cases, postal services and freight transport services are exempt²⁶;
- v) online platform providers that allow distance contracts to be concluded with traders if the conditions²⁷ for information storage provided for in Article 6(3) of Regulation (EU) 2022/2065 on a Single Market for Digital Services are met²⁸; and
- vi) distributors in the event that they fail to comply with the obligation to identify the liable economic operator established within the EU²⁹.

In addition, where no economic operator can be held liable, Member States may use existing national sectoral compensation schemes or set up new national schemes, which should preferably not be financed by public revenue, to compensate injured persons who have suffered damage caused by defective products³⁰.

4.5. Rules of exemption from liability

The following cases are considered exempt from liability³¹:

- i) Where a manufacturer or importer of the product in the EU did not place the product on the EU market or put it into service;

26. Article 8(1)(c)(iii) read together with Article 4(13) and Recital (37) of the PLD.

27. Article 8(4) and Recital (38) of the PLD.

28. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance), [PE/30/2022/REV/1], OJ L 277, 27.10.2022, p. 1/102.

29. Article 8(3) and Recital (37).

30. Article 8(5) and Recital (41) of the PLD.

31. Article 11(1) and Recitals (49) to (51) of the PLD.

- ii) Where the distributor did not make the product available on the market;
- iii) Where the defectiveness that caused the damage did not exist when the product was placed on the market or put into service, or, in the case of a distributor, when the product was made available on the market; or where the defect arose after that moment;
- iv) Where the defectiveness existed as a consequence of the product's compliance with legal requirements;
- v) Where the state of scientific and technical knowledge at the time the product was placed on the market or put into service, or during the period when the product was under the manufacturer's control, did not objectively allow the defectiveness to be discovered³²;
- vi) Where a manufacturer of a defective component proves that the defectiveness of the product is attributable to the design of the product in which the component has been integrated or to the instructions given by the manufacturer of that product to the manufacturer of the component;
- vii) Where a person substantially modifies a product, when the defectiveness that caused the damage relates to a part of the product not affected by the modification.

However, the PLD provides that even if the defectiveness of a product did not exist when the product was placed on the market, the economic operator is liable if that defectiveness is due to a "related service" linked to the product itself³³, to a substantial modification of the product or to software under the control of the manufacturer (including software updates or upgrades and the lack thereof)³⁴.

32. Recital (52) of the PLD.

33. Article 4(3) of the PLD.

34. Article 11(2) read in conjunction with Article 11(1)(c) and Recitals (50) and (51) of the PLD.

4.6. Special rules

A. Multiple economic operators

As already provided for in the 1985 PLD, where two or more operators are liable for the same damage, they may be held jointly and severally liable³⁵. Furthermore, the new PLD establishes that, in the case of products including software, the manufacturer of such software shall not be liable to a manufacturer who integrates the software products into the product, provided that the manufacturer of the software or the software component is a micro or small enterprise, and the manufacturer who integrates such software components into a given product has contractually agreed to waive the right of recourse against the manufacturer of the software³⁶.

B. Reduced liability

As in the 1985 PLD, the liability of the economic operator may be reduced or excluded where the damage is due both to the defective nature of the product and to the fault of the injured person or of any person under the responsibility of the injured person.

However, Member States should ensure that such liability is not reduced or disallowed where the damage is caused both by the defective nature of the product and by the act or omission of a third party³⁷.

C. Derogation from development risk defence

The new PLD recognises the possibility for Member States to maintain, introduce or amend measures under which economic operators covered by the new PLD may continue to be held liable even in cases where it has been established that the state of scientific and technical knowledge at the time when the product was placed on the market, put into service

35. Article 12 and Recital (53) of the PLD.

36. Article 12 and Recital (54) of the PLD.

37. Article 13 and Recitals (55) and (56) of the PLD.

or placed under the control of the manufacturer did not allow for the discovery of its defective nature³⁸.

In this respect, the 1985 PLD only recognised the possibility for Member States to maintain such measures if they already existed in their legal systems, but did not allow new measures to be introduced or existing ones to be amended.

However, under the rules of the new PLD, if Member States wish to introduce or amend existing measures within the meaning of this provision, they must do so subject to certain conditions: (i) they must be limited to certain products; (ii) they must be justified by public interest objectives; and (iii) they must be proportionate and fit for purpose without going beyond what is necessary. In addition, they must be reported to the Commission and the Commission will have a period of 6 months from the notification by the Member States to declare whether or not these requirements are respected. During this period, Member States may not adopt the new measures³⁹.

5. New rules harmonising legal claims for damage caused by defective products

The PLD establishes new rules on the proof of damage in legal proceedings, the burden of proof and presumptions to ensure a level playing field in the EU. However, such harmonisation is not complete, as for some issues it refers back to national law, particularly concerning the burden of proof⁴⁰.

38. Article 18(1) and Recital (59) of the PLD.

39. Articles 18(3) and 18(5) of the PLD.

40. Article 9(3) and Recital (42) of the PLD.

41. Articles 9(1) and 9(2) and Recitals (42) to (45) of the PLD.

42. Article 9(6) of the PLD.

5.1. Disclosure of evidence

Regarding the rules on the disclosure of evidence, Member States must establish in their national rules the possibility for not only claimants but also defendants to apply to the court for the disclosure of evidence in order to substantiate their claim or to defend themselves in legal proceedings⁴¹.

In particular, the request for the disclosure of evidence must be made in accordance with the principles of necessity and proportionality. It also includes an express reference to the obligation to protect confidential information, in particular, trade secrets.

In addition, it also highlights the new obligation for Member States to ensure that where a party is obliged to disclose evidence, national courts may require the disclosure of evidence in an accessible and comprehensible format if such disclosure is proportionate in terms of cost and effort for the required party⁴².

5.2. The presumptions

The PLD does not alter the general principle established in the 1985 PLD. Thus, the party that claims that damage has been suffered must prove such damage, the defectiveness of the product and the causal link between the damage and the defectiveness of the product⁴³. However, a series of presumptions⁴⁴ are established that allow for proof to the contrary by the defendants⁴⁵.

Specifically, the PLD establishes that **the defective nature of the product will be presumed** when the defendant fails to provide the evidence he is required to disclose, when the claimant demonstrates that the product does not comply with the safety standards provided by national or EU law, or when the claimant demonstrates that the damage was caused by an obvious malfunction of the product during reasonably foreseeable use or under ordinary circumstances⁴⁶.

43. Article 10(1) of the PLD.

44. Article 10(2) to (4) and Recitals (46) and (47) of the PLD.

45. Article 10(5) and Recital (46) of the PLD.

46. Article 10(2) of the PLD.

Furthermore, **the causal link between the defectiveness and the damage will be presumed** when it has been established that the product is defective and the damage suffered is typically consistent with that defect⁴⁷.

Finally, **the defectiveness and the causal link to the damage shall be presumed** when there are excessive technical or scientific difficulties in proving it and the claimant succeeds in demonstrating that it is likely that the product is defective or that there is a causal link to the damage⁴⁸ or both.

5.3. Limitation period

The new PLD maintains the limitation period of 3 years for the initiation of proceedings as established by the 1985 PLD. This period will start when the person had or should have had knowledge of the damage, the defect and the identity of the economic operator who can be held liable⁴⁹.

Furthermore, as in the 1985 PLD, the injured person shall not be entitled to compensation after 10 years have elapsed since the product was placed on the market or, in the case of substantial modifications, after it has been made available on the market following the implementation of such modifications, unless the injured party initiates proceedings earlier⁵⁰.

However, a new feature has been introduced when compared to the 1985 PLD: if the personal injury was already latent, the expiry period will be 25 years, unless the injured party has initiated proceedings before⁵¹.

5.4. Right of recourse

There is a **possibility of recourse which was not expressly recognised in the 1985 PLD**. Where more than one economic operator is liable for

the same damage, the one who has compensated the injured person has the right of recourse against the other economic operators held liable. This was not specified in the 1985 PLD, although the possibility for the existence of national rules in this regard was foreseen⁵².

5.5. Publication of judgments

The Directive requires Member States to publish in an accessible electronic format the judgments of the highest courts (in the case of Spain, the Supreme Court or the Provincial Courts) which definitively end any proceedings initiated on the basis of the provisions of the PLD. The Commission must provide access to such information through a database⁵³.

6. Businesses under the PLD

The new PLD harmonises product liability more extensively in the EU, mainly in view of the complexity of products, and the difficulty of maintaining a level playing field in the Member States given the divergence in liability rules⁵⁴.

In addition, a more rigorous regime has been established, aimed at greater consumer protection, although it also includes important safeguards to prevent excessive stringency in the obligations of companies from undermining innovation, at a time of evident technological transformation.

However, it will be necessary to await transposition by the Member States to determine its scope, given that there is some leeway in certain judicial aspects, particularly with regard to the applicable procedural rules. The greatest possible clarity on those aspects where there is some leeway would be desirable, in order to provide legal certainty, and to ensure a proper balance between the different interests at stake.

47. Article 10(3) of the PLD.

48. Article 10(4) of the PLD.

49. Article 16 of the PLD.

50. Article 17(1) and Recitals (57) and (58) of the PLD.

51. Article 17(2) and Recital (57) of the PLD.

52. Article 14 of the PLD.

53. Article 19 and Recitals (60) and (61) of the PLD.

54. Recital (64) of the PLD.

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The Product Liability Regime in the EU - Comparison between the 1985 Directive and the regime of the new Directive

Equivalence between the articles of the new PLD and the 1985 PLD	Differences between the two legal instruments
<p>Article 2 of the new PLD - Scope of application:</p> <ul style="list-style-type: none"> i) Article 17 of the 1985 PLD is equivalent to Article 2(1) of the new PLD. ii) Article 14 of the 1985 PLD is equivalent to Article 2(3) of the new PLD. iii) Article 2(4)(a) of the new PLD has no equivalent in the 1985 PLD. iv) Article 13 of the 1985 PLD is equivalent to Article 2(4)(b) and (c) of the new PLD. 	<p>The scope of application has been expanded. The new PLD will apply to both tangible and intangible products. Specifically, it will apply to:</p> <ul style="list-style-type: none"> i) software, with the exception of source code of computer programs and open-source software that is developed or provided outside the course of a commercial activity ("free and open-source software"); and ii) digital manufacturing files containing the functional information necessary to produce tangible items by enabling automated control of machinery or tools.
<p>Article 4 of the new PLD - Definitions:</p> <ul style="list-style-type: none"> i) Article 2 of the 1985 PLD is equivalent to Article 4(1) of the new PLD - Definition of "product". ii) Article 4, sections (2) to (5) and (6) to (18) with the exception of (10) of the new PLD have no equivalent in the 1985 PLD. iii) Article 3, sections (1) and (2) of the 1985 PLD is equivalent to Article 4(10) of the new PLD - Definition of "manufacturer". 	<p>Sixteen new definitions have been introduced in comparison with the 1985 PLD: (i) "digital manufacturing file"; (ii) "component"; (iii) "related service"; (iv) "manufacturer's control"; (v) "data"; (vi) "making available in the market"; (vii) "placing on the market"; (viii) "putting into service"; (ix) "authorised representative"; (x) "importer"; (xi) "fulfilment service provider"; (xii) "distributor"; (xiii) "economic operator"; (xiv) "online platform"; (xv) "trade secret" and (xvi) "substantial modification".</p>
<p>Article 5 of the new PLD - Right to compensation:</p> <p>No equivalent exists in the 1985 PLD.</p>	<p>Article 5 of the new PLD expressly introduces a right to compensation which the 1985 PLD regime did not include (in the 1985 PLD, references to compensation were only to be found in the explanatory memorandum).</p>

Equivalence between the articles of the new PLD and the 1985 PLD	Differences between the two legal instruments
<p>Article 6 of the new PLD - Damage:</p> <ul style="list-style-type: none"> i) Article 9(1)(a) of the 1985 PLD is equivalent to Article 6(1)(a) of the new PLD. ii) Article 9(1)(b) of the 1985 PLD is equivalent to Article 6(1)(b) of the new PLD. iii) Article 6(1)(c) of the new PLD has no equivalent in the 1985 PLD - Relating to the loss or corruption of data which is not used exclusively for business purposes. iv) Article 6(2) of the new PLD has no equivalent in the 1985 PLD - Relating to damage covered by the right to compensation under the new PLD. v) Article 9(2) of the 1985 PLD is equivalent to Article 6(2) of the new PLD. 	<p>It starts from the 1985 definition of damage, but broadens the concept: Damage covered still includes death, personal injury and damage to property. However, the new PLD also explicitly mentions damage to mental or psychological health. In addition, the destruction or corruption of data that is not used for professional purposes has been included.</p>
<p>Article 7 of the new PLD - Defectiveness:</p> <p>Article 6 of the 1985 PLD is equivalent to Article 7 of the new PLD.</p>	<p>It is based on the definition of the 1985 PLD but introduces relevant changes. The main change is that the list of factors to be considered in proving the defectiveness of a product has been expanded to include: (i) the labelling of the product, its design, its technical characteristics, its composition, its packaging, as well as its assembly, installation, use and maintenance instructions. It also includes the "reasonable misuse" of the product; (ii) the safety requirements of the product and the failure of a product intended to prevent damage to achieve that purpose; (iii) the effects on the product of the product's ability to continue to acquire new properties once placed on the market or put into service; and (iv) the effects that interconnected products may have on each other.</p>

Equivalence between the articles of the new PLD and the 1985 PLD	Differences between the two legal instruments
<p>Article 8 of the new PLD - Economic operators liable for defective products:</p> <ul style="list-style-type: none"> i) Article 3(3) of the 1985 PLD is equivalent to Article 8(3) of new PLD. ii) Article 8, sections (1), (2), (4) and (5) of the new PLD have no equivalent in the 1985 PLD. 	<p>The rules on liable economic operators have been significantly expanded. New features worth highlighting include: (i) the manufacturer and the manufacturer of a component that caused the defect are primarily liable; (ii) those who substantially modify a product placed on the market or in service may be considered "manufacturers" in the new PLD; (iii) software developers are considered "manufacturers"; (iv) in cases of non-EU manufacturers, the importer or his authorised representative may be considered liable "manufacturers"; (v) in the case of an importer or his representatives outside the EU, a fulfilment service provider offering two of the following functions may be considered liable: warehousing, packaging, addressing or dispatching of the product. In these cases, postal services and freight transport services are exempt; (vi) providers of online platforms allowing distance contracts to be concluded with traders may also be liable under certain conditions; (vii) distributors, where they fail to identify the liable operator, provided that he is established in the EU; and (viii) a specific rule is included (Article 8(5) new PLD): where no economic operator can be held liable, Member States may use existing national sectoral compensation schemes or set up new national schemes, which should preferably not be financed from public revenues, to compensate injured persons who have suffered damage caused by defectiveness products.</p>
<p>Article 9 of the new PLD - Disclosure of evidence:</p> <p>No equivalent exists in the 1985 PLD.</p>	<p>This issue was not regulated in the 1985 PLD.</p> <p>It includes the possibility for claimants and defendants to request the disclosure of evidence in order to defend themselves in legal proceedings. It expressly provides for the protection of business secrets and for national courts to require the disclosure of evidence in an accessible and comprehensible format if such disclosure is proportionate in terms of cost and effort for the obliged party.</p>
<p>Article 10 of the new PLD - Burden of proof:</p> <ul style="list-style-type: none"> i) Article 4 of the 1985 PLD is equivalent to Article 10(1) of the new PLD. ii) Article 10(2) to (5) of the new PLD has no equivalent in the 1985 PLD. 	<p>It has been substantially amended when compared to the 1985 PLD. The new system is much more comprehensive and establishes a number of presumptions which allow for evidence to the contrary by the defendants.</p> <p>The defective nature of the product will be presumed when the defendant fails to provide the evidence he is required to disclose or when the claimant demonstrates that the product does not comply with the safety regulations provided for by national or EU law or even when the claimant demonstrates that the damage was caused by an obvious malfunction of the product during reasonably foreseeable use or under ordinary circumstances.</p> <p>It must be read in conjunction with Article 9 of the new PLD.</p>

Equivalence between the articles of the new PLD and the 1985 PLD	Differences between the two legal instruments
<p>Article 11 of the new PLD - Exemption from liability: Article 7 of the 1985 PLD is equivalent to Article 11 of the new PLD.</p>	<p>As in the 1985 PLD, there are some exemptions from liability. The new PLD adds that where a person modifies a product, he is not liable for the defect of a part of the product that has not been modified. Furthermore, under the new PLD, even if the defect did not exist when the product was placed on the market, the economic operator is liable if that defect is due to a "related service" connected to the product itself or to a substantial modification of the product or to software (including software updates or upgrades and the lack thereof) under the control of the manufacturer.</p>
<p>Article 12 of the new PLD - Liability of multiple economic operators:</p> <ul style="list-style-type: none"> i) Article 5 of the 1985 PLD is equivalent to Article 11(1) of the new PLD. ii) Article 11(2) of the new PLD has no equivalent in the 1985 PLD. 	<p>As already provided for in the 1985 PLD, where two or more operators are liable for the same damage, they may be held jointly and severally liable. In addition, the new PLD provides that, in the case of products containing software, the manufacturer of such defective software is not liable if it is a micro or small enterprise, and if they have contractually agreed to waive their right of recourse against the manufacturer.</p>
<p>Article 13 of the new PLD - Reduction of liability:</p> <ul style="list-style-type: none"> i) Article 8 of the 1985 PLD is equivalent to Article 13 of the new PLD. 	<p>As in the 1985 PLD, the liability of the economic operator may be reduced or disallowed where the damage is due both to the defective nature of the product and the fault of the injured party.</p>
<p>Article 14 of the new PLD - Right of recourse: No equivalent exists in the 1985 PLD.</p>	<p>This is a possibility which was not expressly recognised in the 1985 PLD. Where more than one economic operator is liable for the same damage, the one who has compensated the injured person has a right of recourse against the other economic operators. This was not specified in the 1985 PLD, although the possibility for the existence of national rules in this regard was foreseen.</p>
<p>Article 15 of the new PLD - Exclusion or limitation of liability:</p> <ul style="list-style-type: none"> i) Article 12 of the 1985 PLD is equivalent to Article 15 of the new PLD. 	<p>It is based on the 1985 PLD. As in that case, liability cannot be limited or excluded by contractual provisions or national law.</p>
<p>Article 16 of the new PLD - Limitation period: Equivalent to Article 10 of the 1985 PLD.</p>	<p>The new PLD maintains the three-year limitation period for initiating proceedings, which starts when the person knew or ought to have known of the damage, the defect and the identity of the economic operator who may be held liable.</p>

Equivalence between the articles of the new PLD and the 1985 PLD	Differences between the two legal instruments
<p>Article 17 of the new PLD - Expiry period:</p> <ul style="list-style-type: none"> i) Article 11 of the 1985 PLD is equivalent to Article 17(1) of the new PLD. ii) Article 17(2) of the new PLD has no equivalent in the 1985 PLD. 	<p>As in the 1985 PLD, the injured person shall not be entitled to compensation after the expiry of ten years from the placing on the market of the product or, in the case of substantial modifications, from the placing on the market after the application of such modifications, unless he institutes proceedings earlier.</p> <p>However, a new feature has been introduced when compared to the 1985 PLD: if the personal injury was already latent, the limitation period will be 25 years, which did not exist under the 1985 PLD regime.</p>
<p>Article 18 of the new PLD - Derogation from development risk defence:</p> <ul style="list-style-type: none"> i) Article 18(1) of the New PLD has no equivalent in the 1985 PLD. ii) Article 15(1)(b) of the 1985 PLD is equivalent to Article 18(2) of the new PLD. iii) Article 15, sections (2) and (3) of the 1985 PLD is equivalent to Article 18, sections (3) to (5) of the new PLD. 	<p>This refers to a possibility which was mentioned in Article 15(1)(b) of the 1985 PLD but which the new PLD expands. It recognises the possibility for Member States to maintain, introduce or amend measures under which economic operators covered by the new PLD may continue to be held liable even in cases where it has been established that the state of scientific and technical knowledge at the time when the product was placed on the market, put into service or placed under the control of the manufacturer did not allow for the discovery of the defectiveness of the product.</p> <p>If Member States wish to introduce or amend existing measures within the meaning of this provision, they must do so subject to certain conditions: (i) that they are limited to certain products; (ii) justified by public interest objectives; and (iii) proportionate and fit for purpose without going beyond what is necessary. In addition, they must notify the Commission, which will have a period of 6 months to declare whether or not these requirements are respected. During this period, Member States may not adopt the new measures (Article 18, sections (3) to (5) of the new PLD).</p>