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Public Consultation on EU Proposal for a Directive on Liability for Defective Products

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Background

The European Commission published a formal proposal for a ***Directive of the European Parliament and of the Council on Liability for Defective Products*** on 28th September 2022. This followed an evaluation¹ of the Product Liability Directive (PLD)², a public consultation held in Autumn 2021 and stakeholder workshops in late Q4 2021. As a result, the Commission identified two areas of concern. The first related to accountability. It was unclear who would be liable when a product that has been modified or remanufactured is defective and causes harm. In addition, it has become increasingly common for consumers to purchase products from non-EU countries without there being a producer or importer based in the EU. The second concerns the obstacles facing consumers in receiving compensation. It is proposed to remove the minimum financial threshold of €500, which would allow claimants to bring actions of any value under the PLD.

In this Directive, the European Commission is proposing 'better protection and higher compensation for victims' by providing legal clarity about which economic operators can be liable, creating a level playing field between EU and non-EU manufacturers, providing protection regardless of tangibility/intangibility of product, ensuring alignment with and reinforcement of product safety rules, restoring balance between manufacturers and injured persons, providing more legal certainty for businesses and more uniform protection for consumers.

¹ Evaluation of the Product Liability Directive, SWD (2018)157.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985L0374&from=EN>

Objectives of the Directive

The general objective of this Directive is to continue to ensure the functioning of the internal market, free movement of goods and undistorted competition between market operators and to continue to ensure a high level of protection of consumers' health and property, with 5 specific objectives:

1. Ensure liability rules reflect nature and risks of products in the digital age;
2. Ensure liability rules reflect nature of products in the circular economy;
3. Ensure there is always an EU-based liable person for defective products bought from producers outside the EU;
4. Ease the burden of proof in the case of complex products and clarify liability for undisclosed defects, while ensuring fair balance between producers and consumers:
5. Ease restrictions on making claims, while ensuring fair balance between producers and consumers.

The Commission proposes to achieve these objectives by providing legal certainty on what products and businesses are covered by no-fault liability. It will also encourage all businesses, including non-EU manufacturers, to place only safe products on the EU market in order to avoid incurring liability. The proposal will also ensure that people enjoy the same protection regardless of whether the product is tangible or digital. The burden of proof will be more fairly shared between injured persons and manufacturers in complex cases, increasing the chances of enforcing a successful compensation claim.

The Department of Enterprise, Trade and Employment recommends stakeholders visit the European Commission website³ which provides further information on the proposal.

³ https://single-market-economy.ec.europa.eu/single-market/goods/free-movement-sectors/liability-defective-products_en.

Breakdown of the Proposed Directive

This Directive contains four Chapters and twenty articles.

CHAPTER I - GENERAL PROVISIONS

This Chapter sets out the subject matter, scope of the proposals and the main terms used in the proposed Directive. It sets out what is defined as a product and clarifies when a related service is to be treated as a component of a product.

Question 1: What are your views on the scope of the proposed Directive? In your response, please provide specific details to support your position.

Question 2: What are your views on the definitions included in the proposed Directive, specifically the definition of a product?

CHAPTER II - SPECIFIC PROVISIONS ON LIABILITY FOR DEFECTIVE PRODUCTS

This Chapter sets out the conditions that lead to a right to compensation as a result of a defective product. It also sets out what constitutes as defectiveness and the economic operators with responsibility for same.

This Chapters also outlines disclosure of evidence, burden of proof and the conditions that must exist in order to qualify for an exemption from liability.

Question 3: In your opinion, are the conditions under which a natural person has a right to compensation adequate?

Question 4: Are you satisfied that the list of instances specified in Article 6 is sufficient to capture when a product may be deemed defective?

Question 5: What are your views regarding the range of economic operators that can be held liable for defective products?

Question 6: What are your views on the proposal in Article 8 that allows Member States to ensure that national courts, upon a request from an injured person, are empowered to order the defendant to disclose relevant evidence.

Question 7: Article 9 states that Member States shall ensure that a claimant is required to prove the defectiveness of a product. What are your views on the conditions listed in subsection (2) regarding instances where the presumption of defectiveness exists.

Question 8: What are your views on the criteria required to meet the exemption of liability?

CHAPTER III: GENERAL PROVISIONS ON LIABILITY

This Chapter remains closely based on the current PLD and outlines the general rules of liability, including the liability of multiple economic operators, the reduction of liability, exclusion or limitation of liability and limitation periods.

Question 9: The proposal allows that in situations where two or more economic operators are liable for the same damage, they can be held jointly liable. What are your views on this proposal.

Question 10: What are your views on the time limits proposed in Article 14(1),(2) and (3)? If you are of the view that the time limits proposed are not sufficient, please provide details to support same.

CHAPTER IV: FINAL PROVISIONS

This Chapter outlines the requirement of Member States to publish judgments delivered by national courts in relation to proceedings launched pursuant to this Directive.

This chapter also provides for the repeal of the current PLD and sets out transitional measures.

If you have any comments on this Chapter or on the proposal not covered in the questions above, including specific suggestions or amendments, please set them out below:

Deadline for Submissions

The deadline for responses is 27th April 2023. Submissions should be sent to:

conspol@enterprise.gov.ie .

When making your submission please provide the name of the individual, firm, or organisation, contact details and briefly describe your interest in the subject matter.

Freedom of Information Act 2014 and publication of submissions

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

General Data Protection Regulation

Respondents should note that the General Data Protection Regulation entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose limitation;
- Data minimisation;
- Accuracy;
- Storage limitation;

- Integrity and confidentiality, and
- Accountability.

The Department of Enterprise, Trade and Employment is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

Appendix – Reply Forms