

EU Publishes New Product Liability Directive

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Highlights

- European Union member states have two years from the date the directive takes effect to implement it into law
- The directive includes a presumption of defectiveness in certain circumstances
- The directive takes into account advances in technology and data protection, including provisions regarding on software and data

The European Union published its new [Directive of the European Parliament and of the Council on liability for defective products](#) on Nov. 18, 2024. The directive was first proposed in 2022 to “provide an EU-level system for compensating people who suffer physical injury or damage to property due to defective products.” The directive “shall apply to products placed on the market or put into service after . . . December [9th], 2026.”

Products placed on the market or put into service before that date will still be governed by the [directive issued in July 1985](#).

Over the past two years, there have been a number of major takeaways in the [new directive](#), including:

- The definition of the word product includes “all movables, even if integrated into another movable or into an immovable,” and includes “electricity, digital manufacturing files and software”
- Damage under the directive is defined as material losses relating to personal injury, harm to the product, or the loss or corruption of data
- A presumption that a product is defective when either a defendant fails to “disclose relevant evidence at its disposal,” or a plaintiff “establishes that the product does not comply with mandatory safety requirements,” or “establishes that the damage was caused by an obvious malfunction of the product”

The presumption of defectiveness can be present if courts find that “it would be excessively difficult for the claimant, in particular due to the technical or scientific complexity of the case, to prove the defectiveness or the causal link, or both.” The directive states that “manufacturers have expert knowledge and are better informed than the injured person,” and as such it found it necessary to “alleviate the claimant’s burden of proof provided that certain conditions are fulfilled.”

What Comes Next

After going into effect next month, European Union member states will have two years to implement the directive into law. Manufacturers should be proactive in strategizing what effect these laws will have on products that will enter the market after Dec. 9, 2026.

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