IMC Liability Insurance conference
2nd September 2026

Directive (EU) 2024/2853 of the European Parliament and of the Council on liability for defective products repealing 85/374/EEC

February 2026

Consumer protection development and the 2024 PLD -what is it

On 9 December 2024, the new Directive on Liability for Defective Products, Directive (EU) 2024/2853, came into effect.   It replaces the old EU Products Directive that, for nearly 40 years, imposed strict no-fault liability on defective products.

In 2020's broad agreement through the EU that the 1985 PLD, was no longer fit for purpose and out of date.

Also, the **increased complexity** of products in the **digital age**, especially **AI-related products** seemed to lower the level of consumer protection provided by the old PLD to a degree deemed to be no longer acceptable.

The European Commission published the initial draft of a revised PLD in September 2022.

Proposal to **broaden the scope of liability**. Not just the **range of products** covered by the PLD but also the **scope of potentially liable entities** and damage considered compensable. In addition, it introduced **new discovery requirements,** did away with all liability thresholds and significantly **extended the expiry period for latency claims.**

Applies to Exports of products into the EU as well as EU entities.

The revised PLD has the potential to change the current liability landscape significantly.

Chronology of the PLD

28th September 2022, the European Commission published a proposal for a revised PLD (to bring the PLD "**up to speed with the digital age,** circular economy business models and **global value chains**").

24th January 2024 Text of the revised PLD approved

April 2024 Parliament endorsed legislation

21st October 2024 Council signed PLD into law

9th December 2024 into Law

It is **applicable to all products placed on the EU market or put into service after 9 December 2026**.

98 days from today

Until then, all EU member states have to adjust their national regulation to comply with the new PLD.

PLD

Industries most affected

Types of industries potentially affected

Although all industries are subject to the PLD we anticipate some will be more affected than others fbelow are some examples of industries that are likely to be more heavily impacted:

- Consumer Electronics and Technology
- Authorised representatives / wholesale importers
- Digital Products
- Automotive and Transportation
- Pharmaceutical and Medical Devices
- Toys and Consumer Goods
- Telecom, Smart Devices, Utilities

UK position

UK

The Law Commission has launched a review of the UK's product liability regime currently governed by the CPA 87 as an effort to update in light of the EU PLD 2024

Update the product liability regime is now fit for purpose in the context of new technologies digital products

The Law Commission has published terms of reference for its review which include the definitions to accommodate

intangible digital technologies

amendments to the definition of "product" "defect" and "damage"

In conjunction with the

Department for business and trade

Department of science innovation and technology

Product liability Directive

EC news article December 2023

The Directive will modernise the 1985 directive in terms of the relationship between claimants and defendants (with significant expansion of potential defendants) , this news article was issued by the European Commission in December 2023:

"…that if a person suffers damage caused by a product, they can claim compensation from the manufacturer or another person that placed the product on the Single Market….This update of the current set of rules adapts them to digital products, like software and artificial intelligence systems. It does so by taking account of software updates and machine learning. ***Since products are increasingly complex, the agreement allows victims' burden of proof to be made lighter when they face excessive difficulties****. Furthermore, considering that more and more products are manufactured outside the Union, the agreement ensures that victims always have an economic operator in the EU from whom to claim compensation. This strengthens the level-playing field between EU and non-EU manufacturers…"*

Significant changes in the new PLD

1) Definition of Product, Article 4

"product" means all movables, even if integrated into, or inter-connected with, another movable or an immovable ; it includes electricity, digital manufacturing files, raw materials, software…"

So now a product includes some of those which may previously have been outside strict liability rules, explicitly **AI and software,** digital manufacturing files and related services, i.e. services integrated into to a product and crucial for its functionality.

Who can be held liable in the new PLD

2) Potential defendants – see Article 8:

***Manufacturer** of a defective product, and also a number of other economic operators can now be held liable for defective products:

Manufacturer of a defective component **integrated** into another causing the other to be defective

If the manufacturer is outside the EU, claims can be brought against the **importer or the the authorised representative.**

If those do not exist or are established outside the EU, **fulfilment service providers** (ie anyone offering at least two services such as **warehousing, packaging or dispatching**) could become the target of claims.

If none of the above can be identified within the EU, the **distributor or online platform provider** can be held liable (online shopping services)

Finally, the new PLD clarifies that someone who **substantially updates a product** outside the original manufacturer´s control is considered a manufacturer.

<u>*Definition – of manufacturer</u> *– Article 4(10) - manufacturer' means any natural or legal person who: (a) develops, manufactures or produces a product; (b) has a product designed or manufactured, or who, by putting their name, trademark or other distinguishing features on that product, presents themselves as its manufacturer; or (c) develops, manufactures or produces a product for their own use…"*

Significant changes in the new PLD

3) EU PDR – What is a Defect?

- Article 7: “*A product shall be considered defective where it does not provide the safety that a person is entitled to expect or that is required under Union or national law*”
- Art 7, para 2(c): takes into account “*the effect on the product of any ability to continue to learn or acquire new features after it is placed on the market or put into service*”
- Software changes/updates

Potential claimants in the new PLD

4) Potential Claimants **Article 5 – Right to Compensation:**

"…Member States shall ensure **that any natural person** who suffers damage caused by a defective product (the 'injured person') is entitled to compensation in accordance with this Directive.

Member States shall ensure that claims for compensation pursuant to paragraph 1 may **also** be brought by:

(a) a person that succeeded, or was subrogated, to the right of the injured person by virtue of Union or national law or contract; or

(b) a person **acting on behalf of one or more injured persons** by virtue of Union or national law…"

NB: other relevant recent and upcoming legislation:

- GDPR 2018
- Representative Actions Directive 2023 (PLD is enforceable via RAD)
- Third Party Litigation Funding
- AI Act 2024
- General Product Safety Regs. 2024
- Cyber resilience Act 2027

Definition of Injury/Damage in the new PLD

5) Definition of Damage **Article 6:**

Apart from death, personal injury and property damage, the range of compensable damage now includes the **destruction or corruption of data** that is not used for professional purposes. The new PLD also clarifies that (NB) **medically recognised damage to psychological health** is **considered as personal injury, as follows:**

The right to compensation…shall apply to the following types of damage:

(a) death and personal injury, **including medically recognised damage to psychological health;**

(b) damage to, or destruction of, any property, except:

- (i) the defective product itself;
- (ii) a product damaged by a defective component that is integrated into, or inter connected with, a product by the manufacturer of that product or within that manufacturer's control; and
- (iii) property used exclusively for professional purposes; and

(c) destruction or corruption of data that is not used for professional purposes.

Thresholds in the new PLD

6) Threshold

The minimum threshold of €500 for compensable property damage has been eliminated.

Also, there is no longer an option for national law to provide a maximum liability threshold for death or personal injury caused by identical items with the same defect (the liability cap for such losses e.g. in Germany currently is €85m).

Burden of Proof in the new PLD

7) The new PLD shifts the **burden of proof** in favour of claimants by introducing presumptions regarding:

The defectiveness of a product and/or causation between the defectiveness and the damage occurred.

The presumption of defectiveness is based on non-compliance with either newly introduced disclosure duties, mandatory product safety requirements or an obvious malfunction.

Causation is presumed, if the damage is of a kind typically consistent with the established defect.

Claimants have to show only that:

- **Product was defective**
- **Loss suffered**
- **Causal link between loss and defectiveness**

National courts are encouraged to apply these presumptions even in absence of these requirements, if the claimant faces “excessive difficulties”, e.g. due to technical or scientific complexity.

Defences under the PLD

Article 11:

No liability if :

(a) Manufacturer or importer **did not place** the product on the market

(b) Distributor, that it **did not distribute** the product

(c) The **defectiveness did not exist** when the product was placed or distributed

(d) the defectiveness is due to **compliance with legal requirements**;

(e) **scientific/technical knowledge** was not such that the defectiveness could be discovered;

(f) manufacturer - the defectiveness of that component has been integrated is attributable to the design of that product or to the instructions given by the manufacturer of that product to the manufacturer of that component;

(g) -a person that modifies a product the defectiveness is related to a part of the product **not affected by the modification**…

2. An economic operator shall not be exempted from liability where the defectiveness of a product is due to any of the following, provided that it is within the manufacturer’s control:

(a) a related service;

(b) software, including software updates or upgrades;

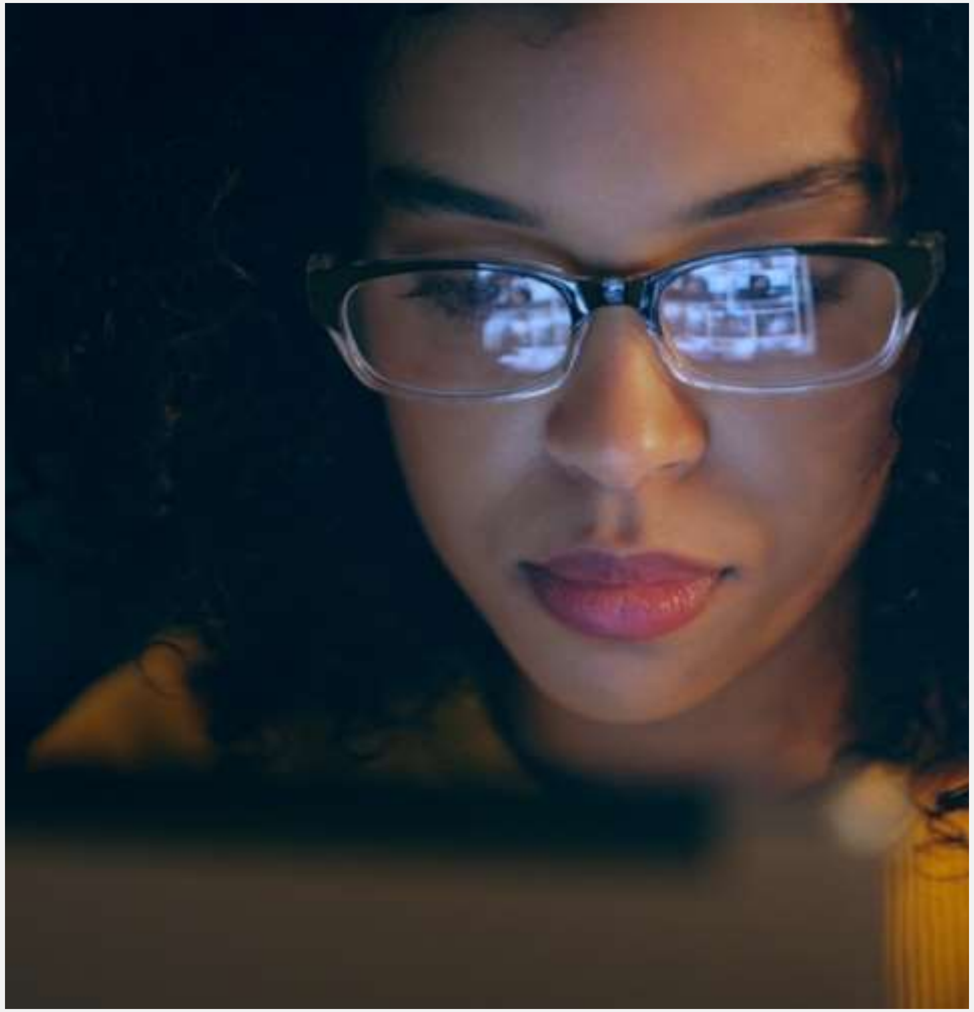
(c) a lack of software updates or upgrades necessary to maintain safety;

(d) a substantial modification of the product…”

Limitation Period in the new PLD/ defences

8) The **limitation period** of three years from claimant becoming aware or should have been aware of the damage, defectiveness and identity of the liable person remains in place.

Longstop still 10 years from placement on market but extendable to 25 years where necessary "due to latency of personal injury"



Disclosure in the new PLD

9) Disclosure:

- **Disclosure obligations created on both sides for relevant documentation (Art. 9 - “necessary and proportionate”) once a “plausible claim” has been established, talking into account trade secrets / confidential information**
- EU firms may be unused to disclosure requirements as seen in common law systems
- Claims may become easier to make
- May result in increased frequency of claims
- Defendants/Insurers may decide to settle before disclosure, increasing frequency
- Quantum of claims may also be impacted

Consequences for the relevant parties/ summary

- No specific London Insurance market reaction yet,
- The various amendments to the PLD **generally may make it easier for claimants to succeed with product liability claims.** This is especially true for latency personal injury claims that formerly often used to fail due to the shorter expiry period. This could become relevant where manifestation may take longer , **e.g. in the PFAS context.**
- **Lower/presumed burden of Proof, due e.g. from technical complexity, both defect and causation may be presumed.**
- For less severe claims, eliminated minimum threshold and the introduction of new **collective redress** mechanisms throughout the EU over the last years may increase in the frequency of claims.
- This might also include claims for the now compensable destruction or corruption of data.
- For severe personal injury claims, the elimination of maximum liability thresholds increases the accumulation risk.
- The new provisions regarding discovery and transparency result in uncertainty. It may take time for the EU Court of Justice to resolve this. Until then, **transaction costs may rise**.

A typical Product liability Cyber exclusion

Policy does not apply to any loss, damage, liability, or expense caused by any:

CYBER ACT (Malicious) or
CYBER INCIDENT (Error or omission , failure to access)
Loss of DATA (i), complaint, investigation, or proceedings arising from a breach of GDPR etc thereto, **unless arising out of:**

Bodily injury (**other than mental injury, mental anguish** (ii) **or mental disease**); or
Physical damage to or destruction of (iii) **tangible** third party property,
Unless caused by a Cyber Act (iv)

i) PLD imposes liability for loss of data
ii) PLD imposes liability for Damage to psychiatric health
iii) PLD imposes liability for damage Injury relating to software, AI
iv) PLD gives no relief for a Malicious Cyber attack

Consequences for the relevant parties

- Scope of Dependents
- Latency to 25 years
- Increase demand for Cyber Tech Professional Indemnity
- Increased claims / Product liability costs
- Predictions of increased premium needed lack of Statistics, cf. 2004/35/EC (and other market moving legislation)
- Lower burden of proof
- Consider contractual conditions, pressure from Importers , Authorised representatives, distributors, online platforms to be included as AI in manufacturers' Product liability policies as their liability shifts from "vicarious" to strict.
- Disclosure through EU happening earlier - more like a common law system, in the absence of disclosure the product will be deemed defective

What are the Wording considerations in relation to the PLD?

PLD

It should be noted that it is not every Policy wording needs to be considered for amendment. However, those clients who have a potential exposure in relation to software, AI systems, AI-enabled goods and digital manufacturing files may require changes to their coverage terms.

In terms of Products Liability wordings (or Products Sections of General Liability Wordings), the main areas to consider are:

- Definition of Product
- Definition of Damage
- Definition of Injury
- Who can be liable?
- Impact of Cyber Exclusions
- Difference in Conditions/Difference in Limits

Definition of Product

If restricted , then :

- Definition of “Product” to include software, electricity, AI systems, AI-enabled goods and digital manufacturing files. In addition, related services (such as a digital service interconnected with a product that is required for the product's functions to be performed) could be considered to be a component part of a product. Watch fin loss exclusions around software and /or dovetail with cyber tech PI
- Includes re-manufacturers as a manufacturer (bringing them within the scope of the directive, which was not the case before); and
- changes “producer” to “manufacturer”

Review “Product” definition :

- Ensure that the current definition **is not limited** to tangible Products solely.
- Consider making explicit reference to software, AI systems, AI-enabled goods and digital manufacturing files, depending on how the Product definition is currently defined.
- Consider including reference to re-manufacturers; and
- Amend any reference to “producer” to “manufacturer”

Definition of Injury

The PLD introduces the concept of medically recognized **damage to psychological health**.
Many (not all) Injury definitions already include mental injury and/or mental anguish, so there may not be the need to update an Injury definition, unless the existing definition in the Policy Wording is relatively basic (such as “death, bodily injury, illness or disease of or to any person only”). It may also be necessary to ensure “damage to psychological health” is not only covered as a consequence of actual or threat of physical Bodily Injury. Coverage for “Damage to psychological health” needs to stand alone.

Who can liable?

- the manufacturer of a defective component integrated into another, causing the other component to become defective;
- if the manufacturer is outside the EU, claims can be brought against the importer or the authorised representative of the manufacturer;
- if such parties do not exist (or are established outside the EU), fulfilment service providers (i.e. anyone offering at least two services such as warehousing, packaging or dispatching) could become the target of PLD claims;
- if none of the above can be identified within the EU, the distributor or online platform provider can be held liable (online shopping services); and
- finally, the new PLD clarifies that someone who substantially updates a product outside the original manufacturer´s control is considered a manufacturer.

Product liability Policy terms points for discussion

- No specific London Market reaction yet
- IUA London steering group during 2026
- Damage definition needs to be reviewed
- Product definition needs to be reviewed
- Cyber/data exclusions exclude loss of data and liability arising from Software.
  – Need to review whether an Injury/Damage write back exists
- Dovetail with Cyber Tech Professional Indemnity policies
- Do we need express cover section for software/AI
- Will the products market allow such an expansion of or will the PLD push cover to the Cyber tech market but what about Injury/damage which are likely to be excluded by a PI policy which is usually restricted to claims for Pure Economic Loss
- Injury definitions to include recognised **Damage to Psychiatric Health, ie amend** Injury definitions in Products policies where necessary

Some opportunities:

- The extended scope of potentially liable entities could produce new demand for product liability coverage particularly Recall coverage.
- Higher limits may be required due to the removal of the old cap on claims
- Higher demand for cyber tech PI type cover or
- Demand from importers, representatives, distributors, online platforms for Product liability or demands to be named as Additional Insureds in manufacturers' Products policy (may not suffice where manufacturer is outside EU

- Web address of the directive itself :
- https://eur-lex.europa.eu/eli/dir/2024/2853/oj/eng

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- **Thank you very much for listening**

Useful links

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Swiss Re (WTW Link)

https://www.hdi.global/globalassets/_local/international/downloads/group_product-liability-directive/HDI_Factsheet_Liability_NewProductDirective_INT_en.pdf

https://eur-lex.europa.eu/eli/dir/2024/2853/oj/eng

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

Q & A

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