

## Upcoming Changes in Product Liability: What You Need to Know About the New Directive

### 产品责任变化在即：新指令要点一览

On 10 October 2024, the Council of the European Union has adopted a Directive to update the EU's civil liability law. The current laws on product liability will be replaced by new provisions stipulated in a revised Directive on liability for defective products. The new rules aim at facilitating the enforcement of damages for consumers. They extend the scope of products subject to product liability and concern a variety of economic operators.

In a nutshell, the most relevant changes imply:

- **Extension of the scope of products** subject to product liability explicitly to digital products, including software and AI ("digitalization" of the product concept).
- **Extension of the concept of damage**, in particular by providing for compensation for the loss and corruption of data, medically recognized impairments of mental health.
- **Concretization of the concept of defect** by providing for an initial clarification with regard to the question of whose safety expectations are relevant, taking into account new aspects for the determination of the defectiveness of a product, linking product liability with the applicable European and national safety regulations, and, in addition, extending a manufacturer's liability to the time after the product has been placed on the market.
- **Extensive facilitation of evidence** by including provisions aiming at easing the burden of proof on consumers (obligation to disclose evidence and presumption of product defect and / or causality).
- **Extension of the liability subjects** by expanding liability to the manufacturer's authorized representative, the so-called fulfilment service provider and by extending the term of the "manufacturer".
- **Removal of thresholds** by limiting the exclusion of liability for manufacturers.
- **Extension of the limitation period** to 25 years in case of latency of personal injury.

2024年10月10日，欧盟理事会通过一项指令，对欧盟民事责任法律进行了更新。现行产品责任法律将被经修订的缺陷产品责任指令中的新条款取代。上述新条款旨在促进落实对消费者的损害赔偿。其扩大了产品责任所涵盖的产品的范围，涉及多类经济运营商。

简而言之，最为相关的变化包括：

- 将产品责任所涵盖的产品的范围扩展到数字产品，囊括了软件和人工智能（产品“数字化”概念）。
- 扩展损害的概念，特别是规定就数据丢失和损坏、医学上认可的心理健康损害提供赔偿。
- 缺陷概念具体化，首先澄清了哪些对象的安全性期望具有相关性，同时考虑了确定产品缺陷的新层面，将产品责任与适用的欧盟和各成员国安全法规联系起来，此外，将生产商的责任延伸至产品投放市场后的阶段。
- 为取证提供诸多便利，纳入多项旨在减轻消费者举证责任的规定（证据披露义务以及产品缺陷和 / 或因果关系推定）。
- 扩大责任主体，将责任扩展至生产商授权代表、即所谓的履行服务提供商，并扩展“生产商”这一术语的含义。
- 取消门槛，对生产商免责加以限制。
- 将延迟的人身伤害的诉讼时效延长至25年。



## Placing products on the market in Germany (EU) 在德国（欧盟）市场投放产品

### Consider tightened rules according to the EU's new Directive on liability for defective products

Germany and the EU will see the current laws on product liability replaced by new provisions stipulated in a revised Directive on liability for defective products (the “Directive” or “PLD”). This note captures considerations for companies from non-EU countries who are placing products on the market. The new rules are expected to apply by the end of 2026.

The new rules concern a variety of economic operators, including manufacturers, their authorized representatives in the EU, component manufacturers, raw material suppliers, importers, distributors, fulfilment service providers, and online platforms. The new provisions also apply to re-manufacturers and other businesses in case they substantially modify products.

- We recommend reviewing which of your entities could be exposed to liability under these extended rules.

The new Directive extends the focus to products of the digital age (including software and AI), circular economy business models and global supply chains. Moreover, it aims at facilitating the enforcement of compensation for damages suffered due to defective products by introducing procedural changes aiming to ease the consumers' burden of proof, disclosure of evidence and rebuttable presumptions of fact.

### 关注欧盟新缺陷产品责任指令中的规则收紧

在德国和欧盟，现行产品责任法律将被经修订的缺陷产品责任指令（“指令”）中的新条款取代。本文介绍了非欧盟国家企业在欧盟市场投放产品时须注意的事项。新规则将于2026年年底前施行。

新规则关系到多类经济运营商，包括生产商、生产商在欧盟的授权代表、组件生产商、原材料供应商、进口商、分销商、履行服务提供商和在线平台。新条款还适用于对产品进行实质性修改的再生产商及其他企业。

- 我们建议您对旗下哪些实体可能因这些扩展的规则而面临责任风险进行审查。

新指令将关注点扩大到数字时代的产品（包括软件和人工智能）、循环经济商业模式和全球供应链。此外，新指令还旨在通过引入可以减轻消费者举证责任的程序性变更、证据披露要求和可反驳的事实推定，使消费者因缺陷产品而遭受的损害更容易获得赔偿。

## “Digitalization” of the product concept

Going forward, European product liability no longer only applies to movable things and electricity, but also explicitly to digital construction files and software, including AI systems.

- We recommend reviewing whether additional products in your portfolio could be exposed to liability under these extended rules.

## 产品“数字化”的概念

展望未来，欧洲的产品责任不再只适用于可移动产品和电力，还明确适用于数字化制造文件和软件，包括人工智能系统。

- 我们建议您就公司产品组合中是否存在其他的可能因扩展规则而面临责任风险的产品进行审查。

## Extension of the concept of damage

The new Directive also introduces provisions extending the concept of damage providing for

- compensation for the loss and corruption of data, including the costs of their recovery and restoration;
- medically recognized impairments of mental health;
- compensation for damage to property if the property is used for both, private and professional purposes, even if the professional purpose predominates.

## 损害概念的扩展

新指令还引入了扩展损害概念的条款，将以下损害纳入保障范围：

- 对数据丢失和损坏（包括恢复和复原数据的费用）的赔偿；
- 对医学上认可的心理健康损害的赔偿；
- 对兼具私人和专业用途的财产（即使以专业用途为主）损害的赔偿。

## Amended concept of defect

Moreover, the new Directive specifies the concept of product defect in several aspects:

According to both, the current and the future laws, a product is to be considered defective, if it does not provide the safety that a person is entitled to expect. The expectations are those of the “general public”.

## 经修订的缺陷概念

此外，新指令还从几个方面明确了产品缺陷的概念：

根据现行以及未来的法律，如果某一产品不提供人们有权期望的安全性，则应被视为缺陷产品。这种期望是指“公众”的期望。

Moreover, the determination of a product defect shall consider the following:

- the effects of other products on the affected product and the ability of a product to learn or acquire new features after it has been taken into use;
  - applicable European and national safety regulations and any recall or intervention by an authority;
  - if the product is still under the manufacturer's control after it has been placed on the market – the manufacturer can then also be held liable, and manufacturers retaining control over the product will be subject to product monitoring obligations.
- 此外，在确定产品缺陷时，应考虑以下因素：
  - 其他产品对受影响产品的影响，以及产品在投入使用后学习或获得新功能的能力；
  - 适用的欧洲和国家各国安全法规以及主管机构的任何召回或干预；
  - 如果产品在投放市场后仍处于生产商的控制——生产商也可能被追究责任，而且对产品仍有控制权的生产商将承担产品监测义务。

Disclosure of evidence

Aiming at putting consumers on equal footing with manufacturers, the new Directive includes provisions supposed to ease the burden of proof on consumers.

证据披露

新指令纳入了减轻消费者举证责任的条款，旨在使消费者处于与生产商平等的地位。

Obligation to disclose evidence

- The court can order a company to disclose information about the product and/or high-risk AI systems (subject to appropriate safeguards to protect sensitive information, such as trade secrets).
- If the defendant (e.g. a company) fails to comply with a court order, the product defect and/or non-compliance with the relevant duty of care shall be rebuttably presumed.

证据披露义务

- 法院可命令公司披露有关产品和/或高风险人工智能系统的信息（在有适当的保障措施以保护商业秘密等敏感信息的前提下）。
- 如果被告（如公司）未遵守法院命令，则应可反驳地推定产品存在缺陷和/或未履行相关注意义务。

- We recommend reviewing or implementing standard operating procedures appropriate to deal with potential retention and disclosure obligations, trade secrets/proprietary information and other appropriate confidentiality topics, legal privilege, etc.

- 我们建议审查或实施适当的标准操作程序，以应对潜在的保留和披露义务、商业秘密/专有信息和其他相关保密性问题、法律特权等问题。

### Presumption of product defect and causality

- A product defect can be presumed if the injured party proves that the particular product violates binding European or national safety regulations, or that the damage was caused by an obvious malfunction of the product.
- Causality can be presumed if the alleged damage is of the kind typically associated with the product defect in question.
- A product defect and causality can be presumed if it is extremely difficult for the injured party to prove defectiveness and causation due to the technical and scientific complexity.
- We recommend considering this increased focus on product safety compliance and expectations towards the manufacturer to present scientific and technical facts as a defense against presumptions of defect and/or causation.

### 产品缺陷和因果关系的推定

- 如果受害方证明特定产品违反了具有约束力的欧洲或国家各国安全法规，或者损害是由产品的明显故障造成，则可以推定该产品存在缺陷。
- 如果指称的损害属于通常与相关产品缺陷有关的损害类型，则可以推定存在因果关系。
- 如果受害方由于技术和科学的复杂性，极难证明产品缺陷和因果关系，则可以推定存在产品缺陷和因果关系。
- 我们建议您关注到对产品安全合规加强的重视以及对生产商提供科学和技术事实以作为对缺陷和/或因果关系推定的抗辩的预期。

### Extension of the limitation period

In order to better protect consumers and, at the same time, seek more certainty, the updated PLD introduces an extended limitation period of 25 years (instead of 10 years) in case of latency of personal injury.

### 时效期限的延长

为了更好地保护消费者，同时寻求更强的确定性，更新后的指令将延迟的人身伤害的诉讼时效延长至25年（原时效为10年）。

## Limitations of the exclusions of liability

Contrary to the PLD of 1985, the revised PLD does no longer contain any provisions limiting the total liability caused by identical items with the same defect, nor the possibility to exclude the manufacturer's development risk defense.

Moreover, a manufacturer's liability also depends on the manufacturer's control over the product. According to the revised PLD, manufacturers cannot exonerate themselves from liability if

- the product defect was recognizable while the manufacturer still had control over the product, and/or
- the defect of a product already placed on the market could have been remedied by a software update or upgrades and this was under the manufacturer's control.

After approval by the European Council, the individual member states will have 24 months to implement the Directive into national law.

- We recommend reviewing the potential increase of overall exposure under the new rules and risk mitigation options.

**Please contact our team in case you are interested in an in-depth analysis.**

## 责任免除限制

与1985年指令相反，修订后的产品责任指令不再包含任何对具有相同缺陷的相同产品造成的赔偿责任总额进行限定的条款，也不再包含生产商以发展风险抗辩获得免责的可能性。

此外，生产商的责任还取决于生产商对产品的控制。根据经修订的指令，在以下情况下，生产商不能免责：

- 产品缺陷是在产品仍处于生产商控制之下时就可识别的缺陷，和/或
- 已经投放市场的产品的缺陷本可以通过软件更新或升级予以弥补、且这属于生产商的控制之下。

经欧盟理事会批准后，各成员国将有24个月的时间在国内法中落实该指令。

- 我们建议您审查新规则下整体风险的潜在上升情况以及风险减缓措施。

**如果您有意了解更深入的分析，请与我所团队成员联系。**

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