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# Knowledge Network

**The New Product Liability Directive**  
*Legislating in a Complex World*

*Wednesday, 9 April 2025*

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# Old vs New

## *The more things change...*

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### No Fault Liability

*“Liability without fault on the part of economic operators remains the sole means of adequately addressing the problem of fair apportionment of risk inherent in modern technology production.”*

### Defect

*“A product shall be considered defective where it does not provide the safety that a person is entitled to expect...”*

### Development Risk Defence

*“The objective state of scientific and technical knowledge at the time the product was placed on the market...was not such that the defectiveness could be discovered.”*

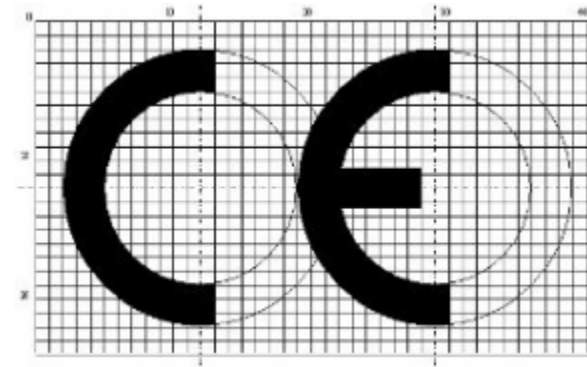
# The Revised Product Liability Directive

## 8 December 2024

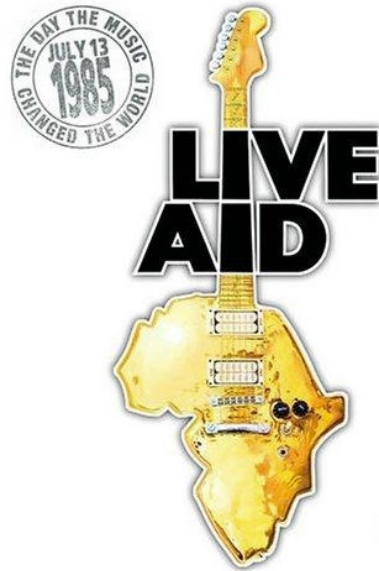
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1. Product
2. Defect
3. Damage
4. Standard of Proof and Presumptions
5. Disclosure



# Product Why Modernise



# Expanding definition of Product

“All movables, even if integrated into, or inter-connected with, another movable or an immovable; it includes electricity, digital manufacturing files, raw materials and software”

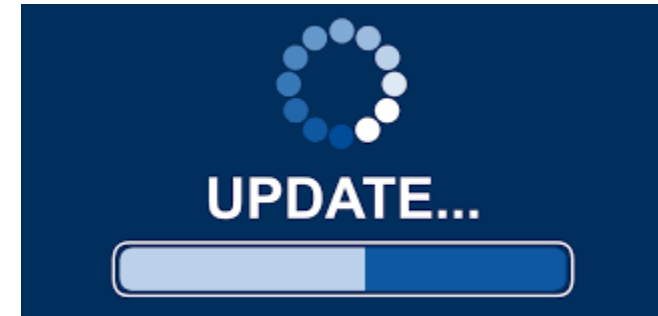
“Related Service” – “a digital service that is integrated into, or inter-connected with, a product in such a way that its absence would prevent the product from performing one or more of its functions”



# Expanding Definition of Product

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“Once a product has been placed on the market, it should be considered to remain within the manufacturer’s control where the manufacturer retains the ability to supply software updates or upgrades itself or via a third party”



“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”

## Same/ Similar Considerations

- presentation and the characteristics of the product, including its labelling, design, technical features, composition and packaging and the instructions for its assembly, installation, use and maintenance.
- reasonably foreseeable use of the product.
- the moment in time when the product was placed on the market or put into service or, where the manufacturer retains control over the product after that moment, the moment in time when the product left the control of the manufacturer.

## New Considerations

- 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.
- the reasonably foreseeable effect on the product of other products that can be expected to be used together with the product, including by means of inter-connection.
- relevant product safety requirements, including safety-relevant cybersecurity requirements.
- any recall of the product or any other relevant intervention relating to product safety by a competent authority or by an economic operator as referred to in Article 8.
- the specific needs of the group of users for whose use the product is intended.
- in the case of a product whose very purpose is to prevent damage, any failure of the product to fulfil that purpose.



- Death or personal injury, including medically recognised damage to psychological health.
- Damage to or destruction of property except property used exclusively for professional purposes.
- The destruction or corruption of data that are not used for professional purposes.



The claimant bears the burden of proving the damage, the defectiveness, and the causal link between the two on the balance of probabilities.

“significant disadvantage compared to manufacturers in terms of access to, and understanding of, information on how a product was produced and how it operates. The asymmetry of information can undermine the fair apportionment of risk, in particular in cases Involving technical or scientific complexity.”



\*AI Prompt: An image of a consumer struggling to understand a complex product

# Rebuttable Presumptions

Presumption of Defect	Presumption of Causation
<ul style="list-style-type: none"><li>• Failure to comply with disclosure obligations.</li></ul>	<ul style="list-style-type: none"><li>• The damage caused is the kind typically consistent with the defect (based primarily on similar cases).</li></ul>
<ul style="list-style-type: none"><li>• Compliance with mandatory safety requirements intended to protect against the risk of damage suffered by the claimant.</li></ul>	
<ul style="list-style-type: none"><li>• An obvious malfunction during reasonably foreseeable use under ordinary circumstances.</li></ul>	
Presumption of Defect and/or Causation	
<ul style="list-style-type: none"><li>• The claimant faces excessive difficulties due to technical or scientific complexity in proving defect or causation.</li></ul>	
<ul style="list-style-type: none"><li>• The claimant demonstrates that it is “likely” that the product was defective or that there is a causal link between the defect and the damage.</li></ul>	

- Where a plausible claim is made, the defendant is required to disclose relevant evidence at the defendant's disposal.
- Such disclosure must be necessary and proportionate.
- This does not affect national rules relating to the Pre-trial disclosure of evidence, where such rules exist.

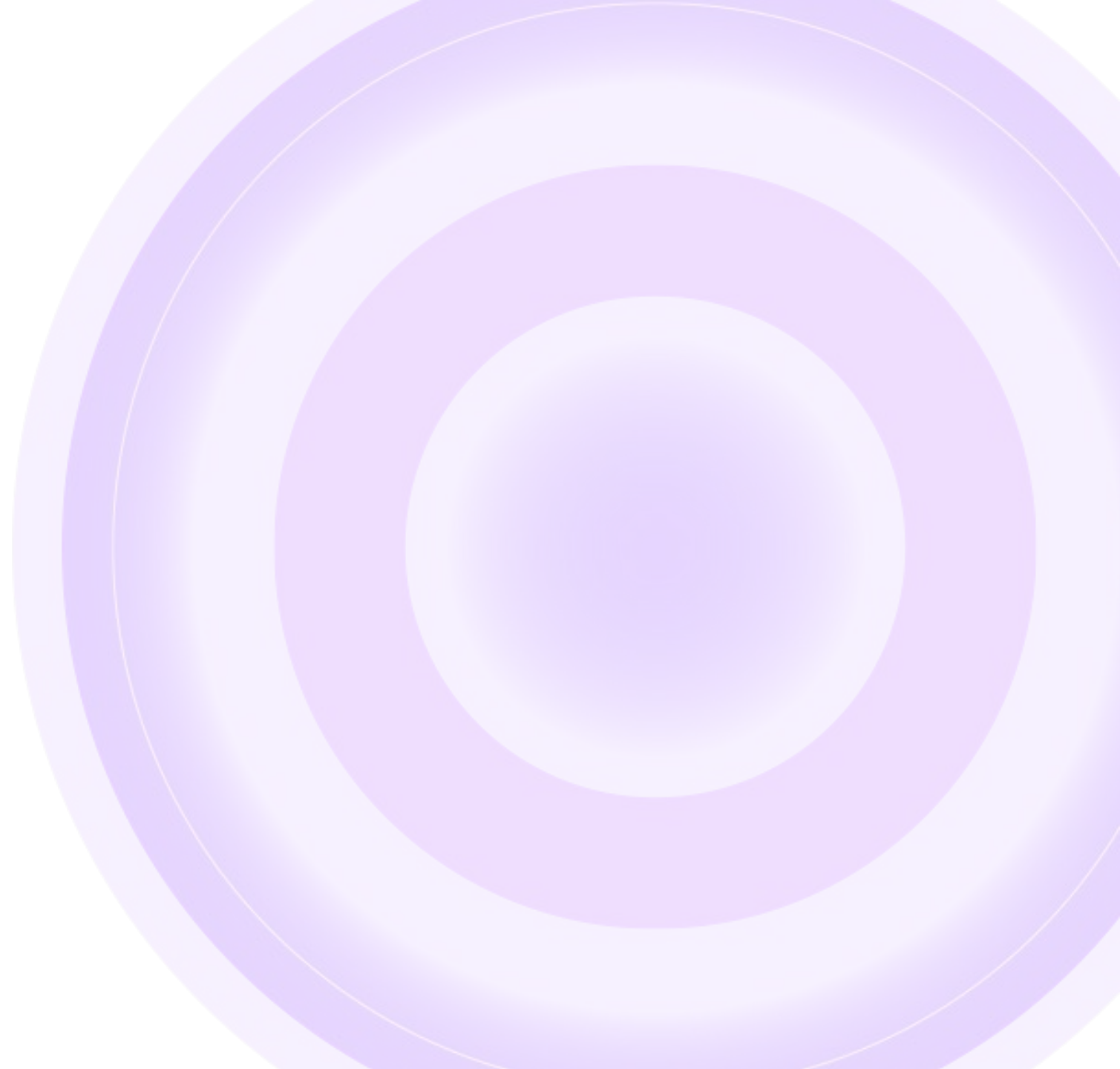


- The New Product Liability Directive will have direct effect from 9 December 2026.
- Producers need to be aware of the expanded definition of product, particularly software providers.
- The standards of proof will create additional litigation risk and potential strategic opportunity.



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**Questions?**



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Such advice should always be taken before acting on any of the matters discussed.