

Die EU-Produkthaftungs-RL 2024: Der „final compromise text“

Verschärfte Produkthaftung plus Product Compliance-Pflichten im Zeichen von Digitalisierung, KI und Globalisierung

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Der finale Text der künftigen EU-Produkthaftungsregeln steht: Am 24.1.2024 hat der Europäische Rat den von ihm als „final compromise text“ bezeichneten Vorschlag an das Europäische Parlament übersandt, nachdem Unterhändler informell eine Einigung erzielt hatten. Sprich: Vorbehaltlich etwaiger Änderungen im Parlament kommt nun die Produkthaftungsrichtlinie für das digitale Zeitalter.

Die Produkthaftung für in der EU in Verkehr gebrachte Produkte wird danach mehrfach verschärft. Persönlich und sachlich. Denn künftig wird die Produkthaftung vom – ohnehin weiten – Herstellerbegriff auf Fulfillment-Dienstleister und Onlineplattformen ausgedehnt, ferner auf Software und KI. Die Umsetzung hat voraussichtlich bis 2026 zu erfolgen.

I. Die künftige Produkthaftungsrichtlinie im Überblick

Die neue Produkthaftungsrichtlinie steht, jedenfalls informell: Seit Anfang 2024 gibt es den „final compromise text“.¹ Der Rat hat den Entwurf der Produkthaftungsrichtlinie am 24.1.2024 („ProdHaftRL-E 2024“) dem Parlament übersandt, nachdem sich Unterhändler von Rat, Kommission und Parlament im sog. Trilog² am 14.12.2023 auf den Kompromiss geeinigt hatten. Nun steht nur noch die Zustimmung von Parlament und Rat aus. Sofern das Parlament den Richtlinienentwurf nun annimmt, hat der Europäische Rat bereits seine Zustimmung signalisiert.

Die Produkthaftungsrichtlinie ist Teil eines ambitionierten³ Regulierungsprogramms der EU, zu dem die allgemeine Produktsicherheitsverordnung,⁴ die Revision der Ökodesign-Richtlinie, die Auskunftsbefehle und Beweislast (aber keine eigene Haftung) regelnde⁵ KI-Haftungsrichtlinie⁶ und weitere Gesetzesprojekte zählen. Sie wird aller Voraussicht nach die bestehende Produkthaftungsrichtlinie 85/374/EWG („ProdHaftRL 1985“) ab 2026 ersetzen.

Die neue Produkthaftungsrichtlinie verschärft die Produkthaftung. Sie betrifft nicht mehr nur Hersteller – den Endhersteller, den Teilehersteller, den Importeur, den Quasi-Hersteller und den Lieferanten,⁷ sondern – neu – Fulfillment-Dienstleister sowie Online-Plattformen. Die Haftung verläuft damit in einer nun noch längeren Haftungskaskade. Die verschuldensunabhängige Produkthaftung trifft Hersteller jeglicher beweglicher, fehlerhafter Produkte – und zwar einschließlich Elektrizität (wie bislang)⁸ und Rohstoffe (wie bislang)⁹ sowie – neu – ausdrücklich digitale Bauunterlagen¹⁰ und Software.¹¹

Zu den ersten Entwürfen zur neuen Herstellerhaftung, der Produkthaftungsrichtlinie und der KI-Haftungsrichtlinie gibt es diverse Beiträge¹² – neu ist die finale Fassung. Der Beitrag berichtet nach diesem Überblick (I.) in aller Kürze über die jüngste Entwurfentwicklung (II.), zeigt die Änderungen gegenüber dem früheren Recht und dem früheren Entwurf auf (III.), insbesondere bzgl. der Haftung für Software und Künstliche Intelligenz („KI“) und schließt mit dem Ausblick auf die Umsetzung (IV.) sowie einer Synopse zwischen geltender und künftiger ProdHaftRL (V.).

II. Die Entwurfentwicklung: Digitalisierung, KI und Globalisierung als Treiber

Die ProdHaftRL zielt seit 1985 darauf, die Risiken innerhalb der modernen, massenhaften, mitunter komplexen Produktion angemessen zu verteilen.¹³ Bis zu ihrer Umsetzung in Deutschland 1990 hafteten Hersteller für ihre fehlerhaften Produkte nur bei Verschulden – weswegen die Rechtsprechung

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- 1 So der Europäische Rat in seinem Schreiben an das Parlament vom 24.1.2024. Der Autor dankt Herrn Johannes Kleis, Press Officer des Europäischen Rates, für den Hinweis auf die Fundstelle.
- 2 Näher Kluth in Callies/Ruffert, 6. Aufl. 2022, AEUV Art. 294 Rn. 26.
- 3 Marx MPR 2022, 155 f. spricht von einem Dschungel („Welcome to the Jungle“).
- 4 Dazu Kipker/Reusch (Hrsg.), BeckOK Produktsicherheitsrecht, 1. Ed. 2024; speziell zu den neuen Pflichten von Online-Marktplätzen Spiegel ZVertriebsR 2023, 71.
- 5 Vgl. Europäische Kommission, Vorschlag für eine Richtlinie über KI-Haftung, COM(2022) 496f final, Ziff. 1.
- 6 Europäische Kommission, Vorschlag für eine Richtlinie über KI-Haftung, COM(2022) 496 final, vom 28.9.2022.
- 7 Art. 3 ProdHaftRL 1985.
- 8 Art. 2 S. 2 ProdHaftRL 1985.
- 9 Vgl. Art. 2 S. 1 ProdHaftRL 1985 („jede bewegliche Sache“) sowie Art. 3 Abs. 1 S. 1 („Hersteller eines Grundstoffs“); die frühere Beschränkung auf Naturprodukte, „die einer Verarbeitung unterzogen wurden“, ist seit 1990 gestrichen.
- 10 Näher am englischen „digital manufacturing file“ wäre indes „digitale Fertigungsdatei“ oder „digitale Produktvorlage“, da der Begriff gemäß Art. 4 Abs. 2 ProdHaftRL-E 2024 digitale Vorlagen meint, die es Maschinen bzw. Werkzeugen ermöglichen, eine bewegliche Sache herzustellen. Zur Haftung nach dem deutschen ProdHaftG für CAD-Dateien Oechsler in Staudinger BGB, Neubearb. 2021, ProdHaftG § 4 Rn. 30 ff.
- 11 Vgl. Art. 4 Abs. 1 ProdHaftRL-E-2024; zum Streitstand, ob Software bereits unter die bisherige ProdHaftRL 1985 bzw. deren deutsche Umsetzung fällt Oster in Foerste/Graf von Westphalen, Produkthaftungshandbuch, 4. Aufl. 2023, § 57 Rn. 40 ff.
- 12 ZB zur Produkthaftungsrichtlinie: Handorn MPR 2023, 16; Schucht InTeR 2023, 71; Kapoor/Klindt BB 2023, 67; Hess CB 2023, 27; Krüger/Wagner ZfPC 2023, 124 (126); Adelberg ZfPC 2023, 59; Meyer RDI 2023, 66 (zur Produkthaftung auf Online-Marktplätzen); Borges DB 2022, 265; zur KI-Haftungsrichtlinie zB Bomhard/Sigmüller RDi 2022, 506; Reusch RDi 2023, 152; Burchardi EuZW 2022, 685.
- 13 ProdHaftRL 1985, ErwG Abs. 11; ProdHaftRL-E 2024 ErwG Nr. 2. Näher zur ProdHaftRL der damalige Referent bei der EG-Kommission Taschner NJW 1986, 611.

im Zuge der industriellen Massenproduktion per Beweislastumkehr die sog. Produzentenhaftung entwickelte.¹⁴ Die Prod-HaftRL, ein auf Minimalkonsens beruhender Kompromiss,¹⁵ verhalf den Verbrauchern weitere Erleichterung, indem sie EU- bzw. EWR-weit¹⁶ die verschuldensunabhängige Haftung für fehlerhafte Produkte geschaffen hat.¹⁷ Zusammen mit der stetig steigenden Regulierung im Produktrecht (durch Produktsicherheits- und Marktüberwachungsvorschriften) ist daraus ein „umfassendes Sicherheitsnetz“¹⁸ für die europäischen Verbraucher entstanden.

Das Update der Produkthaftungsrichtlinie beruht auf drei maßgeblichen tatsächlichen Treibern: Erstens der Digitalisierung (die bereits bei diversen anderen gesetzlichen Neufassungen faktischer Treiber gewesen ist),¹⁹ zweitens dem Aufkommen neuer Geschäftsmodelle innerhalb der Kreislaufwirtschaft (in der Produkte viel länger verwendet bzw. neu aufbereitet und neu verwendet werden sollen) und drittens den globalen Lieferketten, innerhalb derer der Endhersteller oftmals schwer greifbar ist. Insofern soll das Update der Prod-HaftRL 1985

- klarstellen, wie weit sie für Produkte der modernen digitalen (intelligente Produkte wie vernetzte weiße Ware, autonome Fahrzeuge oder Maschinen) bzw. zirkularen Wirtschaft (aufbereitete Produkte) gilt,
- die Beweislast für Fehler bzw. die Schadensverursachung in komplexen Fällen (darunter auch bei intelligenten bzw. KI-gestützten Produkten) vereinfachen,
- Schadensersatzansprüchen die – aus Sicht der Kommission – übermäßigen Beschränkungen nehmen.²⁰

Inhaltlich sieht bereits der Vorschlag für eine Richtlinie über die Haftung für fehlerhafte Produkte vom 28.9.2022²¹ („Prod-HaftRL-E 2022“) eine verschärfte Haftung²² gegenüber der geltenden Produkthaftungsrichtlinie 85/347/EEC vor: Der Prod-HaftRL-E 2022

- stellt klar, dass Software als Produkt gilt;
- erhebt das Fehlen von Software-Updates unter der Kontrolle des Herstellers sowie das Versäumnis, Cybersicherheitsschwachstellen zu beheben, zum Produktfehler;
- führt die Haftung für fehlerhafte Produkte ein, wenn sie überholt und wieder auf den Markt gebracht werden, sowie wenn sie außerhalb der Europäischen Union hergestellt werden;
- erleichtert unter bestimmten Umständen die Beweislast für Geschädigte; und
- erweitert ersetzbare Schäden auf medizinisch anerkannte Schäden an der psychischen Gesundheit und den Verlust oder die Beschädigung von Daten.²³

Der Europäische Rat schlug darauf im Juni 2023 vor,

- unter „Produkte“ auch Rohstoffe wie Gas und Wasser ausdrücklich aufzunehmen,
- bzgl. der Fehlerhaftigkeit klarzustellen, dass die erwartbare Sicherheit sich nach den Erwartungen der „breiten Öffentlichkeit“ richte, Warnhinweise oder andere Begleit-Informationen ein ansonsten fehlerhaftes Produkt allein nicht sicher machen können,
- die Haftung des Herstellers kaskadenartig zu regeln,

- die Einrede des Entwicklungsrisikos beizubehalten,
- die Verjährung des Schadensersatzanspruchs von 15 auf 20 Jahre zu erhöhen, wenn sich die Symptome einer Gesundheitsschädigung erst langsam zeigen.²⁴

Im Parlament nahmen der Ausschuss für Binnenmarkt und Verbraucherschutz (IMCO) und der Rechtsausschuss am 9.10.2023 einen Bericht an und beschlossen, Verhandlungen mit dem Rat aufzunehmen. Das Parlament bestätigte diese Entscheidung in der Plenarsitzung vom 16.10.2023. Die Änderungsanträge des Parlaments zum Text der Kommission betreffen:

- die Aufnahme von Rohstoffen unter die "Produkte" (wie der Rat, s. o.);
- eine Klarstellung bzgl. des Nachweises von Schäden an der psychischen Gesundheit und Festlegung einer Mindestschwelle von 1.000 EUR als Schaden;
- die Beurteilung der Fehlerhaftigkeit, für die es auf die Sicherheit ankommen soll, die ein Durchschnittsmensch (und nicht die Allgemeinheit) erwarten darf, unter Berücksichtigung etwaiger Sicherheitsstandards;
- die Ermöglichung des Schadensersatzes über nationale Systeme (die nicht aus öffentlichen Mitteln finanziert werden sollten) bei insolventen oder anderweitig fehlenden Haftungssubjekten;
- den Ausschluss des Rückgriffs innerhalb der Lieferkette auf Kleinst- oder Kleinunternehmen, die Software herstellen.

Am 14.12.2023 erzielten Rat und Parlament eine vorläufige Einigung, mit folgenden wesentlichen Aspekten:

- Ausdehnen der Produkthaftung auf digitale Baunterlagen und Software. Freie und quelloffene Software, die außerhalb einer kommerziellen Tätigkeit entwickelt oder bereit-

14 Hühnerpest-Entscheidung, vgl. BGH 26.11.1968 – VI ZR 212/66, juris-Rn. 18., 36; zur damaligen Diskussion MüKoBGB/Wagner, 9. Aufl. 2024, § 823 Rn.1033; Schnellüberblick über Produzentenhaftung bei Reusch/Neumann in Behringer, Compliance compact, 4. Aufl. 2018, Ziff. 3.1.21. Kritisch zum Begriff „Produzentenhaftung“; weil mehrdeutig: Foerste in Foerste/Graf von Westphalen, Produkthaftungshandbuch, 4. Aufl. 2024, § 25 Rn. 2.

15 Kapoor in Kapoor, 2023, ProdHaftG Einf. Rn. 6.

16 Gemäß Art. 23 c) iVm Anhang III des Abkommens über den Europäischen Wirtschaftsraum, Schlussakte.

17 Nachdem in Deutschland die Rechtsprechung freilich schon die Grundsätze zur sog. Produzentenhaftung aus § 823 BGB heraus entwickelt hatte, vgl. Grüneberg/Sprau, 83. Aufl. 2024, BGB § 823 Rn. 171; Lenz, Produkthaftung, 2. Aufl. 2023, § 3 Rn. 1.

18 Hess CB 2023, 27 (31).

19 ZB auch bei der Vertikal-Gruppenfreistellungsverordnung, vgl. Rohrßen VBER 2022: EU Competition Law (2023).

20 ProdHaftRL-E 2022, Ziff. 1.1 der Begründung.

21 Entwurf vom 28.9.2022, COM(2022) 495 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0495>

22 Vgl. Kapoor/Klindt BB 2023, 67; Wagner/Rutloff/Römer CCZ 2023, 109. Reusch CB 2023, 503 (506).

23 Europäischer Rat, Pressemitteilung vom 14.12.2023, Einigung zwischen Rat und Europäischem Parlament: Haftungsvorschriften der EU werden fit für das digitale Zeitalter und die Kreislaufwirtschaft: <https://www.consilium.europa.eu/de/press/press-releases/2023/12/14/agreement-between-the-council-and-the-european-parliament-makes-eu-liability-rules-fit-for-the-digital-age-and-circular-economy/>.

24 Europäisches Parlament, Legislative Train Schedule, New Product Liability Directive, <https://www.europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-new-product-liability-directive>.

gestellt wird, ist vom Anwendungsbereich der Richtlinie ausgeschlossen.

- Einbeziehung medizinisch anerkannter Schäden an der psychischen Gesundheit sowie der Zerstörung oder irreversiblen Beschädigung von Daten in die Definition des Schadens.
- Einbeziehung immaterieller Schäden in den Schadenersatz.
- Erleichterung der Beweislast, die weiterhin bei der geschädigten Person liegt.
- Verlängerung des Haftungszeitraums auf 25 Jahre in Ausnahmefällen, wenn die Symptome nur langsam auftreten.
- Verlängerung einer Haftungskaskade um weitere Wirtschaftsakteure.

III. Die künftigen Produkthaftungsregeln laut „final compromise“

Die Produkthaftungsrichtlinie wird vollständig ersetzt, weil nahezu jeder Artikel eine Änderung erfährt.²⁵ Wie schon der ProdHaftRL-E 2022, so umfasst auch der ProdHaftRL-E 2024 „alle beweglichen Sachen, auch wenn sie in eine andere bewegliche Sache oder in eine unbewegliche Sache integriert oder mit dieser verbunden sind. Der Begriff „Produkt“ umfasst Elektrizität, digitale Produktionsdateien („digital manufacturing files“) und Software – sowie in der finalen Kompromissfassung nun auch ausdrücklich Rohstoffe („raw materials“).²⁶ Im Überblick:

1. Richtlinienform, gesetzgeberischer Stil und Definitionen

Die Produkthaftungsrichtlinie bleibt eine Richtlinie, die der Umsetzung durch die Mitgliedstaaten bedarf, auch wenn sie ausdrücklich eine grundsätzliche und weitgehende Vollharmonisierung²⁷ anstrebt: „Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more, or less, stringent provisions to achieve a different level of protection.“²⁸ Grund für die Wahl der Richtlinie als Regelungsinstrument (anstelle eine unmittelbar in den Mitgliedstaaten geltenden Verordnung)²⁹ ist laut Europäischer Kommission, dass das Produkthaftungsrecht national eng mit dem jeweiligen Zivilrecht zu verzahnen ist.³⁰

Auch wenn sie eine Richtlinie bleibt, so zeigt sich der innerhalb der letzten bald vier Jahrzehnte geänderte gesetzgeberische Stil: Bestand die ProdHaftRL 1985 aus 19 unnummerierten Erwägungsgründen und 22 untitulierte(n) Artikeln, so ist nun zwar der Wortumfang beträchtlich gewachsen, gleichzeitig allerdings sind die 47 extensiv formulierten Erwägungsgründe nummeriert und auch die 20 Artikel mit Überschriften versehen und leserführend in Kapitel gegliedert.

Vor dem Ziel, mehr Rechtssicherheit zu schaffen, enthält der ProdHaftRL-E 2024 zu Beginn (in Art. 4) 18 zentral definierte Begriffe. Hier zeigt sich das oben erwähnte europäische Sicherheitsnetz: Begrifflichkeiten wie „Bereitstellung auf dem Markt“ (Art. 4 Abs. 7a ProdHaftRL-E 2024) oder „Inverkehrbringen“ (Art. 4 Abs. 8 ProdHaftRL-E 2024) sind nun dem New Legislative Framework angepasst.³¹ Das ist sinnvoll, weil Produkthaftung und Produktsicherheit miteinander verknüpft

sind und einheitliche Begrifflichkeiten die einheitliche Auslegung erleichtern.³² Diese Verknüpfung stellt nun auch der ProdHaftRL-E 2024 heraus, indem er mehrfach auf die „relevant product safety requirements, including safety-relevant cybersecurity requirements“ abstellt, insbesondere:

- für die Fehlerhaftigkeit eines Produkts,³³
- für die Vermutung der Fehlerhaftigkeit bei fehlender Product Compliance,³⁴ sowie
- für die Frage, ob eine wesentliche Veränderung („substantial modification“) eines Produktes nach dessen Inverkehrbringen vorliegt³⁵ und damit ua die Zeit bis zum Anspruchserlöschen neu startet.³⁶

2. Fulfillment-Dienstleister und Online-Marktplätze in der Haftungskaskade

In Zeiten von Digitalisierung und Globalisierung sind Fulfillment-Dienstleister und insbesondere Online-Marktplätze stark gewachsen. Diese stark gewachsene Rolle spiegelt sich bereits in der Marktüberwachungsverordnung³⁷ und der allgemeinen Produktsicherheitsverordnung wider.³⁸ Dort wie hier im ProdHaftRL-E 2024 unterliegen sie nun eigenen produktsicherheits- bzw. produkthaftungsrechtlichen Pflichten. So widmet die allgemeine Produktsicherheitsverordnung allein den Anbietern von Online-Marktplätzen einen eigenen Artikel mit zwölf Absätzen.³⁹

Der ProdHaftRL-E 2024 erweitert den Kreis der Haftungssubjekte, ausgehend vom Hersteller,⁴⁰ um weitere Wirtschaftsakteure und erweitert entsprechend die Haftungskaskade – bis der/die Geschädigte ein greifbares Haftungssubjekt erreicht (vgl. Art. 7 ProdHaftRL-E 2024):

Endhersteller >
 Teilehersteller >
 Einführer >
 Bevollmächtigter >
 Fulfillment-Dienstleister >
 Wiederaufbereiter >
 Händler >
 Online-Plattform-Betreiber

Damit unterfallen künftig deutlich mehr Wirtschaftsakteure der Produkthaftung, nachdem unter der ProdHaftRL 1985 es

25 Vgl. ProdHaftRL-E 2022, Begründung, Ziff. 2 am Ende.

26 Art. 4 (2).

27 Zur ProdHaftRL 1985 Schaub ZEuP 2011, 41 (42.) und Riehm EuZW 2010, 567; Vgl. Art. 3 ProdHaftRL-E 2022 und Art. 3 ProdHaftRL-E 2024.

28 Art. 3 ProdHaftRL-E 2024.

29 Art. 288 Abs. 2 AEUV.

30 ProdHaftRL-E 2022, Begründung, Ziff. 2 am Ende.

31 Vgl. Art. 2 Nr. 1 und 2 Verordnung Nr. 765/2008 vom 9.7.2008. Vgl. zum ProdHaftRL-E 2022 schon Kapoor/Klindt BB 2023, 67 bei Fn. 5 und jetzt ErwG Nr. 4, 24, 27 des ProdHaftRL-E 2024.

32 ProdHaftRL-E 2024, ErwG Nr. 4, 12, 27, 29, 33.

33 Art. 6 Abs. 1 (f) und (g) ProdHaftRL-E 2024.

34 Art. 9 Abs. 2 (b) ProdHaftRL-E 2024.

35 Art. 4 Abs. 17b ProdHaftRL-E 2024.

36 Art. 14a ProdHaftRL-E 2024.

37 VO (EU) 2019/1020 vom 20.6.2019.

38 VO (EU) 2023/988 vom 10.5.2023.

39 Näher zu diesen Akteuren sui generis Spiegel ZVertriebsR 2023, 71; ders. in Kipker/Reusch (Hrsg.), BeckOK Produktsicherheitsrecht, 1. Ed. 2024, Art. 22.

40 Zum Hersteller-Begriff im ProdHaftRL-E 2022 Schucht InTeR 2023, 71 (73).

allein auf Endhersteller, Teilehersteller, Einführer und Lieferant ankam (vgl. Art. 3). Sollte gleichwohl kein Wirtschaftssektor greifbar sein, so erlaubt die Öffnungsklausel in Art. 6 Abs. 6a ProdHaftRL-E 2024 den Mitgliedstaaten, sektorale Haftungssysteme einzusetzen bzw. neu aufzusetzen, „vorzugsweise nicht durch öffentliche Mittel“ („preferably not be funded by public revenues“), sondern privat finanziert. In Deutschland und anderen EU-Mitgliedstaaten wäre das etwa durch den Weißen Ring eV denkbar, vorausgesetzt, im Produkthaftungsfall liegt eine Straftat.

3. Erweiterung des Produktbegriffs ua auf Software und KI

Der ProdHaftRL-E 2024 erweitert – vor dem Hintergrund der Digitalisierung⁴¹ – die Produkthaftung auch auf immaterielle Produkte, und zwar ausdrücklich auf „digitale Bauunterlagen“ und „Software“.⁴² Damit umfasst der ProdHaftRL-E 2024 auch KI (für letztere existiert zudem bereits ein Vorschlag für eine Richtlinie über KI-Haftung,⁴³ die, im Gegensatz zum ProdHaftRL-E 2024 keine Haftungsgrundlage, sondern beweisbezogene Regelungen [Beweislast; Auskunftsansprüche] enthält).⁴⁴ Neu hinzugekommen im ProdHaftRL-E 2024 ist die Möglichkeit für kleine Softwarehersteller, den Rückgriff des Endherstellers auf sie vertraglich auszuschließen, siehe Art. 11 Abs. 1a ProdHaftRL-E 2024:

„A manufacturer that integrates software as a component in a product shall not have a right to recourse against the manufacturer of a defective software component that causes damage, where:

a) the software component manufacturer was, at the time of the placing on the market of the software, a microenterprise or a small enterprise, meaning an enterprise that, when assessed together with all of its partner enterprises and linked enterprises within the meaning of Article 3 of the Annex to Recommendation 2003/361/EC, if any, is a microenterprise as defined in Article 2(3) of that Annex or a small enterprise as defined in Article 2(2) of that Annex; and

b) the manufacturer integrating the software as a component in a product has contractually agreed with the component manufacturer to waive that right.”

4. Prozessuale Verschärfungen für Hersteller bzw. Beweiserleichterungen für Geschädigte

Der ProdHaftRL-E 2024 erleichtert den Geschädigten die Beweisführung, sowohl durch Pflichten zur Offenlegung von Beweismitteln und Beweislastumkehr, vgl. Art. 8 und 9.

5. Größerer Schadensumfang, Ausschluss der Haftungshöchstgrenze

Die Ersatzpflicht dehnt sich unter dem ProdHaftRL-E 2024 deutlich aus. So haften Hersteller auch für Schäden, die aus der Zerstörung bzw. Beschädigung von Daten folgen.⁴⁵ Gegenüber dem ProdHaftRL-E 2022 ist die Ersatzpflicht allerdings nun insofern abgeschwächt, als der ProdHaftRL-E 2024 zwar den Ersatz materieller Schäden („all material loss“) vorsieht, allerdings für immaterielle Schäden („non-material losses“) auf das jeweilige nationale Recht verweist – sowohl für die Beschädigung bzw. den Verlust von Daten, als auch für Schä-

den aus der Verletzung von Leib und Leben einschließlich psychologischer Gesundheit sowie an nicht ausschließlich beruflich genutztem Eigentum jenseits des fehlerhaften Produktes selbst:

“Article 5a

Damage

1. The right to compensation ... shall apply in respect of only the following types of damage:
 - (a) death or 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
2. The right to compensation shall cover all material losses resulting from the damage referred to in paragraph 1. The right to compensation shall also cover non-material losses resulting from the damage referred to in paragraph 1, in so far as they are compensable under national law.”

Hier zeigt sich die notwendige Verzahnung des Produkthaftungsrechts mit dem mitgliedstaatlichen Zivilrecht – und damit der Grund, aus dem heraus die Kommission die Richtlinie als das passende Regelungsinstrument vorgeschlagen hat.

Überdies fällt auch die bisherige Öffnungsklausel des Art. 16 ProdHaftRL 1985 weg, die es den Mitgliedstaaten erlaubt, die Gesamthaftung eines Herstellers für Schäden infolge von Tod oder Körperverletzungen auf 70 Millionen ECU zu begrenzen. Der deutsche Gesetzgeber hat als einer der wenigen davon Gebrauch gemacht und in § 10 Abs. 1 ProdHaftG einen Haftungshöchstbetrag von 85 Millionen EUR vorgesehen. Sofern Schäden in solchen Größenordnungen in Betracht kommen, sollten Hersteller solche Risiken entlang der Lieferketten ggf. neu bewerten, etwaige Anpassungen ihres Versicherungsschutzes in Betracht ziehen und Verantwortlichkeiten vertraglich neu regeln. Schließlich entfällt, am anderen Ende der Skala, auch der bisherige Selbstbehalt von 500 EUR (Art. 9 ProdHaftRL 1985; § 11 ProdHaftG).

⁴¹ Vgl. ProdHaftRL-E 2022, ErwG Nr. 12.

⁴² Gegen die Einbeziehung von Software unter die bisherige ProdHaftRL 1985 spricht deren Wortlaut (sofern die Software nicht in einer beweglichen Sache verkörpert ist bzw. sich auswirkt), vgl. Wende RDt 2021, 341 (344) bei Rn. 20 f.

⁴³ Vorschlag vom 28.9.2022, COM/2022/496 final.

⁴⁴ Vgl. deren Art. 1 Abs. 2; näher Bombard/Siglmüller RDt 2022, 506; Krüger/Wagner ZfPC 2023, 124; Reusch, RDt 2023, 152; Graf von Westphalen IWRZ 2023, 49 f; Wende RDt 2021, 341.

⁴⁵ Vgl. Definition des „Schadens“ in Art. 4 Abs. 6 ProdHaftRL-E 2022 („loss or corruption of data“), nunmehr in Art. 5a Abs. 1(c) iVm Abs. 2 ProdHaftRL-E 2024 („destruction or corruption of data“).

6. Überblick über die Neuerungen des ProdHaftRL-E 2024

Zusammenfassend hier die überblicksartige Gegenüberstellung der ProdHaftRL 1985, des deutschen Produkthaftungsgesetzes sowie des ProdHaftRL-E 2024.⁴⁶

Thema	ProdHaftRL 1985	ProdHaftG	ProdHaftRL-E 2024
Verschuldensunabhängige Haftung	Art. 1	§ 1	Art. 1
Definition Produkt	Art. 2: jede bewegliche Sache, auch Elektrizität	§ 2	Art. 4 Abs. 1: jede bewegliche Sache, auch wenn in andere integriert, ⁴⁷ auch Elektrizität, digitale Bauunterlagen, Software
Rückausnahme freie und Open Source-Software	./.	./.	Art. 2 Abs. 1a
Harmonisierungsgrad	siehe Erwägungsgründe	./.	Art. 3
Definition Hersteller	Art. 3 Abs. 1–3: Endhersteller, Teilehersteller, Quasi-Hersteller, Importeur und Lieferant	§ 4	Art. 4 Abs. 11: Endhersteller, Quasihersteller, Eigenhersteller); Art. 7: Haftungskaskade Endhersteller, Teilehersteller, Einführer, Bevollmächtigter, Fulfillment-Dienstleister, Wesentliche Veränderung durch ua Wiederaufbereiter, Händler, Online-Plattform-Betreiber
Definitionen, digitale Bauunterlage, Komponente, verbundener Dienst, etc.	./.	./.	Art. 3 Diverse neue Definitionen, angepasst an New Legislative Framework
Öffnungsklausel sektorale Schadensersatzsysteme	./.	./.	Art. 7 Abs. 6a
Beweislast Geschädigter für Schaden, Fehler und Kausalität	Art. 4	§ 1 Abs. 4	Art. 9
Gesamtschuldnerische Haftung mehrerer Wirtschaftsakteure	Art. 5	§ 5	Art. 11
Definition Fehlerhaftigkeit	Art. 6: erwartungsgemäße Sicherheit unter Berücksichtigung von Darbietung, billigerweise zu rechnendem Gebrauch ⁴⁸ und Zeitpunkt des Inverkehrbringens ⁴⁹	§ 3	Art. 6: erwartungsgemäße Sicherheit oder Produktsicherheitsrecht, ⁵⁰ unter Berücksichtigung aller Umstände (vgl. Art. 6 Abs. 1 (a)-(ah)).
Offenlegung von Beweismitteln	./.	./.	Art. 8
Haftungsbefreiung, insbesondere wenn Produkt nicht/fehlerfrei in Verkehr gebracht; nicht für Vertrieb hergestellt/vertrieben; Norm entsprechend; Fehler nach Stand von Wissenschaft und Technik bei Inverkehrbringen nicht erkennbar; Fehler nicht im Teilprodukt des Teileherstellers	Art. 7 (mit Öffnungsklausel in Art. 15)	§ 1 Abs. 2 und Abs. 3	Art. 10

46 Siehe auch die Synopse, die der Europäische Rat erstellt hat, siehe ProdHaftRL-E 2024 sowie die eigene Synopse von ProdHaftRL 1985, ProdHaftRL-E 2022 und ProdHaftRL-E 2024 hier unter V.

47 „Integriert“ lässt nach seinem Wortlaut und unter Berücksichtigung von ErWG Nr. 6 dahin auslegen, dass Hersteller auch Weiterfresserschäden ersetzen müssten. Das scheint allerdings nach ProdHaftRL-E 2022, ErWG Nr. 12 und 15 nicht der Sinn und Zweck zu sein, vielmehr zielt die Regelung auf Software, zB auf Produkte mit digitalen Elementen, auf vernetzte Produkte etc.

48 Zur Abgrenzung von vorhersehbarem Fehlgebrauch und Missbrauch Arndt/Wende ZfPC 2023, 110; gegen das „Overwarning in der Produkt-Compliance“ auch Piovano CB 2022, 137.

49 Vgl. auch Art. 7(a): Kein Inverkehrbringen, keine Haftung.

50 Hier liegt die Schnittstelle von Produkthaftung und Produktrecht: Produktrechtlich nichtkonforme Produkte sind fehlerhaft im Sinne der PDL. Bislang konnten sich Gerichte an den Standards des Produktsicherheitsrechts „orientieren“, vgl. MüKoBGB/Wagner ProdHaftG § 3 Rn. 30. Zur Existenz unterschiedlicher Prüfmaßstäbe vgl. Schucht BB 2016, 456.

Thema	ProdHaftRL 1985	ProdHaftG	ProdHaftRL-E 2024
Haftungsminderung: Alternative Kausalität für den Fehler durch Handlung Dritter	Art. 8 Abs. 1	§ 6 Abs. 2	Art. 12 Abs. 1
Haftungsausschluss oder -ausschluss bei Mitverschulden	Art. 8 Abs. 2	§ 5	Art. 12 Abs. 2
Schadensumfang/-typen	Art. 9: Tod und Körperverletzung; Beschädigung/Zerstörung anderer Sache, hauptsächlich zum privaten Ge-/Verbrauch, Selbstbeteiligung 500 ECU; unberührt: mitgliedstaatliche Haftung für immaterielle Schäden	§ 7 (Tötung), § 8 (Körperverletzung), § 9 (Schadensersatz durch Geldrente), § 11 Selbstbeteiligung	Art. 5a: Tod, Körperverletzung, einschließlich medizinisch anerkannter psychischer Schäden; Beschädigung/Zerstörung anderer Sache; NICHT: Beschädigung/Zerstörung eines Produkts, das nicht durch fehlerhaftes, vom Hersteller integriertes Teil beschädigt, ⁵¹ Sachen von zumindest teilweise privater Nutzung; Beschädigung/Zerstörung nicht professionell genutzter Daten; keine Selbstbeteiligung
Verjährung: 3 Jahren ab Kenntnis; Ausnahme Hemmung	Art. 10:	§ 12	Art. 14
Erlöschen Haftungsanspruch	Art. 11: Zehn Jahre ab Inverkehrbringen, Ausnahme: gerichtliche Geltendmachung	§ 13	Art. 14a: Zehn Jahre; ggf. 25 Jahre bei „latenter“ Körperverletzung
Unabdingbarkeit	Art. 12	§ 14	Art. 13
Konkurrenz vertragliche/außervertragliche Ansprüche	Art. 13	§ 15	Art. 2 Abs. 2
Ausschluss Schäden aus nuklearem Zwischenfall	Art. 14	./. ⁵²	Art. 2 Abs. 2 ⁵³
Öffnungsklausel für Haftungsausdehnung bei Einhaltung Stand von Wissenschaft und Technik	Art. 15	./.	Art. -15 (sic)
Öffnungsklausel Haftungshöchstgrenze Tod/Körperverletzung durch gleiche Produkte ⁵⁴ mit selbem Fehler ≥ 70 Mio. ECU	Art. 16 nur von Deutschland, Spanien und Portugal sowie Island gebraucht ⁵⁵	§ 10: 85 Mio. EUR ⁵⁶	./. Keine Höchstgrenze
Anwendungsausschluss für vor Inkrafttreten in Verkehr gebrachte Produkte	Art. 17	§ 16	Art. 17, 19 Abs. 1 und 2
Währungsumrechnung bei Inkrafttreten	Art. 18	§ 17	./.
Umsetzungsfrist für Mitgliedstaaten	Art. 19 Drei Jahre nach Bekanntgabe	§ 19 1.1.1990	Art. 17, 18 24 Monate nach Inkrafttreten
Informationspflicht für Mitgliedstaaten	Art. 20	./.	Art. 15 Abs. 1
Praxisberichtspflicht für Kommission	Art. 21	./.	Art. 15 Abs. 1; Art. 16; Art. 17
Adressat der Richtlinie = EU-Mitgliedstaaten	Art. 22	./.	Art. 20

51 Dh, wie bereits nach hM im deutschen Recht: kein Ersatz des bloßen Weiterfresserschadens, vgl. Kapoor, 2023, ProdHaftG § 1 Rn. 9, 21 mwN.

52 Bewusst in ProdHaftG nicht umgesetzt, weil der Vorrang aus § 25, 25a AtG folge, vgl. Kapoor in Kapoor ProdHaftG § 15 Rn. 4.

53 Der Regelungsort in Art. 2 Abs. 2 ist systematisch wenig passend, weil Art. 2 den grundsätzlichen „Scope“ regelt, die Haftung selbst hingegen Art. 11.

54 Die ProdHaftRL spricht hier inkonsistent von „Artikel(n)“ statt „Produkten“, vgl. Art. 16 Abs. 1.

55 Taschner PHI 1997, 68. Kapoor in Kapoor ProdHaftG Einf. Rn. 13 mwN.

56 Zur Begründung siehe auch Rn. 7 im Schreiben des Rates vom 24.1.2024.

IV. Ausblick: Übergang zum neuen EU-Produkthaftungsregime

Am 24.1.2024 hat der Ausschuss der Ständigen Vertreter die Einigung vom 14.12.2023 bestätigt.⁵⁷ Der Entwurf geht nun an das Europäische Parlament den Kompromiss bestätigen (vorbehaltlich letzter rein sprachlich-redaktioneller Änderungen, ggf. auch Anpassungen der Nummerierung), wird auch der Rat der neuen Produkthaftungsrichtlinie zustimmen.⁵⁸ Nach der förmlichen Annahme seitens des Parlaments sowie des Rates kann der ProdHaftRL-E 2024 im Amtsblatt der EU veröffentlicht werden und dann am 21. Tag nach der Veröffentlichung in Kraft treten.

Der ProdHaftRL-E 2024 sieht im Vergleich zur ProdHaftRL 1985 (drei Jahre)⁵⁹ eine geringe, im Vergleich zum ProdHaftRL-E 2022 (12 Monate)⁶⁰ allerdings nun doch eine etwas längere Umsetzungsphase vor: Die Produkthaftungsrichtlinie 85/374/EEC wird 24 Monate nach Inkrafttreten der ProdHaftRL-E 2024 aufgehoben. Zum selben Zeitpunkt sollen die Mitgliedstaaten die ProdHaftRL-E 2024 in nationales Recht umsetzen.

Anschließend wird es allerdings noch eine längere Übergangsphase geben. Denn die Produkthaftungsrichtlinie 85/374/EEC gilt für alle Produkte fort, die bis zu deren Aufhebung in Verkehr gebracht oder in Dienst gestellt worden sind.⁶¹ D.h.: die bisherige ProdHaftRL bzw. das jeweilige nationale Umsetzungsgesetz (in Deutschland das ProdHaftG) gilt für die bis 2026 (genauer: 24 Monate ab Inkrafttreten der neuen Produkthaftungsrichtlinie) in Verkehr gebrachten bzw. in Dienst gestellten Produkte fort, dh bis mindestens 2036, weil dann erst die Ausschlussfrist aus Art. 11 ProdHaftRL 1985 greift („es sei denn, der Geschädigte hat in der Zwischenzeit ein gerichtliches Verfahren eingeleitet“).

Zusammenfassend die wesentlichen Neuerungen:

- Der ProdHaftRL-E 2024 knüpft das „europäische Sicherheitsnetz“ aus zivilrechtlicher Haftung und Produktsicher-

heit enger; indem es insbesondere die Begriffe der Produkthaftung an das New Legislative Framework anpasst.

- Der ProdHaftRL-E 2024 fasst unter „Produkte“ als bewegliche Sachen auch Software und KI. Freie und Open-Source-Software nimmt der Entwurf grundsätzlich aus (Art. 2 Abs. 1a ProdHaftRL-E-2024). Kleine Softwarehersteller fallen darunter, können den Rückgriff des Endherstellers indes vertraglich ausschließen.
- Der ProdHaftRL-E 2024 passt die Produkthaftungsregeln auch an den boomenden Onlinevertrieb und die globalisierten Lieferketten an: Der Entwurf verlängert die kaskadenartige Haftung vom Hersteller über den Teilehersteller, den Einführer, den Bevollmächtigten, den Fulfillment-Dienstleister, den Händler, die Online-Plattform. Für den Fall mangelnden Haftungszugriffs lässt der ProdHaftRL-E 2024 nationale, sektorale Entschädigungsregeln zu.
- Der ProdHaftRL-E 2024 führt Pflichten zur Offenlegung von Beweismitteln ein und trifft klare Regeln zur Beweislastumkehr, etwa bei fehlender Product Compliance.
- Der ProdHaftRL-E 2024 sieht einen größeren Schadensumfang vor; der bisherige Selbstbehalt von 500 EUR sowie die bislang mögliche Haftungshöchstgrenze entfallen. Die Haftungsrisiken sind daraufhin zu prüfen, eine etwaige erweiterte Versicherungsdeckung ebenso wie die Möglichkeit, vertraglich die Verantwortlichkeiten in der Lieferkette noch genauer festzulegen bzw. zu verteilen.

⁵⁷ Vgl. zu den einzelnen Verfahrensschritten EU Publications Office, Procedure 2022/0302/COD: https://eur-lex.europa.eu/procedure/EN/2022_302.

⁵⁸ Vgl. Schreiben des Rates vom 24.1.2024 an das Europäische Parlament, im Annex zur Information Note/Interinstitutional File 2022/0302(COD)).

⁵⁹ Art. 19 ProdHaftRL 1985.

⁶⁰ So noch Art. 2 Abs. 1 und Art. 18 ProdHaftRL-E 2022.

⁶¹ Art. 2 Abs. 1 (Geltung der neuen RL), 17 Abs. 1 S. 1 (Aufhebung der alten RL) und S. 2 (Fortgeltung der alten RL) ProdHaftRL-E 2024.

V. Anhang: Synopse der Produkthaftungsrichtlinie von 1985 mit den Entwürfen von 2022 bzw. 2024

ProdHaftRL 1985 ⁶²	ProdHaftRL-E 2022 ⁶³	ProdHaftRL-E 2024 ^{64,65}
Council Directive of 25 July 1985 on (...) concerning liability for defective products (...) ⁶⁶	Proposal for a Directive of the European Parliament and of the Council on liability for defective products (...)	Proposal for a Directive of the European Parliament and of the Council on liability for defective products (...)
	CHAPTER I General provisions	CHAPTER I General provisions
Whereas approximation of the laws of the Member States concerning the liability of the producer for damage caused by the defectiveness of his products is necessary because the existing divergences may distort competition and affect the movement of goods within the common market and entail a differing degree of protection of the consumer against damage caused by a defective product to his health or property ;	Article 1 Subject matter This Directive lays down common rules on the liability of economic operators for damage suffered by natural persons caused by defective products.	<i>Article 1</i> Subject matter and objective This Directive lays down common rules on the liability of economic operators for damage suffered by natural persons caused by defective products <i>and on compensation for such damage.</i> <i>The objective of this Directive is to contribute to the proper functioning of the internal market, while ensuring a high level of protection of consumers and other natural persons.</i>
Article 17 This Directive shall not apply to products put into circulation before the date on which the provisions referred to in Article 19 enter into force.	Article 2 Scope 1. This Directive shall apply to products placed on the market or put into service after [OP, please insert the date: 12 months after entry into force].	<i>Article 2</i> Scope 1. This Directive shall apply to products placed on the market or put into service after [OP, please insert the date: 12 24 months after entry into force]. <i>1a. This Directive does not apply to free and open-source software that is developed or supplied outside the course of a commercial activity.</i>
Article 14 This Directive shall not apply to injury or damage arising from nuclear accidents and covered by international conventions ratified by the Member States.	2. This Directive shall not apply to damage arising from nuclear accidents in so far as liability for such damage is covered by international conventions ratified by Member States.	2. This Directive shall not apply to damage arising from nuclear accidents in so far as liability for such damage is covered by international conventions ratified by Member States.
	3.This Directive shall not affect: (a) the applicability of Union law on the protection of personal data, in particular Regulation (EU) 2016/679, Directive 2002/58/EC, and Directive (EU) 2016/680;	3. This Directive shall not affect: (a) the applicability of Union law on the protection of personal data, in particular Regulation (EU) 2016/679, Directive 2002/58/EC, and Directive (EU) 2016/680;
	(b) national rules concerning the right of contribution or recourse between two or more economic operators that are jointly and severally liable pursuant to Article 11 or in a case where the damage is caused both by a defec-	(b) national rules concerning the right of contribution or recourse between two or more economic operators that are jointly and severally liable pursuant to Article 11 or in a case where the damage is caused both by a defective product and by an act or omission of a third party as referred to in Article 12;

62 Richtlinie 85/374/EWG des Rates vom 25.7.1985 (OJ L 210, 7.8.1985, S. 29, geändert durch Richtlinie 1999/34/EG vom 10.5.1999, OJ L 141, 4.6.1999, S. 20) über die Haftung für fehlerhafte Produkte, <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A31985L0374>.

63 Europäische Kommission, Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates über die Haftung für fehlerhafte Produkte (COM(2022) 495 final) vom 28.9.2022, <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A52022PC0495>.

64 Europäischer Rat, Proposal for a Directive of the European Parliament and of the Council on liability for defective products - Letter sent to the European Parliament, Interinstitutional File: 2022/0302(COD) vom 24.1.2024, <https://data.consilium.europa.eu/doc/document/ST-5809-2024-INIT/en/pdf>.

65 Formatierungen gemäß Original des Europäischen Rats, die die Änderungen gegenüber dem ProdHaftRL-E 2022 offenlegen: Kursiv und Fett = Ergänzung; Durchgestrichen = Löschung.

66 Synopse weitgehend ohne Erwägungsgründe; Erwägungsgründe finden sich vor allem in der Spalte zur ProdHaftRL 1985, weil sich dort gelegentlich Aspekte finden, die in den jüngsten Entwürfen Aufnahme in den Richtlinienentwurf selbst gefunden haben.

ProdHaftRL 1985	ProdHaftRL-E 2022	ProdHaftRL-E 2024
	tive product and by an act or omission of a third party as referred to in Article 12;	
	(c) any rights which an injured person may have under national rules concerning contractual liability or concerning non-contractual liability on grounds other than the defectiveness of a product, including national rules implementing Union Law, such as [AI Liability Directive];	(c) any rights which an injured person may have under national rules concerning contractual liability or concerning non-contractual liability on grounds other than the defectiveness of a product <i>as provided for in this Directive</i> , including national rules implementing Union law, such as [AI Liability Directive] ;
	(d) any rights which an injured person may have under any special liability system that existed in national law on 30 July 1985.	(d) any rights which an injured person may have under any special liability system that existed in national law on 30 July 1985.
[Recital] Whereas the harmonization resulting from this cannot be total at the present stage, but opens the way towards greater harmonization;	Article 3 Level of harmonisation Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more, or less, stringent provisions to achieve a different level of consumer protection, unless otherwise provided for in this Directive.	<i>Article 3</i> Level of harmonisation Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more, or less, stringent provisions to achieve a different level of consumer protection <i>protection for consumers and other natural persons</i> , unless otherwise provided for in this Directive.
Article 2 For the purpose of this Directive 'product' means all movables, with the exception of primary agricultural products and game, even though incorporated into another movable or into an immovable. 'Primary agricultural products' means the products of the soil, of stock-farming and of fisheries, excluding products which have undergone initial processing. 'Product' includes electricity. Article 3 1. 'Producer' means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer. 2. Without prejudice to the liability of the producer, any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a producer within the meaning of this Directive and shall be responsible as a producer. 3. Where the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or	Article 4 Definitions For the purpose of this Directive, the following definitions shall apply: (1) 'product' means all movables, even if integrated into another movable or into an immovable. 'Product' includes electricity, digital manufacturing files and software; (2) 'digital manufacturing file' means a digital version or a digital template of a movable; (3) 'component' means any item, whether tangible or intangible, or any related service, that is integrated into, or inter-connected with, a product by the manufacturer of that product or within that manufacturer's control; (4) 'related service' means 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; (5) 'manufacturer's control' means that the manufacturer of a product authorises a) the integration, inter-connection or supply by a third party of a component including software updates or	<i>Article 4</i> Definitions For the purpose of this Directive, the following definitions shall apply: 'product' means all movables, even if integrated into <i>or inter-connected with</i> another movable or into an immovable. 'Product' includes electricity, digital manufacturing files, <i>raw materials</i> and software; 'digital manufacturing file' means a digital version or a digital template of a movable, <i>which contains the functional information necessary to produce a tangible item by enabling the automated control of machinery or tools</i> ; 'component' means any item, whether tangible or intangible, <i>raw materials</i> or any related service, that is integrated into, or inter-connected with, a product by the manufacturer of that product or within that manufacturer's control ; 'related service' means 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; 'manufacturer's control' means that the manufacturer of a product authorises a) the integration, inter-connection or supply by a third party of a component including software updates or upgrades, or b) the modification of the product;

ProdHaftRL 1985	ProdHaftRL-E 2022	ProdHaftRL-E 2024
<p>of the person who supplied him with the product. The same shall apply, in the case of an imported product, if this product does not indicate the identity of the importer referred to in paragraph 2, even if the name of the producer is indicated.</p>	<p>upgrades, or b) the modification of the product;</p> <p>(6) ‘damage’ means material losses resulting from:</p> <p>(a) death or personal injury, including medically recognised harm to psychological health;</p> <p>(b) harm to, or destruction of, any property, except:</p> <p>(i) the defective product itself;</p> <p>(ii) a product damaged by a defective component of that product;</p> <p>(iii) property used exclusively for professional purposes;</p> <p>(c) loss or corruption of data that is not used exclusively for professional purposes;</p> <p>(7) ‘data’ means data as defined in Article 2, point (1), of Regulation (EU) 2022/868 of the European Parliament and of the Council 51 ;</p> <p>(8) ‘placing on the market’ means the first making available of a product on the Union market;</p> <p>(9) ‘making available on the market’ means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;</p> <p>(10) ‘putting into service’ means the first use of a product in the Union in the course of a commercial activity, whether in return for payment or free of charge, in circumstances in which the product has not been placed on the market prior to its first use;</p> <p>(11) ‘manufacturer’ means any natural or legal person who develops, manufactures or produces a product or has a product designed or manufactured, or who markets that product under its name or trademark or who develops, manufactures or produces a product for its own use;</p> <p>(12) ‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on its behalf in relation to specified tasks;</p> <p>(13) ‘importer’ means any natural or legal person established within the Union who places a product from a third country on the Union market;</p>	<p><i>(a) the manufacturer of a product performs or, with respect to actions of a third party, authorises or consents to:</i></p> <p><i>(i) the integration, inter-connection or supply of a component including software updates or upgrades; or</i></p> <p><i>(ii) the modification of the product, including substantial modifications;</i></p> <p><i>(b) the manufacturer of a product has the ability to supply software updates or upgrades itself or via a third party.</i></p> <p>‘damage’ means material losses resulting from:</p> <p>(a) death or personal injury, including medically recognised harm to psychological health;</p> <p>(b) harm to, or destruction of, any property, except:</p> <p>(i) the defective product itself;</p> <p>(ii) a product damaged by a defective component of that product;</p> <p>(iii) property used exclusively for professional purposes;</p> <p>(c) loss or corruption of data that is not used exclusively for professional purposes;</p> <p>‘data’ means data as defined in Article 2, point (1), of Regulation (EU) 2022/868 of the European Parliament and of the Council;</p> <p><i>(7a) ‘making available on the market’ means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;</i></p> <p>‘placing on the market’ means the first making available of a product on the Union market;</p> <p>‘making available on the market’ means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;</p> <p>‘putting into service’ means the first use of a product in the Union in the course of a commercial activity, whether in return for payment or free of charge, in circumstances in which the product has not been placed on the market prior to its first use;</p> <p>‘manufacturer’ means any natural or legal person who develops, manufactures or produces a product or has a product designed or manufactured, or who markets that product under its name or trademark or who develops, manufactures or produces a product for its own use;</p> <p><i>(a) develops, manufactures or produces a product; or</i></p> <p><i>(b) has a product designed or manufactured, or who, by putting its name, trademark or other distinguishing features on that product, presents itself as its manufacturer; or</i></p>

ProdHaftRL 1985	ProdHaftRL-E 2022	ProdHaftRL-E 2024
	<p>(14) ‘fulfilment service provider’ means any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching of a product, without having ownership of the product, with the exception of postal services as defined in Article 2, point (1), of Directive 97/67/EC of the European Parliament and of the Council 52, of parcel delivery services as defined in Article 2, point (2), of Regulation (EU) 2018/644 of the European Parliament and of the Council 53, and of any other postal services or freight transport services;</p> <p>(15) ‘distributor’ means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;</p> <p>(16) ‘economic operator’ means the manufacturer of a product or component, the provider of a related service, the authorised representative, the importer, the fulfilment service provider or the distributor;</p> <p>(17) ‘online platform’ means online platform as defined in Article 2, point (h), of Regulation (EU).../... of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act).</p>	<p><i>(c) develops, manufactures or produces a product for its own use;</i></p> <p>‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on its behalf in relation to specified tasks;</p> <p>‘importer’ means any natural or legal person established within the Union who places a product from a third country on the Union market;</p> <p>‘fulfilment service provider’ means any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching of a product, without having ownership of the product, with the exception of postal services as defined in Article 2, point (1), of Directive 97/67/EC of the European Parliament and of the Council, of parcel delivery services as defined in Article 2, point (2), of Regulation (EU) 2018/644 of the European Parliament and of the Council, and of any other postal services or freight transport services;</p> <p>‘distributor’ means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;</p> <p>‘economic operator’ means the manufacturer of a product or component, the provider of a related service, the authorised representative, the importer, the fulfilment service provider or the distributor;</p> <p>‘online platform’ means online platform as defined in Article 2, point (h), of Regulation (EU).../... of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act).</p>
		<p><i>(17a) ‘trade secret’ means a trade secret as defined in Article 2, point (1), of Directive (EU) 2016/943;</i></p> <p><i>(17b) ‘substantial modification’ means a modification of a product after it has been placed on the market or put into service:</i></p> <p><i>(a) that is considered substantial under relevant Union or national rules on product safety; or</i></p> <p><i>(b) where relevant Union or national rules lay down no threshold on what is to be considered substantial modification, that:</i></p> <p><i>(i) changes the product’s original performance, purpose or type, without this being foreseen in the manufacturer’s initial risk assessment; and</i></p> <p><i>(ii) changes the nature of the hazard, creates a new hazard or increases the level of risk;</i></p>
	<p>CHAPTER II</p> <p>Specific provisions on liability for defective products</p>	<p>CHAPTER II</p> <p>Specific provisions on liability for defective products</p>

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<p>Article 1</p> <p>The producer shall be liable for damage caused by a defect in his product.</p>	<p>Article 5</p> <p>Right to compensation</p> <p>1. 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 the provisions set out in this Directive.</p> <p>2. Member States shall ensure that claims for compensation pursuant to paragraph 1 may also be brought by:</p> <p>(a) a person that succeeded, or was subrogated, to the right of the injured person by virtue of law or contract; or</p> <p>(b) a person acting on behalf of one or more injured persons in accordance with Union or national law.</p>	<p>Article 5</p> <p>Right to compensation</p> <p>1. 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 the provisions set out in this Directive.</p> <p>2. Member States shall ensure that claims for compensation pursuant to paragraph 1 may also be brought by:</p> <p>(a) a person that succeeded, or was subrogated, to the right of the injured person by virtue of <i>Union or national</i> law or contract; or</p> <p>(b) a person acting on behalf of one or more injured persons in accordance with <i>by virtue of</i> Union or national law.</p>
<p>Article 9</p> <p>For the purpose of Article 1, 'damage' means: (a) damage caused by death or by personal injuries ;</p> <p>(b) damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of 500 ECU, provided that the item of property:</p> <p>(i) is of a type ordinarily intended for private use or consumption, and</p> <p>(ii) was used by the injured person mainly for his own private use or consumption.</p> <p>This Article shall be without prejudice to national provisions relating to non-material damage.</p>	<p>Art. 4</p> <p>(6) 'damage' means material losses resulting from:</p> <p>(a) death or personal injury, including medically recognised harm to psychological health;</p> <p>(b) harm to, or destruction of, any property, except:</p> <p>(i) the defective product itself;</p> <p>(ii) a product damaged by a defective component of that product;</p> <p>(iii) property used exclusively for professional purposes;</p> <p>(c) loss or corruption of data that is not used exclusively for professional purposes;</p>	<p>Article 5a</p> <p>Damage</p> <p><i>1. The right to compensation under Article 5 shall apply in respect of only the following types of damage:</i></p> <p><i>(a) death or personal injury, including medically recognised damage to psychological health;</i></p> <p><i>(b) damage to, or destruction of, any property, except:</i></p> <p><i>(i) the defective product itself;</i></p> <p><i>(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</i></p> <p><i>(iii) property used exclusively for professional purposes; and</i></p> <p><i>(c) destruction or corruption of data that is not used for professional purposes</i></p> <p><i>2. The right to compensation shall cover all material losses resulting from the damage referred to in paragraph 1. The right to compensation shall also cover non-material losses resulting from the damage referred to in paragraph 1, in so far as they are compensable under national law.</i></p> <p><i>3. This Article does not affect national law relating to the compensation of damages under other liability regimes.</i></p>
<p>Article 6</p>	<p>Article 6</p> <p>Defectiveness</p>	<p>Article 6</p> <p>Defectiveness</p> <p><i>-1. A product shall be considered defective when it does not provide the safety that a person is entitled to expect or that is required under Union or national law.</i></p>
<p>1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:</p>	<p>1. A product shall be considered defective when it does not provide the safety which the public at large is entitled</p>	<p>1. A product shall be considered defective when it does not provide the safety which the public at large is entitled to expect, taking all circumstances into account <i>In assessing the defectiveness of a product, all circumstances shall be taken</i> into account, including the following:</p>

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	to expect, taking all circumstances into account, including the following:	
(a) the presentation of the product ;	(a) the presentation of the product, including the instructions for installation, use and maintenance;	(a) the presentation <i>and the characteristics</i> of the product, including <i>its labelling, design, technical features, composition, packaging and</i> the instructions for <i>assembly</i> , installation, use and maintenance;
(b) the use to which it could reasonably be expected that the product would be put ;	(b) the reasonably foreseeable use and misuse of the product;	(b) the reasonably foreseeable use and misuse of the product;
	(c) the effect on the product of any ability to continue to learn after deployment;	(c) the effect on the product of any ability to continue to learn <i>or acquire new features</i> after deployment <i>it is placed on the market or put into service</i> ;
	(d) the effect on the product of other products that can reasonably be expected to be used together with the product;	(d) the <i>reasonably foreseeable</i> effect on the product of other products that can reasonably be expected to be used together with the product, <i>including by means of interconnection</i> ;
(c) the time when the product was put into circulation.	(e) 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;	(e) 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;
	(f) product safety requirements, including safety-relevant cybersecurity requirements;	(f) <i>relevant</i> product safety requirements, including safety-relevant cybersecurity requirements;
	(g) any intervention by a regulatory authority or by an economic operator referred to in Article 7 relating to product safety;	(g) any <i>recall of the product or any other relevant</i> intervention by a <i>regulatory competent</i> authority or by an economic operator referred to in Article 7 relating to product safety;
	(h) the specific expectations of the end-users for whom the product is intended.	(h) the specific expectations <i>needs</i> of the end-users <i>group of users</i> for whom the product is intended;
		<i>(ha) in the case of a product whose very purpose is to prevent damage, any failure of the product to fulfil that purpose.</i>
2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.	2. A product shall not be considered defective for the sole reason that a better product, including updates or upgrades to a product, is already or subsequently placed on the market or put into service.	2. A product shall not be considered defective for the sole reason that a better product, including updates or upgrades to a product, is already or subsequently placed on the market or put into service.
Article 1 The producer shall be liable for damage caused by a defect in his product. Article 3 1. 'Producer' means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer. 2. Without prejudice to the liability of the producer, any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a produ-	Article 7 Economic operators liable for defective products 1. Member States shall ensure that the manufacturer of a defective product can be held liable for damage caused by that product. Member States shall ensure that, where a defective component has caused the product to be defective, the manufacturer of a defective component can also be held liable for the same damage. 2. Member States shall ensure that, where the manufacturer of the defective product is established outside the	<i>Article 7</i> Economic operators liable for defective products <i>-1. Member States shall ensure that the following economic operators are liable for damage pursuant to this Directive:</i> <i>(a) the manufacturer of the defective product;</i> <i>(b) the manufacturer of a defective component, where that component has been integrated into, or inter-connected with, the product within the manufacturer's control has caused the product to be defective, and without prejudice to the liability of the manufacturer under point (a); and</i> <i>(c) in the case of a manufacturer of a product or a component established outside the Union, and without prejudice to its own liability:</i>

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<p>cer within the meaning of this Directive and shall be responsible as a producer.</p> <p>3. Where the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product. The same shall apply, in the case of an imported product, if this product does not indicate the identity of the importer referred to in paragraph 2, even if the name of the producer is indicated.</p> <p>Article 5</p> <p>Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.</p>	<p>Union, the importer of the defective product and the authorised representative of the manufacturer can be held liable for damage caused by that product.</p> <p>3. Member States shall ensure that, where the manufacturer of the defective product is established outside the Union and neither of the economic operators referred to in paragraph 2 is established in the Union, the fulfilment service provider can be held liable for damage caused by the defective product.</p> <p>4. Any natural or legal person that modifies a product that has already been placed on the market or put into service shall be considered a manufacturer of the product for the purposes of paragraph 1, where the modification is considered substantial under relevant Union or national rules on product safety and is undertaken outside the original manufacturer’s control.</p> <p>5. Member States shall ensure that where a manufacturer under paragraph 1 cannot be identified or, where the manufacturer is established outside the Union, an economic operator under paragraph 2 or 3 cannot be identified, each distributor of the product can be held liable where:</p> <p>(a) the claimant requests that distributor to identify the economic operator or the person who supplied the distributor with the product; and</p> <p>(b) the distributor fails to identify the economic operator or the person who supplied the distributor with the product within 1 month of receiving the request.</p> <p>6. Paragraph 5 shall also apply to any provider of an online platform that allows consumers to conclude distance contracts with traders and that is not a manufacturer, importer or distributor, provided that the conditions of Article 6(3) set out in Regulation (EU) .../... of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) are fulfilled.</p>	<p><i>(i) the importer of the defective product or component;</i></p> <p><i>(ii) the authorised representative of the manufacturer; and</i></p> <p><i>(iii) where there is no importer established within the Union or authorised representative, the fulfilment service provider.</i></p> <p><i>The liability of the manufacturer under the first subparagraph, point (a) shall also cover any damage caused by a defective component if it was integrated into, or inter-connected with, the product within that manufacturer’s control.</i></p> <p>Member States shall ensure that the manufacturer of a defective product can be held liable for damage caused by that product.</p> <p>Member States shall ensure that, where a defective component has caused the product to be defective, the manufacturer of a defective component can also be held liable for the same damage.</p> <p>2. Member States shall ensure that, where the manufacturer of the defective product is established outside the Union, the importer of the defective product and the authorised representative of the manufacturer can be held liable for damage caused by that product.</p> <p>3. Member States shall ensure that, where the manufacturer of the defective product is established outside the Union and neither of the economic operators referred to in paragraph 2 is established in the Union, the fulfilment service provider can be held liable for damage caused by the defective product.</p> <p>4. Any natural or legal person that <i>substantially</i> modifies a product <i>outside the manufacturer’s control and thereafter makes it available</i> that has already been placed on the market or puts it <i>puts it</i> into service shall be considered a manufacturer of the product for the purposes of paragraph 1, where the modification is considered substantial under relevant Union or national rules on product safety and is undertaken outside the original manufacturer’s control.</p> <p>5. Member States shall ensure that, where a manufacturer <i>economic operator</i> under paragraph 1 cannot be identified or, where the manufacturer is established outside <i>in</i> the Union, an economic operator under paragraph 2 or 3 cannot be identified, each distributor of the <i>defective</i> product can be held is liable where:</p> <p>(a) the claimant <i>injured person</i> requests that distributor to identify the <i>an</i> economic operator or the person who supplied the <i>as referred to in paragraph 1 and established in the Union, or its own</i> distributor who supplied it with that <i>with that</i> with the product; and</p> <p>(b) the <i>that</i> distributor fails to identify the <i>an</i> economic operator or the person who supplied the distributor with the product its own distributor, as referred to in point (a), <i>within one</i> month of receiving the request referred to in point (a). <i>referred to in point (a).</i></p> <p>6. Paragraph 5 shall also apply to any provider of an online platform that allows consumers to conclude dis-</p>

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		<p>tance contracts with traders and that is not an economic operator manufacturer, importer or distributor, provided that the conditions of Article 6(3) set out in Regulation (EU) ... of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act <i>Article 6(3) of Regulation (EU) 2022/2065</i>) are fulfilled.</p> <p><i>6a. Where victims fail to obtain compensation because none of the economic operators referred to in paragraphs 1 to 6 can be held liable under this Directive, or because the liable economic operators are insolvent or have ceased to exist, Member States may use existing national sectorial compensation schemes or establish new ones under national law, which should preferably not be funded by public revenues, to appropriately compensate injured persons who suffered damage caused by defective products.</i></p>
	<p>Article 8</p> <p>Disclosure of evidence</p> <p>1. Member States shall ensure that national courts are empowered, upon request of an injured person claiming compensation for damage caused by a defective product ('the claimant') who has presented facts and evidence sufficient to support the plausibility of the claim for compensation, to order the defendant to disclose relevant evidence that is at its disposal.</p> <p>2. Member States shall ensure that national courts limit the disclosure of evidence to what is necessary and proportionate to support a claim referred to in paragraph 1.</p> <p>3. When determining whether the disclosure is proportionate, national courts shall consider the legitimate interests of all parties, including third parties concerned, in particular in relation to the protection of confidential information and trade secrets within the meaning of Article 2, point 1, of Directive (EU) 2016/943.</p> <p>4. Member States shall ensure that, where a defendant is ordered to disclose information that is a trade secret or an alleged trade secret, national courts are empowered, upon a duly reasoned request of a party or on their own initiative, to take the specific measures necessary to preserve the confidentiality of that information when it is used or referred to in the course of the legal proceedings.</p>	<p>Article 8</p> <p>Disclosure of evidence</p> <p>1. Member States shall ensure that national courts are empowered, upon request of an injured person <i>who is claiming compensation in proceedings before a national court</i> for damage caused by a defective product ('the claimant') <i>and</i> who has presented facts and evidence sufficient to support the plausibility of the claim for compensation, to order the defendant <i>the defendant is required</i> to disclose relevant evidence that is at its disposal, <i>subject to the conditions set out in this Article.</i></p> <p><i>1a. Member States shall ensure that, upon request of a defendant who has presented facts and evidence sufficient to demonstrate its need for evidence for the purposes of countering a claim for compensation, the claimant is required, in accordance with national law, to disclose relevant evidence that is at its disposal</i></p> <p>2. Member States shall ensure that national courts limit the disclosure of evidence <i>pursuant to paragraph 1 and in accordance with national law is limited to what is necessary and proportionate</i> to what is necessary and proportionate to support a claim referred to in paragraph 1.</p> <p>3. When determining whether the disclosure <i>requested by a party is necessary and</i> is proportionate, national courts shall consider the legitimate interests of all parties, including third parties concerned, in particular in relation to the protection of confidential information and trade secrets within the meaning of Article 2, point 1, of Directive (EU) 2016/943.</p> <p>4. Member States shall ensure that, where a defendant is ordered <i>required</i> to disclose information that is a trade secret or an alleged trade secret, national courts are empowered, upon a duly reasoned request of a party or on their own initiative, to take the specific measures necessary to preserve the confidentiality of that information when it is used or referred to in the course of <i>and after</i> the legal proceedings.</p> <p><i>4a. Member States shall ensure that, where a party is required to disclose evidence, national courts are</i></p>

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		<p><i>empowered, upon a duly reasoned request of the counterpart or where the national court deems it pertinent and in accordance with national law, to require the evidence to be presented in an easily accessible and easily understandable manner, if such presentation is deemed proportionate by the national court in terms of costs and effort for the required party.</i></p> <p><i>4b. This Article does not affect national rules relating to the pre-trial disclosure of evidence, where such rules exist.</i></p>
<p>Article 4</p> <p>The injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage.</p>	<p>Article 9</p> <p>Burden of proof</p> <p>1. Member States shall ensure that a claimant is required to prove the defectiveness of the product, the damage suffered and the causal link between the defectiveness and the damage.</p> <p>2. The defectiveness of the product shall be presumed, where any of the following conditions are met:</p> <p>(a) the defendant has failed to comply with an obligation to disclose relevant evidence at its disposal pursuant to Article 8(1);</p> <p>(b) the claimant establishes that the product does not comply with mandatory safety requirements laid down in Union law or national law that are intended to protect against the risk of the damage that has occurred; or</p> <p>(c) the claimant establishes that the damage was caused by an obvious malfunction of the product during normal use or under ordinary circumstances.</p>	<p>Article 9</p> <p>Burden of proof</p> <p>1. Member States shall ensure that a claimant is required to prove the defectiveness of the product, the damage suffered and the causal link between the defectiveness and the damage.</p> <p>2. The defectiveness of the product shall be presumed, where any of the following conditions are met:</p> <p>(a) the defendant has failed to comply with an obligation to disclose relevant evidence at its disposal pursuant to Article 8(1);</p> <p>(b) the claimant establishes<i>demonstrates</i> that the product does not comply with mandatory product safety requirements laid down in Union law or national law that are intended to protect against the risk of the damage that has occurred<i>suffered by the injured person</i>; or</p> <p>(c) the claimant establishes<i>demonstrates</i> that the damage was caused by an obvious malfunction of the product during normal<i>reasonably foreseeable</i> use or under ordinary circumstances.</p>
	<p>3. The causal link between the defectiveness of the product and the damage shall be presumed, where it has been established that the product is defective and the damage caused is of a kind typically consistent with the defect in question.</p>	<p>3. The causal link between the defectiveness of the product and the damage shall be presumed, where it has been established that the product is defective and the damage caused is of a kind typically consistent with the defect in question.</p>
	<p>4. Where a national court judges that the claimant faces excessive difficulties, due to technical or scientific complexity, to prove the defectiveness of the product or the causal link between its defectiveness and the damage, or both, the defectiveness of the product or causal link between its defectiveness and the damage, or both, shall be presumed where the claimant has demonstrated, on the basis of sufficiently relevant evidence, that:</p>	<p>4. Where A national court judges that the claimant faces excessive difficulties, due to technical or scientific complexity, to prove<i>shall presume</i> the defectiveness of the product or the causal link between its defectiveness and the damage, or both, <i>where, despite the disclosure of evidence in accordance with Article 8 and taking into account all relevant circumstances of the case</i> the defectiveness of the product or causal link between its defectiveness and the damage, or both, shall be presumed where the claimant has demonstrated, on the basis of sufficiently relevant evidence, that:</p> <p>(a) the product contributed to <i>claimant faces excessive difficulties, in particular due to technical or scientific complexity to be able to prove the defectiveness of the product or the causal link between its defectiveness and</i> the damage, or both; and</p>

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	<p>(a) the product contributed to the damage; and</p> <p>(b) it is likely that the product was defective or that its defectiveness is a likely cause of the damage, or both.</p> <p>The defendant shall have the right to contest the existence of excessive difficulties or the likelihood referred to in the first subparagraph.</p>	<p>(b) the claimant demonstrates that it is likely that the product was defective or that its defectiveness is a likely cause of there is a causal link between the defectiveness and the damage, or both.</p> <p>The defendant shall have the right to contest the existence of excessive difficulties or the likelihood referred to in the first subparagraph.</p>
	5. The defendant shall have the right to rebut any of the presumptions referred to in paragraphs 2, 3 and 4.	5. The defendant shall have the right to rebut any of the presumptions referred to in paragraphs 2, 3 and 4.
<p>Article 7</p> <p>The producer shall not be liable as a result of this Directive if he proves:</p> <p>(a) that he did not put the product into circulation; or</p> <p>(b) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards ; or</p> <p>(c) that the product was neither manufactured by him for sale or any form of distribution for economic purpose nor manufactured or distributed by him in the course of his business ; or</p> <p>(d) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities ; or</p> <p>(e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered ; or</p> <p>(f) in the case of a manufacturer of a component, that the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product.</p>	<p>Article 10</p> <p>Exemption from liability</p> <p>1. An economic operator referred to in Article 7 shall not be liable for damage caused by a defective product if that economic operator proves any of the following:</p> <p>(a) in the case of a manufacturer or importer, that it did not place the product on the market or put it into service;</p> <p>(b) in the case of a distributor, that it did not make the product available on the market;</p> <p>(c) that it is probable that the defectiveness that caused the damage did not exist when the product was placed on the market, put into service or, in respect of a distributor, made available on the market, or that this defectiveness came into being after that moment;</p> <p>(d) that the defectiveness is due to compliance of the product with mandatory regulations issued by public authorities;</p> <p>(e) in the case of a manufacturer, that the objective state of scientific and technical knowledge at the time when the product was placed on the market, put into service or in the period in which the product was within the manufacturer's control was not such that the defectiveness could be discovered;</p> <p>(f) in the case of a manufacturer of a defective component referred to in Article 7(1), second subparagraph, that the defectiveness of the product is attributable to the design of the product in which the component has been integrated or to the instructions given by the manufacturer of that pro-</p>	<p><i>Article 10</i></p> <p>Exemption from liability</p> <p>1. An economic operator referred to in Article 7 shall not be liable for damage caused by a defective product if that economic operator proves any of the following:</p> <p>(a) in the case of a manufacturer or importer, that it did not place the product on the market or put it into service;</p> <p>(b) in the case of a distributor, that it did not make the product available on the market;</p> <p>(c) that it is probable that the defectiveness that caused the damage did not exist when the product was placed on the market, put into service or, in respect of a distributor, made available on the market, or that this defectiveness came into being after that moment;</p> <p>(d) that the defectiveness is due to compliance of the product with mandatory regulations issued by public authorities; legal requirements;</p> <p>e) in the case of a manufacturer, that the objective state of scientific and technical knowledge at the time when the product was placed on the market, put into service or in the period in which the product was within the manufacturer's control was not such that the defectiveness could be discovered;</p> <p>(f) in the case of a manufacturer of a defective component referred to in Article 7(1), second first subparagraph, point (b), that the defectiveness of the product is attributable to the design of the product in which the component has been integrated or to the instructions given by the manufacturer of that product to the manufacturer of the component; or</p>

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	duct to the manufacturer of the component; or	
	(g) in the case of a person that modifies a product as referred to in Article 7(4), that the defectiveness that caused the damage is related to a part of the product not affected by the modification.	(g) in the case of a person that modifies a product as referred to in Article 7(4), that the defectiveness that caused the damage is related to a part of the product not affected by the modification.
	<p>2. By way of derogation from paragraph 1, point (c), an economic operator shall not be exempted from liability, where the defectiveness of the product is due to any of the following, provided that it is within the manufacturer's control:</p> <p>(a) a related service;</p> <p>(b) software, including software updates or upgrades; or</p> <p>(c) the lack of software updates or upgrades necessary to maintain safety.</p>	<p>2. By way of derogation from paragraph 1, point (c), an economic operator shall not be exempted from liability, where the defectiveness of the product is due to any of the following, provided that it is within the manufacturer's control:</p> <p>(a) a related service;</p> <p>(b) software, including software updates or upgrades; or</p> <p>(c) the lack of software updates or upgrades necessary to maintain safety; <i>or</i></p> <p><i>(ca) a substantial modification.</i></p>
	CHAPTER III General provisions on liability	CHAPTER III General provisions on liability
Article 5 Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.	Article 11 Liability of multiple economic operators Member States shall ensure that where two or more economic operators are liable for the same damage pursuant to this Directive, they can be held liable jointly and severally.	Article 11 Liability of multiple economic operators <i>1. Without prejudice to national law concerning the right of contribution or recourse, Member States shall ensure that where two or more economic operators are liable for the same damage pursuant to this Directive, they can be held liable jointly and severally.</i>
		<p><i>1a. A manufacturer that integrates software as a component in a product shall not have a right to recourse against the manufacturer of a defective software component that causes damage, where:</i></p> <p><i>a) the software component manufacturer was, at the time of the placing on the market of the software, a microenterprise or a small enterprise, meaning an enterprise that, when assessed together with all of its partner enterprises and linked enterprises within the meaning of Article 3 of the Annex to Recommendation 2003/361/EC, if any, is a microenterprise as defined in Article 2(3) of that Annex or a small enterprise as defined in Article 2(2) of that Annex; and</i></p> <p><i>b) the manufacturer integrating the software as a component in a product has contractually agreed with the component manufacturer to waive that right.</i></p>
Article 8 1. Without prejudice to the provisions of national law concerning the right of contribution or recourse, the liability of the producer shall not be reduced when the damage is caused both by a defect in product and by the act or omission of a third party.	Article 12 Reduction of liability 1. Member States shall ensure that the liability of an economic operator is not reduced when the damage is caused both by the defectiveness of a product and by an act or omission of a third party.	Article 12 Reduction of liability <i>1. Without prejudice to national law concerning the right of contribution or recourse, Member States shall ensure that the liability of an economic operator is not reduced or disallowed when the damage is caused both by the defectiveness of a product and by an act or omission of a third party.</i>

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2. The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or any person for whom the injured person is responsible.	2. The liability of an economic operator may be reduced or disallowed when the damage is caused both by the defectiveness of the product and by the fault of the injured person or any person for whom the injured person is responsible.	2. The liability of an economic operator may be reduced or disallowed when the damage is caused both by the defectiveness of the product and by the fault of the injured person or any person for whom the injured person is responsible.
		<p>Article 12a</p> <p>Right of recourse</p> <p><i>Where more than one economic operator is liable for the same damage, the economic operator that has compensated the injured person shall be entitled to pursue remedies against the other economic operators liable under Article 7, in accordance with national law.</i></p>
<p>[Recital]</p> <p>Whereas, to achieve effective protection of consumers, no contractual derogation should be permitted as regards the liability of the producer in relation to the injured person ;</p> <p>(...)</p> <p>Article 12</p> <p>The liability of the producer arising from this Directive may not, in relation to the injured person, be limited or excluded by a provision limiting his liability or exempting him from liability.</p>	<p>Article 13</p> <p>Exclusion or limitation of liability</p> <p>Member States shall ensure that the liability of an economic operator pursuant to this Directive is not, in relation to the injured person, limited or excluded by a contractual provision or by national law.</p>	<p>Article 13</p> <p>Exclusion or limitation of liability</p> <p>Member States shall ensure that the liability of an economic operator pursuant to this Directive is not, in relation to the injured person, limited or excluded by a contractual provision or by national law.</p>
<p>Article 10</p> <p>1. Member States shall provide in their legislation that a limitation period of three years shall apply to proceedings for the recovery of damages as provided for in this Directive. The limitation period shall begin to run from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.</p> <p>2. The laws of Member States regulating suspension or interruption of the limitation period shall not be affected by this Directive.</p>	<p>Article 14</p> <p>Limitation periods</p> <p>1. Member States shall ensure that a limitation period of 3 years applies to the initiating of proceedings for claiming compensation for damage falling within the scope of this Directive. The limitation period shall begin to run from the day on which the injured person became aware, or should reasonably have become aware, of all of the following:</p> <p>(a) the damage;</p> <p>(b) the defectiveness;</p> <p>(c) the identity of the relevant economic operator that can be held liable for the damage in accordance with Article 7.</p> <p>The laws of Member States regulating suspension or interruption of the limitation period referred to in the first subparagraph shall not be affected by this Directive.</p> <p>2. Member States shall ensure that the rights conferred upon the injured person pursuant to this Directive are extinguished upon the expiry of a limi-</p>	<p>Article 14</p> <p>Limitation periods</p> <p>1. Member States shall ensure that a limitation period of 3three years applies to the initiating of proceedings for claiming compensation for damage falling within the scope of this Directive. The limitation period shall begin to run from the day on which the injured person became aware, or should reasonably have become aware, of all of the following:</p> <p>(a) the damage;</p> <p>(b) the defectiveness;</p> <p>(c) the identity of the relevant economic operator that can be held liable for the damage in accordance with Article 7.</p> <p>2. The laws of Member States regulating suspension or interruption of the limitation period referred to in the first subparagraphparagraph 1 shall not be affected by this Directive.</p>

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	<p>tation period of 10 years from the date on which the actual defective product which caused the damage was placed on the market, put into service or substantially modified as referred to in Article 7(4), unless a claimant has, in the meantime, initiated proceedings before a national court against an economic operator that can be held liable pursuant to Article 7.</p> <p>3. By way of exception from paragraph 2, where an injured person has not been able to initiate proceedings within 10 years due to the latency of a personal injury, the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a limitation period of 15 years.</p>	
<p>Article 11</p> <p>Member States shall provide in their legislation that the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a period of 10 years from the date on which the producer put into circulation the actual product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer.</p>		<p>Article 14a</p> <p>Expiry period</p> <p>21. Member States shall ensure that the rights conferred upon the injured person injured person is no longer entitled to compensation pursuant to this Directive are extinguished upon the expiry of a limitation period of 10 years from the date on which the actual defective product which caused the damage was placed on the market, put into service or substantially modified as referred to in Article 7(4), unless a claimant that injured person that injured person has, in the meantime, initiated proceedings before a national court against an economic operator that can be held liable pursuant to Article 7.</p> <p>The period shall run from:</p> <p>(a) the date on which the actual defective product which caused the damage was placed on the market or put into service; or</p> <p>(b) in the case of substantially modified products, the date the product was made available on the market or put into service subsequent to the substantial modification.</p> <p>32. By way of exception from paragraph 21, where an injured person has not been able to initiate proceedings within 10 years due to the latency of a personal injury, the rights conferred upon the injured person injured person shall no longer be entitled to compensation pursuant to this Directive shall be extinguished upon the expiry of a limitation period of 15 25 years, unless that injured person has, in the meantime, initiated proceedings against an economic operator that can be held liable pursuant to Article 7.</p>
	<p>CHAPTER IV</p> <p>Final provisions</p>	<p>CHAPTER IV</p> <p>Final provisions</p>
<p>Article 15</p> <p>1. Each Member State may:</p> <p>(a) by way of derogation from Article 2, provide in its legislation that within the mea-</p>		<p>Article -15⁶⁷</p> <p>Derogation from development risk defence</p> <p>1. Member States may, by way of derogation from Article 10(1), point (e), maintain in their legal systems exist-</p>

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<p>ning of Article 1 of this Directive 'product' also means primary agricultural products and game ;</p> <p>(b) by way of derogation from Article 7 (e), maintain or, subject to the procedure set out in paragraph 2 of this Article, provide in this legislation that the producer shall be liable even if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered.</p>		<p><i>ting measures to the effect that economic operators are to be liable even if they prove that the state of scientific and technical knowledge at the time when the product was placed on the market, put into service or in the period in which the product was within the manufacturer's control was not such that the defectiveness could be discovered.</i></p> <p><i>Any Member State wishing to maintain measures in accordance with this paragraph shall notify the text of the measure to the Commission no later than [24 months after entry into force]. The Commission shall inform the other Member States thereof.</i></p>
<p>2. A Member State wishing to introduce the measure specified in paragraph 1 (b) shall communicate the text of the proposed measure to the Commission. The Commission shall inform the other Member States thereof.</p> <p>The Member State concerned shall hold the proposed measure in abeyance for nine months after the Commission is informed and provided that in the meantime the Commission has not submitted to the Council a proposal amending this Directive on the relevant matter. However, if within three months of receiving the said information, the Commission does not advise the Member State concerned that it intends submitting such a proposal to the Council, the Member State may take the proposed measure immediately.</p> <p>If the Commission does submit to the Council such a proposal amending this Directive within the aforementioned nine months, the Member State concerned shall hold the proposed measure in abeyance for a further period of 18 months from the date on which the proposal is submitted.</p>		<p><i>2. Member States may, by way of derogation from Article 10(1), point (e), introduce or amend in their legal systems a measure to the effect that economic operators are to be liable even if they prove that the state of scientific and technical knowledge at the time when the product was placed on the market, put into service or in the period in which the product was within the manufacturer's control was not such that the defectiveness could be discovered.</i></p>
<p>3. Ten years after the date of notification of this Directive, the Commission shall submit to the Council a report on the effect that rulings by the courts as to the application of Article 7 (e) and of paragraph 1 (b) of this Article have on consumer protection and the functioning of the common market. In the light of this report the Council, acting on a proposal from the Commission and pursuant to the terms of Article 100 of the Treaty, shall decide whether to repeal Article 7 (e).</p>		<p><i>3. Such a measure as referred to in paragraph 2 shall be:</i></p> <p><i>(a) limited to specific categories of products;</i></p> <p><i>(b) justified by public interest objectives; and</i></p> <p><i>(c) proportionate in that it is suitable for securing the attainment of the objective pursued and does not go beyond what is necessary to attain that objective.</i></p>
<p>Article 20</p> <p>Member States shall communicate to the Commission the texts of the main provisions of national law which they subsequently adopt in the field governed by this Directive.</p>		<p><i>4. Any Member State wishing to introduce or amend a measure as referred to in paragraph 2 shall notify the text of the proposed measure to the Commission and shall provide a justification of how the measure complies with paragraph 3. The Commission shall inform the other Member States thereof</i></p>

67 Der Artikel ist im Entwurf tatsächlich so benannt („Article -15“).

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		<p><i>5. The Commission may, within 6 months, issue an opinion on the text and the justification, taking into account any observations received from other Member States.</i></p> <p><i>The Member State concerned shall hold the proposed measure in abeyance for 6 months following its notification to the Commission, unless the Commission issues its opinion earlier.</i></p>
	<p>Article 15</p> <p>Transparency</p> <p>1. Member States shall publish, in an easily accessible and electronic format, any final judgment delivered by their national courts in relation to proceedings launched pursuant to this Directive as well as other relevant final judgments on product liability. The publication shall be made without delay upon notification of the full written judgment to the parties.</p>	<p>Article 15</p> <p>Transparency</p> <p>1. Member States shall publish, in an easily accessible and electronic format, any final judgment delivered by their national courts <i>of appeal or of the highest instance</i> in relation to proceedings launched pursuant to this Directive as well as other relevant final judgments on product liability. The publication shall be made without delay upon notification of the full written judgment to the parties <i>in accordance with national law.</i></p>
	<p>2. The Commission may set up and maintain a publicly available database containing the judgments referred to in paragraph 1.</p>	<p>2. The Commission may<i>shall</i> set up and maintain an<i>easily accessible and</i> publicly available database containing the judgments referred to in paragraph 1.</p>
<p>Article 21</p> <p>Every five years the Commission shall present a report to the Council on the application of this Directive and, if necessary, shall submit appropriate proposals to it.</p>	<p>Article 16</p> <p>Review</p> <p>The Commission shall by [OP, please insert the date: 6 years after the date of entry into force of this Directive], and every 5 years thereafter, review the application of this Directive and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee.</p>	<p>Article 16</p> <p>Review</p> <p>The Commission shall by [OP, please insert the date: 6 years after the date of entry into force of this Directive], and every 5 years thereafter, review<i>evaluate</i> the application of this Directive and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee <i>including information about: the cost and benefits of the Directive, comparison with OECD countries and availability of product liability insurance.</i></p>
	<p>Article 17</p> <p>Repeal and transitional provision</p> <p>1. Directive 85/374/EEC is repealed with effect from [OP, please insert the date: 12 months after the date of entry into force of this Directive]. However, it shall continue to apply with regard to products placed on the market or put into service before that date.</p>	<p>Article 17</p> <p>Repeal and transitional provision</p> <p>1. Directive 85/374/EEC is repealed with effect from [OP, please insert the date: 12<i>24</i> months after the date of entry into force of this Directive]. However, it shall continue to apply with regard to products placed on the market or put into service before that date.</p>
	<p>2. References to Directive 85/374/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in the Annex to this Directive.</p>	<p>2. References to Directive 85/374/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in the Annex to this Directive.</p>
<p>Article 19</p> <p>1. Member States shall bring into force, not later than three years from the date of notification of this Directive, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall</p>	<p>Article 18</p> <p>Transposition</p> <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP, please insert the date: 12 months after entry into</p>	<p>Article 18</p> <p>Transposition</p> <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP, please insert the date: 12<i>24</i> months after entry into force of this Directive].</p>

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<p>forthwith inform the Commission thereof (').</p> <p>2. The procedure set out in Article 15 (2) shall apply from the date of notification of this Directive.</p>	<p>force of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p> <p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	<p>They shall forthwith communicate to the Commission the text of those provisions.</p> <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p> <p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>
	<p>Article 19</p> <p>Entry into force</p> <p>This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p>	<p>Article 19</p> <p>Entry into force</p> <p>This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.⁶⁸</p>
	<p>Article 20</p> <p>Addressees</p> <p>This Directive is addressed to the Member States.</p>	<p>Article 20</p> <p>Addressees</p> <p>This Directive is addressed to the Member States.</p>

⁶⁸ Als Änderung im Original formatiert, obwohl unverändert gegenüber ProdHaftRL-E 2022.