

Important changes in the Product Safety Regulation and Product Liability Directive

Insurance Group
2026 Webinar Programme

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Agenda

- 01 Introduction, key changes
- 02 GPSR and E-commerce
- 03 Change of burden of proof, disclosure
- 04 Transposition, interpretation, Commission
- 05 Practical implications for the insurance market
- 06 Potential implications for increased litigation

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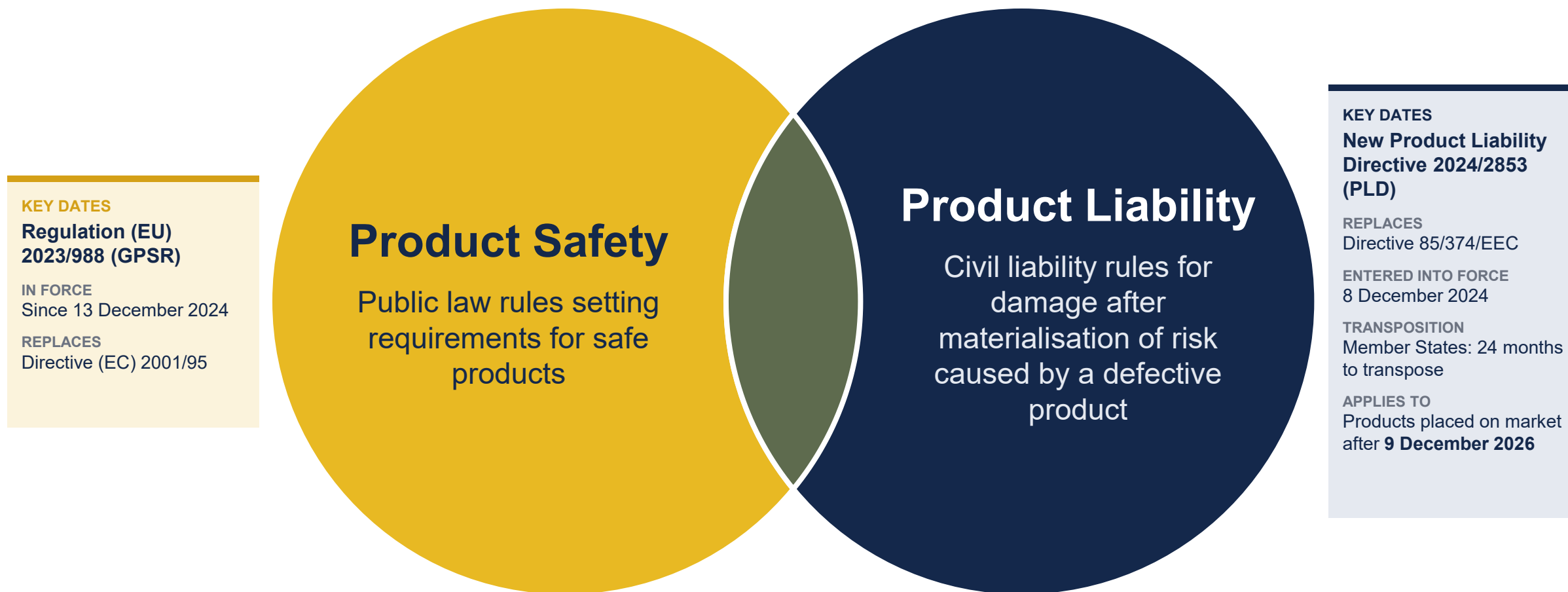


Section 01

Introduction, key changes

Product Safety vs. Product Liability

Two related but distinct legal domains



Influence of non-compliance under the GPSR on product liability





New PLD in a nutshell

Expands the scope of claims (broader definition of “product”)

Expands the pool of potential Defendants

Expands the types of damages that can be sought; removes minimum threshold for damage to property

Allows Member States to derogate from the “Development Risk” Defence



Changes the test/ provides an alternative basis for “defectiveness”

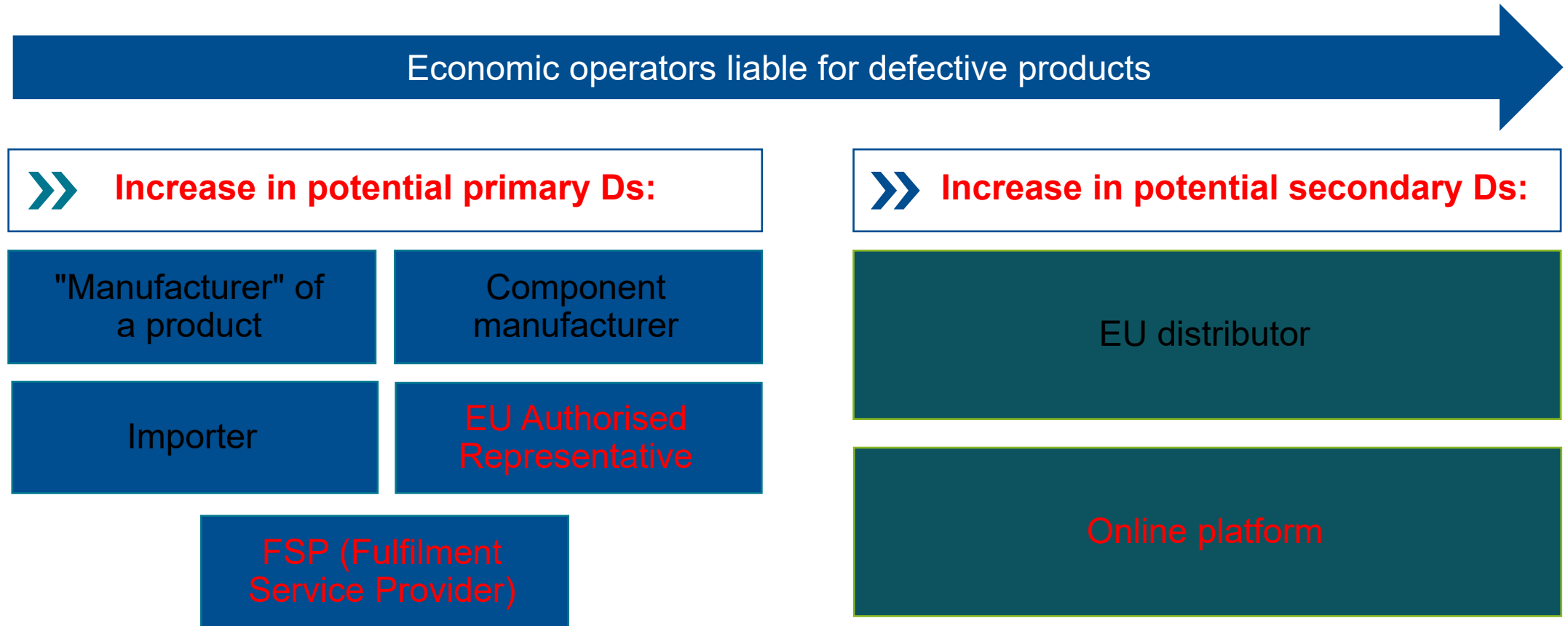
Leads to heavy, early disclosure (discovery) by Defendants

Eases the burden of proof for Claimants

Extends long-stop limitation date for latent injuries to 25 years



Pool of defendants expanded



Section 02

GPSR and E-commerce

02

EU General Product Safety Regulation

- Regulation (EU) 2023/988 on General Product Safety (“**GPSR**”) has entered into force as of 13 December 2024 and replaced the General Product Safety Directive (EC) 2001/95
- The developments on the market required an amendment of the product safety legislation
 - Increase in E-commerce business
 - Globalized supply chains
 - New technologies in products
- The objective is to ensure that only safe products are offered to consumers, regardless of the origin of the products and whether they are sold in shops or online.

GPSR – scope and principles

1. Scope

- Non-food consumer products
- New, used/second-hand, refurbished or repaired

2. GPSR vs. EU harmonisation legislation

- In addition to the GPSR, there is also legislation that provides for specific product safety requirements (i.e. Toy Safety Regulation; RED etc.)
- In principle: Specific takes precedence over general
- Economic operators: product subject to GPSR or also specific legislation?

Note: E-commerce regulations of the GPSR apply to all consumer products – even if covered by EU harmonisation legislation



GPSR – E-commerce

Why online sales are a priority under the GPSR

EU authorities have identified online sales as a major source of unsafe products entering the EU market – particularly from non-EU sellers **without** an EU presence.

New principle under GPSR:

- Products may be offered and placed on the EU market only if there is an **EU Responsible Person** established in the EU (*point of accountability for market surveillance authorities*)

New obligations & responsibilities for

- **Online marketplaces**
- **E-commerce sellers** (EU and Non-EU)



GPSR – E-commerce

Business sellers

Online offers must include the following information:

1. **Manufacturer's** name and contact information, incl. electronic address
2. If manufacturer is not established in the EU: **EU-based Responsible Person** and contact details
3. **Product safety information**
 - Any warnings & safety information
 - On the product, packaging or in accompanying documents
 - Sufficient: pictures, user manuals, PDF
 - Not sufficient: link to manufacturer's website
 - Local language requirement (!)
4. **Product identification details**
 - Pictures, model/serial number, batch, product type
 - any other product identifier



GPSR – E-commerce

Business sellers

1. A product offered online for sale is considered **placed on the market** if the offer is targeted at customers in the EU, even if shipped from outside the EU.
 - Key point in time for compliance with applicable product safety requirements
 - Fast market entry ahead of regulatory changes
2. **Additional** obligations under the GPSR vary depending on whether the Seller qualifies as a (i) manufacturer, (ii) importer or (iii) distributor of the product offered.

Note: New and extended product safety obligations under the GPSR



GPSR – E-commerce

Online marketplaces

1. Online marketplaces must design and organize their online interface in such a way that Sellers are able to provide the mandatory product safety information
2. "Enabling obligation"
 - No obligation to check the correctness and completeness of the information
 - Recommended: Mandatory fields
 - Still unclear: Mandatory check of Safety Gate Portal prior to listing?
3. **But: Liability Risk under PLD**
 - Under certain circumstances, online marketplace may be held secondarily liable where **no EU-based** manufacturer, importer, AR or fulfilment service provider can be identified.
 - Liability is closely linked to the marketplace's ability to verify, document and disclose the relevant economic operators behind a product
 - **Verification deficiencies as a liability trigger**

GPSR – E-commerce

Key obligations of online marketplaces

Cooperation with **market surveillance authorities**

Registration in the Safety Gate Portal

Establish internal product safety processes

Single point(s) of contact for product safety (for consumers & MSA)

Processing product safety notices within 3 days

Remove or disable access to **dangerous product** listings within 2 days

Reporting and information obligations (product recalls; safety warnings; accidents)

Scanning of Safety Gate Portal for dangerous products

Delisting of sellers

GPSR – E-commerce

Enforcement

Market surveillance authorities:

- Order immediate online removals or restrict access to the marketplace (!)
- Require warnings to be displayed to consumers
- Require cooperation
- Coordinate EU-wide takedowns
- Impose administrative fines under national law

More power to remove products from the market and impose sanctions.

Regulatory focus in Germany:

- (Incorrect) EU Responsible Person
- Incomplete / incorrect product safety information
- Safety information in local language

Section 03

Change of burden of proof, disclosure

03

Burden of proof

General rule

The claimant must prove the defectiveness of the product, the damage suffered and the causal link between them

Apportionment of burden

- Claimant's burden of proof made easier
- Defendant's heavier disclosure

Rebuttable presumptions

Presumption of defectiveness	Presumption of causation	Key takeaways
• (a) Defendant fails to disclose relevant evidence • (b) Product does not comply with mandatory EU or national safety requirements protecting against the risk of the damage • (c) Damage caused by an obvious malfunction during reasonably foreseeable use or ordinary circumstances	• Defectiveness is established, and • The damage is of a kind typically consistent with the defect in question	• Proof of evidence shifting to the defendant • National courts' interpretation of some definitions (e.g. malfunction) is relevant
<i>Presumptions do not replace the claimant's burden</i>		

Practical implications

Technical complexity

- Digital products, software, AI and connected devices are “black boxes” for consumers
- Defects may arise post-sale, e.g. from updates, patches or learning behaviour

Information asymmetry

- Technical data, source code and safety test results held by manufacturers
- Claimants' disadvantage in accessing and understanding how a product was made and operates

Costs

- Proving a software or design defect requires extremely costly technical expert assessments

Failure to disclose relevant evidence triggers presumption of defectiveness

Access to evidence

Right of access (art. 9)	Disclosure	Business protection
• The court may order the defendant to disclose relevant evidence at its disposal if the claimant submits elements supporting the plausibility of the claim • The claimant may also be ordered to disclose relevant evidence if the defendant presents facts sufficient to demonstrate its need for evidence for the purpose of challenging the claim • Disclosure of evidence according to the Member States' national law	• Disclosure limited to what is necessary and proportionate • Legitimate interests of all parties, including third parties, are considered • Trade secrets and confidential information must be safeguarded	• Establish and implement appropriate internal product safety policies, procedures and team (including an action plan, compliance officer and recall team) • Review responsibilities through the supply chain • Engage experts



Section 04

Transposition status, interpretation issues, commission engagement

04

Implementation

9 December 2024

24-month transposition

9 December 2026



new PLD went into effect

MS have **24 months** to transpose it into national law

New EU PLD will apply to products placed on the market/put into service **after 9 December 2026**

EU

27 EU MS, and Northern Ireland, to implement by **9 December 2026**

?

BUT implementation date in MS is of key importance as claimants cannot use the new law until that has happened

≡

Full harmonization with couple of exceptions, e.g.:

- Non-material losses
- Development risk defence

Transposition progress across the EU

Implemented (3): Hungary,
Croatia, Lithuania

Draft legislation
prepared/published (14):
Germany, Netherlands,
Sweden, Finland, Belgium,
Denmark, Italy, Poland,
Slovakia, Slovenia, Czech
Republic, Cyprus, Latvia,
France

Limited/no process: Spain,
Austria, Bulgaria, Estonia,
Greece, Ireland, Luxembourg,
Malta, Portugal, Romania

Some explanation please.....

- 7.1 A product shall be considered defective where it does not provide the safety that a person is entitled to expect or that is **required under Union or national law**
- Articles 10(2)-(4) provide that the defectiveness of a product, and the causal link between defectiveness and damage, “**shall** be presumed” in many circumstances.
- “[T]he defendant fails to disclose **relevant** evidence” (Article 10(2)(a))
- “[T]he claimant demonstrates that the product does not comply with mandatory product safety requirements **laid down in Union or national law** that are intended to protect against the risk of the damage suffered by the injured person; (Article 10(2)(b))
- “[T]he claimant demonstrates that the damage was caused by an **obvious malfunction** of the product during **reasonably foreseeable** use or under **ordinary circumstances**” (Article 10(2)(c));
- “[T]he damage caused is of a kind **typically consistent** with the defect in question” (Article 10(3));
- “[T]he claimant faces **excessive difficulties**, in particular due to **technical or scientific complexity**, in proving the defectiveness of the product or the causal link between its defectiveness and the damage, or both” (Article 10(4)(a));

Section 05

Practical implications for the insurance market

05

Practical implications

Underwriters, claims handlers and policyholders

Underwriters	Claims handlers	Policyholders
• Proposal forms: software, AI, connectivity, who controls updates, length of security support, role in the supply chain • Definitions: decide expressly on psychological harm and data (cover, exclude or sub-limit) to avoid a new "silent cyber" • Long tail: 10-year long-stop, up to 25 for latent injury; reserving, pricing, series clauses • Accumulation: one software component, many insureds	• Preserve evidence from first notice: logs, software versions, update history • Involve experts early to test defect and causation • Coordinate policies: triggers, notice periods, other insurance and excess clauses • Serial and collective claims: one loss or many? • Recovery: review supply contracts, indemnities and subrogation waivers	• Am I now a manufacturer? Software integrators, importers, substantial modifiers • Review the programme as a whole: data, psychological harm, software exclusions, recall and correction costs • Align supplier contracts with cover • Document design and update decisions; fast internal escalation

Disclosure and presumptions move the decisive work to the first weeks of the claim.

One incident, four policies

A defective OTA update for a connected device: users injured, data lost, products recalled or corrected, business customers suffer financial loss. Each policy responds, in principle, to a different risk.

01

Product liability: bodily injury and property damage, but data may be excluded

02

Cyber: data and systems, but bodily injury and property damage often excluded

03

Product recall: may require a safety risk; unclear for remote software fixes

04

Technology E&O: pure financial loss, but injury, damage and product liability often excluded

Gaps and overlaps

The four covers do not always fit together

Issue	Why it matters
Loss of data	Product liability excludes data and cyber does not cover product claims: no cover for a head of damage the Directive expressly includes
Psychological harm	"Bodily injury" is often defined in physical terms: does it cover medically recognised psychological harm without physical injury?
Software defects	Failure to update may make a product defective, yet the cost of fixing it may fall outside both cyber and recall. Repairing the product itself is not automatically recoverable damage under the Directive
Overlaps	A software failure can be both a product defect and a technology error: product liability and Tech E&O may both respond; other insurance, contribution and allocation clauses decide

Build a coverage matrix: exclusions and covers should reflect a deliberate decision, not an accident.

Wider implications for financial lines

Claims follow the decisions taken before and after the defect is known

D&O

- Sources of liability: failures in risk oversight, delayed updates or recalls, market disclosure (listed companies), regulatory investigations (GPSR, AI Act, CRA)
- Bodily injury exclusions: narrow "for" wording or broad "arising out of"? Relevant to shareholder claims based on non-disclosure
- Investigation sub-limits and entity cover
- Notice of circumstances: a defect notified under liability or cyber may also matter for D&O policy year

Professional indemnity

- Exposed: developers and integrators, testing and certification bodies, brokers, lawyers and compliance advisers
- Substantial modification can turn a service provider into a manufacturer
- Contractual warranties on security and compliance may exceed legal liability
- M&A: product liability and known contingencies under W&I
- Key question: covered professional negligence or excluded product liability?

The Directive does not change D&O or PI wordings, but it may increase the claims that reach them.

Conclusions: five priorities for the renewals

01

Review product liability, cyber, recall and Tech E&O together

02

Update definitions and exclusions: software, electronic data, psychological harm

03

Reassess the long tail: liability periods, serial losses, reserves and pricing

04

Test D&O and PI exclusions against product-driven claims

05

Track national transposition to keep master and local policies consistent

The challenge is not only to insure new risks, but to make the covers work together.

Section 06

Potential implications for increased litigation?

06

Expected impact

The RAD, GPSR and new PLD can encourage **PL class actions** being brought against companies doing business in the EU



Number of EU jurisdictions with **favourable class action environment**, e.g. Netherlands & Portugal



Rise of **litigation funders** in EU



More **onerous disclosure** / Significant front-loading



Increase of **defence costs**



Increased **D&O liability?**



Supply chain re-allocation of risk

European Class Action Report 2026

107

Class actions

38

Claims in England and
Wales

18

Claims in Portugal

203 bn

Combined value of opt-out
claims in UK, NL and
Portugal



EU Product Liability Directive | Dedicated page

Our **dedicated page** provides access to the resources we are producing to help businesses navigate these changes, including legislative trackers, implementation timelines, practical guidance, comparative analyses, and insights on emerging litigation and enforcement trends.

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