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COVER NOTE

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Subject:	REGULATORY SCRUTINY BOARD OPINION Impact assessment / Product Liability Directive

Delegations will find attached document SEC(2022)343.

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REGULATORY SCRUTINY BOARD OPINION

Product Liability Directive

{COM(2022) 495}

{SWD(2022) 315-317}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: **Impact assessment / Product Liability Directive**

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

This initiative aims to revise the 1985 Product Liability Directive (PLD). The PLD lays down common rules for the non-fault liability of producers for damage caused by defective products as well as a system at EU level for compensating people who have suffered physical injury or damage to consumer property due to those defective products.

The initiative builds on the 2018 evaluation of the PLD which identified several shortcomings. It was legally unclear how to apply the PLD's definitions to products in the digital and circular economy. The burden of proof was also challenging in the case of complex products; and the rules limited the possibility of making claims (e.g. damage should be more than 500 EUR). The revision aims to address these shortcomings. There are close interlinkages with the parallel initiative on artificial intelligence liability.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitment to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report is not sufficiently clear about the size and evolution of the problem. It is also not clear about the baseline assumptions regarding the reduction of product liability cases resulting from the recent revisions of the product safety rules, as well as the robustness and relevance of the extrapolated baseline estimates.

(2) The report does not present the net impact of the preferred option. The distributional analysis of the impacts on the different stakeholder groups, including SMEs, is incomplete.

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) The report should better explain the scope of the problem, in particular why it does not cover repaired products. It should clarify why the product/service overlap with the parallel initiative on artificial intelligence liability is not problematic.

(2) The report should clarify the baseline assumptions. It should explain better to what extent the reduction of number of liability cases resulting from the expected product safety improvements are included in the baseline and be clear how this affects the size of the remaining problem. Given the significance of the expected reduction of product-related accidents, further efforts should be undertaken to produce a more realistic assessment and description of the dynamic baseline.

(3) The report should be clear on the uncertainties related to the baseline estimates. It should explain how representative and robust the baseline figures extrapolated from a limited data source (one Member State) are. It should explain better to what extent the legal database from the Netherlands can serve as a realistic reference basis for extrapolation to all EU-27 Member States.

(4) The report should show that the selected options contain all relevant combinations of measures. It should not discard measures based on the views of only one stakeholder group.

(5) The report should clarify what the costs to businesses include and how the quantitative estimates were calculated. Given that the direct compensation costs borne by businesses having no liability insurance coverage are not quantified due to data limitations, it should acknowledge the risk that the presented estimates result in a likely underestimation of the costs.

(6) The report should present the overall net impact of the preferred option taking into account all transfers between different stakeholder groups. In addition, it should clarify and complete the distributional analysis of the impacts on the different stakeholder groups. In particular, it should analyse the impacts on producers (both with and without liability insurance) and on insurance companies. Given the high SME relevance of the initiative, the report should further develop the analysis of the effects on SMEs, including the extent to which they might be faced with direct compensation costs, due to a lack of (adequate) insurance coverage.

(7) The report should better justify why the transfer of product liability from the original manufacturer to refurbishers and remanufacturers would not negatively affect the development of the circular economy.

(8) The report should be clear to what extent the analytical assumptions and results (in both the baseline and impact analyses) have been validated by experts and stakeholders. More generally, the report should deal better with uncertainty, for instance by considering sensitivity analysis when assessing the scale of the (remaining) problem and comparing the options in terms of costs and benefits.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion **The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.** **If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.**	
Full title	Revision of the Product Liability Directive
Reference number	PLAN/2020/9848
Submitted to RSB on	7 March 2022
Date of RSB meeting	6 April 2022

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Improved well-being (Protection of injured persons)	Total amount not quantifiable but benefits generated by measures affecting the digital and circular economy, compensable damage, burden of proof, restrictions on making claims, as well as by ensuring the presence of an EU-based liable person.	Consumers
Harmonisation of rules for injured persons and businesses	Total amount not quantifiable but benefits generated by measures affecting the digital and circular economy, compensable damage, burden of proof, as well as by ensuring the presence of an EU-based liable person.	Producers and consumers
Higher liability insurance premiums	Total amount not quantifiable but benefits to insurance companies generated by the different measures proposed in the policy options.	Insurance companies
Indirect benefits		
Support to competitiveness in the single market (market efficiency)	Total amount not quantifiable but benefits generated by measures affecting the digital and circular economy, compensable damage, as well as by ensuring the presence of an EU-based liable person.	Producers

(1) Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together).

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Action (a)	Indirect cost of compensation (in most cases covered by insurance costs below)	Not relevant	Not relevant *[pay-outs to consumers/victims 0.30 – 52.14 EUR million annually]*	Not relevant	Not relevant	Not relevant	Not relevant
	Indirect cost related to liability insurance	Not relevant	Not relevant	Not relevant	18.70 – 37.40 EUR million annually	Not relevant	Not relevant
	Legal costs	Not relevant	0.57 – 1.30 EUR million annually *[assuming consumers will pay 40% of legal costs]*	Not relevant	0.86 – 1.96 EUR million annually *[assuming producers will pay 60% of legal costs]*	Not relevant	Increased litigation leading to higher costs of justice administration
	Other costs	No other incremental costs for consumers would be generated by the preferred option, compared to the baseline scenario.		Costs of familiarisation with new provisions	Not relevant	Not relevant	
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	Given the low administrative costs, the 'one in, one out' approach is not applicable to this initiative					
	Indirect adjustment costs						
	Administrative costs (for offsetting)						