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From:	Presidency
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Subject:	Proposal for a Directive of the European Parliament and of the Council on liability for defective products – four-column table

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Delegations will find in Annex the updated four-column table on the above mentioned directive.

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on liability  
for defective products (Text with EEA relevance)**

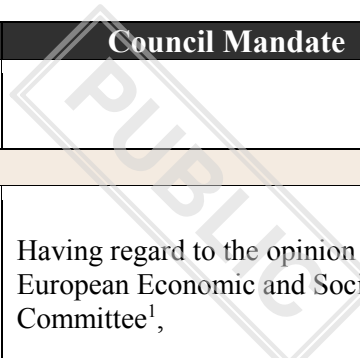
2022/0302(COD)

DRAFT [4CT following drafting session 28/11]

28-11-2023 at 13h03

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Formula				
1	2022/0302 (COD)	2022/0302 (COD)	2022/0302 (COD)	2022/0302 (COD) <small>Text Origin: Commission Proposal</small>
Proposal Title				
2	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on liability for defective products (Text with EEA relevance)	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on liability for defective products (Text with EEA relevance)	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on liability for defective products (Text with EEA relevance)	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on liability for defective products (Text with EEA relevance) <small>Text Origin: Commission Proposal</small>
Formula				
3				

	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>	<b>Draft Agreement</b>
	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  Text Origin: Commission Proposal
Citation 1				
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,  Text Origin: Commission Proposal
Citation 2				
5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,  Text Origin: Commission Proposal
Citation 3				
6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,  Text Origin: Commission



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				Proposal
Citation 4				
7	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> , <u>1. OJ C [...], [...], p. [...].</u>	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> , <u>1. OJ C [...], [...], p. [...].</u>	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> , <u>1. OJ C [...], [...], p. [...].</u>	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> , <u>1. OJ C [...], [...], p. [...].</u>  Text Origin: Commission Proposal
Citation 5				
8	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,  Text Origin: Commission Proposal
Formula				
9	Whereas:	Whereas:	Whereas:	Whereas:  Text Origin: Commission Proposal
Recital 1				
10	(1) Council Directive	(1) Council Directive	(1) <b>In order to improve the</b>	

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	<p>85/374/EEC<sup>1</sup> lays down common rules on liability for defective products with the aim of removing divergences between the legal systems of Member States that may distort competition and affect the movement of goods within the internal market, and that entail a differing degree of protection of the consumer against damage to health or property caused by such products.</p> <p><sup>1</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).</p>	<p>85/374/EEC<sup>1</sup> lays down common rules on liability for defective products with the aim of removing divergences between the legal systems of Member States that may distort competition and affect the movement of goods within the internal market, and that entail a differing degree of protection of the consumer against damage to health or property caused by such products, <u>and is aimed at providing compensation for such damage.</u></p> <p><sup>1</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).</p>	<p><b>proper functioning of the internal market, it is necessary to ensure that competition is not distorted and the movement of goods is not obstructed.</b> Council Directive 85/374/EEC<sup>1</sup> lays down common rules on liability for defective products with the aim of removing divergences between the legal systems of Member States that may distort competition and affect the movement of goods within the internal market, <del>and that entail a differing</del>. <b>Greater harmonisation of the common rules on liability for defective products laid down in that Directive should further contribute to the achievement of these objectives, while entailing an increased degree of protection of the consumer against damage to consumers' and other natural persons' health or property. caused by such products.</b></p> <p><sup>1</sup> [1] Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).</p>	
Recital 2				

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11	(2) Liability without fault on the part of the relevant economic operator remains the sole means of adequately solving the problem of a fair apportionment of the risks inherent in modern technological production.	(2) Liability without fault on the part of the relevant economic operator remains the sole means of adequately solving the problem of a fair apportionment of the risks inherent in modern technological production.	(2) Liability without fault on the part of the relevant economic operator remains the sole means of adequately solving the problem of a fair apportionment of the risks inherent in modern technological production.	(2) Liability without fault on the part of the relevant economic operator remains the sole means of adequately solving the problem of a fair apportionment of the risks inherent in modern technological production.  Text Origin: Commission Proposal
Recital 3				
12	(3) Directive 85/374/EEC needs to be revised in light of developments related to new technologies, including artificial intelligence (AI), new circular economy business models and new global supply chains, which have led to inconsistencies and legal uncertainty, in particular as regards the meaning of the term ‘product’. Experience gained from applying Directive 85/374/EEC has also shown that injured persons face difficulties obtaining compensation due to restrictions on making compensation claims and due to challenges in gathering evidence to prove liability, especially in light of increasing technical and	(3) Directive 85/374/EEC <u>has been an effective and important instrument, but it has emerged that it</u> needs to be revised in light of developments related to new technologies, including artificial intelligence (AI), new circular economy business models and new global supply chains; <u>the development of</u> which <u>have has</u> led to <u>inconsistencesinconsistencies</u> and legal uncertainty, in particular as regards the meaning of the term ‘product’. Experience gained from applying Directive 85/374/EEC has also shown that injured persons face difficulties obtaining compensation due to restrictions on making compensation claims and	(3) Directive 85/374/EEC needs to be revised in light of developments related to new technologies, including artificial intelligence (AI), new circular economy business models and new global supply chains, which have led to inconsistencies and legal uncertainty, in particular as regards the meaning of the term ‘product’. Experience gained from applying Directive 85/374/EEC has also shown that injured persons face difficulties obtaining compensation due to restrictions on making compensation claims and due to challenges in gathering evidence to prove liability, especially in light of increasing technical and	

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	scientific complexity. This includes claims for damages related to new technologies, including AI. The revision will therefore encourage the roll-out and uptake of such new technologies, including AI, while ensuring that claimants can enjoy the same level of protection irrespective of the technology involved.	due to challenges in gathering evidence to prove liability, especially in light of increasing technical and scientific complexity. This includes claims for damages related to new technologies, <del>including AI</del> . The revision will therefore encourage the roll-out and uptake of such new technologies, including AI, while ensuring that claimants can enjoy the same level of protection irrespective of the technology involved, <u>and that all businesses benefit from a level playing field with legal certainty, while avoiding disproportionate costs and risks for microenterprises, small-sized businesses and start-ups.</u>	scientific complexity. This includes claims for damages related to new technologies, including AI. The revision will therefore encourage the roll-out and uptake of such new technologies, including AI, while ensuring that claimants can enjoy the same level of protection irrespective of the technology involved.	
Recital 4				
13	(4) A revision of Directive 85/374/EEC is also needed in order to ensure coherence and consistency with product safety and market surveillance legislation at Union and national level. In addition, there is a need to clarify basic notions and concepts to ensure coherence and legal certainty and to reflect recent case	(4) A revision of Directive 85/374/EEC is also needed in order to ensure coherence and consistency with product safety and market surveillance legislation at Union and national level. In addition, <u>a revision is necessary to complement national laws on extra-contractual liability, and to provide for compensation and a</u>	(4) A revision of Directive 85/374/EEC is also needed in order to ensure coherence and consistency with product safety and market surveillance legislation at Union and national level. In addition, there is a need to clarify basic notions and concepts to ensure coherence and legal certainty and to reflect recent case	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	law of the Court of Justice of the European Union.	<u>high level of protection for persons injured by defective products. Furthermore,</u> there is a need to clarify basic notions and concepts to ensure coherence and legal certainty <u>and a level playing field in the internal market,</u> and to reflect recent case law of the Court of Justice of the European Union.	law of the Court of Justice of the European Union.	
Recital 5				
14	(5) Considering the extensive nature of the amendments that would be required and in order to ensure clarity and legal certainty, Directive 85/374/EEC should be repealed and replaced with a new Directive.	(5) Considering the extensive nature of the amendments that would be required and in order to ensure <u>easy and effective applicability,</u> clarity and legal certainty, Directive 85/374/EEC should be repealed and replaced with a new Directive.	(5) Considering the extensive nature of the amendments that would be required and in order to ensure clarity and legal certainty, Directive 85/374/EEC should be repealed and replaced with a new Directive.	
Recital 6				
15	(6) In order to ensure the Union's product liability regime is comprehensive, no-fault liability for defective products should apply to all movables, including when they are integrated into other movables or installed in immovables.	(6) In order to ensure the Union's product liability regime is comprehensive <u>and easy and effective to apply,</u> no-fault liability for defective products should apply to all movables, <u>including software, irrespective of the mode of supply and</u> including when they are integrated into other movables	(6) In order to ensure <b>that</b> the Union's product liability regime is comprehensive, no-fault liability for defective products should apply to all movables, including when they are integrated into other movables or installed in immovables.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		or installed in immovables.		
Recital 7				
16	(7) Liability for defective products should 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.	(7) Liability for defective products should 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.	(7) Liability for defective products should 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.	(7) Liability for defective products should 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.  Text Origin: Commission Proposal
Recital 8				
17	(8) In order to create a genuine internal market with a high and uniform level of consumer protection, and to reflect the case law of the Court of Justice, Member States should not be, in respect of matters within the scope of this Directive, maintain or introduce more, or less, stringent provisions than those laid down in this Directive.	(8) In order to create a genuine internal market with a high and uniform level of consumer protection, and to reflect the case law of the Court of Justice, Member States should not <del>be</del> , in respect of matters, within the scope of this Directive, maintain or introduce more, or less, stringent provisions than those laid down in this Directive. <u>For matters other than those provided for under this Directive, national procedural rules should apply in so far as they do not undermine the</u>	(8) In order to create a genuine internal market with a high and uniform level of <del>consumer protection</del> <b>protection for natural persons</b> , and to reflect the case law of the Court of Justice, Member States should not <del>be</del> , in respect of matters within the scope of this Directive, maintain or introduce more, or less, stringent provisions than those laid down in this Directive.	


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		<u><a href="#">effectiveness and objectives of the system of product liability provided for under this Directive.</a></u>		
Recital 9				
18	<p>(9) Under the legal systems of Member States an injured person may have a claim for damages on the basis of contractual liability or on grounds of non-contractual liability that do not concern the defectiveness of a product, for example liability based on warranty or on fault. This includes the provisions of the [AI Liability Directive .../... of the European Parliament and of the Council], which lays down common rules on the disclosure of information and the burden of proof in the context of fault-based claims for damages caused by an AI system. Such provisions, which also serve to attain inter alia the objective of effective protection of consumers, should remain unaffected by this Directive.</p>	<p>(9) Under the legal systems of Member States an injured person may have a claim for damages on the basis of contractual liability or on grounds of non-contractual liability that do not concern the defectiveness of a product, for example liability based on warranty or on fault. <del>This includes the provisions of the [AI Liability Directive .../... of the European Parliament and of the Council], which lays down common rules on the disclosure of information and the burden of proof in the context of fault-based claims for damages caused by an AI system.</del> Such provisions, which also serve to attain inter alia the objective of effective protection of consumers, should remain unaffected by this Directive.</p>	<p>(9) Under the legal systems of Member States an injured person may have a claim for damages on the basis of contractual liability or on grounds of non-contractual liability that do not concern the <b>manufacturer's liability for defectiveness of a product; as established in this Directive. This concerns</b> for example liability based on warranty or on fault, <b>or strict liability of operators for damages caused by the properties of an organism, resulting from genetic engineering. This also</b> .This includes the provisions of the [AI Liability Directive .../... of the European Parliament and of the Council], which lays down common rules on the disclosure of information and the burden of proof in the context of fault-based claims for damages caused by an AI system. Such provisions, which also serve to attain, inter alia, the objective of effective protection of</p>	

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			consumers <b>and other natural persons</b> , should remain unaffected by this Directive.	
Recital 10				
19	(10) In certain Member States, injured persons may be entitled to make claims for damages caused by pharmaceutical products under a special national liability system, with the result that effective protection of consumers in the pharmaceutical sector is already attained. The right to make such claims should remain unaffected by this Directive.	(10) In certain Member States, injured persons may be entitled to make claims for damages caused by pharmaceutical products under a special national liability system, with the result that effective protection of consumers in the pharmaceutical sector is already attained <u>in those Member States. When it comes to harm suffered due to pharmaceuticals that are not defective, all Member States cover basic losses through national health systems or social security schemes. To cover further losses, some Member States have created special insurance schemes for pharmaceuticals, under which victims of harm are able to get compensation if, despite being non-defective, the pharmaceutical product nonetheless caused harm, without any need to prove fault or defectiveness.</u> The right to make such claims should remain unaffected by this Directive. <u>Amendments to those special</u>	(10) In certain Member States, injured persons may be entitled to make claims for damages caused by pharmaceutical products under a special national liability system, with the result that effective protection of <del>consumers</del> <b>natural persons</b> in the pharmaceutical sector is already attained. The right to make such claims should remain unaffected by this Directive. <b>Furthermore, amendments to such special liability systems should not be precluded as long as they do not undermine the effectiveness of the system of liability provided for in this Directive or its objectives.</b>	

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		<u><i>national liability systems, health systems and social security schemes as well as the possible introduction of insurance schemes should not be precluded. However, such amendments should not undermine the effectiveness and objectives of the system of product liability provided for under this Directive.</i></u>		
Recital 11				
20	<p>(11) Decision No 768/2008/EC<sup>1</sup> of the European Parliament and of the Council lays down common principles and reference provisions intended to apply across sectoral product legislation. In order to ensure consistency with such legislation, it is appropriate to align certain provisions of this Directive, in particular the definitions, to that Decision.</p> <p><sup>1</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products.</p>	<p>(11) Decision No 768/2008/EC<sup>1</sup> of the European Parliament and of the Council lays down common principles and reference provisions intended to apply across sectoral product legislation. In order to ensure consistency with such legislation, it is appropriate to align certain provisions of this Directive, in particular the definitions, to that Decision.</p> <p><sup>1</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products.</p>	<p>(11) Decision No 768/2008/EC<sup>1</sup> of the European Parliament and of the Council lays down common principles and reference provisions intended to apply across sectoral product legislation. In order to ensure consistency with such legislation, it is appropriate to align certain provisions of this Directive, in particular the definitions, to that Decision.</p> <p><sup>1</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products.</p>	<p>(11) Decision No 768/2008/EC<sup>1</sup> of the European Parliament and of the Council lays down common principles and reference provisions intended to apply across sectoral product legislation. In order to ensure consistency with such legislation, it is appropriate to align certain provisions of this Directive, in particular the definitions, to that Decision.</p> <p><sup>1</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products.</p> <p><u>Text Origin: Commission Proposal</u></p>


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Recital 12				
21	<p>(12) Products in the digital age can be tangible or intangible. Software, such as operating systems, firmware, computer programs, applications or AI systems, is increasingly common on the market and plays an increasingly important role for product safety. Software is capable of being placed on the market as a standalone product and may subsequently be integrated into other products as a component, and is capable of causing damage through its execution. In the interest of legal certainty it should therefore be clarified that software is a product for the purposes of applying no-fault liability, irrespective of the mode of its supply or usage, and therefore irrespective of whether the software is stored on a device or accessed through cloud technologies. The source code of software, however, is not to be considered as a product for the purposes of this Directive as this is pure information. The developer or producer of software, including AI system providers within the meaning of [Regulation (EU) .../...</p>	<p>(12) Products in the digital age can be tangible or intangible. Software, such as operating systems, firmware, computer programs, applications or AI systems, is increasingly common on the market and plays an increasingly important role for product safety. Software is capable of being placed on the market as a standalone product and may subsequently be integrated into other products as a component <u>or may be provided as one or more services</u>, and is capable of causing damage through its execution. <u>The risk of damage is proportionate to the extent to which software is essential to the functioning of a product into which it is integrated or with which it is inter-connected, and in how far it contributes to one or more of the functions of the product, or in how far its absence would prevent the product from performing one or more of its functions. In particular where software that ordinarily and of itself does not pose a significant risk of damage is included in a product with higher safety</u></p>	<p>(12) Products in the digital age can <del>can</del> <b>beare not necessarily</b> tangible-<del>or</del> <del>intangible</del>. Software, such as operating systems, firmware, computer programs, applications or AI systems, is increasingly common on the market and plays an increasingly important role for product safety. Software is capable of being placed on the market as a standalone product and may subsequently be integrated into other products as a component, and is capable of causing damage through its execution. In the interest of legal certainty it should therefore be clarified that software is a product for the purposes of applying no-fault liability, irrespective of the mode of its supply or usage, and therefore irrespective of whether the software is stored on a device-<del>or</del>, accessed through cloud technologies. <del>The source code of software,</del> <b>or supplied through a software-as-a-service model.</b> However, <b>information</b> is not to be considered as <del>aa</del> <b>product, and therefore</b> product for the purposes of this Directive as this is pure</p>	

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	<p>(AI Act)], should be treated as a manufacturer.</p>	<p><u>expectations, the assessment of defectiveness leading to damage should take the original intent of the software producer into account.</u> In the interest of legal certainty it should therefore be clarified that software is a product for the purposes of applying no-fault liability, irrespective of the mode of its supply or usage, and therefore irrespective of whether the software is stored on a device or accessed through <u>a communication network or cloud technologies, or supplied through a software as-a-service model.</u> The source code of software, however, is not to be considered as a product for the purposes of this Directive as this is pure information. The developer or producer of software, including AI system providers within the meaning of [Regulation (EU) .../... (AI Act)] <u>and deployers that make substantial modifications to software,</u> should be treated as a manufacturer.</p>	<p>information <b>liability rules should not apply to the content of digital files, such as media files or ebooks or the mere source code of software.</b> The developer or producer of software, including AI system providers within the meaning of [Regulation (EU) .../... (AI Act)], should be treated as a manufacturer.</p>	
Recital 12a				
21a		<p><u>(12a) Software in its own right, where specifically intended by the manufacturer to be used for one</u></p>		

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		<p><u>or more of the medical purposes set out in the definition of a medical device, should qualify as a medical device, while software intended for general purposes, even when used in a healthcare setting, or software intended for lifestyle and well-being purposes should not be considered a medical device. The qualification of software, either as a device or an accessory, should be independent of the software's location or the type of interconnection between the software and a device.</u></p>		
Recital 12b				
21b		<p><u>(12b) Individual natural persons who are typically employed in the context of a non-personal professional activity related to the development, manufacturing, production or design of a product and do not exert control over the manufacturing, integration, placing on the market or putting into service of the product should not be considered manufacturers in the meaning of this Directive.</u></p>		


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Recital 13				
22	<p>(13) In order not to hamper innovation or research, this Directive should not apply to free and open-source software developed or supplied outside the course of a commercial activity. This is in particular the case for software, including its source code and modified versions, that is openly shared and freely accessible, usable, modifiable and redistributable. However where software is supplied in exchange for a price or personal data is used other than exclusively for improving the security, compatibility or interoperability of the software, and is therefore supplied in the course of a commercial activity, the Directive should apply.</p>	<p>(13) In order not to hamper innovation or research, this Directive should not apply to free and open-source software <del>developed or supplied outside the course of a commercial activity</del> <u>in accordance with the conditions laid down under this Directive.</u> This is in particular the case for software, including its source code and modified versions, that is openly shared and freely accessible, usable, modifiable and redistributable. <u>Free and open source software, where the source code is openly shared and users can freely access, use, modify and redistribute the software or modified versions thereof, can contribute to research and innovation on the market. Such software relies on public licences that guarantee the freedom to run, copy, distribute, study, change and improve the software. In order to ensure that innovation and research are not hindered, this Directive should not impact the use of such public licences.</u> However where software is supplied in exchange for a price or</p>	<p>(13) In order not to hamper innovation or research, this Directive should not apply to free and open-source software developed or supplied outside the course of a commercial activity, <b>since products so developed or supplied are by definition not placed on the market.</b> This is in particular the case for software, including its source code and modified versions, that is openly shared and freely accessible, usable, modifiable and redistributable. However, where software is supplied in exchange for a price or personal data is used other than exclusively for improving the security, compatibility or interoperability of the software, and is therefore supplied in the course of a commercial activity, the Directive should apply. <b>If, however, free and open-source software supplied outside the course of a commercial activity is subsequently integrated by a manufacturer as a component into a product that is placed on the market, it would be possible</b></p>	

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		<p>personal data is used other than exclusively for improving the security, compatibility or interoperability of the software; <del>and is therefore supplied in the course of a commercial activity</del>, the Directive should apply.</p>	<p><b>to hold that manufacturer liable for damage caused by the defectiveness of such software, while not the manufacturer of the software itself because they would have not fulfilled the conditions of placing a product or component on the market.</b></p>	
Recital 13a				
22a		<p><u>(13a) A manufacturer should be allowed to decide to integrate free and open-source software as a component of a product or authorise its integration, inter-connection or supply by a third party, which should then, in the interest of legal certainty, be considered to be modifications under the manufacturer’s control. In such cases, if the product is placed on the market or put into service in the course of a commercial activity, this Directive should apply, meaning that in that case the manufacturer of the product could be held liable for damage arising from a defect in the free and open source software. However, it should not be possible to hold the developer or producer of the free and open-source</u></p>		

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		<p><u><i>software liable for such damage unless the software is supplied to the manufacturer of the product for payment or for personal data other than data exclusively for improving the security, compatibility or interoperability of the software.</i></u></p>		
Recital 14				
23	<p>(14) Digital manufacturing files, which contain the functional information necessary to produce a tangible item by enabling the automated control of machinery or tools, such as drills, lathes, mills and 3D printers, should be considered as products, in order to ensure consumer protection in cases where such files are defective. For the avoidance of doubt, it should also be clarified that electricity is a product.</p>	<p>(14) Digital manufacturing files, which contain the functional information necessary to produce a tangible item by enabling the automated control of machinery or tools, such as drills, lathes, mills and 3D printers, should be considered as products, in order to ensure consumer protection in cases where such files are defective. For the avoidance of doubt, it should also be clarified that <u><i>raw materials and electricity are products. Products that are digital manufacturing files, which are licensed under free and open-source licenses, should be treated analogously to how free and open-source software products are treated.</i></u></p>	<p>(14) <b>Whereas digital files as such are not products under this Directive</b>, digital manufacturing files, which contain the functional information necessary to produce a tangible item by enabling the automated control of machinery or tools, such as drills, lathes, mills and 3D printers, should be considered as products, in order to ensure <del>consumer</del><b>the protection of natural persons</b> in cases where such files are defective. For <b>example, a defective computer-assisted-design (CAD) file used to create a 3D-printed good that causes harm should give rise to liability under this Directive.</b> For the avoidance of doubt, it should also be clarified that <del>electricity is a product</del><b>raw materials, such as gas and water, and electricity are</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			products.	
Recital 15				
24	<p>(15) It is becoming increasingly common for digital services to be integrated in or inter-connected with a product in such a way that the absence of the service would prevent the product from performing one of its functions, for example the continuous supply of traffic data in a navigation system. While this Directive should not apply to services as such, it is necessary to extend no-fault liability to such digital services as they determine the safety of the product just as much as physical or digital components. Such related services should be considered as components of the product to which they are inter-connected, when they are within the control of the manufacturer of that product, in the sense that they are supplied by the manufacturer itself or that the manufacturer recommends them or otherwise influences their supply by a third party.</p>	<p>(15) It is becoming increasingly common for digital services to be integrated in or inter-connected with a product in such a way that the absence of the service would prevent the product from performing one of its functions, for example the continuous supply of traffic data in a navigation system. <u><i>The relevant functions that should be considered for the purposes of this Directive are those that have been attributed to the product by its manufacturer or the functions that an average person would reasonably expect the product to have in light of the description of the product provided by the manufacturer.</i></u> While this Directive should not apply to services as such, it is necessary to extend no-fault liability to such digital services as they determine the safety of the product just as much as physical or digital components. Such related services should be considered as components of the product to which they are inter-connected,</p>	<p>(15) It is becoming increasingly common for digital services to be integrated in or inter-connected with a product in such a way that the absence of the service would prevent the product from performing one of its functions, <del>for example the continuous supply of traffic data in a navigation system.</del> While this Directive should not apply to services as such, it is necessary to extend no-fault liability to such digital services as they determine the safety of the product just as much as physical or digital components. Such related services should be considered as components of the product to which they are inter-connected, when they are within the control of the manufacturer of that product, <del>in the sense that they are supplied by the manufacturer itself or that the manufacturer recommends them or otherwise influences their supply by a third party.</del> <b>Examples of such related services include the continuous supply of traffic data in a navigation system, a health</b></p>	


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p>when they are within the control of the manufacturer of that product, in the sense that they are supplied by the manufacturer itself or that the manufacturer <del>recommends</del><u>authorises</u> them or otherwise influences their supply by a third party.</p>	<p><b>monitoring service that relies on sensors of a physical product to track the user's physical activity or health metrics, a temperature control service that monitors and regulates the temperature of a smart fridge, or a voice assistant service, which allows control of one or more products by using voice commands. However, internet access services should not be treated as related services, since they cannot be considered as part of the product and it would be unreasonable to make manufacturers liable for harm caused by shortcomings in such services. Nevertheless, a product that relies on such services and that fails to maintain safety in the event of a loss of connectivity could be found to be defective under this Directive.</b></p>	
Recital 15a				
24a		<p><u><i>(15a) Related services and other components, including software updates and upgrades, should be considered to be within the manufacturer's control where they are integrated, inter-connected or supplied by the</i></u></p>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u>manufacturer itself or where the manufacturer authorises or consents to their supply by a third party. In addition, once a product has been placed on the market, it should be considered to be within the manufacturer's control in so far as the manufacturer decides to supply software updates or upgrades, or authorises or consents to the supply thereof by a third party.</u></p>		
Recital 15a				
24b			<p>(15a) Related services and other components, including software updates and upgrades, should be considered to be within the manufacturer's control where they are integrated, inter-connected or supplied by the manufacturer itself or where the manufacturer authorises or consents to their supply by a third party, for example where the manufacturer of a smart home appliance consents to the provision by a third party of software updates for its appliance or where a manufacturer presents a related service or component as part of</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			the product even though it is supplied by a third party. A manufacturer should not be considered to have consented to integration or inter-connection merely by providing for the technical possibility to integrate or inter-connect or by recommending certain brands or by not prohibiting potential related services or components.	
Recital 15b				
24c			(15b) In addition, once a product has been placed on the market, it should be considered to be within the manufacturer's control in so far as the manufacturer retains the technical ability to supply software updates or upgrades itself or via a third party.	
Recital 16				
25	(16) In recognition of the growing relevance and value of intangible assets, the loss or corruption of data, such as content deleted from a hard drive, should also be compensated, including the cost of	(16) In recognition of the growing relevance and value of intangible assets, <del>the loss or</del> <u>economic loss due to the destruction or irreversible</u> corruption of data, such as <del>content</del> <u>digital files</u> deleted	(16) In recognition of the growing relevance and value of intangible assets, the loss or corruption of data, such as content deleted from a hard drive, should also be compensated, including the cost of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>recovering or restoring the data. As a result, the protection of consumers requires compensation for material losses resulting not only from death or personal injury, such as funeral or medical expenses or lost income, and from damage to property, but also for loss or corruption of data. Nevertheless, compensation for infringements of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup>, Directive 2002/58/EC of the European Parliament and of the Council<sup>2</sup>, Directive (EU) 2016/680 of the European Parliament and of the Council<sup>3</sup> and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>4</sup> is not affected by this Directive.</p> <p><sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).</p> <p><sup>2</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).</p> <p><sup>3</sup> Directive (EU) 2016/680 of the</p>	<p>from a hard drive, should also be compensated, <del>including when</del> <u>consumers cannot access data in the way they could before the damage and they have to pay a price for recovering and restoring that data. This should include, where relevant,</u> the cost of recovering or restoring the data. As a result, the protection of consumers requires compensation for material losses resulting not only from death or personal injury, such as funeral or medical expenses or lost income, and from damage to property, but also for <del>loss or</del> <u>destruction or irreversible corruption of data. However, in order to avoid the potential risk of litigation in an excessive number of cases, the destruction or irreversible</u> corruption of data <u>should not be compensated if the economic value of the damage is below EUR 1 000.</u> Nevertheless, <u>destruction or irreversible corruption of data is distinct from data leaks or breaches of data protection rules, and</u> compensation for infringements of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup>, Directive 2002/58/EC of</p>	<p>recovering or restoring the data. As a result, the protection of <del>consumers</del> <b>natural persons</b> requires compensation for material losses resulting not only from death or personal injury, such as funeral or medical expenses or lost income, and from damage to property, but also for loss or corruption of data. Nevertheless, compensation for infringements of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup>, Directive 2002/58/EC of the European Parliament and of the Council<sup>2</sup>, Directive (EU) 2016/680 of the European Parliament and of the Council<sup>3</sup> and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>4</sup> is not affected by this Directive.</p> <p><sup>1</sup> [1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).</p> <p><sup>2</sup> [2] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89.</p> <p>4. Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.</p>	<p>the European Parliament and of the Council<sup>2</sup>, Directive (EU) 2016/680 of the European Parliament and of the Council<sup>3</sup> and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>4</sup> is not affected by this Directive.</p> <p><u><i>Destruction or corruption of data does not automatically result in a material loss for the victim if, for example, a back-up of the data exists or the data can be downloaded again, or an economic operator restores or recreates temporarily unavailable data, for example in a virtual environment. In line with the principle of contributory negligence, it should be possible to reduce or disallow an economic operator's liability where the persons who have suffered the loss or damage themselves have negligently contributed to the cause of the damage, for example if it can be reasonably expected that certain digital files are regularly backed up in a second location.</i></u></p> <p>1. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of</p>	<p>3. [3] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89.</p> <p>4. [4] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p>personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).</p> <p>2. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).</p> <p>3. Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89.</p> <p>4. Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.</p>		
Recital 17				
26	(17) In the interests of legal certainty, it should be clarified that personal injury includes medically recognised damage to	(17) In the interests of legal certainty, it should be clarified that <u>Member States should provide that</u> personal injury includes	(17) In the interests of legal certainty, it should be clarified that personal injury includes medically recognised damage to	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	psychological health.	medically recognised damage to psychological health, <u>certified by a court ordered medical expert, including psychologists, and limited to serious adverse effects on the victim’s psychological integrity of such gravity or intensity that it affects the victim’s general state of health and cannot be resolved without therapy or medical treatment, taking, in particular, the International Classification of Diseases of the World Health Organisation into account.</u>	psychological health.	
Recital 18				
27	(18) While Member States should provide full and proper compensation for all material losses resulting from death, or personal injury, or damage to or destruction of property and data loss or corruption, rules on calculating compensation should be laid down by Member States. Furthermore, this Directive should not affect national rules relating to non-material damage.	(18) While Member States should provide full, <u>proportionate</u> and proper compensation for all material losses resulting from death, or personal injury, or damage to or destruction of property, <u>Member States should ensure that their national</u> <del>and data loss or corruption,</del> rules on calculating compensation <del>should be laid down by Member States.</del> <del>Furthermore, this Directive should not affect national rules relating to non-material damage</del> <u>allow for injured persons to obtain full and</u>	(18) While Member States should provide full and proper compensation for all material losses resulting from death, or personal injury, or damage to or destruction of property and data loss or corruption, rules on calculating compensation should be laid down by Member States. Furthermore, <b>compensation of non-material losses resulting from the damages covered by this Directive, such as pain and suffering,</b> should not affect national rules relating to non-	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>proper compensation from the economic operator who is ultimately liable or from any other relevant party.</i></u>	material damage be provided in so far as they are compensable under national law.	
Recital 18a				
27a			<b>(18a) Types of damage other than those provided for in this Directive, such as pure economic loss, privacy infringements or discrimination, should not by themselves trigger liability under this Directive. However, this Directive should not affect the right to compensation for any damages, including non-material, under other liability regimes.</b>	
Recital 19				
28	(19) In order to protect consumers, damage to any property owned by a natural person should be compensated. Since property is increasingly used for both private and professional purposes, it is appropriate to provide for the compensation of damage to such mixed-use property. In light of this Directive's aim to protect consumers, property used	(19) In order to protect consumers, damage to any property owned by a natural person should be compensated. Since property is increasingly used for both private and professional purposes, it is appropriate to provide for the compensation of damage to such mixed-use property. In light of this Directive's aim to protect consumers, property used	(19) In order to protect <b>natural persons</b> consumers, damage to any property owned by a natural person should be compensated. Since property is increasingly used for both private and professional purposes, it is appropriate to provide for the compensation of damage to such mixed-use property. In light of this Directive's aim to protect <b>natural persons</b>	

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	exclusively for professional purposes should be excluded from its scope.	exclusively for professional purposes should be excluded from its scope. <u>However, several Member States provide for the possibility to extend consumer protection rules to other weaker parties, such as microenterprises as defined in Commission Recommendation 2003/361/EC<sup>1a</sup>. Member States should therefore be encouraged to compensate damage to property used exclusively for professional purposes by microenterprises.</u>  <u>1a. Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).</u>	consumers, property used exclusively for professional purposes should be excluded from its scope.	
Recital 20				
29	(20) This Directive should apply to products placed on the market or, where relevant, put into service in the course of a commercial activity, whether in return for payment or free of charge, for example products supplied in the context of a sponsoring campaign or products manufactured for the provision of a service financed by	(20) This Directive should apply to products placed on the market or, where relevant, put into service in the course of a commercial activity, whether in return for payment or free of charge, for example products supplied in the context of a sponsoring campaign or products manufactured for the provision of a service financed by	(20) This Directive should apply to products placed on the market or, where relevant, put into service in the course of a commercial activity, whether in return for payment or free of charge, for example products supplied in the context of a sponsoring campaign or products manufactured for the provision of a service financed by	

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	public funds, since this mode of supply still has an economic or business character.	public funds, since this mode of supply still has an economic or business character. <u>Neither the collaborative development of free and open-source software nor making such software available on open repositories should constitute placing on the market or putting into service. A commercial activity within the understanding of making available on the market might, however, be characterised by monetisation or paid software updates, unless that serves only to recover actual costs, or by the use of personal data for reasons other than exclusively for improving the security, compatibility or interoperability of the software. Occasional supplies by charities or hobbyists should not be considered as taking place in a business-related context.</u>	public funds, since this mode of supply still has an economic or business character.	
Recital 20a				
29a		<u>(20a) Products which are not intended to be placed on the market or to be put into service, due to them, for example, being intended only for personal use or for use only in a controlled and</u>		

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		<u>confined setting, but which appear on the market or are put into service after, for example, being stolen, should be excluded from the scope of this Directive.</u>		
Recital 20b				
29b		<u>(20b) Taking into account the increased complexity of products, of business models and of supply chains, and considering that the aim of this Directive is to ensure that consumers can easily exercise their right to get compensation in case of damage caused by defective products, Member States should ensure that competent national consumer protection authorities and bodies provide all relevant information and tailored guidance to affected consumers to enable them to effectively exercise their right to compensation in accordance with this Directive. National consumer protection agencies and bodies should regularly exchange relevant information they become aware of and closely cooperate with market surveillance authorities.</u>		


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Recital 20a				
29c			<b>(20a) In so far as national law provides, the right to compensation for injured persons should apply both to direct victims, who suffer damage directly caused by a defective product, and to indirect victims, who suffer damage as a result of the direct victim's damage.</b>	
Recital 21				
30	<p>(21) This Directive should not affect the various means of seeking redress at national level, whether through court proceedings, non-court solutions, alternative dispute resolution or representative actions under Directive (EU) 2020/1828<sup>1</sup> of the European Parliament and of the Council or under national collective redress schemes.</p> <p><sup>1</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).</p>	<p>(21) This Directive should not affect the various means of seeking redress at national level, whether through court proceedings, non-court solutions, alternative dispute resolution or representative actions under Directive (EU) 2020/1828<sup>1</sup> of the European Parliament and of the Council or under national collective redress schemes.</p> <p><sup>1</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).</p>	<p>(21) This Directive should not affect the various means of seeking redress at national level, whether through court proceedings, non-court solutions, alternative dispute resolution or representative actions under Directive (EU) 2020/1828<sup>1</sup> of the European Parliament and of the Council or under national collective redress schemes.</p> <p><sup>1</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).</p>	<p>(21) This Directive should not affect the various means of seeking redress at national level, whether through court proceedings, non-court solutions, alternative dispute resolution or representative actions under Directive (EU) 2020/1828<sup>1</sup> of the European Parliament and of the Council or under national collective redress schemes.</p> <p><sup>1</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Recital 22				
31	<p>(22) In order to protect the health and property of consumers, the defectiveness of a product should be determined by reference not to its fitness for use but to the lack of the safety that the public at large is entitled to expect. The assessment of defectiveness should involve an objective analysis and not refer to the safety that any particular person is entitled to expect. The safety that the public at large is entitled to expect should be assessed by taking into account, inter alia, the intended purpose, the objective characteristics and the properties of the product in question as well as the specific requirements of the group of users for whom the product is intended. Some products, such as life-sustaining medical devices, entail an especially high risk of damage to people and therefore give rise to particularly high safety expectations. In order to take such expectations into account, it should be possible for a court to find a</p>	<p>(22) In order to protect the health and property of consumers, the defectiveness of a product should be determined by reference not to its fitness for use but to the lack of the safety <del>that the public at large</del> <u>an average person</u> is entitled to expect <u>or that is required under Union or national law</u>. The assessment of defectiveness should involve an objective analysis and not refer to the safety that any particular person is entitled to expect. The safety that <del>the public at large</del> <u>an average person</u> is entitled to expect should be assessed by taking into account, inter alia, <del>the intended purpose</del> <u>reasonably foreseeable use, the presentation</u>, the objective characteristics and the properties of the product in question as well as the specific requirements of the group of users for whom the product is intended. <u>In addition, the compliance with relevant product safety requirements laid down in Union and national law</u></p>	<p>(22) In order to protect the health and property of <del>consumers</del> <b>natural persons</b>, the defectiveness of a product should be determined by reference not to its fitness for use but to the lack of the safety that the public at large is entitled to expect. The assessment of defectiveness should involve an objective analysis and not refer to the safety that any particular person is entitled to expect. The safety that the public at large is entitled to expect should be assessed by taking into account, inter alia, the intended purpose, the objective characteristics and the properties of the product in question as well as the specific requirements of the group of users for whom the product is intended. Some products, such as life-sustaining medical devices, entail an especially high risk of damage to people and therefore give rise to particularly high safety expectations. In order to take such expectations into account, it should</p>	

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	<p>product defective without establishing its actual defectiveness, where it belongs to the same production series as a product already proven to be defective.</p>	<p><u>should be taken into account, in particular if non-compliance increased the risk of the product causing damage of the type suffered by the injured person and that risk has materialised. Economic operators should not be liable, however, if they prove that the damage suffered by the injured person would also have occurred if the relevant mandatory requirements under Union or national law had been complied with.</u> Some products, such as life-sustaining medical devices, entail an especially high risk of damage to people and therefore give rise to particularly high safety expectations. In order to take such expectations into account, it should be possible for a court to find a product defective without establishing its actual defectiveness, where it belongs to the same production series as a product already proven to be defective.</p>	<p>be possible for a court to find a product defective without establishing its actual defectiveness, where it belongs to the same production series as a product already proven to be defective.</p>	
Recital 22a				
31a			<p><b>(22a) The assessment of defectiveness should take into account the product's</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>presentation. However, warnings or other information provided with a product cannot by themselves make an otherwise defective product safe, since defectiveness is determined only by reference to the safety that the public at large is entitled to expect. Therefore, liability under this Directive cannot be circumvented simply by listing all conceivable side effects of a product. When determining the defectiveness of a product, its reasonably foreseeable use should also encompass misuse that is not unreasonable under the circumstances, such as the foreseeable behaviour of a user of machinery resulting from lack of concentration or the foreseeable behaviour of certain user groups such as children.</p>	
Recital 23				
32	<p>(23) In order to reflect the increasing prevalence of inter-connected products, the assessment of a product's safety should also take into account the effects of other products on the product in question. The effect on a product's</p>	<p>(23) In order to reflect the increasing prevalence of inter-connected products, the assessment of a product's safety should also take into account the <u>reasonably foreseeable</u> effects of other products on the product in</p>	<p>(23) In order to reflect the increasing prevalence of inter-connected products, the assessment of a product's safety should also take into account the <b>reasonably foreseeable</b> effects of other products on the product in</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>safety of its ability to learn after deployment should also be taken into account, to reflect the legitimate expectation that a product’s software and underlying algorithms are designed in such a way as to prevent hazardous product behaviour. In order to reflect that in the digital age many products remain within the manufacturer’s control beyond the moment at which they are placed on the market, the moment in time at which a product leaves the manufacturer’s control should also be taken into account in the assessment of a product’s safety. A product can also be found to be defective on account of its cybersecurity vulnerability.</p>	<p>question. The effect on a product’s safety of its ability to learn after <del>deployment</del><u>it is placed on the market or put into service</u> should also be taken into account, to reflect the legitimate expectation that a product’s software and underlying algorithms are designed in such a way as to prevent hazardous product behaviour. In <u>particular where software that ordinarily and of itself does not pose a significant risk of damage is included in a product with higher safety expectations, such as in case of life-sustaining medical devices as defined in Article 2, point (1), of Regulation (EU) 2017/745 of the European Parliament and of the Council<sup>a</sup></u>, the assessment of defectiveness leading to damage should take the original intent of the developer or manufacturer of the software into account. In order to reflect that in the digital age many products remain within the manufacturer’s control beyond the moment at which they are placed on the market, the moment in time at which a product leaves the manufacturer’s control should also be taken into account in the</p>	<p>question, <b>for example within a smart home system</b>. The effect on a product’s safety of its ability to learn after <del>deployment</del><u>it is placed on the market or put into service</u> should also be taken into account, to reflect the legitimate expectation that a product’s software and underlying algorithms are designed in such a way as to prevent hazardous product behaviour. <b>As such, a manufacturer that designs a product with the ability to develop unexpected behaviour remains responsible for behaviour that causes harm</b>. In order to reflect that in the digital age many products remain within the manufacturer’s control beyond the moment at which they are placed on the market, the moment in time at which a product leaves the manufacturer’s control should also be taken into account in the assessment of a product’s safety. A product can also be found to be defective on account of its cybersecurity vulnerability.</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p>assessment of a product’s safety. A product can also be found to be defective on account of its cybersecurity vulnerability <u>where the product does not fulfil safety-relevant cybersecurity requirements laid down in Union or national law.</u></p> <p><u>1a. Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).</u></p>		
Recital 24				
33	<p>(24) In order to reflect the relevance of product safety and market surveillance legislation for determining the level of safety that the public at large is entitled to expect, it should be clarified that safety requirements, including safety-relevant cybersecurity requirements, and interventions by regulatory authorities, such as issuing product recalls, or by economic operators themselves, should also be taken into account in that assessment. Such</p>	<p>(24) In order to reflect the relevance of product safety and market surveillance legislation for determining the level of safety that <del>the public at large</del> <u>an average person</u> is entitled to expect, it should be clarified that <u>relevant product</u> safety requirements, including safety-relevant cybersecurity requirements <u>laid down in Union or national law</u>, and interventions by regulatory authorities, such as issuing product recalls, or by economic operators</p>	<p>(24) In order to reflect the relevance of product safety and market surveillance legislation for determining the level of safety that the public at large is entitled to expect, it should be clarified that safety requirements, including safety-relevant cybersecurity requirements, and interventions by regulatory authorities, such as issuing product recalls, or by economic operators themselves, should also be taken into account in that assessment. Such</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	interventions should, however, not of themselves create a presumption of defectiveness.	themselves, should also be taken into account in that assessment. <del>Such</del> <b>Voluntary</b> interventions should, however, not of themselves create a presumption of defectiveness.	interventions should, however, not of themselves create a presumption of defectiveness.	
Recital 25				
34	(25) In the interests of consumer choice and in order to encourage innovation, the existence, or subsequent placing, on the market of a better product should not in itself lead to the conclusion that a product is defective. Equally, the supply of updates or upgrades to a product should not in itself lead to the conclusion that a previous version of the product is defective.	(25) In the interests of consumer choice and in order to encourage innovation, <b>research and easy access to new technologies</b> , the existence, or subsequent placing, on the market of a better product should not in itself lead to the conclusion that a <b>previous</b> product is defective. Equally, the supply of updates or upgrades to a product should not in itself lead to the conclusion that a previous version of the product is defective.	(25) In the interests of consumer choice and in order to encourage innovation, the existence, or subsequent placing, on the market of a better product should not in itself lead to the conclusion that a product is defective. Equally, the supply of updates or upgrades to a product should not in itself lead to the conclusion that a previous version of the product is defective.	
Recital 26				
35	(26) The protection of the consumer requires that any manufacturer involved in the production process can be made liable, in so far as their product or a component supplied by them is defective. Where a manufacturer	(26) The protection of the consumer requires that any manufacturer involved in the production process can be made liable, in so far as their product or a component supplied by them is defective. Where a manufacturer	(26) The protection of <del>the consumer</del> <b>natural persons</b> requires that any manufacturer involved in the production process can be made liable, in so far as their product or a component supplied by them is defective. <b>This includes</b>	

	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>	<b>Draft Agreement</b>
	integrates a defective component from another manufacturer into a product, an injured person should be able to seek compensation for the same damage from either the manufacturer of the product or from the manufacturer of the component.	integrates a defective component from another manufacturer into a product, an injured person should be able to seek compensation for the same damage from either the manufacturer of the product or from the manufacturer of the component.	<b>any person who presents themselves as the manufacturer by affixing, or authorising a third party to affix, their name, trademark or other distinguishing feature, since by doing so they give the impression that they are involved in the production process or assume the responsibility for it.</b> Where a manufacturer integrates a defective component from another manufacturer into a product, an injured person should be able to seek compensation for the same damage from either the manufacturer of the product or from the manufacturer of the component. <b>Where a component is integrated into a product outside of the control of the product manufacturer, an injured person should be able to seek compensation from the component manufacturer in so far as the component itself is a product under this Directive.</b>	
Recital 27				
36	(27) In order to ensure that injured persons have an enforceable claim for compensation where a	(27) In order to ensure that injured persons have an enforceable claim for compensation where a	(27) In order to ensure that injured persons have an enforceable claim for compensation where a	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>manufacturer is established outside the Union, it should be possible to hold the importer of the product and the authorised representative of the manufacturer liable. Practical experience of market surveillance has shown that supply chains sometimes involve economic operators whose novel form means that they do not fit easily into the traditional supply chains under the existing legal framework. Such is the case, in particular, with fulfilment service providers, which perform many of the same functions as importers but which might not always correspond to the traditional definition of importer in Union law. In light of the role of fulfilment service providers as economic operators in the product safety and market surveillance framework, in particular in Regulation (EU) 2019/1020 of the European Parliament and of the Council<sup>1</sup>, it should be possible to hold them liable, but given the subsidiary nature of that role, they should be liable only where no importer or authorised representative is based in the Union. In the interests of channelling liability in an effective</p>	<p>manufacturer is established outside the Union, it should be possible to hold the importer of the product and the authorised representative of the manufacturer liable. Practical experience of market surveillance has shown that supply chains sometimes involve economic operators whose novel form means that they do not fit easily into the traditional supply chains under the existing legal framework. Such is the case, in particular, with fulfilment service providers, which perform many of the same functions as importers but which might not always correspond to the traditional definition of importer in Union law. In light of the role of fulfilment service providers as economic operators in the product safety and market surveillance framework, in particular in Regulation (EU) 2019/1020 of the European Parliament and of the Council<sup>1</sup>, it should be possible to hold them liable, but given the subsidiary nature of that role, they should be liable only where no importer or authorised representative is based in the Union. In the interests of channelling liability in an effective</p>	<p>manufacturer is established outside the Union, it should be possible to hold the importer of the product and the authorised representative of the manufacturer, <b>appointed for the purpose of specified tasks under product safety and market surveillance legislation</b>, liable. Practical experience of market surveillance has shown that supply chains sometimes involve economic operators whose novel form means that they do not fit easily into the traditional supply chains under the existing legal framework. Such is the case, in particular, with fulfilment service providers, which perform many of the same functions as importers but which might not always correspond to the traditional definition of importer in Union law. <del>In light of the role of fulfilment service providers</del> <b>Fulfilment service providers play an increasingly significant role as economic operators enabling and facilitating access to the Union market for products from third countries. This shift in relevance is already reflected</b> in the product safety and market surveillance framework, in particular in</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>manner towards manufacturers, importers, authorised representatives and fulfilment service providers, it should be possible to hold distributors liable only where they fail to promptly identify a relevant economic operator based in the Union.</p> <p>1. Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).</p>	<p>manner towards manufacturers, importers, authorised representatives and fulfilment service providers, it should be possible to hold distributors liable only where they fail to promptly identify a relevant economic operator based in the Union.</p> <p>1. Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).</p>	<p>Regulation (EU) 2019/1020 of the European Parliament and of the Council<sup>1</sup> and <b>[General Product Safety Regulation]</b>. Therefore, it should be possible to hold them liable, but given the subsidiary nature of that role, they should be liable only where no importer or authorised representative is based in the Union. In the interests of channelling liability in an effective manner towards manufacturers, importers, authorised representatives and fulfilment service providers, it should be possible to hold distributors liable only where they fail to promptly identify a relevant economic operator based in the Union.</p> <p>1. Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).</p>	
Recital 28				
37	(28) Online selling has grown consistently and steadily, creating new business models and new actors in the market such as online	(28) Online selling has grown consistently and steadily, creating new business models and new actors in the market such as online	(28) Online selling has grown consistently and steadily, creating new business models and new actors in the market such as online	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>platforms. [Regulation [.../...]] on a Single Market for Digital Services (Digital Services Act)] and [Regulation [.../...]] on General Product Safety] regulate, inter alia, the responsibility and accountability of online platforms with regard to illegal content, including products. When online platforms perform the role of manufacturer, importer or distributor in respect of a defective product, they should be liable on the same terms as such economic operators. When online platforms play a mere intermediary role in the sale of products between traders and consumers, they are covered by a conditional liability exemption under the Digital Services Act. However, the Digital Services Act establishes that online platforms that allow consumers to conclude distance contracts with traders are not exempt from liability under consumer protection law where they present the product or otherwise enable the specific transaction in question in a way that would lead an average consumer to believe that the product is provided either by the online platform itself or by a trader</p>	<p>platforms. <del>[Regulation [.../...]] on a Single Market for Digital Services (Digital Services Act)] and [Regulation [.../...]] on General Product Safety]</del> <u>Regulations (EU) 2022/2065<sup>1a</sup> and (EU) 2023/988<sup>1b</sup> of the European Parliament and of the Council</u> regulate, inter alia, the responsibility and accountability of online platforms with regard to illegal content, including products. When online platforms perform the role of manufacturer, importer or distributor in respect of a defective product, they should be liable on the same terms as such economic operators. When online platforms play a mere intermediary role in the sale of products between traders and consumers, they are covered by a conditional liability exemption under the Digital Services Act. However, the Digital Services Act establishes that online platforms that allow consumers to conclude distance contracts with traders are not exempt from liability under consumer protection law where they present the product or otherwise enable the specific transaction in question in a way that would lead an average</p>	<p>platforms. [Regulation [.../...]] <b>(EU) 2022/2065</b> on a Single Market for Digital Services (Digital Services Act)]<sup>1</sup> of the European Parliament and of the Council and [Regulation [.../...]] on General Product Safety] regulate, inter alia, the responsibility and accountability of online platforms with regard to illegal content, including products. When online platforms perform the role of manufacturer, importer or distributor in respect of a defective product, they should be liable on the same terms as such economic operators. When online platforms play a mere intermediary role in the sale of products between traders and consumers, they are covered by a conditional liability exemption under <del>the Digital Services Act</del> <b>Regulation (EU) 2022/2065</b>. However, <del>the Digital Services Act</del> <b>Regulation (EU) 2022/2065</b> establishes that online platforms that allow consumers to conclude distance contracts with traders are not exempt from liability under consumer protection law where they present the product or otherwise enable the specific transaction in question in a way</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>acting under its authority or control. In keeping with this principle, when online platforms do so present the product or otherwise enable the specific transaction, it should be possible to hold them liable, in the same way as distributors under this Directive. That means that they would be liable only when they do so present the product or otherwise enable the specific transaction, and only where the online platform fails to promptly identify a relevant economic operator based in the Union.</p>	<p>consumer to believe that the product is provided either by the online platform itself or by a trader acting under its authority or control. In keeping with this principle, when online platforms do so present the product or otherwise enable the specific transaction, it should be possible to hold them liable, in the same way as distributors under this Directive. That means that they would be liable only when they do so present the product or otherwise enable the specific transaction, and only where the online platform fails to promptly identify a relevant economic operator based in the Union.</p> <p><a href="#"><u>1a. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).</u></a></p> <p><a href="#"><u>1b. Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (OJ L 135, 23.5.2023, p. 1).</u></a></p>	<p>that would lead an average consumer to believe that the product is provided either by the online platform itself or by a trader acting under its authority or control. In keeping with this principle, when online platforms do so present the product or otherwise enable the specific transaction, it should be possible to hold them liable, in the same way as distributors under this Directive. That means that they would be liable only when they do so present the product or otherwise enable the specific transaction, and only where the online platform fails to promptly identify a relevant economic operator based in the Union.</p> <p><b>1. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 29				
38	<p>(29) In the transition from a linear to a circular economy, products are designed to be more durable, reusable, repairable and upgradable. The Union is also promoting innovative and sustainable ways of production and consumption that prolong the functionality of products and components, such as remanufacturing, refurbishment and repair.<sup>1</sup> In addition, products allow for modifications through changes to software, including upgrades. When a product is modified substantially outside the control of the original manufacturer, it is considered to be a new product and it should be possible to hold the person that made the substantial modification liable as a manufacturer of the modified product, since under relevant Union legislation they are responsible for the product's compliance with safety requirements. Whether a modification is substantial is determined according to criteria set out in relevant Union and national safety legislation, such as</p>	<p>(29) In the transition from a linear to a circular economy, <del>products</del> products are designed to be more durable, reusable, repairable and upgradable. The Union is also promoting innovative and sustainable ways of production and consumption that prolong the functionality of products and components, such as remanufacturing, refurbishment and repair.<sup>1</sup> In addition, products allow for modifications through changes to software, including upgrades. When a product is modified substantially outside the control of the original manufacturer, it is considered to be a new product and it should be possible to hold the person that made the substantial modification liable as a manufacturer of the modified product, <u>and subject to the same obligations of a manufacturer</u>, since under relevant Union legislation they are responsible for the product's compliance with safety requirements. <u>However, those requirements should only apply with respect to the modified part</u></p>	<p>(29) In the transition from a linear to a circular economy, <del>products</del> products are designed to be more durable, reusable, repairable and upgradable. The Union is also promoting innovative and sustainable ways of production and consumption that prolong the functionality of products and components, such as remanufacturing, refurbishment and repair.<sup>1</sup> <del>In addition, products allow for modifications through changes to software, including upgrades.</del> When a product is modified substantially <del>outside the control of the original manufacturer</del> <b>and is thereafter made available on the market or put into service</b>, it is considered to be a new product. <b>Where the modification is made outside the control of the original manufacturer</b>, and it should be possible to hold the person that made the substantial modification liable as a manufacturer of the modified product, since under relevant Union legislation they are responsible for the product's compliance with safety</p>	


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>modifications that change the original intended functions or affect the product’s compliance with applicable safety requirements. In the interests of a fair apportionment of risks in the circular economy, an economic operator that makes a substantial modification should be exempted from liability if it can prove that the damage is related to a part of the product not affected by the modification. Economic operators that carry out repairs or other operations that do not involve substantial modifications should not be subject to liability under this Directive.</p> <p>1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan for a cleaner and more competitive Europe, COM/2020/98 final.</p>	<p><u>of the product, provided that the modification does not affect the product as a whole. Therefore, the liability of the person that made the substantial modification should be limited to the modified part of the product when the modification does not have an impact on the product as a whole.</u></p> <p>Whether a modification is substantial is determined according to criteria set out in relevant Union <u>law, including Regulation (EU) 2023/988</u>, and national <u>product safety legislation. Modifications should be considered substantial, for instance, if they, such as modifications that</u> change the original intended functions or affect the product’s compliance with applicable safety requirements. In the interests of a fair apportionment of risks in the circular economy, an economic operator that makes a substantial modification should be exempted from liability if it can prove that the damage is related to a part of the product not affected by the modification. Economic operators that carry out repairs or other operations that do not involve substantial modifications should</p>	<p>requirements. Whether a modification is substantial is determined according to criteria set out in relevant Union and national safety legislation, such as modifications that change the original intended functions or affect the product’s compliance with applicable safety requirements. <b>Where a substantial modification is carried out by the original manufacturer, or within its control, and where such a substantial modification makes the product defective, that manufacturer should not be able to avoid liability by arguing that the defect came into being after it originally placed the product on the market or put it into service.</b></p> <p>In the interests of a fair apportionment of risks in the circular economy, an economic operator <b>other than the original manufacturer</b> that makes a substantial modification should be exempted from liability if it can prove that the damage is related to a part of the product not affected by the modification. Economic operators that carry out repairs or other operations that do not involve substantial modifications should</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p>not be subject to liability under this Directive. <u><i>In particular the provision of third-party software updates or upgrades after a manufacturer has ceased to provide support for a product can have very positive effects for the environment by contributing to the reparability and longevity of such a product and should not be disproportionately or negatively affected by this Directive.</i></u></p> <p>1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan for a cleaner and more competitive Europe, COM/2020/98 final.</p>	<p>not be subject to liability under this Directive.</p> <p>1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan for a cleaner and more competitive Europe, COM/2020/98 final.</p>	
Recital 29a				
38a		<p><u><i>(29a) Where victims fail to obtain compensation because no economic operator is liable under this Directive or because the liable economic operators are insolvent or have ceased to exist, Member States should be able to use existing national sectorial compensation schemes or establish new ones under national law, which should not be funded</i></u></p>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>by public revenues, to appropriately compensate injured persons who suffered damage caused by defective products.</i></u>		
Recital 29a				
38b			<b>(29a) Since products also allow for modifications through changes to software, including upgrades, the same principles of substantial modification should apply. Where a substantial modification is made through a software update or upgrade, or due to the continuous learning of an AI system, the substantially modified product should be considered to be made available on the market or put into service at the time the modification is actually made.</b>	
Recital 30				
39	(30) In light of the imposition on economic operators of liability irrespective of fault, and with a view to achieving a fair apportionment of risk, the injured person claiming compensation for damage caused by a defective	(30) In light of the imposition on economic operators of liability irrespective of fault, and with a view to achieving a fair apportionment of risk, the injured person claiming compensation for damage caused by a defective	(30) In light of the imposition on economic operators of liability irrespective of fault, and with a view to achieving a fair apportionment of risk, the injured person claiming compensation for damage caused by a defective	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>product should bear the burden of proving the damage, the defectiveness of a product and the causal link between the two. Injured persons, are, however, often at a significant disadvantage compared to manufacturers in terms of access to, and understanding of, information on how a product was produced and how it operates. This asymmetry of information can undermine the fair apportionment of risk, in particular in cases involving technical or scientific complexity.</p>	<p>product should bear the burden of proving the damage, the defectiveness of a product and the causal link between the two. <u><i>It should be possible for Member States to empower national consumer protection bodies to represent the interests of consumers in the process of gathering the evidence necessary to prove the defectiveness of a product, the damage caused by the defective product and the causal link between the two.</i></u> Injured persons, are, however, often at a significant disadvantage compared to manufacturers in terms of access to, and understanding of, information on how a product was produced and how it operates. This asymmetry of information can undermine the fair apportionment of risk, in particular in cases involving technical or scientific complexity. <u><i>The Commission Impact Assessment Report accompanying the proposal for this Directive highlighted the fact that the most frequent reasons to reject claims relate to the proof of the defect and its link with the damage, which together account for 53 % of the cases of rejection.</i></u></p>	<p>product should bear the burden of proving the damage, the defectiveness of a product and the causal link between the two, <b>in accordance with the standard of proof applicable under national law.</b> Injured persons, are, however, often at a significant disadvantage compared to manufacturers in terms of access to, and understanding of, information on how a product was produced and how it operates. This asymmetry of information can undermine the fair apportionment of risk, in particular in cases involving technical or scientific complexity.</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>On the other hand, the 2018 Commission Evaluation of Council Directive 85/374/EEC assessed that around 60 % of the claims for defective products were successful from 2000 to 2016.</i></u>		
Recital 31				
40	(31) It is therefore necessary to facilitate claimants' access to evidence to be used in legal proceedings, while ensuring that such access is limited to that which is necessary and proportionate, and that confidential information and trade secrets are protected. Such evidence should also include documents that have to be created ex novo by the defendant by compiling or classifying the available evidence.	(31) <del><i>It is therefore necessary to facilitate claimants' access</i></del> <u><i>Therefore, in legal proceedings to adjudicate on compensation for damage caused by a defective product, at the request of a claimant who has presented facts and evidence sufficient to support the plausibility of the claim for compensation, national courts should be able to order the defendant to disclose relevant evidence that is at its disposal, in accordance with national procedural law. At the request of the defendant, national courts should also be able to order the claimant to disclose relevant evidence that is at its disposal, in accordance with national procedural law. The requested disclosure of evidence should be limited to what</i></u> <del><i>to be used in legal proceedings, while ensuring that</i></del>	(31) It is therefore necessary to facilitate claimants' access to evidence to be used in legal proceedings, while ensuring that such access is limited to that which is necessary and proportionate, and that confidential information and trade secrets are protected. Such evidence should also include documents that have to be created ex novo by the defendant by compiling or classifying the available evidence.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><i>such access is limited to that which is necessary and proportionate, and <u>should be carried out in such a way as to ensure that trade secrets, in line with the Directive (EU) 2016/943 of the European Parliament and of the Council<sup>1a</sup>, that confidential information and trade secrets</u> are protected. Such evidence should also include documents that have to be created ex novo by the defendant by compiling or classifying the available evidence. <u>Taking in consideration the complexity of certain types of data, especially those from digital products, the evidence to be disclosed should be delivered in an easily accessible and easily understandable manner.</u></i></p> <p><u>1a. Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).</u></p>		
Recital 31a				
40a		<p><u>(31a) This Directive should not affect national law relating to the</u></p>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>pre-trial disclosure of evidence.</u>		
Recital 31a				
40b			<b>(31a) This Directive harmonises rules on disclosure of evidence only in so far as such matters are regulated by it. Matters not regulated include rules on disclosure of evidence (i) regarding pre-trial procedures, (ii) on how specific a request for evidence must be, (iii) in relation to third parties, (iv) in cases of declaratory actions and (v) sanctions against non-compliance with obligations to disclose evidence.</b>	
Recital 32				
41	(32) In respect of trade secrets within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council <sup>1</sup> , national courts should be empowered to take specific measures to ensure the confidentiality of trade secrets during and after the proceedings, while achieving a fair and proportionate balance between the	(32) In respect of trade secrets within the meaning of Directive (EU) 2016/943 <del>of the European Parliament and of the Council<sup>1</sup></del> , national courts should be empowered to take <del>specific</del> <u>all necessary</u> measures to ensure <del>the</del> <u>their</u> confidentiality <del>of trade secrets</del> during and after the proceedings, while achieving a fair and proportionate balance between	(32) In respect of trade secrets within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council <sup>1</sup> , national courts should be empowered to take specific measures to ensure the confidentiality of trade secrets during and after the proceedings, while achieving a fair and proportionate balance between the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>interest of the trade-secret holder to secrecy and the interest of the injured person. This should include at least measures to restrict access to documents containing trade secrets or alleged trade secrets and access to hearings to a limited number of people, or allowing access to redacted documents or transcripts of hearings. When deciding on such measures, national courts should take into account: (i) the need to ensure the right to an effective remedy and to a fair trial; (ii) the legitimate interests of the parties and, where appropriate, of third parties; and (iii) any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.</p> <p>1. Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).</p>	<p>the interest of the trade-secret holder to secrecy and the interest of the injured person. This should include at least measures to restrict access to documents containing trade secrets or alleged trade secrets and access to hearings to a limited number of people, or allowing access to redacted documents or transcripts of hearings. When deciding on such measures, national courts should take into account: (i) the need to ensure the right to an effective remedy and to a fair trial; (ii) the legitimate interests of the parties, <u>including the amount of damage,</u> and, where appropriate, of third parties; and (iii) any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.</p> <p><del>1. Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).</del></p>	<p>interest of the trade-secret holder to secrecy and the interest of the injured person. This should include at least measures to restrict access to documents containing trade secrets or alleged trade secrets and access to hearings to a limited number of people, or allowing access to redacted documents or transcripts of hearings. When deciding on such measures, national courts should take into account: (i) the need to ensure the right to an effective remedy and to a fair trial; (ii) the legitimate interests of the parties and, where appropriate, of third parties; and (iii) any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.</p> <p>1. Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).</p>	
Recital 33				
42				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>(33) It is also necessary to alleviate the claimant’s burden of proof provided that certain conditions are fulfilled. Rebuttable presumptions of fact are a common mechanism for alleviating a claimant’s evidential difficulties, and allow a court to base the existence of defectiveness or causal link on the presence of another fact that has been proven, while preserving the rights of the defendant. In order to provide an incentive to comply with the obligation to disclose information, national courts should presume the defectiveness of a product where a defendant fails to comply with such an obligation. Many legislative and mandatory safety requirements have been adopted in order to protect consumers and the public from the risk of harm. In order to reinforce the close relationship between product safety rules and liability rules, non-compliance with such requirements should also result in a presumption of defectiveness. This includes cases in which a product is not equipped with the means to log information about the operation of the product as required under</p>	<p>(33) It is also necessary to alleviate the claimant’s burden of proof provided that certain conditions are fulfilled. Rebuttable presumptions of fact are a common mechanism for alleviating a claimant’s evidential difficulties, and allow a court to base the existence of defectiveness or causal link on the presence of another fact that has been proven, while preserving the rights of the defendant. In order to provide an incentive to comply with the obligation to disclose information, national courts should presume the defectiveness of a product where a defendant fails to comply with such an obligation. Many legislative and mandatory safety requirements have been adopted in order to protect consumers and the public from the risk of harm, <u><a href="#">including under Regulation (EU) 2023/988</a></u>. In order to reinforce the close relationship between product safety rules and liability rules, non-compliance with such requirements should also result in a presumption of defectiveness. This includes cases in which a product is not equipped with the means to log information about the operation of</p>	<p>(33) It is also necessary to alleviate the claimant’s burden of proof provided that certain conditions are fulfilled. Rebuttable presumptions of fact are a common mechanism for alleviating a claimant’s evidential difficulties, and allow a court to base the existence of defectiveness or causal link on the presence of another fact that has been proven, while preserving the rights of the defendant. In order to provide an incentive to comply with the obligation to disclose information, national courts should presume the defectiveness of a product where a defendant fails to comply with such an obligation. Many legislative and mandatory safety requirements have been adopted in order to protect consumers and the public <del>natural persons</del> from the risk of harm. In order to reinforce the close relationship between product safety rules and liability rules, non-compliance with such requirements should also result in a presumption of defectiveness. This includes cases in which a product is not equipped with the means to log information about the operation of the product as required under</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Union or national law. The same should apply in the case of obvious malfunction, such as a glass bottle that explodes in the course of normal use, since it is unnecessarily burdensome to require a claimant to prove defectiveness when the circumstances are such that its existence is undisputed.	the product as required under Union or national law. The same should apply in the case of obvious malfunction, such as a glass bottle that explodes in the course of normal use, since it is unnecessarily burdensome to require a claimant to prove defectiveness when the circumstances are such that its existence is undisputed.	Union or national law. The same should apply in the case of obvious malfunction, such as a glass bottle that explodes in the course of <del>normal</del> <b>reasonably foreseeable</b> use, since it is unnecessarily burdensome to require a claimant to prove defectiveness when the circumstances are such that its existence is undisputed.	
Recital 33a				
42a			<b>(33a) Similarly, where it has been established that the product is defective and the kind of damage that occurred is, based primarily on other similar cases, typically caused by the defectiveness in question, the claimant should be spared from fully proving the causal link and its existence should be presumed.</b>	
Recital 34				
43	(34) National courts should also presume the defectiveness of a product or the causal link between the damage and the defectiveness, or both, where, notwithstanding the	(34) National courts should also <del>presume</del> <b>alleviate the burden of proving</b> the defectiveness of a product or the causal link between the damage and the defectiveness,	(34) National courts should also presume the defectiveness of a product or the causal link between the damage and the defectiveness, or both, where, notwithstanding the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>defendant’s disclosure of information, it would be excessively difficult for the claimant, in light of the technical or scientific complexity of the case, to prove its defectiveness or the causal link, or both. In such cases, requiring proof would undermine the effectiveness of the right to compensation. Therefore, given that manufacturers have expert knowledge and are better informed than the injured person, it should be for them to rebut the presumption. Technical or scientific complexity should be determined by national courts on a case-by-case basis, taking into account various factors. Those factors should include the complex nature of the product, such as an innovative medical device; the complex nature of the technology used, such as machine learning; the complex nature of the information and data to be analysed by the claimant; and the complex nature of the causal link, such as a link between a pharmaceutical or food product and the onset of a health condition, or a link that, in order to be proven, would require the claimant to explain the inner</p>	<p>or both, where, notwithstanding the defendant’s disclosure of information <u>and taking all relevant circumstances of the case into account</u>, it would be excessively difficult for the claimant, in light of the technical or scientific complexity of the case, to prove its defectiveness or the causal link, or both. In such cases, requiring proof would undermine the effectiveness of the right to compensation. Therefore, given that manufacturers have expert knowledge and are better informed than the injured person, <del>#the</del> <u>claimant</u> should be <del>for them to rebut the presumption</del> <u>required to establish on the basis of relevant evidence that it is possible that the product contributed to the damage and, where the claimant’s difficulties relate to proving defectiveness, that it is possible that the product was defective, or where the claimant’s difficulties relate to proving the causal link, that its defectiveness is a possible cause of the damage</u>. Technical or scientific complexity should be determined by national courts on a case-by-case basis, taking into account various factors. Those</p>	<p>defendant’s disclosure of information, it would be excessively difficult for the claimant, in light of <del>particular due</del> <b>to</b> the technical or scientific complexity of the case, to prove its defectiveness or the causal link, or both. <b>They should do so taking into account all the circumstances of the case.</b> In such cases, requiring <b>the usual standard of proof as required under national law, which often calls for a high degree of probability</b>, would undermine the effectiveness of the right to compensation. Therefore, given that manufacturers have expert knowledge and are better informed than the injured person, <del>#and in</del> <b>order to maintain a fair apportionment of risk while avoiding a reversal of the burden of proof, the claimant</b> should be for them to rebut the <del>presumption</del> <b>required to prove only that it is likely that, where the claimant’s difficulties relate to proving defectiveness, the product was defective, or that, where the claimant’s difficulties relate to proving the causal link, its defectiveness is a likely cause</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>workings of an AI system. The assessment of excessive difficulties should also be made by national courts on a case-by-case basis. While a claimant should provide arguments to demonstrate excessive difficulties, proof of such difficulties should not be required. For example, in a claim concerning an AI system, the claimant should, for the court to decide that excessive difficulties exist, neither be required to explain the AI system’s specific characteristics nor how these characteristics make it harder to establish the causal link. The defendant should have the possibility to contest the existence of excessive difficulties.</p>	<p>factors should include <del>the complex nature of the product, such as an innovative medical device</del>; <u>substantiated advice from experts in the relevant field, the complex nature of the product</u> the complex nature of the technology used, such as machine learning; the complex nature of the information and data to be analysed by the claimant; and the complex nature of the causal link, such as a link between a pharmaceutical or food product and the onset of a health condition, or a link that, in order to be proven, would require the claimant to explain the inner workings of an AI system. The assessment of excessive difficulties should also be made by national courts on a case-by-case basis. While a claimant should provide arguments to demonstrate excessive difficulties, proof of such difficulties should not be required. For example, in a claim concerning an AI system, the claimant should, for the court to decide that excessive difficulties exist, neither be required to explain the AI system’s specific characteristics nor how these characteristics make it harder to establish the causal</p>	<p><b>of the damage.</b> Technical or scientific complexity should be determined by national courts on a case-by-case basis, taking into account various factors. Those factors should include the complex nature of the product, such as an innovative medical device; the complex nature of the technology used, such as machine learning; the complex nature of the information and data to be analysed by the claimant; and the complex nature of the causal link, such as a link between a pharmaceutical or food product and the onset of a health condition, or a link that, in order to be proven, would require the claimant to explain the inner workings of an AI system. The assessment of excessive difficulties should also be made by national courts on a case-by-case basis. While a claimant should provide arguments to demonstrate excessive difficulties, proof of such difficulties should not be required. For example, in a claim concerning an AI system, the claimant should, for the court to decide that excessive difficulties exist, neither be required to explain the AI system’s specific characteristics</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p>link. The defendant should have the possibility to contest the existence of excessive difficulties <u>for example by demonstrating that the claimant has sufficient evidence to prove the defectiveness of the product or the causal link between its defectiveness and the damage, or both. In such a case, the defectiveness of the product or the causal link between its defectiveness and the damage, or both, should not be presumed.</u></p>	<p>nor how these characteristics make it harder to establish the causal link. The defendant should have the possibility to contest <b>all elements, including</b> the existence of excessive difficulties.</p>	
Recital 35				
44	<p>(35) In order to maintain a fair apportionment of risk, and to avoid a reversal of the burden of proof, a claimant should nevertheless, in order to benefit from the presumption, be required to demonstrate, on the basis of sufficiently relevant evidence, that it is likely that, where the claimant's difficulties relate to proving defectiveness, the product was defective, or that, where the claimant's difficulties relate to proving the causal link, its defectiveness is a likely cause of the damage.</p>	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 36				
45	(36) In the interest of a fair apportionment of risk, economic operators should be exempted from liability if they can prove the existence of specific exonerating circumstances. They should not be liable where they can prove that a person other than themselves has caused the product to leave the manufacturing process against their will or that compliance with mandatory regulations was the very reason for the product's defectiveness.	(36) In the interest of a fair apportionment of risk, economic operators should be exempted from liability if they can prove the existence of specific exonerating circumstances. They should not be liable where they can prove that a person other than themselves has caused the product to leave the manufacturing process against their will or that compliance with <del>mandatory regulations</del> <u>legal requirements</u> was the very reason for the product's defectiveness.	(36) In the interest of a fair apportionment of risk, economic operators should be exempted from liability if they can prove the existence of specific exonerating circumstances. They should not be liable where they can prove that a person other than themselves has caused the product to leave the manufacturing process against their will or that compliance with <del>mandatory regulations</del> <b>legal requirements</b> was the very reason for the product's defectiveness.	
Recital 36a				
45a		<u>(36a) In order not to hamper innovation in the software sector and acknowledging the challenges developers of software could be facing with respect to the rules laid down under this Directive, software manufacturers should be exempted from liability if another economic operator is liable under this Directive for damage caused by that software, and, at the time of the placing on the market of that software, that manufacturer</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>was 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, falls within the category of microenterprises or small enterprises within the meaning of Article 2(1) of that Annex.</i></u>		
Recital 37				
46	(37) The moment of placing on the market or putting into service is normally the moment at which a product leaves the control of the manufacturer, while for distributors it is the moment when they make the product available on the market. Therefore manufacturers should be exempted from liability where they prove that it is probable that the defectiveness that caused the damage did not exist when they placed the product on the market or put it into service or that it came into being after that moment. However, since digital technologies allow manufacturers to exercise control beyond the moment of placing the product on	(37) The moment of placing on the market or putting into service is normally the moment at which a product leaves the control of the manufacturer, while for distributors it is the moment when they make the product available on the market. Therefore manufacturers should be exempted from liability where they prove that it is probable that the defectiveness that caused the damage did not exist when they placed the product on the market or put it into service or that it came into being after that moment. However, since digital technologies allow manufacturers to exercise control beyond the moment of placing the product on	(37) The moment of placing on the market or putting into service is normally the moment at which a product leaves the control of the manufacturer, while for distributors it is the moment when they make the product available on the market. Therefore manufacturers should be exempted from liability where they prove that it is probable that the defectiveness that caused the damage did not exist when they placed the product on the market or put it into service or that it came into being after that moment. However, since digital technologies allow manufacturers to exercise control beyond the moment of placing the product on	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>the market or putting into service, manufacturers should remain liable for defectiveness that comes into being after that moment as a result of software or related services within their control, be it in the form of upgrades or updates or machine-learning algorithms. Such software or related services should be considered within the manufacturer’s control where they are supplied by that manufacturer or where that manufacturer authorises them or otherwise influences their supply by a third party.</p>	<p>the market or putting into service, manufacturers should remain liable for defectiveness that comes into being after that moment as a result of software or related services within their control, be it in the form of upgrades or updates or machine-learning algorithms. Such software or related services should be considered within the manufacturer’s control where they are supplied by that manufacturer or where that manufacturer authorises them or otherwise influences their supply by a third party.</p>	<p>the market or putting into service, manufacturers should remain liable for defectiveness that comes into being after that moment as a result of software or related services within their control, be it in the form of upgrades or updates or machine-learning algorithms. Such software or related services should be considered within the manufacturer’s control where they are supplied by that manufacturer or where that manufacturer authorises them or otherwise <del>influences</del><b>consents to</b> their supply by a third party. <b>For example, if a smart television is presented as including a video application, but the user is required to download the application from a third party’s website after purchase of the television, the television manufacturer should still be liable, alongside the manufacturer of the video application, for damage caused by any defectiveness of the video application, even though the defectiveness came into being only after the television was placed on the market.</b></p>	
Recital 38				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
47	<p>(38) The possibility for economic operators to avoid liability by proving that a defect came into being after they placed the product on the market or put it into service should also be restricted when a product's defectiveness consists in the lack of software updates or upgrades necessary to address cybersecurity vulnerabilities and maintain the product's safety. Such vulnerabilities can affect the product in such a way that it causes damage within the meaning of this Directive. In recognition of manufacturers' responsibilities under Union law for the safety of products throughout their lifecycle, such as under Regulation (EU) 2017/745 of the European Parliament and of the Council<sup>1</sup>, manufacturers should also be liable for damage caused by their failure to supply software security updates or upgrades that are necessary to address the product's vulnerabilities in response to evolving cybersecurity risks. Such liability should not apply where the supply or installation of such software is beyond the manufacturer's control, for</p>	<p>(38) The possibility for economic operators to avoid liability by proving that a defect came into being after they placed the product on the market or put it into service should also be restricted when a product's defectiveness consists in the lack of <del>software</del><u>security</u> updates or upgrades necessary to address cybersecurity vulnerabilities and maintain the product's safety. Such vulnerabilities can affect the product in such a way that it causes damage within the meaning of this Directive. In recognition of manufacturers' responsibilities under Union law for the safety of products throughout their lifecycle, such as under Regulation (EU) 2017/745 of the European Parliament and of the Council<sup>1</sup>, manufacturers should also be liable for damage caused by their failure to supply <del>software</del> security updates or upgrades that are necessary to address the product's vulnerabilities in response to evolving cybersecurity risks. Such liability should not apply where the supply or installation of such <del>software</del><u>updates or upgrades</u> is</p>	<p>(38) The possibility for economic operators to avoid liability by proving that a defect came into being after they placed the product on the market or put it into service should also be restricted when a product's defectiveness consists in the lack of software updates or upgrades necessary to address cybersecurity vulnerabilities and maintain the product's safety. Such vulnerabilities can affect the product in such a way that it causes damage within the meaning of this Directive. In recognition of manufacturers' responsibilities under Union law for the safety of products throughout their lifecycle, such as under Regulation (EU) 2017/745 of the European Parliament and of the Council<sup>1</sup>, manufacturers should also <b>not be exempted from liability</b> be liable for damage caused by their <b>defective product when the defectiveness resided in their</b> failure to supply software security updates or upgrades that are necessary to address the product's vulnerabilities in response to evolving cybersecurity risks. Such liability should not apply where the</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>example where the owner of the product does not install an update or upgrade supplied for the purpose of ensuring or maintaining the level of safety of the product.</p> <p>1. Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).</p>	<p>beyond the manufacturer’s control, for example where the owner of the product does not install an update or upgrade supplied for the purpose of ensuring or maintaining the level of safety of the product <u>insofar as that can be reasonably expected by the owner in terms of their technical capabilities and the knowledge required to be able to perform such update or upgrade.</u></p> <p>1. Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).</p>	<p>supply or installation of such software is beyond the manufacturer’s control, for example where the owner of the product does not install an update or upgrade supplied for the purpose of ensuring or maintaining the level of safety of the product. <b>This Directive does not itself impose any obligation to provide updates or upgrades to a product.</b></p> <p>1. Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).</p>	
Recital 39				
48	<p>(39) In the interests of a fair apportionment of risks, manufacturers should also be exempted from liability if they prove that the state of scientific and technical knowledge, determined with reference to the most advanced level of objective knowledge accessible and not to the actual knowledge of the manufacturer in question, while the</p>	<p>(39) In the interests of a fair apportionment of risks, <del>manufacturers</del><u>economic operators</u> should also be exempted from liability if they prove that the <u>general</u> state of scientific and technical knowledge, determined with reference to the most advanced level of objective knowledge accessible and not to the actual knowledge of the</p>	<p>(39) In the interests of a fair apportionment of risks, <del>manufacturers</del><u>economic operators</u> should also be exempted from liability if they prove that the state of scientific and technical knowledge, determined with reference to the most advanced level of objective knowledge accessible and not to the actual knowledge of the manufacturer in</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	product was within their control was such that the existence of defectiveness could not be discovered.	<del>manufacturer</del> <u>economic operator</u> in question, while the product was within their control was such that the existence of defectiveness could not be discovered.	question, while the product was within their control was such that the existence of defectiveness could not be discovered.	
Recital 40				
49	(40) Situations may arise in which two or more parties are liable for the same damage, in particular where a defective component is integrated into a product that causes damage. In such a case, the injured person should be able to seek compensation both from the manufacturer that integrated the defective component into its product and from the manufacturer of the defective component itself. In order to ensure consumer protection, all parties should be held liable jointly and severally in such situations.	(40) Situations may arise in which two or more parties are liable for the same damage, in particular where a defective component is integrated into a product that causes damage. In such a case, the injured person should be able to seek compensation both from the manufacturer that integrated the defective component into its product and from the manufacturer of the defective component itself. In order to ensure consumer protection, all parties should be held liable jointly and severally in such situations, <u>with compensation mechanisms allowing the injured person to be compensated for the relevant damage.</u>	(40) Situations may arise in which two or more parties are liable for the same damage, in particular where a defective component is integrated into a product that causes damage. In such a case, the injured person should be able to seek compensation both from the manufacturer that integrated the defective component into its product and from the manufacturer of the defective component itself. In order to ensure <del>consumer</del> <u>the</u> protection <b>of natural persons</b> , all parties should be held liable jointly and severally in such situations.	
Recital 41				
50	(41) Situations may arise in which the acts and omissions of persons	(41) Situations may arise in which the acts and omissions of persons	(41) Situations may arise in which the acts and omissions of persons	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>other than a potentially liable economic operator contribute, in addition to the defectiveness of the product, to the cause of the damage suffered, such as a third party exploiting a cybersecurity vulnerability of a product. In the interests of consumer protection, where a product is defective, for example due to a vulnerability that makes the product less safe than the public at large is entitled to expect, the liability of the economic operator should not be reduced as a result of such acts or omissions. However, it should be possible to reduce or disallow the economic operator's liability where injured persons themselves have negligently contributed to the cause of the damage.</p>	<p>other than a potentially liable economic operator contribute, in addition to the defectiveness of the product, to the cause of the damage suffered, such as a third party exploiting a cybersecurity vulnerability of a product. In the interests of consumer protection, where a product is defective, for example due to a vulnerability that makes the product less safe than <del>the public at large</del> <u>an average person</u> is entitled to expect, the liability of the economic operator should not be reduced, <u>excluded or disallowed</u> as a result of such acts or omissions <u>by a third party</u>. However, it should be possible to reduce or disallow the economic operator's liability where injured persons themselves have negligently contributed to the cause of <u>the damage, including where the injured person failed to install updates or upgrades provided by the economic operator that would have mitigated or avoided</u> the damage.</p>	<p>other than a potentially liable economic operator contribute, in addition to the defectiveness of the product, to the cause of the damage suffered, such as a third party exploiting a cybersecurity vulnerability of a product. In the interests of <del>consumer protection</del> <b>protecting natural persons</b>, where a product is defective, for example due to a vulnerability that makes the product less safe than the public at large is entitled to expect, the liability of the economic operator should not be reduced as a result of such acts or omissions. However, it should be possible to reduce or disallow the economic operator's liability where injured persons themselves have negligently contributed to the cause of the damage.</p>	
Recital 42				
51	(42) The objective of consumer protection would be undermined if	(42) The objective of consumer protection would be undermined if	(42) The objective of <del>consumer protection</del> <b>protecting natural</b>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>it were possible to limit or exclude an economic operator’s liability through contractual provisions. Therefore no contractual derogations should be permitted. For the same reason, it should not be possible for provisions of national law to limit or exclude liability, such as by setting financial ceilings on an economic operator’s liability.</p>	<p>it were possible to limit or exclude an economic operator’s liability through contractual provisions. Therefore no contractual derogations should be permitted. For the same reason, it should not be possible for provisions of national law to limit or exclude liability, such as by setting financial ceilings on an economic operator’s liability.</p>	<p><b>persons</b> would be undermined if it were possible to limit or exclude an economic operator’s liability through contractual provisions. Therefore no contractual derogations should be permitted. For the same reason, it should not be possible for provisions of national law to limit or exclude liability, such as by setting financial ceilings on an economic operator’s liability.</p>	
Recital 43				
52	<p>(43) Given that products age over time, and that higher safety standards are developed as the state of science and technology progresses, it would not be reasonable to make manufacturers liable for an unlimited period of time for the defectiveness of their products. Therefore, the liability should be subject to a reasonable length of time, that is 10 years following placing on the market, without prejudice to claims pending in legal proceedings. In order to avoid unreasonably denying the possibility of compensation, the limitation period should be 15 years in cases where</p>	<p>(43) Given that products age over time, and that higher safety standards are developed as the state of science and technology progresses, it would not be reasonable to make manufacturers liable for an unlimited period of time for the defectiveness of their products. Therefore, the liability should be subject to a reasonable length of time, that is 10 years following placing on the market, without prejudice to claims pending in legal proceedings. In order to avoid unreasonably denying the possibility of compensation, the limitation period should be <del>15</del><sup>30</sup> years in cases</p>	<p>(43) Given that products age over time, and that higher safety standards are developed as the state of science and technology progresses, it would not be reasonable to make manufacturers liable for an unlimited period of time for the defectiveness of their products. Therefore, the liability should be subject to a reasonable length of time, that is 10 years following placing on the market, without prejudice to claims pending in legal proceedings. In order to avoid unreasonably denying the possibility of compensation, the <del>limitation</del><sup>expiry</sup> period should be <del>15</del><sup>20</sup> years in</p>	

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	the symptoms of a personal injury are, according to medical evidence, slow to emerge.	where the symptoms of a personal injury are, according to medical evidence, slow to emerge.	cases where the symptoms of a personal injury are, according to medical evidence, slow to emerge.	
Recital 44				
53	(44) Since substantially modified products are essentially new products, the limitation period should restart after a product has been substantially modified, for example as a result of remanufacturing, that modify a product in such a way that its compliance with the applicable safety requirements may be affected.	(44) Since substantially modified products are essentially new products, the limitation period should restart after a product has been substantially modified, for example as a result of remanufacturing, that modify a product in such a way that its compliance with the applicable safety requirements may be affected.	(44) Since substantially modified products are essentially new products, <del>the limitation a new</del> <b>expiry period should restart to run</b> after a product has been substantially modified <b>and has subsequently been made available on the market or put into service</b> , for example as a result of remanufacturing, <del>that modify a product in such a way that its compliance with the applicable safety requirements may be affected.</del> <b>Updates or upgrades that do not amount to a substantial modification of the product do not affect the expiry period that applies to the original product.</b>	
Recital 44a				
53a			<b>(44a) The possibility offered to an economic operator to free itself from liability, if it proves that the state of scientific and</b>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>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 as to enable the existence of a defect to be discovered, could be deemed in certain Member States to limit unduly the protection of natural persons. It should therefore be possible for a Member State to introduce new measures, including amending existing ones, extending liability in such situations to specific types of products, if it is deemed necessary, proportionate and justified by public interest objectives, such as those within the meaning of the Treaty on the Functioning of the European Union, namely public policy, public security and public health. To ensure transparency and legal certainty for economic operators operating across the Union, the use of such a derogation from the development risk defence should be notified to the Commission, who should then inform the other Member States. In order to facilitate a coherent approach</p>	

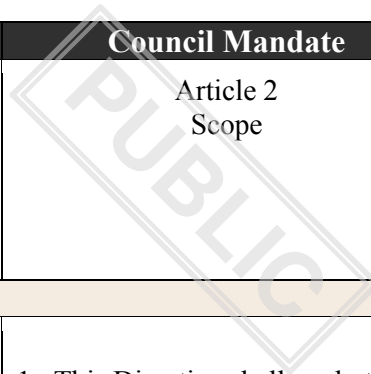
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>across Member States and consistency with the objectives of the Directive, the Commission should be able to issue a non-binding opinion on the proposed measure. In order to allow time for such an opinion, the Member State concerned should hold the proposed measure in abeyance for 6 months following its notification to the Commission, unless the Commission issues an opinion earlier. Such opinions should be issued after close cooperation between the Member State concerned and the Commission, taking into account any views of other Member States. In the interest of legal certainty and to facilitate continuity of arrangements under Directive 85/374/EEC, it should also be possible for a Member State to maintain existing derogations from the development risk defence in its legal system.</p>	
Recital 45				
54	(45) In order to facilitate harmonised interpretation of this Directive by national courts,	(45) In order to facilitate harmonised interpretation of this Directive by national courts,	(45) In order to facilitate <b>the</b> harmonised interpretation of this Directive by national courts,	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Member States should be required to publish relevant court judgments on product liability.	Member States should be required to publish relevant court judgments on product liability. <u>Furthermore, the Commission should set up and maintain an easily accessible and publicly available database containing such judgments as well as judgments delivered by the Court of Justice of the European Union in relation to proceedings launched pursuant to this Directive.</u>	Member States should be required to publish relevant <b>final</b> court judgments on product liability <b>under this Directive, meaning those judgments that cannot be, or can no longer be, appealed. In order to limit administrative burden, Member States should be required only to publish judgments of national courts of appeal or of the highest instance.</b>	
Recital 46				
55	(46) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making <sup>1</sup> , that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. For reasons of legal certainty, this Directive should not apply to products placed or put into service on the Union market before	(46) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making <sup>1</sup> , that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. For reasons of legal certainty, this Directive should not apply to products placed or put into service on the Union market before	(46) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making <sup>1</sup> , that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU <del>value</del> <b>value</b> and should provide the basis for impact assessments of possible further measures. For reasons of legal certainty, this Directive should not apply to products placed <b>on the Union market</b> or put into service	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>the date of its transposition. It is necessary to provide for transitional arrangements in order to ensure continued liability under Directive 85/374/EEC for damage that caused by defective products which have been placed on the market or put into service before that date.</p> <p>1. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).</p>	<p>the date of its transposition. It is necessary to provide for transitional arrangements in order to ensure continued liability under Directive 85/374/EEC for damage that caused by defective products which have been placed on the market or put into service before that date.</p> <p>1. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).</p>	<p><del>on the Union market</del> before the date of its <del>transposition</del><b>application</b>. It is necessary to provide for transitional arrangements in order to ensure continued liability under Directive 85/374/EEC for damage <del>that</del> caused by defective products which have been placed on the market or put into service before that date.</p> <p>1. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).</p>	
Recital 47				
56	<p>(47) Since the objectives of this Directive, namely to ensure the functioning of the internal market, undistorted competition and a high level of consumer protection, cannot be sufficiently achieved by the Member States due to the Union-wide nature of the market in goods but can rather, by reason of the harmonising effect of common rules on liability, be better achieved at Union level, the Union may adopt measures, in accordance</p>	<p>(47) Since the objectives of this Directive, namely to ensure the functioning of the internal market, undistorted competition and a high level of consumer protection, cannot be sufficiently achieved by the Member States due to the Union-wide nature of the market in goods but can rather, by reason of the harmonising effect of common rules on liability, be better achieved at Union level, the Union may adopt measures, in accordance</p>	<p>(47) Since the objectives of this Directive, namely to ensure the functioning of the internal market, undistorted competition and a high level of <del>consumer</del> protection <b>for natural persons</b>, cannot be sufficiently achieved by the Member States due to the Union-wide nature of the market in goods but can rather, by reason of the harmonising effect of common rules on liability, be better achieved at Union level, the Union</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,	with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,	may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,	
Formula				
57	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE: <small>Text Origin: Commission Proposal</small>
CHAPTER I				
58	CHAPTER I General provisions	CHAPTER I General provisions	CHAPTER I General provisions	CHAPTER I General provisions <small>Text Origin: Commission Proposal</small>
Article 1				
59	Article 1 Subject matter	Article 1 Subject matter <u>and objective</u>	Article 1 Subject matter	Article 1 Subject matter <u>and objective</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: EP Mandate
Article 1, first paragraph				
60	This Directive lays down common rules on the liability of economic operators for damage suffered by natural persons caused by defective products.	This Directive lays down common rules on the liability of economic operators for damage suffered by natural persons caused by defective products <u>and is aimed at ensuring that such persons are entitled to compensation.</u>	This Directive lays down common rules on the liability of economic operators for damage suffered by natural persons caused by defective products.	This Directive lays down common rules on the liability of economic operators for damage suffered by natural persons caused by defective products <u>and on compensation for such damage.</u>  EP can accept COM compromise text  Text Origin: EP Mandate
Article 1, first paragraph a				
60a		<u>The objective of this Directive is to contribute to the proper functioning of the internal market, while ensuring a high level of consumer protection, and to remove divergences between the legal systems of Member States related to the liability of economic operators for damage suffered by natural persons caused by defective products.</u>		<u>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.</u>  Council - to come back with final feedback
Article 2				
61				



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 2 Scope	Article 2 Scope	Article 2 Scope	Article 2 Scope  Text Origin: Commission Proposal
Article 2(1)				
R	62  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].	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].	1. This Directive shall apply to products placed on the market or put into service after [OP, please insert the date: <del>12</del> 30 months after entry into force].	
Article 2(1a)				
Y	62a	<u><i>1a. This Directive does not apply to free and open-source software, unless such software is offered in exchange for a price or for personal data not exclusively used for improving the security, compatibility or interoperability of that software.</i></u>		<u><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></u>  COM compromise proposal + R13 EP - we would need more detail, possibly in recitals, on what commercial activity is EP to come back on COM compromise proposal on R13 + 13a
Article 2(2)				
G	63			

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	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.  Text Origin: Commission Proposal
Article 2(3)				
64	3. This Directive shall not affect:	3. This Directive shall not affect:	3. This Directive shall not affect:	3. This Directive shall not affect:  Text Origin: Commission Proposal
Article 2(3), point (a)				
65	(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;	(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;	(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;	(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;  Text Origin: Commission Proposal
Article 2(3), point (b)				
66	(b) national rules concerning the right of contribution or recourse	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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;			
Article 2(3), point (c)				
67	(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, 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 <b>as provided for in this Directive</b> , including national rules implementing Union law, <del>such as</del> [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 <b>as provided for in this Directive</b> , including national rules implementing Union law, <del>such as</del> <del>[AI Liability Directive]</del> ;  Text Origin: Council Mandate
Article 2(3), point (d)				
68	(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.	(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.  Text Origin: Commission Proposal

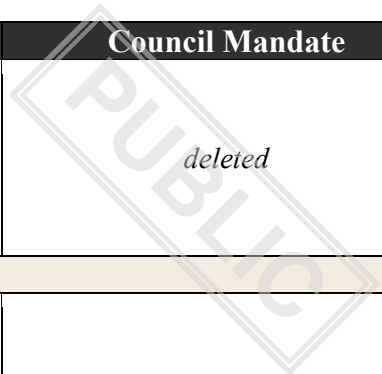
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 3				
69	Article 3 Level of harmonisation	Article 3 Level of harmonisation	Article 3 Level of harmonisation	Article 3 Level of harmonisation  Text Origin: Commission Proposal
Article 3, first paragraph				
70	Member States shall not 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.	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.	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 <del>consumer</del> <b>protection for consumers and other natural persons</b> , unless otherwise provided for in this Directive.	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 <del>consumer</del> <b><u>protection for consumers and other natural persons</u></b> , unless otherwise provided for in this Directive.  Text Origin: Council Mandate
Article 4				
71	Article 4 Definitions	Article 4 Definitions	Article 4 Definitions	Article 4 Definitions  Text Origin: Commission

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Proposal
Article 4, first paragraph				
72	For the purpose of this Directive, the following definitions shall apply:	For the purpose of this Directive, the following definitions shall apply:	For the purpose of this Directive, the following definitions shall apply:	For the purpose of this Directive, the following definitions shall apply:  Text Origin: Commission Proposal
Article 4, first paragraph, point (1)				
73	(1) ‘product’ means all movables, even if integrated into another movable or into an immovable. ‘Product’ includes electricity, digital manufacturing files and software;	(1) ‘product’ means all movables, even if integrated into <u>or inter-connected with</u> another movable or into an immovable. ‘Product’ includes electricity, digital manufacturing files, <u>raw materials</u> and software;	(1) ‘product’ means all movables, even if integrated into another movable or into an immovable. ‘Product’ includes <b>raw materials</b> , electricity, digital manufacturing files and software;	(1) ‘product’ means all movables, even if integrated into <u>or inter-connected with</u> another movable or into an immovable. ‘Product’ includes electricity, digital manufacturing files, <u>raw materials</u> and software;  Text Origin: EP Mandate
Article 4, first paragraph, point (2)				
74	(2) ‘digital manufacturing file’ means a digital version or a digital template of a movable;	(2) ‘digital manufacturing file’ means a digital version or a digital template of a movable, <u>which contains the functional information necessary to produce a tangible item by enabling the</u>	(2) ‘digital manufacturing file’ means a digital version or a digital template of a movable, <b>which contains the functional information necessary to produce a tangible item by</b>	(2) ‘digital manufacturing file’ means a digital version or a digital template of a movable, <u>which contains the functional information necessary to produce a tangible item by enabling the</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>automated control of machinery or tools</u> ;	enabling the automated control of machinery or tools;	<u>automated control of machinery or tools</u> ;  Text Origin: Council Mandate
Article 4, first paragraph, point (3)				
75	(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;	(3) ‘component’ means any item, whether tangible or intangible, <u>including embedded software, raw materials</u> or any related service, that is integrated into, or inter-connected with, <del>a</del> <u>another</u> product by the manufacturer of that product or <u>by a third party</u> within that manufacturer’s control;	(3) ‘component’ means any item, whether tangible or intangible, or any related service, that is integrated into, or inter-connected with, a product <del>by the manufacturer of that product or</del> within that manufacturer’s control;	(3) ‘component’ means any item, whether tangible or intangible, <u>raw materials</u> or any related service, that is integrated into, or inter-connected with, a product <del>by the manufacturer of that product or</del> <u>within that manufacturer’s control</u> ;  Pending agreement on art. 7
Article 4, first paragraph, point (4)				
76	(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;	(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;	(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, <b>with the exception of electronic communications services within the meaning of Article 2, point (4), (a) of Directive (EU) 2018/1972 of the European Parliament and of the Council</b> ;	Council to send the updated corresponding recital - R15

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			1. Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ L 321, 17.12.2018, p. 36–214.	
Article 4, first paragraph, point (5)				
G	77	(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 upgrades, or b) the modification of the product;	(5) ‘manufacturer’s control’ means that the manufacturer of a product <u>performs or, with respect to the actions of a third party, explicitly authorises or consents to</u> a) the integration, inter-connection or supply by a third party of a component including <u>the specific</u> software updates or upgrades, or b) the modification of the product, <u>including substantial modifications</u> ;	(5) ‘manufacturer’s control’ means that <del>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;</del>  Text Origin: Council Mandate
Article 4, first paragraph, point (5)(a)				
R	77a		(a) the manufacturer of a product performs or, with respect to actions of a third party, authorises or consents to:	<u>(a) the manufacturer of a product performs or, with respect to actions of a third party, authorises or [explicitly] consents to:</u>  EP to come back on R15a
Article 4, first paragraph, point (5)(a)(i)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
77b			(i) the integration, inter-connection or supply of a component including software updates or upgrades; or	<u>(i) the integration, inter-connection or supply of a component including software updates or upgrades; or</u> Text Origin: Council Mandate
Article 4, first paragraph, point (5)(a)(ii)				
77c			(ii) the modification of the product, including substantial modifications;	<u>(ii) the modification of the product, including substantial modifications;</u> Text Origin: Council Mandate
Article 4, first paragraph, point (5)(a)(iii)				
77d			(b) the manufacturer of a product has the ability to supply software updates or upgrades itself or via a third party.	<u>(b) the manufacturer of a product has the ability to supply software updates or upgrades itself or via a third party.</u> Text Origin: Council Mandate
Article 4, first paragraph, point (6)				
78	(6) ‘damage’ means material losses resulting from:	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
Article 4, first paragraph, point (6)(a)				



	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>	<b>Draft Agreement</b>
79	(a) death or personal injury, including medically recognised harm to psychological health;	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
<i>Article 4, first paragraph, point (6)(b)</i>				
80	(b) harm to, or destruction of, any property, except:	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
<i>Article 4, first paragraph, point (6)(b)(i)</i>				
81	(i) the defective product itself;	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
<i>Article 4, first paragraph, point (6)(b)(ii)</i>				
82	(ii) a product damaged by a defective component of that product;	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
<i>Article 4, first paragraph, point (6)(b)(iii)</i>				
83	(iii) property used exclusively for professional purposes;	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
<i>Article 4, first paragraph, point (6)(c)</i>				
84	(c) loss or corruption of data that			

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	is not used exclusively for professional purposes;	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
<i>Article 4, first paragraph, point (7)</i>				
85	<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<sup>1</sup>;</p> <p>1. Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act) (OJ L 152, 3.6.2022, p. 1).</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<sup>1</sup>;</p> <p>1. Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act) (OJ L 152, 3.6.2022, p. 1).</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<sup>1</sup>;</p> <p>1. Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act) (OJ L 152, 3.6.2022, p. 1).</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<sup>1</sup>;</p> <p>1. Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act) (OJ L 152, 3.6.2022, p. 1).</p> <p>Text Origin: Commission Proposal</p>
<i>Article 4, first paragraph, point (7a)</i>				
85a		<p><u><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></u></p>		<p><u><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></u></p> <p>Text Origin: EP Mandate</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 4, first paragraph, point (8)				
86	(8) 'placing on the market' means the first making available of a product on the Union market;	(8) 'placing on the market' means the first making available of a product on the Union market;	(8) 'placing on the market' means the first making available of a product on the Union market;	(8) 'placing on the market' means the first making available of a product on the Union market;  Text Origin: Commission Proposal
Article 4, first paragraph, point (9)				
87	(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;	<i>deleted</i>	(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;	<i>deleted</i>
Article 4, first paragraph, point (10)				
88	(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;	(10) 'putting into service' means the first use of a product <u>by the end user</u> 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;	(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;	(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;  EP - further explanation in the recitals



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>might be needed</p> <p>COM proposal to add the following to R20: The concept of putting into service is relevant for products that are not placed on the market prior to their first use, as can be the case in the field of lifts, machinery or medical devices.</p> <p>Text Origin: Commission Proposal</p>
Article 4, first paragraph, point (10a)				
88a			(10a) ‘substantial modification’ means a modification of a product after it has been placed on the market or put into service:	<p><i>deleted</i></p> <p><i>moved to 95b onward.</i></p>
Article 4, first paragraph, point (10a)(a)				
88b			(a) that is considered substantial under relevant Union or national rules on product safety; or	
Article 4, first paragraph, point (10a)(b)				
88c			(b) where relevant Union or national rules lay down no	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			threshold on what should be considered a substantial modification, that:	
Article 4, first paragraph, point (10a)(b)(i)				
G	88d		(i) changes the product's original performance, purpose or type, without this being foreseen in the manufacturer's initial risk assessment; and	
Article 4, first paragraph, point (10b)				
Y	88e		(ii) changes the nature of the hazard, creates a new hazard or increases the level of risk;	<p>EP to come back</p> <p>COM proposal to add further explanations regarding hazard to recital 29:</p> <p>Whether a modification is substantial is determined according to criteria set out in relevant Union and national safety legislation, which typically refer to such as modifications that change the original intended functions in such a way that changes or creates a new hazard or increases the level or risk, or thus affecting the product's compliance with applicable safety requirements....</p>

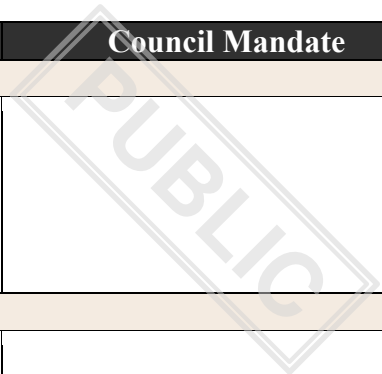
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 4, first paragraph, point (11)				
89	(11) ‘manufacturer’ means any natural or legal person who develops, manufactures or produces a product or has a product designed or manufactured, or who markets that product under its name or trademark or who develops, manufactures or produces a product for its own use;	(11) ‘manufacturer’ means any natural or legal person who <del>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;</del>	(11) ‘manufacturer’ means any natural or legal person who develops, manufactures or produces a product or has a product designed or manufactured, or who <b>markets, by putting its name, trademark or other distinguishing features on</b> that product, <b>presents itself as its manufacturer,</b> <del>under its name or trademark</del> or who develops, manufactures or produces a product for its own use;	(11) ‘manufacturer’ means any natural or legal person who <del>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;</del>  EP to come back on adding distinguishing feature in line 89b  Text Origin: Council Mandate
Article 4, first paragraph, point (11)(a)				
89a		<u>(a) develops, manufactures or produces a product; or</u>		<u>(a) develops, manufactures or produces a product; or</u>  Text Origin: EP Mandate
Article 4, first paragraph, point (11)(b)				
89b		<u>(b) has a product designed or manufactured, or who markets that product under its name or</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>trademark, thereby presenting itself as a manufacturer; or</u>		
Article 4, first paragraph, point (11)(b)				
89c		<u>(c) develops, manufactures or produces a product for its own use;</u>		<u>(c) develops, manufactures or produces a product for its own use;</u>  Text Origin: EP Mandate
Article 4, first paragraph, point (12)				
90	(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;	(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 <u>for the purposes of this Directive;</u>	(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 <b>under Union product safety and market surveillance legislation;</b>	EP: suggestion to revert to Commission proposal. Council cannot accept the COM proposal
Article 4, first paragraph, point (13)				
91	(13) ‘importer’ means any natural or legal person established within the Union who places a product from a third country on the Union market;	(13) ‘importer’ means any natural or legal person established within the Union who places a product from a third country on the Union market;	(13) ‘importer’ means any natural or legal person established within <del>the Union</del> who places a product from a third country on the Union market;	EP to come back
Article 4, first paragraph, point (14)				

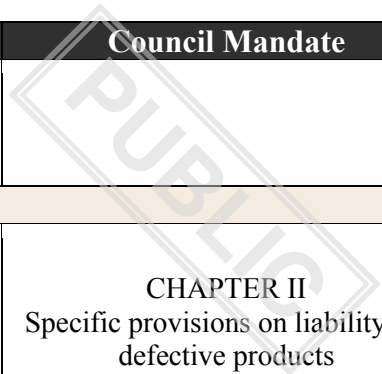
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
92	<p>(14) ‘fulfilment service provider’ means any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching of a product, without having 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<sup>1</sup>, of parcel delivery services as defined in Article 2, point (2), of Regulation (EU) 2018/644 of the European Parliament and of the Council<sup>2</sup>, and of any other postal services or freight transport services;</p> <p>1. Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14). 2. Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services (OJ L 112, 2.5.2018, p. 19).</p>	<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<sup>1</sup>, of parcel delivery services as defined in Article 2, point (2), of Regulation (EU) 2018/644 of the European Parliament and of the Council<sup>2</sup>, and of any other postal services or freight transport services;</p> <p>1. Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14). 2. Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services (OJ L 112, 2.5.2018, p. 19).</p>	<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<sup>1</sup>, of parcel delivery services as defined in Article 2, point (2), of Regulation (EU) 2018/644 of the European Parliament and of the Council<sup>2</sup>, and of any other postal services or freight transport services;</p> <p>1. Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14). 2. Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services (OJ L 112, 2.5.2018, p. 19).</p>	<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<sup>1</sup>, of parcel delivery services as defined in Article 2, point (2), of Regulation (EU) 2018/644 of the European Parliament and of the Council<sup>2</sup>, and of any other postal services or freight transport services;</p> <p>1. Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14). 2. Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services (OJ L 112, 2.5.2018, p. 19).</p> <p>Text Origin: Commission</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Proposal
Article 4, first paragraph, point (15)				
93	(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;	(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;	(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;	(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;  Text Origin: Commission Proposal
Article 4, first paragraph, point (16)				
94	(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;	(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;	(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, <b>the distributor or the provider of an online platform that fulfills the conditions referred to in Article 7(6)</b> ;	COM to propose general reference to online platforms, not to be included in the definitions
Article 4, first paragraph, point (17)				
95	(17) ‘online platform’ means	(17) ‘online platform’ means	(17) ‘online platform’ means	(17) ‘online platform’ means

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>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)<sup>1</sup>.</p> <p>1. *OP: Please insert in the text the number of the Directive contained in document PE-CONS 30/22 (2020/0361(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.</p>	<p>online platform as defined in Article <del>23</del>, point <del>(h)</del>(i), of Regulation (EU).../... <del>of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act)</del><sup>1</sup>. <u>2022/2065</u>;</p> <p><del>1. *OP: Please insert in the text the number of the Directive contained in document PE-CONS 30/22 (2020/0361(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.</del></p>	<p>online platform as defined in Article <del>23</del>, point <del>(h)</del>(i), of Regulation (EU).../... of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act)<sup>1</sup> <u>2022/2065</u>.</p> <p>1. *OP: Please insert in the text the number of the Directive contained in document PE-CONS 30/22 (2020/0361(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.</p>	<p>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)<sup>1</sup>.</p> <p>1. *OP: Please insert in the text the number of the Directive contained in document PE-CONS 30/22 (2020/0361(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.</p> <p>Text Origin: Commission Proposal</p>
Article 4, first paragraph, point (17a)				
95a		<p><u>(17a) 'trade secret' means a trade secret as defined in Article 2, point (1), of Directive (EU) 2016/943;</u></p>		<p><u>(17a) 'trade secret' means a trade secret as defined in Article 2, point (1), of Directive (EU) 2016/943;</u></p> <p>Text Origin: EP Mandate</p>
Article 4, first paragraph, point (17b)				
95b		<p><u>(17b) 'substantial modification' means a modification to a product, made after the product has been placed on the market or put into service;</u></p>		<p><u>(17b) 'substantial modification' means a modification of a product after it has been placed on the market or put into service;</u></p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 4, first paragraph, point (17b)(a)			
G	95c	<u>(a) that is considered substantial under relevant Union or national rules on product safety; or</u>		<u>(a) that is considered substantial under relevant Union or national rules on product safety; or</u>
	Article 4, first paragraph, point (17b)(b)			
G	95d	<u>(b) where relevant Union or national rules lay down no threshold on what is to be considered substantial modification, that:</u>		<u>(b) where relevant Union or national rules lay down no threshold on what is to be considered substantial modification, that:</u>  Text Origin: EP Mandate
	Article 4, first paragraph, point (17b)(b)(i)			
G	95e	<u>(i) changes the product's original performance, purpose or type, without such change being foreseen in the manufacturer's initial risk assessment of the product; and</u>		<u>(i) changes the product's original performance, purpose or type, without this being foreseen in the manufacturer's initial risk assessment; and</u>
	Article 4, first paragraph, point (17b)(b)(ii)			
Y	95f	<u>(ii) changes the nature of the hazard, creates a new hazard or increases the level of risk.</u>		<u>(ii) changes the nature of the hazard, creates a new hazard or increases the level of risk;</u>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				reference to 'hazard' to be further checked.
CHAPTER II				
96	CHAPTER II Specific provisions on liability for defective products	CHAPTER II Specific provisions on liability for defective products	CHAPTER II Specific provisions on liability for defective products	CHAPTER II Specific provisions on liability for defective products  Text Origin: Commission Proposal
Article 5				
97	Article 5 Right to compensation	Article 5 Right to compensation	Article 5 Right to compensation	Article 5 Right to compensation  Text Origin: Commission Proposal
Article 5(1)				
98	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.	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.	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.	
Article 5(2)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
99	2. Member States shall ensure that claims for compensation pursuant to paragraph 1 may also be brought by:	2. Member States shall ensure that claims for compensation pursuant to paragraph 1 may also be brought by:	2. Member States shall ensure that claims for compensation pursuant to paragraph 1 may also be brought by:	
Article 5(2), point (a)				
100	(a) a person that succeeded, or was subrogated, to the right of the injured person by virtue of law or contract; or	(a) a person that succeeded, or was subrogated, to the right of the injured person by virtue of law or contract; or	(a) a person that succeeded, or was subrogated, to the right of the injured person by virtue of <b>Union or national</b> law or contract; or	(a) a person that succeeded, or was subrogated, to the right of the injured person by virtue of <u>Union or national</u> law or contract; or  Text Origin: Council Mandate
Article 5(2), point (b)				
101	(b) a person acting on behalf of one or more injured persons in accordance with Union or national law.	(b) a person acting on behalf of one or more injured persons in accordance with Union or national law.	(b) a person acting on behalf of one or more injured persons <del>in accordance with</del> <b>by virtue of</b> Union or national law.	(b) a person acting on behalf of one or more injured persons <del>in accordance with</del> <u>by virtue of</u> Union or national law.  Text Origin: Council Mandate
Article 5(2), point (ba)				
101a		<u>Article 5a</u> <u>Damage</u>	<b>Article 5a</b> <b>Damage</b>	<u>Article 5a</u> <u>Damage</u>
Article 5(2), point (bb)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>1. For the purpose of this Directive, 'damage' means material losses resulting from:</u>	1. The right to compensation under Article 5 shall apply in respect of only the following types of damage:	EP - Council structure OK, but some changes in the chapeau might be needed EP to come back with compromise text
Article 5(2), point (bc)				
		<u>(a) death or personal injury, including medically recognised damage to psychological health;</u>	(a) death and personal injury, including medically recognised damage to psychological health;	EP to check Council proposal on R17
Article 5(2), point (bd)				
		<u>(b) damage to, or destruction of, any property, except:</u>	(b) damage to, or destruction of, any property, except:	<u>(b) damage to, or destruction of, any property, except:</u>
Article 5a(2), point (b)(i)				
		<u>(i) the defective product itself;</u>	(i) the defective product itself;	<u>(i) the defective product itself;</u>
Article 5(2), point (b)(i)				
		<u>(ii) a product damaged by a defective component of that product that is integrated into, or inter-connected with, a product by the manufacturer of that product</u>	(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	<u>(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</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>within that manufacturer's control;</i></u>	within that manufacturer's control; and	<u><i>within that manufacturer's control; [and]</i></u> <small>Text Origin: Council Mandate</small>
Article 5(2), point (b)(ii)				
G	101g	<u><i>(iii) property used exclusively for professional purposes.</i></u>	(iii) property used exclusively for professional purposes; and	<u><i>(iii) property used exclusively for professional purposes; [and]</i></u> <small>Text Origin: Council Mandate</small>
Article 5(2), point (be)				
R	101h	<u><i>(c) destruction or irreversible corruption of data that are not used for professional purposes, provided that the material loss exceeds EUR 1 000.</i></u>	(c) loss or corruption of data that is not used exclusively for professional purposes.	<small>EP to come back on a reversible loss of data Council to explore destruction instead of loss</small>
Article 5(2), point (bf)				
	101i		<b>The right to compensation shall cover all material losses and, in so far as they are compensable under national law, non-material losses, resulting from the damage referred to in the first subparagraph.</b>	<small>COUNCIL: need to clarify the framework for material and non-material damages. EP: reference to national rules in row 101j.</small>
Article 5(2a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	101j	<u>2. This Article shall not affect national rules relating to non-material damage as well as those relating to the compensation of damage under other liability regimes.</u>	2. This Article does not affect national law relating to the compensation of damages under other liability regimes.	see comment above.
Article 5b				
	101k	<u>Article 5b Guidance</u>		
Article 5(2b)				
	101l	<u>1. Member States shall ensure that the competent national consumer protection authorities provide information and tailored guidance to consumers to enable them to effectively exercise their right to compensation in accordance with Article 5.</u>		<u>Member States shall encourage the competent national consumer protection authorities to provide information and guidance to consumers to better enable them to effectively exercise their right to compensation in accordance with Article 5.</u>  COM compromise text
Article 5(2c)				
	101m	<u>2. Member States shall ensure that market surveillance authorities regularly exchange</u>		Possibility to remove para 2 but include reference to directive



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement	
		<u>relevant information with national consumer protection agencies and bodies to ensure a high level of consumer protection and that national consumer protection agencies and bodies regularly exchange relevant information at their disposal.</u>		2394/2017 in recitals  COM text for addition to recital 20b  In doing so, Member States should have regard to existing obligations for cooperation between national authorities responsible for enforcing consumer protection laws, in particular those under Regulation (EU) 2017/2394 of the European Parliament and of the Council [full ref. to be added in fn].	
Article 6					
G	102	Article 6 Defectiveness	Article 6 Defectiveness	Article 6 Defectiveness  Text Origin: Commission Proposal	G
Article 6(-1)					
Y	102a	<u>-1. A product shall be considered defective when it does not provide the safety that an average person is entitled to expect or that is required under Union or national law.</u>		<u>-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.</u>  COM compromise proposal	Y



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>Recital 22 based on EP text (bold shows EP amendments; bold-italic shows COM input)</p> <p>In order to protect the health and property of consumers, the defectiveness of a product should be determined by reference not to its fitness for use but to the lack of the safety that that an average person is entitled to expect or that is required under Union or national law. The assessment of defectiveness should involve an objective analysis of the safety that the public at large is entitled to expect, and not refer to the safety that any particular person is entitled to expect. The safety that an average person the public at large is entitled to expect should be assessed by taking into account, inter alia, the intended purpose, reasonably foreseeable use, the presentation, the objective characteristics and the properties of the product in question, including its expected lifespan, as well as the specific requirements of the group of users for whom the product is intended.</p> <p>Council to come back</p>
Article 6(1)				
103	1. A product shall be considered	1. <del>A product shall be considered</del>	1. A product shall be considered	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	defective when it does not provide the safety which the public at large is entitled to expect, taking all circumstances into account, including the following:	<del>defective when it does not provide the safety which the public at large is entitled to expect, taking all circumstances</del> <u>In assessing the defectiveness of a product, all circumstances shall be taken</u> into account, including <del>the following</del> :	defective when it does not provide the safety which the public at large is entitled to expect, taking all circumstances into account, including the following:	COUNCIL: accepts EP structure
Article 6(1), point (a)				
Y	104 (a) the presentation of the product, including the instructions for installation, use and maintenance;	(a) the <del>presentation</del> <u>characteristics</u> of the product, including <u>its labelling, design, technical features, composition, packaging, any other information regarding the product and</u> the instructions for <u>assembly</u> , installation, use and maintenance;	(a) the presentation of the product, including the instructions for installation, use and maintenance;	(a) the presentation <u>and the characteristics</u> of the product, including <u>its labelling, design, technical features, composition, packaging and</u> the instructions for <u>assembly</u> , installation, use and maintenance;  COUNCIL to come back  Text Origin: EP Mandate
Article 6(1), point (b)				
G	105 (b) the reasonably foreseeable use and misuse of the product;	(b) the reasonably foreseeable use <del>and misuse</del> <u>of the product, taking into account the expected lifespan</u> of the product;	(b) the reasonably foreseeable use <del>and misuse</del> of the product;	(b) the reasonably foreseeable use <del>and misuse</del> of the product;  Text Origin: Council Mandate
Article 6(1), point (c)				
Y	106			

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(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 <del>continue to learn</del> <u>acquire new features or knowledge</u> after <del>deployment</del> <u>it is placed on the market or put into service</u> ;	(c) the effect on the product of any ability to continue to learn after deployment <b>it is placed on the market or put into service</b> ;	EP to come back
Article 6(1), point (d)				
107	(d) the effect on the product of other products that can reasonably be expected to be used together with the product;	(d) the effect <u>that other products might have</u> on the product <u>to be assessed, where, at the time of placing on the market or putting into service, it of other products</u> <del>that</del> can reasonably be expected <del>to</del> <u>that the product will</u> be used together with <u>other products, including the interconnection of those products</u> <del>the product</del> ;	(d) the <b>reasonably foreseeable</b> effect on the product of other products that can <del>reasonably</del> be expected to be used together with the product;	EP to come back COMM: keep "reasonably foreseeable" and "interconnection of those products"
Article 6(1), point (e)				
108	(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;	(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;
Article 6(1), point (f)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
G	109	(f) <u>relevant</u> product safety requirements, including safety-relevant cybersecurity requirements <u><i>laid down in Union or national law, that are intended to protect against the risk of the damage that has occurred;</i></u>	(f) product safety requirements, including safety-relevant cybersecurity requirements;	(f) <u>relevant</u> product safety requirements, including safety-relevant cybersecurity requirements;  Text Origin: Council Mandate
Article 6(1), point (g)				
Y	110	(g) any <u>recall of the product or any other relevant</u> intervention <u>decided</u> by a regulatory authority or by an economic operator referred to in Article 7 relating to product safety;	(g) any intervention by a regulatory authority or by an economic operator referred to in Article 7 relating to product safety;	(g) any <u>recall of the product or any other relevant</u> intervention by <del>a regulatory</del> <u>competent</u> authority or by an economic operator referred to in Article 7 relating to product safety;  COM compromise proposal Council to come back
Article 6(1), point (h)				
Y	111	(h) the specific expectations of the end-users for whom the product is intended.	<i>deleted</i>	(h) the specific <del>expectations</del> <b>needs</b> of the <del>end-users</del> <b>group of users</b> for whom the product is intended-;  EP to come back
Article 6(1), point (ha)				
Y	111a		(i) <b>any failure of the product to fulfil its purpose of preventing</b>	COMM: proposed clarification in a

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			damage.	<p>recital.</p> <p>New Recital 24a: In order to reflect the nature of products whose very purpose is to prevent damage, such as a warning mechanism like a smoke alarm, it should be clarified that the assessment of such a product's safety should also take into account its failure to fulfil that purpose.</p>
Article 6(2)				
112	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.	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.	<p>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.</p> <p>Text Origin: Commission Proposal</p>
Article 7				
113	Article 7 Economic operators liable for defective products	Article 7 Economic operators liable for defective products	Article 7 Economic operators liable for defective products	<p>Article 7 Economic operators liable for defective products</p> <p>Text Origin: Commission Proposal</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 7(-1), first subparagraph			
113a			-1. Member States shall ensure that the following economic operators are liable for damage covered by Article 5a caused by a defective product:	<p><u>-1. Member States shall ensure that the following economic operators [can be/are] liable for damage covered by Article 5a caused by a defective product:</u></p> <p>EP to come back, Council structure could be fine</p> <p>Text Origin: Council Mandate</p>
	Article 7(-1), first subparagraph, point (a)			
113b			(a) the manufacturer of the defective product;	Could be agreed if Council's structure accepted.
	Article 7(-1), first subparagraph, point (b)			
113c			(b) where a defective component that 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), the manufacturer of that component; and	see comment above and row 115. Possible rewording to further clarify.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 7(-1), first subparagraph, point (c)			
Y	113d		(c) in the case of a manufacturer established outside the Union, and without prejudice to its own liability:	"in the case of a manufacturer of the product or the component established outside the Union"
	Article 7(-1), first subparagraph, point (c)(i)			
Y	113e		(i) the importer of the defective product or component;	EP and Council positions identical
	Article 7(-1), first subparagraph, point (c)(ii)			
Y	113f		(ii) the authorised representative of the manufacturer; and	EP to come back
	Article 7(-1), first subparagraph, point (c)(iii)			
Y	113g		(iii) where there is no importer established within the Union or authorised representative, the fulfilment service provider.	EP to come back
	Article 7(-1), second subparagraph			
	113h		The liability of the manufacturer under the first subparagraph, point (a) shall also cover any damage caused by a defective	Council to come back with a clearer drafting on this para. - shared liability

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			component if it was integrated into, or inter-connected with, the product within that manufacturer's control.	
Article 7(1), first subparagraph				
114	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 the manufacturer of a defective product can be held liable for damage caused by that product.	<i>deleted</i>	
Article 7(1), second subparagraph				
115	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.	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, <u>unless the defect 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.</u>	<i>deleted</i>	COMM: EP text covered in row 147.
Article 7(2)				
116	2. Member States shall ensure that,	2. Member States shall ensure that,		



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	where the manufacturer of the defective product <u>or component</u> is established outside the Union, the importer of the defective product <u>or component and, where applicable,</u> <del>and</del> the authorised representative of the manufacturer can be held liable for damage caused by that product.	<i>deleted</i>	
Article 7(3)				
117	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.	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 <u>or, where applicable, component.</u>	<i>deleted</i>	
Article 7(4)				
118	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	4. Any natural or legal person that <u>substantially</u> modifies a product <del>that has already been placed</del> <u>outside the manufacturer's control and thereafter makes it available</u> on the market or put into	4. Any natural or legal person that <b>substantially</b> modifies a product <b>outside the manufacturer's control and thereafter makes it available</b> <del>that has already been placed</del> on the market or <b>puts it</b>	4. Any natural or legal person that <u>substantially</u> modifies a product <u>outside the manufacturer's control and thereafter makes it available</u> <del>that has already been placed</del> on the market or <u>puts it</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	modification is considered substantial under relevant Union or national rules on product safety and is undertaken outside the original manufacturer's control.	service shall be considered a manufacturer of the product for the purposes of paragraph 1, <del>where the modification is considered substantial under relevant Union or national rules on product safety and is undertaken outside the original manufacturer's control.</del>	into service shall be considered a manufacturer of the product for the purposes of paragraph 1, <del>where the modification is considered substantial under relevant Union or national rules on product safety and is undertaken outside the original manufacturer's control.</del>	into service shall be considered a manufacturer of the product for the purposes of paragraph 1, <del>where the modification is considered substantial under relevant Union or national rules on product safety and is undertaken outside the original manufacturer's control.</del>
Article 7(5)				
119	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:	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:	5. Member States shall ensure that <del>where a manufacturer under paragraph 1 cannot be identified or, where the manufacturer is established outside the Union,</del> <b>an Union-based</b> economic operator under paragraph 2 <del>or 3</del> cannot be identified, each distributor of the product <del>can be held</del> is liable where:	5. Member States shall ensure that, where <del>a manufacturer</del> <b>an economic operator</b> under paragraph <del>1</del> <b>-1</b> <del>cannot be identified or, where the manufacturer,</del> <b>that</b> is established <del>outside</del> <b>in</b> the Union, <del>an economic operator under paragraph 2 or 3</del> cannot be identified, each distributor of the product <del>[can be held</del> <b>held/is]</b> liable where:  EP/COUNCIL to come back  Text Origin: Council Mandate
Article 7(5), point (a)				
120	(a) the claimant requests that distributor to identify the economic operator or the person who supplied the distributor with the	(a) the claimant requests that distributor to identify the economic operator or the person who supplied the distributor with the	(a) the <del>claimant</del> <b>injured person</b> requests that distributor to identify <del>the</del> <b>a Union-based</b> economic operator <del>or the person who</del>	(a) the <del>claimant</del> <b>injured person</b> requests that distributor to identify <del>the</del> <b>an</b> economic operator <b>under paragraph -1, that is established</b>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	product; and	product; and	supplied the <del>under paragraph -1 or its own</del> distributor with the product; and	<i>in the Union</i> , or the <del>person</del> distributor who supplied the distributor with <del>the</del> that product; and  Exact drafting to be checked by the LL  Text Origin: Council Mandate
Article 7(5), point (b)				
121	(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.	(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.	(b) the distributor fails to identify <del>the</del> such an economic operator or <del>the person who supplied the</del> its own distributor with the product within <del>one</del> month of receiving the request.	Should be consistent with previous paragraph To be checked by LL
Article 7(6)				
122	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) <sup>1</sup> are fulfilled.	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 <i>European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act)</i> <sup>1</sup> <u>2022/2065</u> are fulfilled.	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)Article 6(3) of Regulation	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 <del>of Article 6(3)</del> set out in <i>Regulation (EU).../... of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act)Article 6(3) of Regulation</i>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	1. *OP: Please insert in the text the number of the Directive contained in document PE-CONS 30/22 (2020/0361(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.	<i>1. *OP: Please insert in the text the number of the Directive contained in document PE-CONS 30/22 (2020/0361(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.</i>	(EU) <sup>+</sup> 2022/2065 are fulfilled.  1. *OP: Please insert in the text the number of the Directive contained in document PE-CONS 30/22 (2020/0361(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.	<u>(EU)<sup>+</sup> 2022/2065</u> are fulfilled.  <i>1. *OP: Please insert in the text the number of the Directive contained in document PE-CONS 30/22 (2020/0361(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.</i>
Article 7(6a)				
122a		<u>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 shall not be funded by public revenues, to appropriately compensate injured persons who suffered damage caused by defective products.</u>		COUNCIL: doubts on the legal basis for this provision + issue with "which shall not be funded by public revenues"
Article 8				
123	Article 8 Disclosure of evidence	Article 8 Disclosure of evidence	Article 8 Disclosure of evidence	Article 8 Disclosure of evidence

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 8(1)				
124	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.	1. Member States shall ensure that <del>national courts are empowered, upon request of an injured person</del> <u>in proceedings for</u> claiming compensation for damage caused by a defective product, <u>at the request of a</u> <del>(the claimant)</del> who has presented facts and evidence sufficient to support the plausibility of the claim for compensation, <del>national courts may</del> order the defendant to disclose relevant evidence that is at its disposal, <u>subject to the conditions set out in this Article.</u>	1. Member States shall ensure that <del>national courts are empowered,</del> upon request of an injured person <b>who is</b> claiming compensation <b>before a national court</b> for damage caused by a defective product ('the claimant') <b>and</b> who has presented facts and evidence sufficient to support the plausibility of the claim for compensation, <del>to order the defendant</del> <b>the defendant is required</b> to disclose relevant evidence that is at its disposal.	COM to propose compromise drafting
Article 8(1a)				
124a		<u>1a. Member States shall ensure that, if requested by the defendant, national courts are able to order the claimant to disclose relevant evidence that is at its disposal, subject to the same conditions that apply to the disclosure of evidence by the defendant set out in this Article.</u>		COUNCIL: avoid entering into specificities of civil proceedings that are already established at national level. COMM: further discussion needed, not included in the original Commission proposal. COM to propose compromise text

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				"evidence relevant for countering the claim"
Article 8(2)				
125	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.	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.	2. Member States shall ensure that national courts limit the disclosure of evidence <b>pursuant to paragraph 1 and in accordance with national law is limited to what is necessary and proportionate</b> to what is necessary and proportionate to support a claim referred to in paragraph 1.	2. Member States shall ensure that <del>national courts limit</del> the disclosure of evidence <b>pursuant to paragraph 1 and in accordance with national law is limited to what is necessary and proportionate</b> <del>to what is necessary and proportionate to support a claim referred to in paragraph 1.</del>  COUNCIL: modification to clarify that there is no harmonisation of national rules on the disclosure of evidence. EP to come back  Text Origin: Council Mandate
Article 8(3)				
126	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	3. When determining whether the disclosure <b>requested by a party is necessary and</b> <del>is</del> proportionate, national courts shall consider the legitimate interests of all parties, including third parties concerned, in particular in relation to the protection of <i>confidential</i>	3. When determining whether the disclosure is proportionate, <del>national courts shall consider</del> the legitimate interests of all parties <b>concerned</b> , including third parties, <del>shall be considered concerned</del> , in particular in relation to the protection of confidential	Council to come back on the EP text EP to come back on deletion of "confidential information and the last addition related to "non-specific searches" (could be moved to the recitals) delete "within the meaning of Article

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	within the meaning of Article 2, point 1, of Directive (EU) 2016/943.	<del>information and</del> trade secrets within the meaning of Article 2, point 1, of Directive (EU) 2016/943 <u>and the need to prevent non-specific searches for information, which is unlikely to be of relevance for the parties to the procedure.</u>	information and trade secrets within the meaning of Article 2, point <del>1</del> (1), of Directive (EU) 2016/943.	2, point 1(1), of Directive (EU) 2016/943"
Article 8(4)				
127	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.	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 <del>are empowered, upon a duly reasoned request of a party or on their own initiative, to take the</del> <u>take</u> specific measures necessary to preserve the confidentiality of that information when it is used or referred to in the course of <u>and after</u> the legal proceedings.	4. Member States shall ensure that, where a defendant is <del>ordered</del> <b>required</b> 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.	4. Member States shall ensure that, where a defendant is <del>ordered</del> <b>required</b> 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 <u>and after</u> the legal proceedings.  Council drafting to be checked on EP side Council to check the addition of "and after"  Text Origin: Council Mandate
Article 8(4a)				

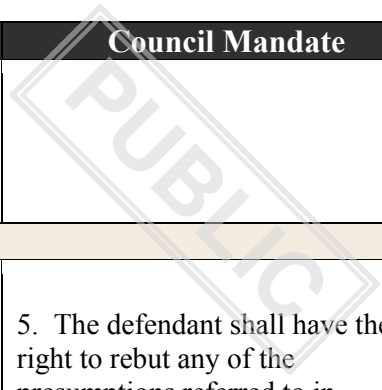
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
127a		<u>4a. Member States shall ensure that, where a party is ordered to disclose information, the information is presented without undue delay to the other party in an easily accessible and easily understandable manner.</u>	PUBLIC	EP to check if explanation is agreeable.  COUNCIL: concerns, avoid burdens for the economic operators. It also raises issues of interpretation.
Article 8(4b)				
127b		<u>4b. This Article does not affect national law relating to the pre-trial disclosure of evidence.</u>		COUNCIL: text in Recital 31a, row 40b.
Article 9				
128	Article 9 Burden of proof	Article 9 Burden of proof	Article 9 Burden of proof	Article 9 Burden of proof  Text Origin: Commission Proposal
Article 9(1)				
129	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.	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.	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.	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.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 9(2)				
130	2. The defectiveness of the product shall be presumed, where any of the following conditions are met:	2. The defectiveness of the product shall be presumed, where any of the following conditions are met:	2. The defectiveness of the product shall be presumed, where any of the following conditions are met:	2. The defectiveness of the product shall be presumed, where any of the following conditions are met:  Text Origin: Commission Proposal
Article 9(2), point (a)				
131	(a) the defendant has failed to comply with an obligation to disclose relevant evidence at its disposal pursuant to Article 8(1);	(a) the defendant has failed to comply with an obligation to disclose relevant evidence at its disposal pursuant to Article 8(1);	(a) the defendant has failed to <del>comply with an obligation to disclose relevant evidence at its disposal</del> pursuant to Article 8(1);	EP agreed to check Council drafting
Article 9(2), point (b)				
132	(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	(b) the claimant establishes that the product does not comply with mandatory <u>product</u> safety requirements laid down in Union law or national law that are intended to protect against <u>or reduce</u> the risk of the <u>occurrence of the</u> damage <del>that has</del>	(b) the claimant <del>establishes</del> <b>demonstrates</b> 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	(b) the claimant <del>establishes</del> <b>demonstrates</b> that the product does not comply with mandatory <u>product</u> safety requirements laid down in Union law or national law that are intended to protect against the risk of the damage <del>that has</del>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<del>occurred</del> <u>suffered by the injured party</u> ; or		<del>occurred</del> <u>suffered by the injured person</u> ; or  Both drafting to be further checked.
Article 9(2), point (c)				
133	(c) the claimant establishes that the damage was caused by an obvious malfunction of the product during normal use or under ordinary circumstances.	(c) the claimant establishes that the damage was caused by an obvious malfunction of the product during normal use <u>as intended by the manufacturer</u> or under ordinary circumstances.	(c) the claimant <del>establishes</del> <b>demonstrates</b> that the damage was caused by an obvious malfunction of the product during <del>normal</del> <b>reasonably foreseeable</b> use or under ordinary circumstances.	Council text to be clarified in a recital
Article 9(3)				
134	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.	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 <del>of a kind</del> typically consistent with the defect in question, <u>or where the product belongs to the same production series as a product already proven to be defective</u> .	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.	Council, clarify if it is a presumption of defectiveness or of the causal link. COMM, to be further checked and in case moved to a different paragraph. EP to consider whether it goes beyond case law.
Article 9(4), first subparagraph				
135	Where a national court judges that	<del>Where</del> A national court <del>judges that</del>	4. <del>Where</del> A national court judges	<del>Where</del> A national court <del>judges that</del>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>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><del>the claimant faces excessive difficulties, due to technical or scientific complexity, to prove</del> <b>shall presume</b> the defectiveness of the product or the causal link between its defectiveness and the damage, or both, <b>where, notwithstanding the disclosure of evidence in accordance with Article 8 and taking into account all relevant circumstances of the case</b> <del>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:</del></p>	<p>that the claimant faces excessive difficulties, due to technical or scientific complexity, to prove the defectiveness <b>shall, taking into account all relevant circumstances</b> of the product or the causal link between its defectiveness and the damage, or both, <b>case, presume</b> the defectiveness of the product or the 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><del>the claimant faces excessive difficulties, due to technical or scientific complexity, to prove</del> <b>shall presume</b> the defectiveness of the product or the causal link between its defectiveness and the damage, or both, <b>where, despite the disclosure of evidence in accordance with Article 8 and taking into account all relevant circumstances of the case</b> <del>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:</del></p> <p>To be checked by Council Alternate drafting to be checked by lawyer linguists, making a reference to Member States having obligations. Horizontal issue for the whole proposal.</p> <p>Text Origin: EP Mandate</p>
Article 9(4), first subparagraph, point (a)				
136	(a) the product contributed to the damage; and	(a) the <del>product contributed to</del> <b><u>national court considers that the claimant faces excessive</u></b>	(a) <b>the claimant faces excessive difficulties, in particular due to technical or scientific complexity,</b>	(a) the <del>product contributed to</del> <b><u>claimant faces excessive difficulties, [in particular] due to</u></b>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>difficulties, due to technical or scientific complexity to be able to prove the defectiveness of the product or the causal link between its defectiveness and</u> the damage, <u>or both</u> ; and	to prove the defectiveness of the product <del>contributed to</del> the causal link between its defectiveness and the damage, or both; and	<u>technical or scientific complexity to be able to prove the defectiveness of the product or the causal link between its defectiveness and</u> the damage, <u>or both</u> ; and  EP: clarification may be needed on reference to 'in particular'. COMM: there might be other reasons why claimant may face difficulties.  Text Origin: EP Mandate
Article 9(4), first subparagraph, point (b)				
137	(b) it is likely that the product was defective or that its defectiveness is a likely cause of the damage, or both.	(b) <u>the claimant establishes, on the basis of relevant evidence, that it is <del>likely</del> possible that the product contributed to the damage, and it is possible</u> that the product <del>was</del> defective or that its defectiveness is a <u>likely possible</u> cause of the damage, or both.	(b) <b>the claimant demonstrates that</b> it is likely that the product <del>was</del> defective or that its defectiveness is a likely cause <del>of</del> <b>there is a causal link between the defectiveness and</b> the damage, or both.	Council: 'possible' creates imbalance, the defendant would be obliged to prove that something is impossible. In the view of the Council this seems to lead to reversing the burden of proof. To be checked, linked with row 138 EP: 'on the basis of relevant evidence' as a way to balance the positions of claimant and defendant. COMM: preference for Council's text.
Article 9(4), second subparagraph				
138	The defendant shall have the right to contest the existence of	The defendant shall have the right to contest the existence of	<i>deleted</i>	Council: already in national rules,



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	excessive difficulties or the likelihood referred to in the first subparagraph.	excessive difficulties or the <i>likelihood</i> <u>possibility</u> referred to in the first subparagraph.		<i>To be checked, linked with row 137 COMM: text in the original proposal inserted for clarity.</i>
Article 9(5)				
139	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.	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.  Text Origin: Commission Proposal
Article 10				
140	Article 10 Exemption from liability	Article 10 Exemption from liability	Article 10 Exemption from liability	Article 10 Exemption from liability  Text Origin: Commission Proposal
Article 10(1)				
141	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:	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:	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:	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:  Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 10(1), point (a)				
142	(a) in the case of a manufacturer or importer, that it did not place the product on the market or put it into service;	(a) in the case of a manufacturer or importer, that it did not place the product on the market or put it into service;	(a) in the case of a manufacturer or importer, that it did not place the product on the market or put it into service;	(a) in the case of a manufacturer or importer, that it did not place the product on the market or put it into service;  Text Origin: Commission Proposal
Article 10(1), point (aa)				
142a		<u>(aa) in the case of a manufacturer of software that, at the time of the placing on the market of that software, the manufacturer was 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, provided that another economic operator is liable under this Directive for damage caused</u>		Council: difficulties in assessing the definition of microenterprise. Further to that, this could push consumers to buy only from big companies that would be liable for damages. EP: exemption 'provided that another economic operator is liable'. COMM: further clarifications needed.

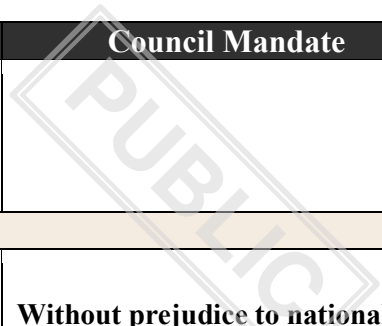
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>by that software;</u>		
Article 10(1), point (b)				
143	(b) in the case of a distributor, that it did not make the product available on the market;	(b) in the case of a distributor <u>or an online platform acting as a distributor</u> , that it did not make the product available on the market;	(b) in the case of a distributor, that it did not make the product available on the market;	Council: in Council's text tackled in the definition. COMM: drafting issue.
Article 10(1), point (c)				
144	(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;	(c) that, <u>having regard to the circumstances</u> , 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, <u>provided that that defectiveness did not result from any update or supply under the control of that economic operator and was not due to the failure of that economic operator to provide an update as required by Union or national law</u> ;	(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;	(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;  Council: to be further checked. COMM: similar text in paragraph 2(b) and (c). EP: to be checked  Text Origin: Council Mandate
Article 10(1), point (d)				
145				

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	(d) that the defectiveness is due to compliance of the product with mandatory regulations issued by public authorities;	(d) that the defectiveness is due to compliance of the product with <del>mandatory regulations issued by public authorities</del> <u>legal requirements and that the economic operator exercised all reasonable due care required in the circumstances</u> ;	(d) that the defectiveness is due to compliance of the product with <del>mandatory regulations issued by public authorities</del> <u>legal requirements</u> ;	(d) that the defectiveness is due to compliance of the product with <del>mandatory regulations issued by public authorities</del> <u>legal requirements</u> ;  Council: doubts on the last part of EP text. Duty of care is a subjective element, while the regime provided for in the Directive is a fault-based one. COMM: Fault-based framework. Text already in the current Directive. EP: to be checked.  Text Origin: Council Mandate
Article 10(1), point (e)				
146	(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;	(e) <del>in the case of a manufacturer, that</del> the objective state of scientific and technical knowledge at the time when the product was placed on the market, put into service or <u>the last update supplied under the control of the manufacturer</u> in the period in which the product was within the manufacturer's control was not such that the defectiveness could be discovered;	(e) <del>in the case of a manufacturer,</del> 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;	(e) <del>in the case of a manufacturer, that</del> the objective state of scientific and technical knowledge at the time when the product was placed on the market, put into service or <u>the last update</u> in the period in which the product was within the manufacturer's control was not such that the defectiveness could be discovered;  COMM: EP text seems acceptable. Council: EP text to be checked

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: EP Mandate
Article 10(1), point (f)				
147	(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 product to the manufacturer of the component; or	(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 product to the manufacturer of the component; or	(f) in the case of a manufacturer of a defective component referred to in Article 7(1), <del>second</del> <b>7(-1), first</b> subparagraph, <b>point (b)</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	could be greened, pending check on cross-reference.
Article 10(1), point (g)				
148	(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.	(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.  Text Origin: Commission Proposal
Article 10(2)				
149	2. By way of derogation from	2. By way of derogation from	2. By way of derogation from	2. By way of derogation from

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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:	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:	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:	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:  Text Origin: Commission Proposal
Article 10(2), point (a)				
150	(a) a related service;	(a) a related service;	(a) a related service;	(a) a related service;  Pending agreement on definition of "related service"  Text Origin: Commission Proposal
Article 10(2), point (b)				
151	(b) software, including software updates or upgrades; or	(b) software, including software updates or upgrades <u>for the reasonably expected lifespan of the product</u> ; or	(b) software, including software updates or upgrades; <del>or</del>	Council: concerns on reference to expected lifespan. It might also lead to a reduction of the limitation period in Article 14. COMM: uncertainty on the effective coverage of the liability.
Article 10(2), point (c)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
152	(c) the lack of software updates or upgrades necessary to maintain safety.	(c) the lack of software updates or upgrades necessary to maintain safety <u>for the reasonably expected lifespan of the product.</u>	(c) the lack of software updates or upgrades necessary to maintain safety-; or	see comment above. EP: COMM and Council position to be checked
Article 10(2), point (ca)				
152a			(d) a substantial modification.	<u>(ca) a substantial modification.</u>  Council: text added to close a loophole. COMM: Council text seems acceptable. EP: Council text to be checked.  Text Origin: Council Mandate
CHAPTER III				
153	CHAPTER III General provisions on liability	CHAPTER III General provisions on liability	CHAPTER III General provisions on liability	CHAPTER III General provisions on liability  Text Origin: Commission Proposal
Article 11				
154	Article 11 Liability of multiple economic operators	Article 11 Liability of multiple economic operators	Article 11 Liability of multiple economic operators	Article 11 Liability of multiple economic operators



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 11, first paragraph				
155	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.	<u>Without prejudice to national law concerning the right of contribution or recourse</u> , 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.	<b>Without prejudice to national law concerning the right of contribution or recourse</b> , 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 12				
156	Article 12 Reduction of liability	Article 12 Reduction of liability	Article 12 Reduction of liability	Article 12 Reduction of liability  Text Origin: Commission Proposal
Article 12(1)				
157	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	1. <u>Without prejudice to national law concerning the right of contribution or recourse</u> , Member States shall ensure that the liability of an economic operator is not	1. <b>Without prejudice to national law concerning the right of contribution or recourse</b> , Member States shall ensure that the liability of an economic operator is	Council: concerns on last part of Parliament text. COMM: issue on 'force majeure' to be clarified.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	an act or omission of a third party.	reduced, <u>excluded or disallowed</u> when the damage is caused both by the defectiveness of a product and by <u>an event outside the control of the economic operator, such as one attributable to</u> an act or omission of a third party.	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.	
Article 12(2)				
158	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. <u>Without prejudice to the compensation mechanisms provided under this Directive</u> , 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, <u>including when the injured person does not install updates or upgrades provided by the economic operator that would have mitigated the defect,</u>	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.	Council: EP position to be checked. COMM: assessment should be done by the Courts, could be clarified in a recital.
Article 12a				
158a		<u>Article 12a</u> <u>Right of recourse</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 12(2a)				
158b		<u>1. Where more than one economic operator is liable for the same damage, any economic operator that has compensated the injured person or was ordered to do so by an enforceable judgment shall have a right of recourse against any other jointly and severally liable economic operator. Member States shall lay down the conditions for exercising such right of recourse which shall not be less favourable to the claimant than in comparable national cases.</u>		Council: it doesn't seem related to consumer protection, but linked to procedural rules.  Incoming EP proposal, to be checked with Council
Article 12(2b)				
158c		<u>2. National courts may, where appropriate, apply Article 9(2) to (5) in cases in which the right of recourse is exercised.</u>		Council: as per comment above.
Article 13				
159	Article 13 Exclusion or limitation of liability	Article 13 Exclusion or limitation of liability	Article 13 Exclusion or limitation of liability	Article 13 Exclusion or limitation of liability  Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 13, first paragraph				
160	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.	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.	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.	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.  Text Origin: Commission Proposal
Article 14				
161	Article 14 Limitation periods	Article 14 Limitation periods	Article 14 Limitation periods	Article 14 Limitation periods  Text Origin: Commission Proposal
Article 14(1), first subparagraph				
162	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	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	1. Member States shall ensure that a limitation period of <del>3</del> three 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	Member States shall ensure that a limitation period of <del>3</del> three 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

	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>	<b>Draft Agreement</b>
	which the injured person became aware, or should reasonably have become aware, of all of the following:	which the injured person became aware, or should reasonably have become aware, of all of the following:	run from the day on which the injured person became aware, or should reasonably have become aware, of all of the following:	run from the day on which the injured person became aware, or should reasonably have become aware, of all of the following:  Text Origin: Council Mandate
Article 14(1), first subparagraph, point (a)				
163	(a) the damage;	(a) the damage;	(a) the damage;	(a) the damage;  Text Origin: Commission Proposal
Article 14(1), first subparagraph, point (b)				
164	(b) the defectiveness;	(b) the defectiveness;	(b) the defectiveness;	(b) the defectiveness;  Text Origin: Commission Proposal
Article 14(1), first subparagraph, point (c)				
165	(c) the identity of the relevant economic operator that can be held liable for the damage in accordance with Article 7.	(c) the identity of the relevant economic operator that can be held liable for the damage in accordance with Article 7.	(c) the identity of the relevant economic operator that can be held liable for the damage in accordance with Article 7.	(c) the identity of the relevant economic operator that can be held liable for the damage in accordance with Article 7.  Text Origin: Commission Proposal
Article 14(1), second subparagraph				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
166	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.	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.	2. The laws of Member States regulating suspension or interruption of the limitation period referred to in <del>the first subparagraph</del> <b>paragraph 1</b> shall not be affected by this Directive.	EP can agree with Council structure
Article 14a				
166a			<b>Article 14a</b> <b>Expiry period</b>	
Article 14(1a)(2)				
167	2. Member States shall ensure that the rights conferred upon the injured person 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 has, in the meantime, initiated proceedings before a national court against an economic operator that can be held liable pursuant to Article 7.	2. Member States shall ensure that the rights conferred upon the injured person 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, <u>or the last update or supply under the control of the manufacturer,</u> which caused the damage was placed on the market, put into service or substantially modified as referred to in Article 7(4), <u>or in case of an update or upgrade, should have been made available on the market in order to bring it into conformity with applicable</u>	<del>21. Member States shall ensure that the rights conferred upon the injured person</del> <b>injured person is no longer entitled to compensation</b> pursuant to this Directive <del>are extinguished</del> 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 <b>that injured person</b> has, in the meantime, initiated proceedings before a national court against an economic operator that can be held liable	EP to come back

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>product safety requirements under Union or national law</u> , 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. <u>A software update or upgrade and related services which do not amount to a substantial modification under Article 7(4) shall not trigger or restart the limitation period.</u>	pursuant to Article 7.	
Article 14a(1), second subparagraph				
167a			The period shall run from:	EP to come back
Article 14a(1), second subparagraph, point (a)				
167b			(a) the date on which the actual defective product which caused the damage was placed on the market or put into service; or	
Article 14a(1), second subparagraph, point (b)				
167c			(b) in the case of substantially modified products , the date the product was made available on the market or put into service	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			subsequent to the substantial modification.	
Article 14(3)				
168	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.	3. By way of exception from paragraph 2, where an injured person, <i>despite exercising all due care</i> , 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 <del>15</del> 30 years.	<del>32.</del> 32. By way of exception from paragraph <del>21</del> , where an injured person has not been able to initiate proceedings within 10 years due to the latency of a personal injury, the <del>rights conferred upon the injured person</del> injured person shall no longer be entitled to compensation pursuant to this Directive <del>shall be extinguished upon the expiry of a limitation period of 15</del> 20 years, <b>unless that injured person has, in the meantime, initiated proceedings against an economic operator that can be held liable pursuant to Article 7.</b>	EP to check if it can agree with deletion of "due care" and the changes in the Council mandate, with the exception of the timeline
CHAPTER IV				
169	CHAPTER IV Final provisions	CHAPTER IV Final provisions	CHAPTER IV Final provisions	
Article -15				
169a			Article -15	

	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>	<b>Draft Agreement</b>
			<b>Derogation from development risk defence</b>	EP: to be further checked.
Article 14b(1), first subparagraph				
169b			<p><b>1. Member States may, by way of derogation from Article 10(1), point (e), maintain in their legal systems existing 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.</b></p>	
Article 14b(1), second subparagraph				
169c			<p><b>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.</b></p>	

	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>	<b>Draft Agreement</b>
<b>Article 14b(2)</b>				
169d			<p><b>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.</b></p>	
<b>Article 14b(3)</b>				
169e			<p><b>3. Such a measure as referred to in paragraph 2 shall be:</b></p>	
<b>Article 14b(3), point (a)</b>				
169f			<p><b>(a) limited to specific categories of products;</b></p>	
<b>Article 14b(3), point (b)</b>				
169g				

	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>	<b>Draft Agreement</b>
			<b>(b) justified by public interest objectives; and</b>	
Article 14b(3), point (c)				
169h			<b>(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.</b>	
Article 14b(4)				
169i			<b>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.</b>	
Article 14b(5), first subparagraph				
169j			<b>5. The Commission may, within 6 months, issue an opinion on the text and the justification, taking into account any observations</b>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			received from other Member States.	
Article 14b(5), second subparagraph				
169k			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.	
Article 15				
170	Article 15 Transparency	Article 15 Transparency	Article 15 Transparency	Article 15 Transparency  Text Origin: Commission Proposal
Article 15(1)				
171	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	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	1. Member States shall publish, in an easily accessible and electronic format, any final judgment delivered by their national courts <b>of appeal or of the highest instance</b> in relation to proceedings launched pursuant to this Directive <del>as well as other relevant final</del>	EP to come back on Council text

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	shall be made without delay upon notification of the full written judgment to the parties.	shall be made without delay upon notification of the full written judgment to the parties.	<del>judgments on product liability. The publication shall be made without delay upon notification of the full written judgment to the parties</del> in accordance with national law.	
Article 15(2)				
172	2. The Commission may set up and maintain a publicly available database containing the judgments referred to in paragraph 1.	2. The Commission <del>may</del> <u>shall</u> set up and maintain <del>an easily accessible and</del> publicly available database containing the judgments referred to in paragraph 1. <u>This database shall contain, in addition to the judgements referred to in paragraph 1, the judgments delivered by the Court of Justice of the European Union relating to proceedings launched pursuant to this Directive.</u>	2. The Commission may set up and maintain a publicly available database containing the judgments referred to in paragraph 1.	EP to check possibility to move last EP addition in recitals
Article 16				
173	Article 16 Review	Article 16 Review	Article 16 Review	Article 16 Review  Text Origin: Commission Proposal
Article 16, first paragraph				
174				

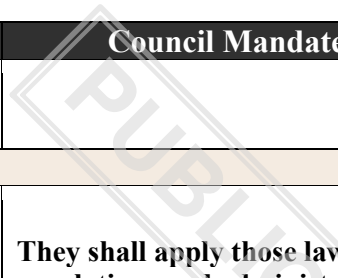
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>The Commission shall by [OP, please insert the date: 6 years after the date of entry into force of this Directive], and every 5 years thereafter, review the application of this Directive and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee.</p>	<p>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. <u>including information about:</u></p>	<p>The Commission shall by [OP, please insert the date: 67 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>COM compromise proposal</p> <p>The Commission shall by [OP, please insert the date: 6 years [CSL: 7 years] after the date of entry into force of this Directive], and every 5 years thereafter, evaluate the application of this Directive and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee including information about: the cost and benefits of the Directive, comparison with OECD countries and availability of product liability insurance.</p> <p>Recital 46</p> <p>The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. In its evaluation report, the Commission should provide the methodology of the calculation used</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	in its evaluation. The Commission should gather all relevant information in a way that avoids overregulation and administrative burden for Member States and economic operators, using information from all relevant and reliable sources, including Union institutions, bodies, offices and agencies, national competent authorities and internationally recognised bodies and organisations .
Article 16, first paragraph, point (a)				
174a		<u>(a) the costs entailed by this Directive for economic operators as a percentage of their operation costs;</u>		
Article 16, first paragraph, point (b)				
174b		<u>(b) the net benefit of this Directive or its qualified estimation for consumers;</u>		
Article 16, first paragraph, point (c)				
174c		<u>(c) a comparison of the protection provided by this Directive with the protection provided in relevant</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>third countries belonging to the Organisation for Economic Co-operation and Development and world leading economies;</i></u>		
Article 16, first paragraph, point (d)				
174d		<u><i>(d) the availability of insurance and other products to cover the risks of economic operators related to this Directive.</i></u>		
Article 16, first paragraph a				
174e		<u><i>The Commission shall clearly specify the methodologies used for calculation of any qualified estimation contained in the report referred to in paragraph 1. The Commission shall gather information for that report without increasing the reporting obligations of economic operators, using information from all relevant and reliable sources, including Union institutions, bodies, offices and agencies, national competent authorities and internationally recognised bodies and organisations.</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 17				
175	Article 17 Repeal and transitional provision	Article 17 Repeal and transitional provision	Article 17 Repeal and transitional provision	Article 17 Repeal and transitional provision  Text Origin: Commission Proposal
Article 17(1)				
176	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.	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.	1. Directive 85/374/EEC is repealed with effect from [OP, please insert the date: <del>230</del> 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.	
Article 17(2)				
177	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.	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.	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.	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.  Text Origin: Commission Proposal
Article 18				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
178	Article 18 Transposition	Article 18 Transposition	Article 18 Transposition	Article 18 Transposition  Text Origin: Commission Proposal
Article 18(1), first subparagraph				
179	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 force of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.	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 force of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.	<del>-1.</del> Member States shall <del>bring into force</del> <b>adopt and publish</b> the laws, regulations and administrative provisions necessary to comply with this Directive by [OP, please insert the date: <del>12</del> 24 months after entry into force of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.	
Article 18(1), second subparagraph				
180	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.	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.	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.	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.  Text Origin: Commission



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Proposal
Article 18(-1), third subparagraph				
180a			<b>They shall apply those laws, regulations and administrative provisions from [OP, please insert the date: 30 months after entry into force of this Directive].</b>	
Article 18(2)				
181	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.	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.	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.	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.  Text Origin: Commission Proposal
Article 19				
182	Article 19 Entry into force	Article 19 Entry into force	Article 19 Entry into force	Article 19 Entry into force  Text Origin: Commission Proposal
Article 19, first paragraph				
183				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	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> Official Journal of the European Union.	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> <i>Official Journal of the European Union</i> .  Text Origin: Council Mandate
Article 20				
184	Article 20 Addressees	Article 20 Addressees	Article 20 Addressees	Article 20 Addressees  Text Origin: Commission Proposal
Article 20, first paragraph				
185	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.  Text Origin: Commission Proposal
Formula				
186	Done at Brussels,	Done at Brussels,	Done at Brussels,	Done at Brussels,  Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Formula			
187	For the European Parliament	For the European Parliament	<i>For the European Parliament</i> For the European Parliament	<u><i>For the European Parliament</i></u> <del>For the European Parliament</del> Text Origin: Council Mandate
	Formula			
188	The President	The President	<i>The President</i> The President	<u><i>The President</i></u> <del>The President</del> Text Origin: Council Mandate
	Formula			
189	For the Council	For the Council	<i>For the Council</i> For the Council	<u><i>For the Council</i></u> <del>For the Council</del> Text Origin: Council Mandate
	Formula			
190	The President	The President	<i>The President</i> The President	<u><i>The President</i></u> <del>The President</del> Text Origin: Council Mandate