

Beat: Politics

## THE EUROPEAN COUNCIL & PARLIAMENT RELEASED REACHED AGREEMENT OVER EU LIABILITY

### RULES FIT FOR THE DIGITAL AGE & CIRCULAR

Paris, Washington DC, 18.12.2023, 02:36 Time

**USPA NEWS** - European Council and European Parliament released a Statement over the AI Digital Rules. We publish this statement as it was delivered " Negotiators from the Spanish presidency and the European Parliament have reached a political agreement on a new EU law on liability for defective products. The law will update the current, decades-old, civil liability rulebook in order to better take into account that nowadays many products have digital features and that the economy is becoming increasingly circular.

#### DIGITAL ECONOMY

Under the new liability directive, the definition of 'product' will be extended to digital manufacturing files and software. Free and open-source software that is developed or supplied outside the course of a commercial activity is excluded from the scope of the directive. The digital economy has led to a lot of online sales. It has therefore been decided that online platforms can also be held liable for a defective product if they present the product or otherwise enable the transaction for the sale of the product 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 acting under its authority or control.

#### CIRCULAR ECONOMY

In a circular economy, products are designed to be more durable, reusable, repairable and upgradable. When a product is modified substantially, outside the original manufacturer's control, and is made available on the market or put into service again, the new directive stipulates that the company or person that made the substantial modification should be held liable as the manufacturer of the modified product.

#### RIGHT TO COMPENSATION

The Council and Parliament also agreed that any natural person who suffers damage by a defective product is entitled to compensation. Such damages include death or personal injury, including medically recognised damage to psychological health, damage to or destruction of property, as well as destruction or irreversible corruption of data.

The right to compensation will cover material losses resulting from the damage as well as non-material losses resulting from the damage, in so far as they are compensable under national law.

Due to the increasing technical complexity of many products, member states must ensure that an injured person who claims compensation before a national court can request access to relevant evidence at the disposal of the manufacturer in order to be able to prove their claim.

#### PRODUCTS BOUGHT FROM NON -EU MANUFACTURERS

Consumers are increasingly buying products from manufacturers based outside the EU. However, the level of protection they receive should remain the same when those products prove to be defective.

The agreement provides that when a manufacturer of a product or a component is established outside the EU, the importer of the defective product or component, the authorised representative of the manufacturer or, as a last resort, the fulfilment service provider (a company that typically takes care of the warehousing, packaging and dispatching of a product) can be held liable for damages.

#### BURDEN OF PROOF

One of the directive's objectives is to ensure that consumers will have a fair chance of getting compensation in complex cases. When a claimant (e.g. the injured consumer) is faced with excessive difficulties, in particular due to the technical or scientific complexity of the case, to prove the defectiveness of the product or the causal link between its effectiveness and the damage, a court may decide that the claimant is only required to prove the likelihood that the product was defective or that its defectiveness is a likely cause of the

damage.

#### **NEXT STEPS**

Today's agreement will need to be endorsed by member states' representatives within the Council (Coreper). If approved, the text will have to go through the formal adoption process in both the Council and the European Parliament.

#### **BACKGROUND**

The EU product liability regime was established to compensate injured persons for physical injury or damages of property that they have suffered due to a defective product (for instance an overheating hair dryer or a leaking washing machine), simply by proving that a product was defective and that the defect caused the injury or damage.... Source : European Parliament

#### **Article online:**

<https://www.uspa24.com/bericht-23949/the-european-council-und-parliament-released-reached-agreement-over-eu-liability.html>

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V.i.S.d.P. & Sect. 6 MDSIV (German Interstate Media Services Agreement): Jedi Foster, Rahma Sophia RACHDI

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