At a glance

With a draft to modernise the Product Liability Directive, the European Commission wishes to adapt liability without fault (so-called strict liability) to the digital age, as well as to developments in the field of artificial intelligence, and to guarantee consumers a high level of protection in terms of health and property.

The planned Product Liability Directive provides for serious increases in liability for all manufacturing companies, in order to protect people.

What does it concern?

An example: anyone who produces microchips today does not have to worry about liability if the end product causes personal injury. The manufacturer is responsible for this instance of injury. The basis for liability is the German Product Liability Act (Produkthaftungsgesetz), which regulates the liability of manufacturers and importers for injury to life, health and other property suffered by persons through the use of a defective product. Product liability is designed as purely strict liability, i.e. the manufacturer is liable even if he is not at fault for the damage or injury in question.

When the Product Liability Directive comes into force, things will be much stricter. Then, entrepreneurs would have to prepare for the following:

Expansion of liable parties and new fault concept

To date, it has mainly been the end manufacturers who have taken out product liability insurance. Under the new Directive, component manufacturers – such as microchip manufacturers – would now also have to insure the risk of the final product. This is because, in the future, they could also be held liable for personal injury if the defectiveness of the end product was caused by the defective component supplied.

In the future, the defectiveness of a product will also be justified by the fact that it does not offer the safety that the "general public" may expect. The Directive leaves open as to when a safety breach exists and who determines the level of safety. It is conceivable that the "general public" has different expectations than what is possible in technical and purely practical terms for companies. In the future, European companies would not only have to cushion instances of damage caused by cyberattacks – some of which amount to millions of euros – but would also be exposed to additional liability claims, regardless of whether the company was at fault.

Increased risk of legal action

The risk of legal action will increase for companies in many respects.

Firstly, the threshold value for bringing legal action of EUR 500 is to be dropped. This would allow injured parties to file a lawsuit even in the case of minor damages, and the Commission also wants to do so by way of class action. The maximum liability limit of EUR 85 million for personal injuries is also to be done away with without replacement. For companies, this means an adjustment of their insurance premiums.

Secondly, the burden of proof in court changes to the disadvantage of companies. Until now, the injured party has had to provide full proof of the respective fault, the damage and the causality between the fault and the damage. The strict requirements are justified because the producer is liable even if he is not at fault for the damage. A balance is struck between the injured party and the producer. The new regulation would eliminate this existing balance, because, in future, the injured party can win the case if it is probable that the product defect caused the damage.

The position paper "EU Directive: Liability for Defective Products" was adopted by the General Assembly of the Chamber of Commerce and Industry (IHK) for Munich and Upper Bavaria on 8 March 2023 with 48 approvals, 1 abstention and 2 votes against.

Wirtschaft für Zukunft
EU DIRECTIVE: LIABILITY FOR DEFECTIVE PRODUCTS

Thirdly: In the future, injured parties should be able to obtain all technical documents relevant to the claim from the entrepreneur in court proceedings. If the entrepreneur does not disclose his documents (or discloses them incompletely), the product defect is presumed by law and the entrepreneur loses the case. Such disclosure obligations are known in Anglo-American law, but this contradicts the fundamental principles in German civil procedure.

Assessment

Companies would have to prepare themselves for an immensely increased liability risk, which can only be cushioned by an increase in insurance premiums and price increases. Experience has shown that higher costs will be passed on in terms of price, so that European products will experience significant price increases. This, in turn, cannot be in the interest of customers and Europe as a business location.

The EU Commission’s intended goal of protecting consumers from the dangers of new technologies is not being achieved. As the intensification of liability affects all products, manufacturers and importers would have to take out higher-level insurance policies for all product groups. In addition, component manufacturers will be affected, as they will have to factor in the risk of the end product in the future.

Conclusion

- The modernised Product Liability Directive disadvantages the European economy and weakens its competitiveness. It promotes the migration of production facilities and technologies abroad.
- Existing product liability legislation is largely up to the challenges of new technological developments, and only requires minor adjustments, e.g. in the provision of evidence, product definition etc.
- Safety requirements for technical products can be solved via technical standards and industry-related safety requirements, as well as quality assurance measures for the respective product groups.

Point of contact:

Andrea Nützel  089 5116-0  Nuetzel@muenchens.ihk.de
Volker Schlehe  089 5116-0  Schlehe@muenchens.ihk.de