



**Independent
Retail Europe**

**PROPOSAL FOR A REVISION OF THE PRODUCT LIABILITY
DIRECTIVE
- COMMENTS OF INDEPENDENT RETAIL EUROPE -**

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EXECUTIVE SUMMARY

The European Commission's [proposal for a revision of the Product Liability Directive](#) (PLD) intends to adapt the liability regime to the digital economy and the circular economy. The Commission proposes to include software and AI in the scope of the Directive, to ease the burden of proof for claiming liability through some rebuttal presumptions. The Commission also proposes to slightly alter the chain of liability.

Independent Retail Europe welcomes the EU Commission proposal. We would like to highlight the following points:

- ➔ Refurbished products should not fall with the PLD if not substantially modified
- ➔ We support article 7 regarding the chain of liability, but a residual liability should be introduced for marketplaces when no EU-based entity can be held liable
- ➔ Any reversal of the burden of proof would set a precedent undermining legal certainty and putting small companies at risk

COMMENTS OF INDEPENDENT RETAIL EUROPE ON A PROPOSAL FOR A REVISED PRODUCT LIABILITY DIRECTIVE

Refurbished products should not fall with the PLD if not substantially modified

The proposal addresses new developments in the circular economy. We welcome that refurbished products (Article 7 (4)) will only fall within the scope of the PLD if “substantially modified” as defined under their respective sectoral legislation. It is important that simple repair services remain out of the scope of this Directive, as liability risks under the PLD would otherwise put a break to the development of such services in the EU. Therefore, the revised PLD must distinguish clearly between refurbishments that might affect the safety requirements or the functionality of a product (due to a substantial modification) and repairs that restore the functions intended by the manufacturer. Faulty repairs should further on be addressed by national fault-based liability rules.

Chain of liability: we support article 7, but a residual liability should be introduced for marketplaces when no EU-based entity can be held liable

Regarding the chain of liability in Article 7, we generally agree with the hierarchy of liability as proposed by the Commission. Manufacturers should primarily be liable for the products they produced, while importers and authorised representative based in the EU should assume liability when there is no EU-based manufacturer. Moreover, in case neither the manufacturer nor the importer is based in the EU, fulfillment service providers should be held liable, as proposed by Article 7-3. We also agree with article 7-5, in that distributors cannot be held liable, unless the manufacturer is based outside of the EU/cannot be identified and the retailer is not able to identify any of the previous operators in the supply chain. Reputable retailers will always be able to identify the entity that supplied them with a product (be it another distributor, an importer or a manufacturer).

However, we believe that article 7 does not cover the full range of situations that consumers can experience. In particular, this applies for products produced outside the EU and shipped directly to the consumer who ordered them via a non-EU third-party seller on a marketplace. In this case, there is no EU based entity that can be held liable for the defective product. We therefore invite the co-legislators to introduce a provision to ensure that providers of online platforms are bound by a residual liability for products sold through their platform and for which neither the manufacturer, the authorised representative, the importer nor the distributor are based in the EU and when there was no fulfilment service providers used. Article 7(6) of the PLD proposal does indeed not fully cover this situation, as platforms will only be liable if they meet article 6(3) of the DSA. We therefore suggest adding a provision in that sense.

We would highly appreciate seeing marketplaces included in the scope of the Product Liability Directive in a similar way as distributors putting large platforms on equal footing with regular distributors and ensuring fair competition on the Internal Market. Consumers purchase goods online not distinguishing between direct online sales channels and online platforms. They should thus be protected equally whatever the sales channel is. Likewise, economic operators should face similar risks and operate on a level playing field, disregarding whether they act as platform or simply operate a direct online sales channel.

Any reversal of the burden of proof would set a precedent undermining legal certainty and putting small companies at risk

Concerning article 9, we invite the co-legislator to ensure that the burden of proof will not be reversed during the discussions in the Council and European Parliament. Although retailers are highly unlikely to be concerned by this article, we believe that reversing the burden of proof, in particular in a strict (no-fault) liability regime such as the PLD, would set a dangerous precedent in the EU legal order, undermining legal certainty. Most small companies – even in the absence of any fault, would face great difficulties to rebut the presumption resulting from any reversal of the burden of proof, exposing them to risks of blackmail and/or false claims.

Similar provisions on the burden of proof are included in other legislative texts where retailers are directly concerned. Reversing the burden of proof in the context of PLD would create precedent that could also have an impact on retailers in the context of other legislation (Sales of Good Directive, Unfair Commercial Practices, etc.).

Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer.

Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.

Independent Retail Europe represents 23 groups and their over 403.900 independent retailers, who manage more than 759.000 sales outlets, with a combined retail turnover of more than 1,314 billion euros and generating a combined wholesale turnover of 484 billion euros. This represents a total employment of more than 6.620.000 persons.

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