MASON HAYES & CURRAN

Product & Consumer Protection Annual Review 2024

Introduction

Welcome to our Product & Consumer Protection Annual Review 2024.

In the six months since the publication of our Mid-Year Review, advancement in the EU product and consumer protection law landscape has continued apace. We review some of the key developments during the year and look ahead to future reform for 2025.

In this Review, we will consider key issues such as:

- The implications of the revised Product Liability Directive and the proposed Artificial Intelligence Liability Directive for economic operators of consumer products.
- The application of the EU's General Product Safety Regulation to standalone software.
- Due diligence requirements and achieving sustainability in the value chain.
- Guidance for businesses about preparing an accessibility statement as part of their obligations under the European Accessibility Act (EAA) before the June 2025 deadline.

As we look to 2025, we discuss these issues and much more and hope you enjoy the fifth edition of our Annual Product & Consumer Protection Review.

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Historically, the concepts of product safety and liability used to be confined to 'bricks and mortar' products. Now, the term 'products' encompasses much wider concepts, including software, AI systems, mobile apps, hardware products with integrated software and IoT-connected products.

In recent years, the product safety legislative framework has undergone a significant reform at a European Union level. This reform includes an expansion of the meaning of the term 'product' and the introduction of new rules and regulations to ensure the safety of consumers. This is reflected by the implementation of the EU's General Product Safety Regulation, or 'GPSR'[1], which came into effect in December 2024. At the same time, the EU has proposed the reform of its product liability regime to address liability issues arising from digital technologies and artificial intelligence, circular economy business models and global value chains. In that regard, it proposed the revision of the EU Product Liability Directive (Revised PLD)[2].

As part of our in-depth analysis, we provide an overview of the upcoming changes in this space in the EU and how these proposed reforms will impact businesses and consumers alike. We also set out an overview of the interplay between the Revised PLD and the EU's proposed Artificial Intelligence Liability Directive, or 'AILD'.

Product Liability Directive

The Product Liability Directive (PLD) established an EU-wide system of strict liability for product liability claims. This means that there is no requirement for a claimant to prove that a defendant producer was negligent or at fault.

The PLD provides that a producer is liable for damage caused wholly or partly by a defect in their product. A product is considered 'defective' if it fails to provide the safety that a person is entitled to expect. This assessment is an objective one. It is carried out by having regard to what the public at large is generally entitled to expect, and by reference to a range of circumstances, including:

- The presentation of the product
- Its reasonably expected uses, and
- The time it was put into circulation

The concept of 'putting a product into circulation' isn't explicitly defined in the PLD. However, case law from the Courts of Justice of the EU (CJEU) clarifies that a product is put into circulation when the product leaves the production process and enters a marketing process in the form it is offered to consumers.[3]

The burden of proof is on a claimant to prove the damage, the defect, and the causal relationship between the two. In Ireland, claimants commonly bring a product liability claim in tandem with a claim in negligence and/or in contract.

Several statutory defences are available to producers under the PLD. If successfully invoked, a defendant

[1] EU/2023/988

[2] 85/374/EEC

[3] Case C-127/04 Declan O'Byrne v Sanofi Pasteur MSD Ltd and Sanofi Pasteur SA.

can avoid liability for a defective product. These defences include:

- That the defect did not exist at the time the product was put into circulation, or that the defect came into being afterwards
- The 'state of the art' defence, is arguably the most invoked. This applies where a defendant can show the defect was not discoverable due to the state of scientific and technical knowledge at the time the product was put into circulation

It is also important to be aware that there is a limitation period of three years to bring claims under the PLD. This is subject to a long stop provision where a claimant's right of action will be extinguished 10 years after the product's date of circulation, if they haven't brought a claim in that time.

Why is a Revised PLD necessary?

The PLD was adopted almost 40 years ago in 1985. In that time, we have seen a dramatic change in the types of products on the market through developments in technologies like AI and machine learning.

As a result, the European Commission reviewed the PLD and proposed the reform of the existing product liability rules to meet the challenges presented by these technological advances as well as by:

- Products imported directly from outside the EU
- The emergence of new actors in the supply chain such as online marketplaces
- An increased awareness around environmental sustainability and the circular economy where products can be repaired, reused and refurbished

Incoming changes and features of the Revised PLD

The Revised PLD was adopted by the European Parliament in March 2024. It was then subsequently formally adopted by the European Council in October 2024.

The Revised PLD entered into force on 8 December 2024 and will apply to products placed on the market 24 months after this date.

There will be a protracted transitional period where product liability cases may be brought under the PLD or the Revised PLD depending on which regime is applicable.

There are several noteworthy reforms under the Revised PLD:

- **Product:** The Revised PLD expands the definition of a 'product' to expressly include software, including standalone software and AI systems.
- **Defectiveness:** New factors have been added into the Revised PLD for determining whether a product is defective, including a product's interconnectedness, self-learning functionality, and cybersecurity vulnerabilities.
- **Defendants:** The Revised PLD expands the pool of defendants that can potentially be held liable for damage caused by a defective product ensuring, amongst other things, that there is always an EU-based liable person for products bought from manufacturers who are based outside the EU.
- **Circular economy:** Where a product is upgraded or repaired outside the manufacturer's control, the company or person who modified the product should be held liable.
- **Damage:** The definition of 'damage' has been extended under the Revised PLD. It now brings in scope medically recognised damage including psychological health and damage from the destruction or corruption of data not used for professional purposes.

- **Scope of liability**: One of the previous statutory defences allows the original manufacturer to avoid liability for defects that emerge after the product is put into circulation.
  Under the Revised PLD, the scope of liability may be extended to the time after a product was put into circulation where it is still under the manufacturer's control. For example, where a product has been substantially modified through software updates.
- **Products bought from non-EU manufacturers:** To ensure that consumers are compensated for damage caused by products manufactured outside of the EU, the importer or the EU-based representative of the foreign manufacturer can be held liable for damages.
- **Discovery:** The Revised PLD introduces a discovery model for statutory product liability claims. Under this model, a claimant who has presented facts and evidence sufficient to support a plausible claim can seek an order from a defendant to disclose relevant evidence at its disposal. While this is a significant development for civil law EU countries, it would have minimal effect in Ireland as we already have discovery in civil proceedings. In addition, the Revised PLD expressly acknowledges that it does not affect national rules on pre-trial disclosure of evidence. The Revised PLD provides that where a defendant fails to disclose relevant evidence in response to a request, the product will be presumed to be defective.
- **Rebuttable presumptions:** The Revised PLD contains rebuttable presumptions on defectiveness and causation designed to ease the burden of proof for claimants.
- **Collective redress**: Businesses may not only be liable for harm caused to individual consumers by defective products. They may also be subject to a collective redress action if a product defect impacts the collective interests of a group of consumers/litigants under the Collective Redress Directive[4] (CRD).

Scope of the Revised PLD

The Revised PLD explicitly applies to software, including standalone software, AI systems, digital manufacturing files, and related services. It also covers cases where an integrated digital service is necessary for a product to function, such as a car GPS system. The Revised PLD includes several limited exceptions. One exception concerns pure information, such as software source code. Another applies to free and open-source software that is not developed or used as part of a commercial activity. This wider definition of what is considered a 'product' will expand the scope of liability for software products beyond those incorporated into a tangible product, as required under the PLD. As a result, it will have far-reaching consequences for software developers.

The Revised PLD also broadens the pool of economic operators that may be potentially liable for a defective product.

In addition to manufacturers, importers and, in some cases, distributors of a product or component of a product, the Revised PLD also includes:

- The providers of related services
- Authorised representatives
- Fulfilment service providers
- Third parties making substantial modifications to products already placed on the market, and
- Online platforms in certain circumstances. This occurs when they play more than a mere intermediary role in the sale of products between traders and consumers

The Revised PLD's expanded definition of an 'economic operator' is designed to ensure that there is always an EU-based representative liable for damage caused by a defective product. This could be the designated authorised representative, importer, or fulfilment service provider.

[4] 2020/1828

EU Artificial Intelligence Act

The EU Artificial Intelligence Act 2024 (AI Act) is the world's first comprehensive piece of AI law.

The AI Act prioritises trustworthy AI by ensuring compliance with regulatory requirements and managing the relationship between providers and regulators. In contrast, the Revised PLD and the proposed Artificial Intelligence Liability Directive (AILD) focus on addressing harm caused. The AI Act entered into force on 1 August 2024 with staggered implementation and is fully applicable 36 months after 2 August 2024.

High-risk AI software systems must be compliant by 2 August 2026, subject to a legacy provision. Other products, such as AI-enabled medical devices, lifts, and toys, will have additional time to meet their regulatory requirements. The applicable obligations will not take effect until 36 months after the Act enters into force, on 2 August 2027.

Core concepts of the AI Act and applicability

The AI Act adopts a risk-based approach to the regulation of AI systems. It seeks to regulate them by imposing a range of obligations on providers and deployers of those AI systems depending on the risk categorisation of the AI system. These obligations include requirements related to transparency, control and risk management, training and support and recordkeeping. The aim of the AI Act is to foster trustworthy AI in Europe and beyond, by ensuring that risks of powerful and impactful AI systems are addressed.

The AI Act has broad territorial application and is applicable to:

- Providers and manufacturers of AI systems
- Deployers, or users, of AI systems
- Importers, distributors, affected persons, and authorised representatives of AI systems

The AI Act imposes a far greater regulatory burden on AI developers rather than on users. The AI Act lays down an enforcement framework that is designed to regulate AI systems on a sliding scale of risk. The compliance obligations will be dictated by the risk category into which the AI system falls. There are four risk categories:

1. Unacceptable risk
2. High risk
3. Limited risk
4. Minimal or no risk.

Unacceptable risk AI systems

AI systems which are considered a clear threat to the safety, livelihoods and rights of people are banned. This includes systems such as social scoring by governments and toys using voice assistance that encourages dangerous behaviour. These will be banned from the EU market from 2 February 2025.

High-risk AI systems

High-risk AI covers a broad range of applications. These include AI used in medical devices, as a safety component in toys, and for managing critical infrastructure such as electricity supply. It can also include employment recruitment tools, credit scoring applications, and grade prediction technology in education. High-risk AI will be broadly divided into two categories:

1. AI systems that are used as a safety component in products or are themselves products falling under certain specified EU harmonisation legislation e.g. toys, medical devices etc. These are known as Annex I high-risk AI systems.
2. AI systems in certain areas will require registration in an EU database. These include educational and vocational training, law enforcement, and the management and operation of critical infrastructure, among others. These are referred to as Annex III high-risk AI systems.

Before these categories of high-risk AI systems can be put on the EU market, they will be subject to a stringent 'conformity assessment' process. This conformity assessment determines whether

the system meets all requirements in the Act. Providers dealing with Annex I high-risk AI systems will enhance their existing third-party conformity assessment procedure with their existing notified body. In contrast, providers of Annex III high-risk AI systems will conduct self-assessments in order to meet the same requirements.

Limited risk AI systems

Limited risk AI systems have a low risk of harm that can be remedied by making them more transparent. It is important that AI systems which interact directly with people are developed to ensure that the person is aware they are interacting with AI. These systems include chatbots, and generative AI.

Minimal risk AI systems

Minimal risk AI systems pose a minimal risk to the safety and rights of citizens. These are not subject to the obligations or restrictions under the AI Act. However, companies can choose to voluntarily adopt additional codes of conduct.

The AILD

The AILD is designed to revise and harmonise Member State's non-contractual, fault-based rules concerning claims for injuries arising from AI systems. In Ireland, this will impact claims in negligence under tort law.

The product liability regime under the PLD provides for a harmonised application of its strict liability rules across the EU. The more 'traditional' fault-based rules, however, tend to vary more from Member State to Member State. The worry is that Member States will, and to some extent already are, applying their fault-based national rules to cases about AI systems and models in differing ways. This is unfortunately creating a fragmented set of new legal tests and case law that lacks consistency, making it a very challenging environment to do business.

The AILD is designed to harmonise these fault-based rules across the EU. It does this through a range of mechanisms including, for example, using the same terms and definitions as those used in the AI Act. The AILD also provides for the introduction of disclosure requirements and rebuttable presumptions into national fault-based rules in alignment with similar proposed reforms under the Revised PLD.

The EU Parliament's Research Service published a Complementary Impact Assessment in September 2024. The assessment evaluated the AILD's relevance and effectiveness in the current legislative landscape, particularly considering the Revised PLD. The Complementary Impact Assessment has made several key recommendations, one of which is to transform the AILD into a Regulation. This would ensure it has direct application in each Member State, eliminating the need for transposing national legislation. The Complementary Impact Assessment is being considered by the European Parliament's Legal Affairs Committee and we await its decision as to whether it will accept its recommendations or not.

Features of the AILD

There are three key features worth highlighting in the proposed AILD in its current form:

1. **Scope:** The AILD would ensure that the scope of national fault-based liability regimes is broad. For example, you can have claims against any person, not just the manufacturer, for faults that influenced the AI system which caused the damage. The AILD also applies to any type of damage covered under national law, including damage resulting from discrimination or breach of fundamental rights like privacy, which could in some cases be broader than the Revised PLD's concept of 'damage.' Claims under the AILD can also be made by any natural or legal person. This contrasts with the PLD whereby it is just natural persons who can make a claim.

2. **Disclosure of evidence:** Similar to the new rules under the Revised PLD, national courts would have the authority, at the request of a potential claimant, to order providers of high-risk AI systems - as well as those subject to the provider's obligations and users of those systems - to disclose or preserve relevant evidence related to a specific high-risk AI system suspected of causing damage.
3. **Rebuttable presumptions:** For a fault-based claim to be successful, the defendant's negligent act or omission must be shown to have caused the damage in question. According to the EC, proving this causal link could be difficult for a claimant in a fault-based claim involving an AI system. This is because they may have to explain the inner functioning of the AI system and what a defendant did or failed to do to make the AI system behave in a way that it wasn't perhaps supposed to. This is understandably a high evidential bar that would be difficult for most claimants. It could also arguably result in an unfair barrier to claimants' access to justice. In those circumstances and, similarly, to the provisions introduced under the Revised PLD, the AILD would provide for a presumption of the causal link where certain conditions are met.

Collective redress

The CRD allows certain public representative bodies such as regulatory agencies and NGOs to bring claims on behalf of groups of consumers. Claims are brought under a very long and evolving list of EU product safety and consumer protection legislation.

'Qualified entities' representing groups of consumers can seek various forms of redress. Redress options can include repair, refunds and compensation, price reduction, contract termination as well as various types of injunctive relief, such as court orders compelling traders to stop the practice which has caused the infringement.

While the AI Act is not included, a range of consumer protection and product safety legislation, including the PLD, is on that list. As a result, it means that there is a possibility for qualified entities to bring claims against manufacturers under the PLD. It remains to be seen if that will happen and what it might look like. However, there is now a legislative basis for this happening in various Member States, including Ireland.

The CRD was adopted back in December 2020 and had to be implemented by Member States by June 2023. In Ireland, we now have the Representative Actions Act 2023 and the Irish Council for Civil Liberties was the first designated qualified entity under the Act. The CRD provides for various safeguards to avoid the opening of any sort of 'floodgate' of claims:

- **Dismissal of manifestly unfounded cases:** Courts are empowered to dismiss manifestly unfounded cases at the earliest possible stage of the proceedings.
- **Settlement:** There is the possibility that a claim can be settled subject to court approval.
- **Funding transparency:** A qualified entity will be required to publicly disclose information about its sources of funding. Under Irish law, third-party litigation funding is prohibited for parties with no interest in the dispute, making it challenging for qualified entities in the not-for-profit sector to fund large, sometimes cross-border, representative actions. This prohibition remains unchanged by the enactment of the 2023 Act, which allows third-party funding for representative actions "insofar as permitted in accordance with law."
- **Multiple claims by individual consumers:** Consumers are prevented from being involved in a collective action where they have previously received compensation from the same trader for the same cause of action.

The CRD forms part of the new EU product liability landscape and is worth bearing in mind alongside the Revised PLD and the AI Act. Although the EU's collective redress model is designed to be different from the US class-action system and contains

multiple measures to prevent opportunistic litigation, it will undoubtedly result in increased litigation risk for consumer-facing businesses. This is because consumers will be empowered to participate in a collective action whereas individually, they may not have had the means or appetite to do so. Consequently, Ireland could become an attractive forum for joint representative actions centred on EU-wide product liability claims. This is because it is the only remaining English-speaking common law country in the EU with a largely pro-plaintiff judiciary and extensive US-style discovery model. All these factors will likely lead to more product liability litigation. This could have secondary effects, such as a greater focus by businesses on achieving regulatory compliance. Businesses will aim to limit their risk of litigation exposure. Additionally, a more stringent regulatory culture may emerge.

Conclusion

The extended scope of the Revised PLD reflects the evolution of product liability to include not only physical products but also software applications and AI systems. These are now explicitly recognised as products under the Directive. The new rules intend to enhance consumer protection for damage suffered by defective products.

Even though the AILD has not been adopted, it is the subject of ongoing discussion at an EU level. Therefore, organisations and businesses must start preparing for how it may potentially impact them. Developers of AI systems should consider the legislative changes which may affect their product and ensure their compliance with the upcoming frameworks.

The trio of new legislation consisting of the AI Act, the Revised PLD and the proposed AILD will overlap. This is likely to result in the harmonisation of how AI systems are treated under EU product safety and product liability law. This will apply to both fault-based and strict liability claims. Producers will need to be aware of these legislative reforms in the context of the development of their products and the potential liability issues which could arise.

We recommend stakeholders monitor this evolving liability landscape as well as the potential for regulatory divergence outside of the EU. The EU is fast becoming an innovative frontier in this highly complex and exciting area of law.

Sustainability In the Value Chain

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Environmental and social risks can arise at various stages of a business's value chain, from sourcing raw materials to the end of a product's lifecycle. The EU has introduced due diligence (DD) obligations for specific products groups. These apply particularly to those with supply chains that have higher risks of adverse effects on environmental and human rights. These DD obligations are becoming increasingly onerous.

Looking ahead

Over the course of 2025 to 2027 and beyond, certain businesses will have to implement new policies and procedures to comply with new DD obligations under EU law. It is critical that businesses start preparing for this now, to avoid potential non-compliance and operational restrictions when these obligations take effect.

The EU Batteries Regulation will introduce DD obligations for certain large importers of batteries and products containing batteries. Broadly speaking, the importers will need to comply with the requirements if their individual or group net turnover is at least €40 million. These requirements will apply from 18 August 2025. They will require companies placing the batteries on the EU market for the first time to, amongst other things, adopt and implement a DD policy. The policy must be aligned with certain international standards and integrated into risk management measures, and supplier agreements.

The Corporate Sustainability Due Diligence Directive [1] or 'CS3D', will be phased in from 2027.

This will begin with both:

- EU companies with over 5,000 employees and a net worldwide turnover of more than €1,500 million, and
- Non-EU companies with over €1,500 million net turnover generated in the EU in the year preceding their last financial year.

Broadly speaking, CS3D requires companies to identify and address potential and actual adverse impacts on human rights and the environment within its own operations. These obligations also apply to a company's subsidiaries, and, where connected to their value chains, their business partners. As part of this duty, companies must comply with prescriptive requirements such as carrying out stakeholder engagement at different stages of the DD process.

The recently adopted Forced Labour Regulation [2] (FLR) will apply from late 2027. Essentially, the FLR will prohibit products from being imported into or exported from the EU if they were produced by means of forced labour.

[1] Directive 2024/1760
[2] Regulation (EU) 2024/3015

Why it matters

Failure to comply with DD obligations carries high risks, which differ according to the legal framework. These include financial penalties and fines, reputational damage, prohibition on selling certain products, as well as damages and other potential enforcement action.

However, complying with DD obligations offers several benefits. It enhances a company's understanding of its value chain and fosters stronger business relationships and consumer trust. Additionally, rising global standards create powerful incentives to integrate sustainability into value chains.

Preparing for compliance

Businesses subject to the requirements will need to integrate a robust DD policy into their wider management systems and contracts. This is to ensure that appropriate DD enquiries are made by the importer's own organisation, as well as by its suppliers and customers. Unfortunately, there is currently a lack of practical guidance from the EU and Member States as to how businesses should comply with their obligations. It is hoped that guidance will be published before some of the obligations take effect. However, businesses should not wait for guidance to be issued before commencing their compliance preparations.

For most companies, integrating DD policies and procedures into their wider risk management and business strategy processes can be challenging. A good starting point is to have a clear understanding of an organisation's value chain. The Board should have oversight of the process to ensure it is implemented. Once the requirements are identified, policies and procedures should be reviewed to identify gaps. It will be important to clearly identify and allocate roles and responsibilities at operational level. This approach will ensure that policies and procedures are implemented in full. Key to compliance will be the gathering of verifiable information from the value chain and ensuring contracts facilitate the gathering and analysis of the information.

Companies will need to consider how they will address risks, should they materialise from their DD process.

Conclusion

The EU has introduced further regulation focusing on reducing environmental and social risks in a value chain of certain businesses. The DD requirements are becoming more extensive and prescriptive. In-scope companies will need to identify and review the DD requirements and integrate them into their wider business policies and procedures.

The complexity of a product's value chain, and the sustainability risks that may arise, mean businesses need to move early to ensure compliance. Although the changes will be a burden in the short term, businesses may be able to realise value in the medium and longer term through establishing sustainable relationships with their value chain and stakeholders.

Application of the General Product Safety Regulation to Software

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The EU's General Product Safety Regulation [1] (the GPSR) became applicable in all EU Member States on 13 December 2024. It seeks to ensure that non-food consumer products placed on the EU market are safe. To achieve this, it imposes a range of specific obligations on economic operators and online marketplaces.

Application to standalone software

The GPSR has repealed and replaced its predecessor, the EU General Product Safety Directive [2] (the GPSD). Through a range of measures, it seeks to reform and modernise the product safety framework. These measures include broadening the definition of what is considered a 'product' [3]. This reflects the profound shift in the scope of products now available to consumers, compared to when the GPSD came into effect more than 20 years ago.

Until now, however, the application of the GPSR to standalone software has been somewhat uncertain. This is because the definition of 'product' in the GPSR does not refer to software. As a result, the general consensus was that the GPSR, like the GPSD, was focused on physical products and software was only included to the extent that it was a component of a physical product that affected the product's safety performance.

In a significant development, the European Commission has confirmed the scope of the GPSR. Iin a Q&A, published on 27 November 2024 [4], it clarified that the Regulation applies to all types of products, including digital products and software, provided it is placed on the EU market and does not fall under other specific EU legislation.

This clarification will have significant implications for businesses involved in the development and distribution of standalone software. They must now take steps to adapt their practices, unless they have already done so. This is necessary to ensure that their software complies with the safety requirements under the GPSR before their product is made available on the market.

Regulatory obligations

The obligations that businesses involved in the development and distribution of standalone software must comply before their software products can be made available on the market include:

- **Risk assessments:** When placing a product on the EU market, the manufacturer must ensure that the product is safe and must conduct a risk assessment of the product [5].

[1] (EU) 2023/988

[2] EU GPSD 2001/95/EC

[3] Definition of a 'product' in the GPSR, 'means any item, whether or not it is interconnected to other items, supplied or made available, whether for consideration or not, including in the context of providing a service, which is intended for consumers or is likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them.'

[4] European Commission Q&A Document on the GPSR

[5] Article 5 GPSR

The GPSR establishes minimum aspects which must be considered when conducting this assessment. These include considering international standards and reasonable consumer expectations regarding the safety of a product [6]. In addition to initial risk assessment requirements, a product may require a new risk assessment where it has been substantially modified in a way that impacts on the safety of the product. For example, substantial modifications may occur due to new technologies, such as software updates.

- **Technical documentation:** The internal risk analysis should form the basis for the technical documentation that a manufacturer must draw up and keep up to date regarding the products they place on the market. This documentation should contain the necessary information to prove that the products are safe. It must contain a general description of the product and any essential characteristics relevant for assessing its safety [7]. All potential risks associated with a product must be identified, regardless of the level of that risk. The documentation should, among other things, contain solutions to eliminate or mitigate those risks.

  Ongoing risk analysis measures and technical documentation is a requirement for all products. Technical documentation must be kept for a period of 10 years and must be held at the disposal of market surveillance authorities.

- **'Responsible Person':** All non-food consumer products must have a 'Responsible Person' established within the Union before they can be placed on the EU market [8]. This individual will be responsible for certain tasks under the EU Market Surveillance Regulation [9]. In addition, the Responsible Person must also ensure the safety of the product and its compliance with GPSR requirements, specifically labelling and information provision. The Responsible Person must also regularly check that the product complies with the technical documentation.

- **Labelling requirements:** Products must be labelled with details of the relevant economic operator, for example the details of the manufacturer or importer of the product. The postal and electronic address of the nominated responsible person must also be indicated on the product itself, its packaging, the parcel or any accompanying documents. This information must also appear in distance sale offers and offers placed using online marketplaces. The EU Commission confirmed in its Q&A document that manufacturers cannot rely solely on digital labelling, such as a QR code, to satisfy its labelling requirements under the GPSR. The Q&A document clarifies that the necessary information must be placed on the product itself, or if not possible, on its packaging or in an accompanying document. While digital labelling can be used as an additional option, it cannot replace the physical labelling requirements under the GPSR.

The GPSR also imposes enhanced market surveillance obligations on businesses. They must report to the relevant market surveillance authorities if there are any potential safety issues related to the product. Additionally, they must report any serious injury caused by the product. Of particular relevance to software developers is that mental health injuries are included in the criteria under the GPSR for assessing the safety of a product. In addition, in accordance with the new Product Liability Directive [10], software developers will be exposed to not only claims for physical injury, but also psychological injuries.

Next steps

In accordance with Article 17 of the GPSR, the EU Commission is due to publish a set of guidelines for businesses. These guidelines will be targeted specifically at SMEs and microenterprises. The purpose of these guidelines is to assist them in complying with their new obligations under the GPSR. The Commission stated in the Q&A document that it intended to adopt and publish these guidelines before the entry into application of the GPSR on 13 December 2024. This time has now passed, so we would recommend that all interested stakeholders watch this space as publication of the guidelines should be imminent.

[6] Chapter II GPSR
[7] Article 9(2) GPSR
[8] Article 16 GPSR
[9] EU/2019/1020
[10] EU/2024/2853

European Accessibility Act: Accessibility Statements

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Businesses need to prepare for the European Accessibility Act (EAA) by creating an accessibility statement that publicly demonstrates their compliance before the June 2025 deadline. This document is more than just a formality—it's a key expression of how a company meets accessibility standards for its services. In this article, we break down what businesses need to know about drafting this important document and the steps they should take now to ensure full compliance.

The European Accessibility Act (EAA) was implemented into Irish law through the European Union (Accessibility Requirements of Products and Services) Regulations 2023. The Regulations will apply from 28 June 2025 and will have significant consequences for:

- Economic operators of in-scope products, such as computers and operating systems, ATMs, ticketing and check-in machines and smartphones, and
- Providers of in-scope services, such as e-commerce, consumer banking, e-books, access to audio-visual media services, electronic communications services and air, bus, rail and waterborne passenger transport services

For more information on the EAA, please see our previous articles available on our website:

- Overview of the European Accessibility Act which outlines the products and services which will be subject to the EAA and gives an overview of the accessibility requirements
- Update on the European Accessibility Act in Ireland which gives an overview of what businesses should be doing to prepare for the EAA
- European Accessibility Act Implemented into Irish Law which provides an overview of the Irish implementing measures including the penalties for breaches of these measures

Accessibility statements

The EAA requires that providers of in-scope services produce a public facing document which sets out information on how the in-scope service it provides meets the relevant accessibility requirements. This document, commonly referred to as an "accessibility statement", must be included in either the businesses' general terms and conditions, or in an equivalent document.

The required information must include the following:

- A general description of the service in accessible formats
- Descriptions and explanations necessary for the understanding of the operation of the service, and
- A description of how the relevant accessibility requirements are met by the service

This information must be made available to the public in written and oral format, including in a manner that is accessible to people with disabilities.

What should in-scope businesses be doing?

Accessibility statements serve as the public declaration of how a business complies with the EAA, so they should be drafted towards the end, or near completion, of the EAA compliance process.

For achieving compliance with the EAA generally, the following steps should be taken by businesses, noting the compliance deadline is June 2025:

1.	Identify whether any of the services and/ or products provided by your business are subject to the EAA
2.	If your business provides any in-scope products, identify the role in the supply chain that your business plays
3.	Identify whether your business can avail of any exemptions under the EAA
4.	Identify the precise obligations that your business is subject to
5.	Identify the accessibility requirements that will apply to your product/service and undertake an impact analysis
6.	Conduct an accessibility audit to identify accessibility gaps in products and services
7.	Collaborate with different teams in your organisation to make adjustments to your products / services where required. Harmonised standards can aid an organisation's compliance efforts
8.	For in-scope services, publish an accessibility statement on or before 28 June 2025

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