

# Amendment to product liability law met with mixed reactions

Berlin: The draft bill presented by the Federal Government “on the modernisation of product liability law” ( <https://dserver.bundestag.de/btd/21/042/2104297.pdf> ) has received mixed reviews from experts. At a public hearing of the Committee on Law and Consumer Protection on Monday, the planned 1:1 implementation of a corresponding EU directive was criticised by some as going too far and by others as being too unambitious.

According to the draft bill, German product liability law is to undergo comprehensive reform for the first time since 1989. Among other things, it is proposed that software – including, for example, artificial intelligence (AI) – should in future be “included in product liability regardless of the manner of its provision or use”. To align with the circular economy, the draft contains provisions on products that undergo significant changes after being placed on the market. If a product’s manufacturer is based outside the EU, other actors in the supply chain will also be liable in future under certain conditions. Furthermore, the new product liability law contains provisions designed to facilitate the assertion of claims for damages.

In his [statement](#), Julian Kulaga of the German Chamber of Industry and Commerce (DIHK) criticised the draft, arguing that it goes beyond the requirements of EU law in substantive terms by ‘extending the scope of application beyond what is necessary’.

On the other hand, he argued that the government’s draft falls short of the options provided for under EU law in terms of procedural law and lacks procedural safeguards tailored to German law that could protect trade secrets and, consequently, the innovative capacity of German companies. He joined EJF’s request of 06 October 2025 made during the Justice Ministry’s consultation to finally introduce in German law of civil procedure an hitherto missing fully fledged “*in camera procedure*” where only the court gets full access to the confidential elements of proof while the claimant’s representatives and lawyers are fully excluded from that part of the procedure and will only receive the Court’s evaluation of such elements of proof without disclosing the confidential aspects or business secrets. Kulaga warned that not embracing this concept and restricting the transposition to what is really needed could lead to an increase in the cost of the products covered and, ultimately, jeopardise Germany’s position as a business location within the EU.

From the perspective of the Federation of German Consumer Organisations, the regulations on the duty to provide information and disclose details are not far-reaching enough. Its representative, [Felix Methmann](#), called for the creation of a pre-litigation right to information and disclosure, which should be linked to a procedural means of enforcement. The Federal Association of Consumer Organisations furthermore believes the legislature might need to respond to future events by establishing compensation funds – similar to the German Travel Security Fund – without burdening the state.

Professor [Gerhard Wagner](#) of Humboldt University in Berlin expressed doubt on the admissibility, need and practical need to introduce further pre-litigation disclosure claims as asked for by Methmann.

Criticism of the 1:1 implementation was voiced by Professor [Christiane Wendehorst](#) of the University of Vienna. She encouraged more legislative intervention in order to prevent courts from interceding and shaping producer liability on the basis of general tort clauses as case law beyond the scope of the Act. By relaxing the burden of proof – or even reversing it – a liability regime could ultimately emerge that is not unlike product liability. In particular, new obligations under product safety law could also lead to new and not entirely foreseeable liability risks. Wendehorst argued that creating greater legal certainty in this area would have been in the interests of all stakeholders.

Professor [Martin Schmidt-Kessel](#) of the University of Bayreuth noted that ‘fundamental extensions of liability’ were taking place across a whole range of areas. He would prefer to transpose the reform by integrating it into the Civil Code (BGB). He recommended to fundamentally rethink the dichotomy between private and professional use and to not exclude professional use by employees from protection but only self-employed professional use.

The representative of the German Bar Association (DAV) Rupert Bellinghausen reiterated criticism voiced as early as 2022 regarding the EU product liability reform, namely the many undefined legal terms in it, which lead to uncertainty. Particularly critical are new rules of presumption regarding defects, causality and damage, which significantly alter civil law. The definition of “software” must be clarified and explicitly extended to cover AI systems. Furthermore, the liability exemption for open-source software is unclear, difficult to define and open to abuse.

The German Law Journal „Versicherungsrecht“ (Insurance Law) will very soon publish an article critical of the current German draft transposition law by Herbert Woopen.