

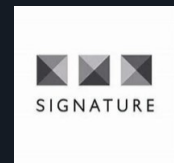
Legal 500

Country Comparative Guides 2025

France

Product Liability

Contributor



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This country-specific Q&A provides an overview of product liability laws and regulations applicable in France.

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France: Product Liability

1. What are the main causes of action upon which a product liability claim can be brought in your jurisdiction, for example, breach of a statutory regime, breach of contract and/or tort? Please explain whether, for each cause of action, liability for a defective product is fault-based or strict (i.e. if the product is defective, the producer (or another party in the supply chain) is liable even if they were not individually negligent).

The primary cause of action is the strict defective product liability statutory regime established by the dedicated EU directive (85/374/EEC) codified in Articles 1245 to 1245-17 in the French Civil Code by law no. 98-389 of 1998. It holds the manufacturer/distributor/seller liable for their product's defect when it has caused damage to someone or something. EU Directive (85/374/EEC) has been repealed by the new EU Directive (2024/2853/EU) of 23 October 2024, which shall be transposed into national law by 9 December 2026 (hereinafter "the New PLD"). The 1985 Directive and the transposed French law will continue to apply to products put on the EU market before 9 December 2026.

Consumer law plays an important role since it provides for a general product safety obligation. Directive 2001/95/EC, which ensures ensuring general product safety in France and within the EU, is transposed into the French Consumer Code and enshrines a fundamental right to safety for customers (Article L.421-3 of the French Consumer Code). Since 13 December 2024, Directive 2001/95/EC has been repealed by Regulation (EU) 2023/988 of 10 May 2023 (thereafter "the GPSR"). This Regulation has direct effect into national laws. Articles L. 421-1 and seq. of the French Consumer Code (including Article L. 421-3) have been either repealed or modified by Law no. 2024-364 of 22 April 2024, which entered into force on 13 December 2024, to refer to the GPSR. This Regulation applies to all products available on the EU market, but shall not impede the making available on the market of products which are in conformity with Directive 2001/95/EC and which were placed on the market before 13 December 2024.

Tort law is also relevant as the manufacturer's/distributor's/seller's liability can be sought for any damages somehow caused by their product where such damage does not result from a

breach of a contractual obligation. This is a fault-based liability regime.

Contract law, sales law, and statutory warranties can also apply. Besides, in the event of bodily injury or lack of compliance with a specific regulation, criminal law may also come into play. Except for the liability for defective product, all other regimes of liability are generally fault-based liability regimes.

2. What is a 'product' for the purpose of the relevant laws where a cause of action exists? Is 'product' defined in legislation and, if so, does the definition include tangible products only? Is there a distinction between products sold to, or intended to be used by consumers, and those sold for use by businesses?

A "product" is defined under Article 1245-2 of the French Civil Code, which provides for a broad definition. A product refers to "any movable asset, even where it is incorporated into an immovable asset, including the products of the soil, stock-farming, hunting and fishing. Electricity is considered as a product".

No distinction is made between tangible and intangible assets, the only criteria on the nature of the asset is that it must be a movable asset.

The definition of product thus encompasses elements of the human body, the products derived from it, and software. In a written question submitted by a Member of Parliament to the Ministry of Justice on 15 June 1998, the Minister of Justice clarified that the product liability regime was applicable to software as they fall within the legal category of movable assets, but specified that the application of these texts "only covers situations where the software would be the direct cause of a damage to personal or assets security". This approach reflects a response from the European Commission which, answering to a written question, confirmed that the European Union's Directive is applicable to software.

Under the New PLD, "product" is defined as "all movables, even if integrated into, or inter-connected with, another movable or an immovable; it includes electricity, digital manufacturing files, raw materials and software" (Article 4.1). The New PLD makes it clear that software

(including digital manufacturing files and digital related services) falls under the definition of "product".

3. Who or what entities can bring a claim and for what type(s) of damage? Can a claim be brought on behalf of a deceased person whose death was caused by an allegedly defective product?

There are no restrictions on who can bring a claim based on the strict defective product liability regime. The claimant is only required to prove the defect of the product, the damage suffered and the causal link between the damage and the defect. The damage can be direct and indirect, opening a claim to contractors down the supply chain or the heirs of a deceased person.

4. What remedies are available against a defendant found liable for a defective product? Are there any restrictions on the types of loss or damage that can be claimed?

French law provides for compensatory damages with the primary objective of fully compensating the entire damage, but only the damage claimed. As such, punitive damages are not allowed under French law. Compensation can be partial when the damage claimed is not exclusively due to the defect in the product.

The damages that can be compensated are the ones resulting from an injury to the person, as well as the losses exceeding a certain amount which are resulting from a damage to a property other than the defective product itself, according to Article 1245-1 of the French Civil Code. As such, material and non-material loss are compensated under French law (for instance, French Supreme Court, 25 May 2023, case no. 21-23.174). This is further confirmed by the New PLD which leaves to Member States the choice of compensating for non-material losses (Article 6.2). In addition, the New PLD puts an end to the €500 excess applicable so far for damage to property. Any damage will be compensated.

Examples of losses commonly compensated are provided in Question 15 below. The damage must, however, be direct, certain and determined. For instance, the French Supreme Court ruled that pure economic damage suffered by a winegrower because of the alteration of its wine's taste could be compensated given that the Court of Appeal had noted that the wine has deteriorated as a result of its pollution by the products claimed to be defective (French Supreme Court, 9 December 2020, case no. 19-17.724).

In order to be compensated, the claimant must prove all the elements above-mentioned.

In addition, the French Supreme Court has overturned its case law on 11 July 2018 and now considers that damage caused to professional property falls within the scope of the product liability regime (case no. 17-20.154). However, the New PLD excludes from the scope of compensable damage, damage to or destruction of "property used exclusively for professional purposes" (Article 6.1 (b) (iii)). Regarding destruction or corruption of data, it is now compensable under the New PLD but only for "data that are not used for professional purposes" (Article 6.1 (c)). French case law should therefore be monitored as we can expect that it aligns to the New PLD provisions.

On top of damages, the successful party can recover all procedural costs listed in Article 695 of the French Code of Civil Procedure (such as court-appointed experts' fees, witnesses' expenses or services fees) (Article 696 of the French Code of Civil Procedure).

Any other legal costs incurred by a party, such as legal fees, fall under the scope of Article 700 of the French Code of Civil Procedure, which states that the court will order the party bearing the court costs, or failing that the losing party, to pay to the other a sum determined by the court corresponding to the costs incurred that are not included in the procedural costs. The losing party will never have to reimburse the full amount spent by the winning party. The court will assess, on a case-by-case basis, what amount it would be fair to grant, taking into account equity or the economic position of the paying party and the amount of damages granted.

5. When is a product defective? What must be shown in order to prove defect?

Pursuant to Article 1245-3 of the French Civil Code, a product is defective when it does not offer the level of safety that a person could legitimately expect.

Various factors must be taken into account when assessing the defect, such as the presentation of the product, its reasonable use and the date on which it was placed on the market. Product presentation refers to the information provided by the manufacturer or supplier about the product. The lack of safety may therefore result from insufficient information on the potential hazards of the product, without it necessarily being affected by an internal defect (e.g., French Supreme Court, 9 December 2020, case no. 19-17.724). The New PLD provides for a list of nine circumstances to notably take into account

when assessing the defectiveness of a product, such as the presentation and the characteristics of the product, the specific needs of the group of users for whose use of the product is intended or the reasonably foreseeable use of the product (Article 7). For digital and connected parts, the effect on the product of any ability to continue to learn or acquire new features after it is placed on the market or put into service shall also be taken into account to assess its defectiveness.

Article 1245-9 of the French Civil Code provides that there can be a defect even if the product was manufactured in compliance with applicable standards or was granted an authorisation to be placed on the market by the competent authorities. The New PLD now specifies that non-compliance with applicable safety requirements, including cybersecurity requirements, shall be a relevant factor in assessing the defectiveness of the product (Article 7 (f)).

6. Which party bears the burden of proof? Can it be reversed?

Under Article 1245-8 of the French Civil Code, the burden of proof lies with the claimant who must prove: the damage, the defect, and the causation between the damage and the defect.

This being said, in practice, French courts tend to shift the burden of proof onto the manufacturer. The latter often must demonstrate, when it cannot prove a flagrant misuse of the product by the claimant, that its product is compliant with the relevant regulations and safe in order to answer the claimant's claim. For instance, French case law has held that the existence of a defect could be presumed based on serious, precise and concordant evidence (French Supreme Court, 21 October 2020, case no. 19-18.689) This is coherent with the CJEU Sanofi case law (CJEU, 21 June 2017, case no. C-621/15). Article 10 of the New PLD adds several new presumptions that will be soon transposed into French law. The New PLD notably creates a presumption following which the defectiveness of a the product or the causal link is presumed when : "the claimant faces excessive difficulties, in particular due to technical or scientific complexity, in proving the defectiveness of the product or the causal link between its defectiveness and the damage, or both" or where "the claimant demonstrates that it is likely that the product is defective or that there is a causal link between the defectiveness of the product and the damage, or both".

These new presumptions can be reversed by the defendant.

The burden of proof also lies with the manufacturer for mass-produced products. If one piece of a batch is alleged to be defective, the manufacturer must prove the absence of serial defect. This is very important when looking at case law such as the Boston Scientific case, which gave rise to a judgment by the Court of Justice of the European Union on 5 March 2015 (Cases C-503/13 and C-504/13, Boston Scientific Medizintechnik GmbH v AOK Sachsen-Anhalt and Others). Interpreting Article 6 of Directive 85/374/EEC of 25 July 1985 on liability for defective products, the Court ruled in particular that where products belonging to the same production series have a potential defect, it is fair to classify all products in that production series as defective without the need to establish that any specific product is actually defective. In that regard, we note that Article 7.2 (g) of the New PLD which provides that "any recall of the product or any other relevant intervention relating to product safety by a competent authority or by an economic operator" is a circumstance to take into account to assess the defectiveness of a product.

More generally, in most product liability cases giving rise to preliminary expert proceedings, whereby a court-appointed expert tries to determine the origin of the damage, manufacturers tend to make greater effort to demonstrate the lack of defect, in particular by commissioning tests, filing technical documents and providing explanations. These efforts are necessary as French courts tend to be favourable to claimants by giving credit to evidence that do not prove adequate causal link or equivalence of causes (the two theories of causation co-existing in French law), but which are in fact presumptions. However, manufacturers can rely on an established line of case law according to which the mere involvement of a product in the occurrence of damage is not sufficient to establish its defect within the meaning of Article 1245-3 of the French Civil Code.

In addition to the introduction of presumptions facilitating the burden of proof for claimants, the New PLD has drastically modified the burden of proof by introducing an EU type discovery under which manufacturers are required to "disclose relevant evidence" in their possession, and present such evidence "in an easily accessible and comprehensible manner" (Article 9). Where manufacturers do not comply with this new obligation to disclose relevant evidence, the New PLD provides that "the defectiveness of the product shall be presumed" (Article 10). Most product liability cases in France require expert proceedings. Therefore, the coexistence of such proceedings with the new discovery will be something to monitor.

Failing to comply with the discovery request has

consequences for the defendant as it creates a presumption of defectiveness of the product.

7. What factors might the court consider when assessing whether a product is defective? To what extent might the court account for a breach of regulatory duty, such as a breach of a product safety regulation?

French courts consider a product defective when it does not offer the safety that can legitimately be expected of the product. Given this broad conception of the defect, the presentation of the product, its reasonable use, the date of its placing on the market, as well as internal factors will be looked at to assess whether a product is defective.

A breach of any regulation is systematically considered as a defect of the product. For example, in the Monsanto case (French Supreme Court, 21 October 2020, case no. 19-18.689), the absence of a regulatory information on the label of a product was considered by the French Supreme Court as a defect. As specified in Q. 5, the New PLD provides for a list of circumstances to notably take into account to determine whether a product is defective or not (Article 7 (f)).

8. Who can be held liable for damage caused by a defective product? If there is more than one entity liable, how is liability apportioned?

Pursuant to Article 1245-5 of the French Civil Code, liability primarily lies with the manufacturer of the finished product, the manufacturer of a raw material, or the manufacturer of a component of the finished product, depending on which part is alleged to be defective. Can also be considered as a manufacturer any person who introduces itself as a manufacturer by affixing its name, trademark or brand or other distinctive sign on the product or as the person or entity who imports the product into the European Union with a view to selling, leasing with or without a promise to sell, or any other form of distribution.

If the manufacturer is unknown, the seller, the lessor or any other professional supplier shall be held liable for the product defect, under the same conditions as the manufacturer but they are not liable if they identify their own supplier or the manufacturer. If a judgment is handed down against them, they may bring a claim against the manufacturer for reimbursement (Article 1245-6 of the French Civil Code).

In the event of damage caused by a defect in a product incorporated into another, the manufacturer of the component part and the manufacturer of the finished product could be held jointly and severally liable.

The New PLD should not drastically modify this repartition of liability between the manufacturer and other entities. In any case, the manufacturer will always be liable for the defect of its products (Article 12.1). Nevertheless, the new Directive clarifies that other economic operators may be jointly and severally liable with the manufacturer or with each other where the manufacturer is not established in the EU (Article 8.1 (c)). Indeed, the New PLD ensures that there is always a liable economic operator in the EU for the defective product. For instance, where neither the manufacturer nor the importer of the product is established in the EU, claimants will be able to act against the distributor or the online platform provider who made the product available on the EU market (Article 8.3 and 4). While under current French law (Article 1245-6), distributors and online platform providers could avoid liability by identifying the manufacturer or the importer of the product.

9. What defences are available?

France's implementation of the European directive on liability for defective products (85/374/EEC) into Article 1245-10 of the French Civil Code allows for five defences:

- the product was not placed on the market,
- the defect did not exist when the product was placed on the market or the defect arose afterwards,
- the product was not intended for sale or distribution,
- the state of technical or scientific knowledge at the time the product was placed on the market did not allow the existence of the defect to be detected (development risk defence),
- the defect is due to the product's compliance with mandatory regulatory or legislative requirements.

Regarding the development risk defence, the French Supreme Court applied it for the first time on 5 May 2021 in a case involving the presence of a dangerous bacteria in a cheese, which does not normally contain it (French Supreme Court, case no. 19-25.102).

Other defences are also available, in particular when the claimant is at fault, or when its negligence contributed to the damage, in which case the manufacturer's liability can be proportionally reduced or excluded (Article 1245-12 of the French Civil Code).

The manufacturer's liability can only be totally excluded if

it can prove that the claimant's fault was unforeseeable and irresistible (as in force majeure cases). This is notably the case if the product is used by the claimant in an abnormal way that the manufacturer could have not reasonably expected. Nonetheless, French courts take a very strict approach to this defence, often considering that manufacturers should always expect the worse and most unusual behaviour from users.

Besides, the manufacturer's liability towards the claimant is not reduced where the act or omission of a third party contributed to the damage (Article 1245-13 of the French Civil Code). However, the manufacturer can bring a claim for damages against the third party whose actions caused the damage.

Finally, the manufacturer of components benefits from additional defences. Indeed, they will not be held liable if they establish that the defect is attributable to the design of the product into which their part has been incorporated or to the instructions given by the manufacturer of that finished product.

These principles remain coherent with the provisions of the New PLD. However, Article 18 of the New PLD allows Member States to derogate to the development risk defence. It will therefore be necessary to monitor how this possibility will be used by each Member States.

10. What is the relevant limitation period(s) for bringing a claim? Does a different limitation period apply to claims brought on behalf of deceased persons?

The criterion of the claimant's knowledge is key when it comes to determining whether a claim is time-barred. Articles 1245-15 and 1245-16 of the French Civil Code provide for a double limitation period for products placed on the market after the entry into force of the law dated 19 May 1998 which implements the European directive on liability for defective products (85/374/EEC): the claim must be brought within three years from the date on which the claimant was aware or ought to have been aware of the defect, the damage and the identity of the manufacturer, and in the absence of a fault of the manufacturer, no action can be launched more than ten years after the product was placed on the market.

Regarding personal injuries, the date of knowledge of the damage is the date on which such damage was stabilised. Therefore, for progressive pathologies or injuries which cannot be stabilised, there cannot be any knowledge of the damage, and the limitation period cannot start to run (French Supreme Court, 5 July 2023,

case no. 22-18.914).

However, the new EU Product Liability Directive provides that for such progressive personal injuries no action can be launched more than 25 years after the product was placed on the market.

11. To what extent can liability be excluded, if at all?

Liability may be reduced or excluded depending on the facts of the case: if the damage was caused jointly by a defect in the product and by a fault of the claimant, or the fault of a third party under the claimant's responsibility, such as minor children or employees or exclusively by a fault of the claimant or the person under its responsibility. The manufacturer's liability can only be totally excluded if the latter can prove that the claimant's fault was unforeseeable and irresistible (as in force majeure cases). It is however not possible to limit or exclude liability for the acts of third parties who jointly caused the damage but who are not related to the claimant. However, the manufacturer can bring a claim for damages against the third party whose actions caused the damage (Articles 1245-11 and 1245-12 of the French Civil Code).

It should also be noted that clauses intended to exclude or limit liability for defective products are prohibited. However, for damage caused to goods that are not used by the victim primarily for their own private use or consumption, clauses stipulated between professionals are valid (Article 1245-14 of the French Civil Code). Such exception does not appear in the New PLD, which provides that: "Member States shall ensure that the liability of an economic operator pursuant to this Directive is not, in relation to the injured person, limited or excluded by a contractual provision or by national law." (Article 15).

12. Are there any limitations on the territorial scope of claims brought under a strict liability statutory regime?

In civil matters, such as product liability cases, both national and EU laws make the defendant's domicile in the French territory the primary criterion for the jurisdiction of French courts (Article 42 of the French Code of Civil Procedure). This principle applies equally to domestic and to cross-border cases, provided that no applicable provision or jurisdiction clause agreed upon between the contracting parties precludes it.

The jurisdiction of the French Courts may also result from the location of the claimant's domicile within the French territory. Article R. 631-3 of the French Consumer Code allows the consumer to bring an action either before the court of the place where they resided at the time of the conclusion of the contract, or the court of the place where they resided at the time of the event giving rise to the damage.

Similarly, Article 18 of EU Regulation 1215/2012 states that in matters relating to contracts concluded by consumers, the consumer may bring proceeding against the other party "either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts of the place where the consumer is domiciled".

13. What does a claimant need to prove to successfully bring a claim in negligence?

Claimants may bring claims on the grounds of fault, including negligence (Articles 1240 and 1241 of the French Civil Code), or on the grounds of the custody of a "thing" (any type of product) (Article 1242 para. 1).

In cases of fault or negligence, the claimant must prove: that he or she has suffered an injury that may be compensated, that the defendant engaged in either negligence or other intentional tortious conduct, and that there is a causal link between the damage and either the negligence or intentional tortious conduct.

In cases involving damage because of the custody of a product, the claimant must not prove a fault or negligence as it falls under a strict liability regime. The claimant must prove that there is an injury that may be compensated, a thing (not subject to another specific regime), a damage caused by the thing either in movement or in an abnormal state and that the thing was in the custody of someone. A thing is considered to be in a party's custody when he or she has the use, direction or control of it.

14. In what circumstances might a claimant bring a claim in negligence?

A claimant may decide to file a claim on the grounds of tort if the conditions for strict liability or contract liability are not met or if the statute of limitation associated with these grounds has expired. Also, there are less defences available to the manufacturer under tort/negligence than under the strict liability regime.

15. What remedies are available? Are punitive damages available?

The principle under French law is that the claimant must be fully compensated, meaning that all the damage shall be compensated, but no more than the damage. This explains why there are no punitive damages in France.

Damages awarded in product liability disputes generally cover economic damages but can also be extended to non-economic damages, such as moral damages. In the case of personal injuries, the claimant is entitled to claim for a wide range of damages as set out in medico-legal rating scales (e.g., see the so-called "Mornet Report"), which encompass pecuniary losses before and after stabilisation, functional impairment, pain and suffering, aesthetic damage, etc.

16. If there are multiple tortfeasors, how is liability apportioned? Can a claimant bring contribution proceedings?

If there are multiple tortfeasors, they may all be held liable. Joint and several liability is allowed if it is provided by law or contract. The claimant can sue any of the tortfeasors, whether only some of them or all of them. Once the claimant has been compensated, contribution proceedings between the tortfeasors may be brought independently.

17. Are there any defences available?

With regard to negligence or intentional tortious conduct, the following defences are available: force majeure (an extraneous event that was unforeseeable and insurmountable), an intervening act of a third party, or the fault or misconduct of the claimant. In the case of a damage linked to the custody of a thing, the owner of the thing is presumed to have control over it. It is however possible to demonstrate that control was transferred to someone else at the time of the damage.

18. What is the relevant limitation period(s) for bringing a claim?

Claimants may bring a claim within five years from the date that the claimant knew or ought to have known that he or she had a claim (Article 2224 of the French Civil Code). However, the limitation period is extended to ten years for claims related to personal injury from the date of stabilisation (Article 2226) or damage caused to the environment from the date the claimant knew or ought to

have known that he or she had a claim (Article 2226-1).

19. To what extent can liability be excluded, if at all?

Liability may be excluded in the following circumstances: force majeure (an extraneous event that was unforeseeable and insurmountable), an intervening act by a third party, or the fault of the claimant. In cases where the claimant committed a fault, it may lead to either a full exclusion or partial exclusion of liability.

20. Do the laws governing contractual liability provide for any implied terms that could impose liability where the product that is the subject of the contract is defective or does not comply with the terms of sale?

Yes, subsequent purchasers or owners of the product may seek liability on either the basis of breach of contract or the statutory warranty against hidden defects.

In order to bring a claim for breach of contract, the claimant must demonstrate: a breach of contract, a compensable damage, and a causal link between the breach and the damage. Delivering a product that does not comply with the specifications of the contract is generally considered to be a breach of contract under French law.

For claims under the statutory warranty against hidden defects, the buyer must prove: that (i) the defect was unknown at the time of sale, and that (ii) the defect either renders the product unfit for its intended use or limits its usefulness to such an extent that the buyer would not have made the purchase for the same price in similar circumstances.

For consumers, there is an additional legal warranty of conformity (Articles L. 217-3 and seq. of the French Consumer Code). This warranty protects consumers during two years from the delivery of the good. In case of non-conformity, consumers may request that the goods be repaired or replaced. Alternatively, they may also claim for the price to be reduced or for a full reimbursement (Article L. 217-8).

21. What remedies are available, and from whom?

Under contractual liability, a party may be forced to perform the contract or the contract can be declared null

and void, depending on the ground put forward by the claimant. A third party to the contract can also seek for damages under specific conditions. As for damages, please see answer to question 22.

22. What damages are available to consumers and businesses in the event of a contractual breach? Are punitive damages available?

The principle in French law is that the claimant must be fully compensated, meaning that the entire damage must be compensated, but only the damage. This explains why there are no punitive damages in France.

The damages awarded generally cover economic damages but can also be extended to non-economic damages such as moral damages. In the case of personal injuries, the claimant is entitled to claim for a wide range of damages as set out in medico-legal rating scales (e.g., see the so-called "Mornet Reference"), which encompass pecuniary losses before and after stabilisation, functional impairment, pain and suffering, aesthetic damage, etc.

23. To what extent can liability be excluded, if at all?

Contractual liability may be excluded if the defendant can prove: force majeure (an extraneous event that was unforeseeable and insurmountable), an intervening act of a third party, or a contributory negligence or fault of the claimant. In cases of contributory negligence or fault by the claimant, liability may be partially or fully excluded. However, for the statutory warranty against hidden defects, French courts make it more challenging to exclude or limit liability.

24. Are there any defences available?

Defences differ on the cause of action chosen by the claimant.

With regards to a breach of contract, the following defences are available to manufacturers: force majeure (an extraneous event that was unforeseeable and insurmountable); and/or a fault committed by the claimant or a third party or contributory negligence that could result in shared liability. Contractual liability is time-barred five years after the date on which the claimant knew or ought reasonably to have known of the facts on which the action is based.

For the statutory warranty against hidden defects, the manufacturer cannot claim that he or she was not aware

of the existence of the defect. The manufacturer can escape liability by demonstrating that the defect was apparent at the time of the sale. However, the definition of an apparent defect depends on the professional knowledge of the purchaser of the product and case-law specifies that buyers do not have to carry out a thorough verification at the time of delivery. Actions under this regime must be brought within two years of the discovery of the defect, but no later than twenty years after the sale.

25. Please summarise the rules governing the disclosure of documents in product liability claims and outline the types of documents that are typically disclosed.

Until now, there were no procedures for disclosure/discovery of documents under French civil law. However, the New PLD added some (see Q. 6) but only in the scope of the strict product liability regime. We shall wait for transposition of the New PLD within French law to see out it will apply in France. Outside this scope, parties are free to select the documents they wish to disclose during the proceedings.

They can, however, request the production of evidence that has not been disclosed by the other party or that is detained by a third party, but only under very strict conditions. Parties can indeed request preliminary inquiries prior to the proceedings on the merits, "if there is a legitimate reason to preserve or to establish [...] evidence of facts upon which the outcome of the dispute depends" (Article 145 of the French Code of Civil Procedure). If the conditions are met, the court may order investigative measures to gather evidence. The requesting party must properly identify the document sought as so-called "fishing expeditions" are not allowed (Articles 138 and 139 of the French Code of Civil Procedure).

In product liability cases in France, expert proceedings in which the Court-appointed expert will request parties to disclose documents can be launched. Parties have an obligation to disclose the information or documents requested by the Court-appointed expert (Article 275 of the French Code of Civil Procedure). Where a party to the expert proceedings does not comply with a request to disclose information or documents, the expert may turn to the Court to force such disclosure.

26. How are product liability claims usually funded? Is third party litigation funding permitted

in your jurisdiction and, if so, is it regulated?

Product liability claims are generally funded by the clients. Under the lawyer's rules of professional conduct, success fees that equate to all legal fees are prohibited. However, it is possible for the client to agree to a success fee in addition to the regular legal fees depending on the services provided or the outcome of the case. Third-party funding is not prohibited in France, but it is not a common practice yet. For lawyers, the main difficulty relates to professional responsibility rules, which require that payment only comes from the client and that confidential information about the case may not be shared by the lawyer to anyone other than the client.

27. Can a successful party recover its costs from a losing party? Can lawyers charge a percentage uplift on their costs?

The successful party can recover all procedural costs listed in Article 695 of the French Code of Civil Procedure (such as court-appointed experts' fees, witnesses' expenses or services fees) (Article 696 of the French Code of Civil Procedure).

Any other legal costs incurred by a party, such as legal fees, fall under the scope of Article 700 of the French Code of Civil Procedure, which states that the court will order the party bearing the court costs, or failing that the losing party, to pay to the other a sum determined by the court corresponding to the costs incurred that are not included in the procedural costs. The losing party will never have to reimburse the full amount spent by the winning party. The court will assess, on a case-by-case basis, what amount it would be fair to grant, taking into account equity or the economic position of the paying party and the amount of damages granted.

28. Can product liability claims be brought by way of a group or class action procedure? If so, please outline the mechanisms available and whether they provide for an 'opt-in' or 'opt-out' procedure. Which mechanism(s) is most commonly used for product liability claims?

France has decided to implement a collective redress mechanism, which focuses on specific sectors and can expand together with the types of issues that may be raised against companies. A "class action" for consumer claims was first created in 2014, together with competition-related class actions ("follow-on actions"), before specific class action schemes were introduced for

discrimination, health, environmental and data privacy related issues. All mechanisms are opt-in actions. In order to bring a group action, at least two individuals placed in a similar situation need to request an approved consumer association or entity to take the case to court and represent the group. Depending on the type of mechanism at stake (consumer or health, for instance), there are specific associations that can launch such claims. The court will first rule on the merits of the case and on the liability of the defendant. If damages are awarded, the non-profit association will be responsible for managing the group, collecting the necessary information, and distributing the individual damages with the court's approval.

Each class action mechanism having its own scope (notably on the claims possible and damages compensable), class actions based on product liability claims could only be open in France under the consumer class action and the health class action schemes. As an example, in 2022, the Paris Civil Court authorized for the first time in France a class action (health class action). In this class action, a medicine has been declared defective as it injured pregnant women and their child when the women took this medicine during pregnancy, knowing that the Court considered that the manufacturer did not adequately inform on this risk. An appeal has been lodged against this ruling, which is therefore not definitive.

There was a pending reform which is being discussed, aiming at opening up the types of claims that can be brought through collective redress and the types of claimants for such claims. In February 2024, the reform went through a second reading in the French National Assembly (i.e. the lower house of the bicameral French Parliament) but after the dissolution of the French National Assembly the bill has been abandoned.

29. Please provide details of any new significant product liability cases in your jurisdiction in the last 12 months.

Recent ruling was rendered based on liability on the grounds of the custody of a "thing" (Article 1242 of the French Civil Code). It provides that a "thing" can be intangible, and a person can have custody over something that is intangible. In this case, the employer has custody over toxic smokes within its company which intoxicated its employees (French Supreme Court, 5 September 2024, case no. 21-23.442). This is coherent with the broad definition of "product" under the product liability regime.

30. Are there any policy proposals and/or regulatory and legal developments that could impact the current product liability framework, particularly given the advancements in new technologies and increasing focus on the circular economy?

The New PLD was adopted on 23 October 2024. This new Directive repeals Directive 85/374/EEC from 9 December 2026. The previous Directive will continue to apply to products made available on the EU market before 9 December 2026. Member States have until this date to transpose the Directive into national law.

The GPSR applies since 13 December 2024. This Regulation aims to provide minimum safety standards for all consumers products made available in the EU market and which are not governed by a more specific legislation. Violation of those standard should amount to defect of the product under the strict product liability regime.

Regulation (EU) 2024/1689 of 13 June 2024 laying down harmonised rules on artificial intelligence will be in force from 2 August 2026. This Regulation aims at ensuring the safety of AI products and provide for transparency obligations and stricter requirements, in particular for AI products which are identified as high-risk, in order to be made available on the EU market. AI products fall under the strict product liability regime and the standards set out in the legislation aim at reducing the risk of defect.

Regulation (EU) 2022/2065 of 19 October 2022, known as the Digital Services Act, is in force since 17 February 2024. This Regulation provides for transparency obligations on marketplaces and online platforms and aims at increasing their cooperation to ensure the safety of products in the EU market. For instance, marketplaces and online platforms must adopt measures to counter illegal goods and services, such as measures for consumers to flag illegal products; they have to ensure the traceability of business users (i.e., sellers); etc.

In France, since January 2025, in application of Law no. 2020-105 of 10 February 2020, all companies with an annual turnover above €10M and putting at least 10.000 units on the French market must inform consumers about the environmental qualities and characteristics of the product (Article L. 541-9-1 of the French Environmental Code). Furthermore, the durability index has started to replace the reparability index on some products (i.e. washing machines and TVs). This index is calculated based on two main criterions: the reparability of the product (including the availability of spare parts, the fact

that the product is easy to dismantle; etc.) and its durability over time (including the fact that it is easy to maintain and repair, the absence of planned obsolescence: the existence of commercial warranty, etc.). The reparability index remains applicable to other products, including phones, laptops, lawnmowers, dishwashers, vacuums and high-pressure cleaners.

The French National Assembly has adopted a law prohibiting “eternal pollutants” (i.e. per- and polyfluoroalkylated substances) on 20 February 2025. The prohibition shall start from 2026 for cosmetic products, textiles (clothes) and shoes, and ski waxes. From 2030, the prohibition should be extended to all textile products. Furthermore, this law provides for the obligation to control the level of those eternal pollutants in clean drinkable water.

31. What trends are likely to impact upon product liability litigation in the future?

The rise in regulations relating to the environmental impact of products and manufacturing process is certainly affecting product liability litigation. We observe an increase in the number of investigations carried out by the French market surveillance authority into environmental-related claims, product reparability, etc. with the aim of characterizing misleading commercial practices or planned obsolescence, which are criminal offences in France.

The exponential growth and influence of artificial intelligence will also have an impact on product liability litigation, especially as the New PLD addresses the issue of damage stemming from AI systems, and as a specific Regulation on AI has been adopted.

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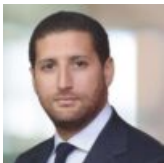
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