TAKING EU PRODUCT LIABILITY LAW SERIOUSLY: HOW CAN THE PRODUCT LIABILITY DIRECTIVE EFFECTIVELY CONTRIBUTE TO CONSUMER PROTECTION?

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The 1985 Product Liability Directive (PLD) is currently being revised, with a view to adapting European Union product liability rules to the digital economy and new technologies. The ongoing discussion focuses on technical issues and apparently takes it for granted that the PLD as it stands adequately achieves the policy goals that were initially assigned to it, namely the establishment of a common market and consumer protection. However, a closer analysis shows that harmonising product liability is not needed to create a truly common market and, more importantly, that the PLD is not an effective instrument for consumer protection. A particular cause for concern is that almost no cross- border claims seem to be brought under the Directive, meaning that those injured by defective products are in effect left without a remedy when the producer is not located in the same country as they are. If the new PLD is to be more than mere poster legislation and to contribute effectively to consumer protection, more drastic changes to the current regime are needed than those that are currently being contemplated. The range of potential defendants should be broadened to include suppliers and online marketing platforms as a matter of principle, and the development risk defence as well as the application of a long-stop period in case of bodily injuries should be reconsidered.