

CHAMBERS GLOBAL PRACTICE GUIDES

Product Liability & Safety 2025

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Switzerland: Law and Practice & Trends and Developments
Annemarie Lagger and Amina Chammah
Walder Wyss Ltd



SWITZERLAND



Law and Practice

Contributed by:

Annemarie Lagger and Amina Chamamah
Walder Wyss Ltd

Contents

1. Product Safety p.4

- 1.1 Product Safety Legal Framework p.4
- 1.2 Regulatory Authorities for Product Safety p.4
- 1.3 Obligations to Commence Corrective Action p.5
- 1.4 Obligations to Notify Regulatory Authorities p.5
- 1.5 Penalties for Breach of Product Safety Obligations p.6

2. Product Liability p.6

- 2.1 Product Liability Causes of Action and Sources of Law p.6
- 2.2 Standing to Bring Product Liability Claims p.7
- 2.3 Time Limits for Product Liability Claims p.8
- 2.4 Jurisdictional Requirements for Product Liability Claims p.8
- 2.5 Pre-Action Procedures and Requirements for Product Liability Claims p.9
- 2.6 Rules for Preservation of Evidence in Product Liability Claims p.10
- 2.7 Rules for Disclosure of Documents in Product Liability Cases p.10
- 2.8 Rules for Expert Evidence in Product Liability Cases p.11
- 2.9 Burden of Proof in Product Liability Cases p.11
- 2.10 Courts in Which Product Liability Claims Are Brought p.12
- 2.11 Appeal Mechanisms for Product Liability Claims p.13
- 2.12 Defences to Product Liability Claims p.13
- 2.13 The Impact of Regulatory Compliance on Product Liability Claims p.14
- 2.14 Rules for Payment of Costs in Product Liability Claims p.14
- 2.15 Available Funding in Product Liability Claims p.14
- 2.16 Existence of Class Actions, Representative Proceedings or Co-Ordinated Proceedings in Product Liability Claims p.15
- 2.17 Summary of Significant Recent Product Liability Claims p.16

3. Recent Policy Changes and Outlook p.17

- 3.1 Trends in Product Liability and Product Safety Policy p.17
- 3.2 Future Policy in Product Liability and Product Safety p.19

Walder Wyss Ltd is a Swiss commercial law firm with offices in Zurich, Geneva, Basel, Berne, Lausanne and Lugano. Its 300 legal experts specialise in corporate and commercial law, banking and finance law, intellectual property and competition law, industrial know-how, public and administrative law, dispute resolution and tax law. The firm's clients include na-

tional and international companies, publicly held corporations and family businesses as well as public law institutions and private clients. With regard to product regulatory and product liability matters, its experts advise and represent clients in administrative, civil and criminal proceedings, contract negotiations and regulatory compliance at all its locations.

Authors



Annemarie Lagger is managing associate in Walder Wyss's regulated markets, competition, technology and IP team. She provides advice in the legal fields of life sciences (including

foodstuff) and information technology, specialising in advisory work, including contract drafting in all phases of the supply chain, and litigation. Annemarie advises and supports clients with their product compliance, product safety and product liability issues as well as in matters of market access and market surveillance. She represents clients before all Swiss cantonal and federal courts and administrative bodies (including Swissmedic and the Federal Office of Public Health).



Amina Chammah is an associate in Walder Wyss's regulated markets team. She advises on product compliance throughout the entire product life cycle, including market access

and market surveillance, as well as product liability, intellectual property, information technology and data protection. Amina is a member of the Braunschweig Bar Association (Germany) and listed on the list of attorneys pursuant to Article 28 BGFA (EU/EFTA attorneys) of the canton Zurich, Switzerland.

Walder Wyss Ltd

Seefeldstrasse 123
8034 Zurich
Switzerland

Tel: +41 58 658 51 93
Fax: +41 58 658 59 59
Email: annemarie.lagger@walderwyss.com
Web: www.walderwyss.com/en

walderwyss

1. Product Safety

1.1 Product Safety Legal Framework

The Swiss product safety legal framework consists of regulations that fall into two broad categories: sector-specific and horizontal framing regulations.

Sector-Specific Federal Regulations

These regulations apply to specific product categories and include, for instance, the following.

- The [Federal Act on Foodstuffs and Utility Articles](#) and implementing ordinances, such as:
 - (a) the [Federal Council's Ordinance on Foodstuffs and Utility Articles](#);
 - (b) the [Federal Department of Home Affairs' Ordinance on the Safety of Toys](#); or
 - (c) the [Federal Department of Home Affairs' Ordinance on Cosmetic Products](#).
- The [Federal Act on Medicinal Products and Medical Devices](#) and implementing ordinances, such as the [Federal Council's Ordinance on Medical Devices](#).
- The [Federal Council's Ordinance on Machines](#).
- The [Federal Act on Electrical Light and Heavy Current Installations](#) and implementing ordinances, such as:
 - (a) the [Federal Council's Ordinance on Electrical Low Current Installations](#); or
 - (b) the [Federal Council's Ordinance on Electromagnetic Compatibility](#).
- The [Federal Act on Construction Products](#).

Horizontal Framing Regulations

These are subsidiary, applicable and cross-sectoral to all products, and include the following.

- The [Federal Product Safety Act](#) and the implementing [Federal Council's Ordinance on Product Safety](#) – these regulations are

applicable to the extent that a sector-specific regulation does not address product safety (eg, regarding post-market surveillance or competencies of the enforcement authorities).

- The [Federal Act on Technical Barriers to Trade](#) and the [Federal Council's Ordinance on the Placing of Products on the Market according to Foreign Regulations](#) – these regulations shall ensure free trade between Switzerland and its main trading partners by obliging the Swiss legislators to align product regulations with those of such partners, in particular with the European Union.
- The [Federal Act on Product Liability](#), which provides for the strict liability (ie, not depending on the producer's fault) of a producer for its defective products.

1.2 Regulatory Authorities for Product Safety

The enforcement of product safety regulation in Switzerland is generally sector specific. This means that the enforcement authorities that are responsible for a specific product sector are also authorised to enforce the specific product safety regulations for that sector. Depending on the sectoral law, the responsibility for enforcement lies with either the cantons or the federal government. The main regulators are the following.

- The State Secretariat for Economic Affairs (SECO) co-ordinates the enforcement of Swiss product safety legislation in agreement with the competent sector-specific enforcement bodies and is, additionally, the surveying regulatory enforcement authority in several product sectors; the SECO also operates a product safety reporting and information centre together with the Federal Consumer Affairs Bureau (FCAB).
- The Federal Inspectorate for Heavy Current Installations (ESTI) is responsible for the tech-

nical supervision and inspection of electrical installations and electronic devices.

- The Swiss Council for Accident Prevention (BFU) is competent for personal protective equipment, specifically with regard to traffic, sport and household needs, and for machines, though with regard to recreational use only.
- The Swiss Accident Insurance Institution (SUVA) is the competent enforcement body for personal protective equipment and machines, with regard to operational use.
- The Swiss Agency for Therapeutic Products (Swissmedic) is responsible for the market surveillance of therapeutic products and medical devices.
- The respective cantonal bodies – eg, cantonal inspectorates/laboratories – are generally competent to enforce the Swiss Foodstuffs and Utility Articles legislation (including with regard to toys, cosmetic products or food contact materials).
- The respective cantonal bodies – eg, cantonal inspectorates/laboratories – are generally competent to enforce Swiss chemical legislation.

1.3 Obligations to Commence Corrective Action

Generally, for consumer products (ie, products that are intended for consumers or likely to be used by consumers under reasonably foreseeable conditions), the Swiss Product Safety Act obliges the producer or any other distributor to take adequate measures (ie, corrective actions) in the course of its business to prevent potential dangers arising from those products.

A corrective action is deemed “adequate” if the disadvantages that arise for the producer or other distributor are not considered completely disproportionate in comparison with the advantag-

es resulting for the affected consumers. Potential measures include the issuing of warnings, a sales stop, the withdrawal from the market or the recall of the product. The law does not provide for any fixed formal requirements. Therefore, any corrective action may be chosen if it ultimately serves to avert the danger posed by the product. In practice, the competent enforcement bodies regularly require a producer/importer to issue a warning throughout the supply chain as well as to consumers (provided that the product has already reached consumers). Depending on the actual safety risk, the enforcement body may also require that the warning is made public, eg, on the producer’s website and/or on the website of the Swiss Federal Consumer Affairs Bureau (for information on the role of the Bureau, please refer to **1.2 Regulatory Authorities for Product Safety**).

1.4 Obligations to Notify Regulatory Authorities

Switzerland follows a risk-based approach regarding the obligation to notify the regulatory authorities. Generally, the duty to notify the authorities in respect of a product safety issue is triggered – for consumer products – if a producer or any other person placing a product on the market knows or ought to know that the product in question presents a risk to the safety or health of users or third parties (Article 8, paragraph 5, Swiss Product Safety Act). The respective provision in the Product Safety Act aligns with the producer’s or other distributor’s obligation to notify the authority, as previously stipulated in Article 5, paragraph 3 of the [EU General Product Safety Directive \(2001/95/EC\)](#). However, [Regulation \(EU\) 2023/988 on General Product Safety](#), which replaced the former EU General Product Safety Directive as of 13 December 2024, introduces the new wording “considers or has reason to believe” (Article 9, paragraph 8; Article 11,

paragraph 8; and Article 12, paragraph 4). The notification obligation of the Product Safety Act applies where the specific sectoral law does not provide for any separate notification obligation.

The notification must be made immediately. According to an FAQ guide published by the State Secretariat for Economic Affairs (SECO), “*immediately*” means no later than one to two days, depending on the associated safety risk. Swiss legal scholars advocate for a longer period of up to ten days in line with the European Commission’s Guidelines for the Notification of Dangerous Consumer Products to the Competent Authorities of the Member States by Producers and Distributors, in accordance with Article 5, paragraph 3 of Directive 2001/95/EC.

The Swiss Product Safety Act defines the minimum content of the notification. There are no legal requirements as to the form of the notification. However, some regulatory bodies provide for voluntary notification templates on their websites but emphasise that the completion of the form should not delay the notification.

1.5 Penalties for Breach of Product Safety Obligations

Generally, any person who fails to notify the authorities in a timely manner of a dangerous or potentially dangerous consumer product, as required under Article 8, paragraph 5 of the Swiss Product Safety Act, or who breaches the duty to collaborate with the enforcement authorities (Article 11, Swiss Product Safety Act) is liable for a fine of up to CHF40,000 (in the case of wilfulness) or CHF20,000 (in the case of negligence). Further, any person who intentionally places a product on the market that does not meet the requirements of Article 3, paragraphs 1 and 2 of the Swiss Product Safety Act (general safety requirements) and thereby endangers the safety

or health of users or third parties shall be liable to a custodial sentence not exceeding one year or to a monetary penalty (if the offender acts on a commercial basis, a custodial sentence up to three years or a monetary penalty). Further sanctions may apply in cases of negligence, false certifications, the unauthorised issuance of declarations of conformity or the use of labelling or warning and safety instructions that do not correspond to the specific hazard potential of a product. Sectoral law, however, sometimes provides for different criminal liability. In any case, the law sets forth that the person within the producer’s organisation who is responsible for the offence should be punished. The principal is only punished if they wilfully or negligently, in breach of a legal obligation, failed to prevent the offence.

There are no publicly available examples of companies being prosecuted or fined for breaching these obligations. However, that does not mean that no such cases exist. Under Swiss criminal prosecution law, the courts may generally only publish a judgment if the publication is in the public’s interest or in the interest of the injured party.

2. Product Liability

2.1 Product Liability Causes of Action and Sources of Law

Depending on the respondent of the action (eg, a producer, distributor or retailer), an injured party would likely base its claim for damages on the following grounds.

Against the Producer

The Federal Product Liability Act provides for the non-contractual strict liability (ie, not depending on fault) of a producer for damages if a defective

product leads to the death or injury of a person or the damaging or destruction of property. “*Producer*” means the person who has manufactured the end product, a basic material or a partial product; any person who claims to be the producer by affixing its name, trade mark or other distinctive sign to the product (“*quasi-producer*”) as well as any person importing the product for distribution purposes to Switzerland. The liability is only triggered if the product is deemed defective – ie, if it does not offer the safety that one may expect considering all circumstances (such as the get-up or overall appearance of the product, the expected use or the time of market placement). The Federal Product Liability Act, however, provides for several defences (please refer to **2.12 Defences to Product Liability Claims** for further details).

In addition, the injured party could base a damages claim on contract (if the producer is the seller and the injured party is the buyer) or general tort law. The latter, however, would require proof of fault. Given this obstacle, a claimant would generally invoke the respective tort claim only on a subsidiary basis.

Against the Seller

The Swiss Code of Obligations provides for the strict contractual liability of a seller for the direct damage suffered by a buyer due to a defective object purchased from that seller. “*Direct damage*” would also include any personal damage or damage to property which was directly caused (ie, without any additional causal link) by the product’s defect. If the seller were also the producer of the defective product, the injured buyer could alternatively base its claim for damages on the Federal Product Liability Act as discussed above.

2.2 Standing to Bring Product Liability Claims

In Switzerland, the standing to bring claims for product liability is – such as with any other claim – a matter of substantive law, ie, it depends on the legal basis of a claim. A party has standing to sue if it (at least allegedly) has a substantive claim under a certain law or legal relationship.

In the context of product liability, claims are usually based on either the Federal Product Liability Act, a contract or tort law (as discussed in **2.1 Product Liability Causes of Action and Sources of Law**).

Under the Federal Product Liability Act, any person injured by a defective product or any person suffering property damage due to a defective product may bring a claim against the responsible producer.

For contractual claims, a party to a contract usually has standing to sue if it suffers damage following a violation of the contract by the other party (in the context of product liability, eg, in case of the delivery of a defective product).

Under general tort law, any person who has suffered damage following a civil wrong committed by another person – whether or not the injured party is linked to that person by a legal relationship, such as a contract (eg, as is often the case in product liability matters between a consumer and a producer) – has standing to sue.

Which of these legal bases is the most favourable for an injured party to bring claims related to a product depends largely on the underlying facts of the case. Whenever there is a contractual relationship, an injured party will most probably bring claims under that contract given that, under Swiss law, there is a presumption of fault,

ie, the burden of proof is on the breaching party causing damage, and in sales contracts there is even a strict liability without requirement of fault for direct damage. If there is no such contract – which is usually the case between an injured party and a producer – the injured party would generally try to sue a producer primarily under the Federal Product Liability Act because of its strict liability, whereas under tort law the producer can only be held liable in case of fault.

2.3 Time Limits for Product Liability Claims

The applicable time limit depends on the legal basis that the respective claim is based on. For claims based on the Federal Product Liability Act, the statute of limitations is three years, starting from the date on which the injured person became or should have become aware of the damage, the defect of the product and the identity of the producer (Article 9 of the Federal Product Liability Act).

For claims based on contract law (in the context of product liability, most likely a sales contract), the statute of limitations is two years, starting from the day the defective product was delivered (Article 210, Swiss Code of Obligations).

For claims based on tort law, the Swiss Code of Obligations provides for two different statutes of limitations: a relative and an absolute one (Article 60, Swiss Code of Obligations). The relative limitation period is three years, starting from the date on which the injured person became aware of the damage and the person liable for it. The absolute limitation period is ten years for property damaged and 20 years for personal injury, starting from the date on which the damaging event occurred or ended. This longer limitation period for personal injury under tort law means that a producer may be held liable by an injured

party, even if the limitation period for claims under the Federal Product Liability Act has expired. This absolute limitation period generally runs regardless of whether the injured person has any knowledge of the damage and even if the damage has not yet occurred. However, the European Court of Human Rights (ECHR) recently condemned Switzerland once again for its handling of limitation periods, in light of the lengthy latency period of asbestos-related diseases and the realistic opportunity for victims to recognise the damage. Therefore, it is unclear how a court would handle future cases in which damages only surface after the expiry of the limitation period.

2.4 Jurisdictional Requirements for Product Liability Claims

The [Swiss Civil Procedure Code](#) determines the locally competent court for a dispute in domestic matters, whereas the Swiss Federal Act on Private International Law or the Lugano Convention (applicable in civil and commercial matters involving parties from EU or European Free Trade Association (EFTA) states) establishes the territorial jurisdiction of a Swiss court in international, cross-border disputes.

The rules regarding the place of jurisdiction are largely comparable in both domestic and international cases. As a general rule, proceedings can be initiated in the competent court at the domicile or seat of the respondent (eg, at the seat of the liable producer). Depending on the area of private law concerned, a claimant may also initiate proceedings at another forum, eg, in product liability cases, a consumer would be entitled to bring a claim at its own domicile.

With regard to subject-matter jurisdiction, it can be said that all cantonal courts in Switzerland have jurisdiction in all areas of the law and apply

both cantonal and federal law. There are no specific/specialised courts for product liability claims, which can therefore be brought before any locally competent court.

However, the Swiss Civil Procedure Code grants the cantons the option to establish specialised commercial courts, in which the panel of judges is mixed, ie, composed of regular judges and experts (so-called expert judges) in the economic sector relevant for the case. Four cantons – Zurich, Berne, Aargau and St Gallen – have established such a court, which is part of the cantonal supreme court and serves as a court of first instance for commercial matters. Such commercial courts have subject-matter jurisdiction if:

- a claim concerns the commercial activity of at least one of the parties to the dispute;
- the value in dispute exceeds CHF30,000 or the dispute is not a property dispute;
- the parties to the dispute are registered in the Swiss commercial register or a similar foreign registry; and
- the dispute does not arise from an employment relationship, the Recruitment Act, the Gender Equality Act, or relate to the renting or leasing of residential and commercial premises or to agricultural leases.

Where only the defendant is registered as a legal entity in the commercial register, a claimant can choose to initiate proceedings before either the commercial court or the locally competent ordinary court. If a producer has its registered seat in a canton with a commercial court, an injured party can thus choose to bring its product liability claim before either the commercial court or the ordinary court.

If a claiming party has the possibility to choose where to bring its claims, which court is the most

favourable depends on the underlying facts and on the party's perspective. Commercial courts have the advantage that experts from the relevant sectors are part of the judges' panel, whereas judges of ordinary courts generally do not have expert knowledge in the specific product sector, but their decisions might be more consumer friendly. Another difference to take into consideration is that there is only one legal remedy against decisions rendered by a commercial court, whereas decisions of the ordinary courts can be appealed against twice (see **2.11 Appeal Mechanisms for Product Liability Claims**).

2.5 Pre-Action Procedures and Requirements for Product Liability Claims

Swiss procedural law provides for mandatory reconciliation proceedings. Before initiating the main proceedings, the claimant must submit a reconciliation request to the Conciliation Authority (the so-called justice of the peace), following which the Authority will schedule a conciliation hearing. If no agreement can be reached, the Conciliation Authority will issue an authorisation to proceed (ie, to file a claim before a court), which is valid for three months. If a claim is filed before a court without a valid authorisation to proceed, the court will not decide on the merits but dismiss the case for procedural reasons.

Despite the mandatory nature of the reconciliation proceeding, the Civil Procedure Code provides for a few exceptions, some of which might be relevant in product liability cases. A claimant may unilaterally waive conciliation if the respondent's registered domicile is outside Switzerland. The parties may mutually agree to waive reconciliation if the amount in dispute is at least CHF100,000. In addition, and irrespective of the amount in dispute, the parties may agree to replace the reconciliation procedure with

mediation pursuant to Article 213 of the Swiss Civil Procedure Code.

In addition, and as set out in **2.4 Jurisdictional Requirements for Product Liability Claims**, certain cantons have established commercial courts. If a producer has its registered seat in one of these cantons, an injured party may choose to bring its product liability claim either before the commercial court or the ordinary court, as long as the criteria as set out in **2.4 Jurisdictional Requirements for Product Liability Claims** are met. If a claimant decides to bring a claim before a commercial court, no reconciliation proceedings take place and the claim must be filed directly with the commercial court.

2.6 Rules for Preservation of Evidence in Product Liability Claims

There are no specific rules, under Swiss product liability law or Swiss procedural law, obliging a producer or other distributor to preserve any evidence in product liability cases.

There are, as in many other jurisdictions, general evidentiary risks in not preserving evidence. In a product liability case, the claimant is generally required to prove that the defendant's product is defective, and that the product defect is the cause of their injury or damage to property. Under Swiss product liability law, the defendant (producer or other distributor) has several defences (please refer to **2.12 Defences to Product Liability Claims** for further discussion of these). In this light, a producer or other distributor is well advised to preserve documentation (eg, random samples, technical documentation, consumer feedback, etc) and product samples for every batch so that such evidence can be readily produced if necessary. Furthermore, under some sectoral laws, producers may be

required to preserve the conformity declaration or technical documentation.

2.7 Rules for Disclosure of Documents in Product Liability Cases

There are no specific rules on the taking of evidence in product liability cases, and the Swiss Civil Procedure Code does not provide for any pretrial or discovery mechanisms. Pursuant to the general rules on the taking of evidence in civil procedure, each party must indicate the evidence it wants to rely on in its briefs. To the extent that such evidence is already in its possession, the party must file the evidence together with its briefs. For product liability cases, in particular this holds true for:

- product samples;
- documentary evidence (technical documentation, risk assessment, customer feedback, etc);
- expert opinions; and
- digital or other data.

Court-Ordered Evidence

To the extent that it is the responsibility of the court to order the taking of evidence, parties must submit respective requests together with precise descriptions of the evidence. In particular, this holds true for:

- opinions to be submitted by a court-appointed expert (indication of the questions to be presented);
- inspections to be executed by the court (indication of the subject); and
- witness testimony (indication of the witnesses) – under Swiss law, witnesses will be examined by the court and there are no cross-examinations.

If a party wants to rely on evidence in the possession of the opposing party or a third party (eg, a defective product, purchase receipt or medical reports), it has to precisely identify the evidence and request that the court order that the evidence be provided.

Preventative taking of evidence

If a potential claimant (ie, an injured person) has reason to believe that evidence is at risk, it may request the preventative taking of evidence by the court. This request can be filed at any time during the proceedings and even prior to the commencement of the proceedings.

The preventative taking of evidence is considered an interim measure. The request is usually granted if:

- a specific law or provision allows the preventative taking of evidence;
- the evidence is at risk (which is the case if the evidence may cease to exist or may alter before the ordinary evidentiary proceedings);
or
- there is another interest worthy of protection.

In any case, the requesting party has to credibly demonstrate (but not prove) the grounds on which it bases its request. In the case of imminent harm, the request can be granted *ex parte*.

2.8 Rules for Expert Evidence in Product Liability Cases

The court may seek an opinion from one or more experts at the request of a party or *ex officio*. However, the court will do so only if it considers an expert opinion necessary to prove relevant facts that are disputed by the parties. If such an opinion is sought, it is the court that appoints as well as instructs the experts and submits the relevant questions to them. Prior to this, the parties

are given the opportunity to submit additional questions or to have the questions modified. The court can order that the experts submit their opinion in writing or present it orally (or via electronic means). It may also summon the experts to the hearing to present and explain their written opinion. In that case, the parties will be given the opportunity to ask for explanations or to put additional questions to the expert. However, cross-examination of the expert is not permitted.

Furthermore, the court may put questions to a witness with expert knowledge in order to assess the merits of the case. The expert witness must have special expertise in the subject so that the court can examine the expert witness not only with regard to the merits, but also on its assessment thereof. However, an expert witness cannot replace an expert opinion. In contrast to an expert, the expert witness is not subject to an appointment procedure. Lastly, an expert witness is liable to prosecution only for giving false testimony and not for giving a false expert opinion.

Parties are free to individually commission an expert opinion and to submit it in the proceedings. As opposed to an expert opinion that was produced by a court-appointed expert, the party expert opinion is not considered to be evidence but will only qualify as a party allegation.

2.9 Burden of Proof in Product Liability Cases

As a general rule under Swiss civil law, it is incumbent upon the party who wants to rely on a certain fact to establish and prove this fact. For product liability cases, this means that it is generally the injured person who bears the burden of proof for all facts underlying its claim.

This holds true for all claims (and the respective requirements) based on tort law and on the Federal Product Liability Act. For claims based on a contract there is one deviation from this rule: the burden of proof for fault is reversed. This means that, if all other requirements are met, it is assumed that the defendant was at fault and it will be upon the defendant (ie, the producer) to prove that this was not the case. From a procedural perspective, it may thus be favourable for an injured person to bring a claim based on contract rather than tort law. For claims based on a sales contract, provided that a direct nexus between the damage and the defect of the product can be established, fault is not a requirement at all. The same holds true for claims based on the Federal Product Liability Act.

The Federal Product Liability Act provides, however, for several exceptions to this strict liability (see 2.1 Product Liability Causes of Action and Sources of Law). In accordance with the general rule set out above, it is the producer who bears the burden of proof for any fact it wants to rely on in order to exonerate itself from liability.

As to the relevant standard of proof: the general threshold is full proof, meaning that the court has to be convinced beyond any reasonable doubt. Where this is not possible (eg, because the defective product has been destroyed or disposed of or the amount of damage suffered cannot reasonably be quantified), the courts may apply a less strict standard.

2.10 Courts in Which Product Liability Claims Are Brought

There are no specific or specialised courts for product liability cases in Switzerland. Therefore, such cases generally must be brought before ordinary courts (ie, the competent local court) or – in certain cantons and if the statutory prerequi-

sites are fulfilled (see 2.4 Jurisdictional Requirements for Product Liability Claims) – before the competent commercial court.

Depending on the value in dispute, the proceeding is held in a simplified proceeding (for claims not exceeding CHF30,000) or in an ordinary proceeding (for claims above CHF30,000 or claims without monetary value).

In Switzerland, cases are decided by judges and the exact composition of a bench depends on local, cantonal law. In simplified proceedings, the court is, however, often composed of a single judge (*Einzelrichter*), whereas there are usually three or more judges (*Kollegialgericht*) on the panel in ordinary proceedings.

There is usually no minimum threshold with regard to the damages that can be claimed. If claims are brought under the Swiss Product Liability Act, however, the claimant must bear a deductible of CHF900 in the case of damage to property.

There is no maximum cap on the damages that can be awarded to a claimant. However, a claimant can only be compensated for the damages it actually suffered. In other words, Swiss courts do not award so-called punitive damages that exceed the amount of the actual loss. Swiss law does not allow a damaged party to take monetary advantage (enrichment) from the event of damage. Accordingly, the claimant must prove each individual damaged position (exact amount) and the causal link between the damaging event (in product liability cases, the defective product) and the respective position.

2.11 Appeal Mechanisms for Product Liability Claims

There are no specific rules governing the appeal mechanisms in product liability cases. The general procedural rules provide essentially for two appeal opportunities which are relevant for product liability cases: an initial appeal to the high court of the respective canton, followed by a further appeal to the Swiss Federal Supreme Court.

Appeal to the High Court of the Respective Canton

Final and interim decisions and decisions on interim measures of a court of first instance can be appealed if the amount in dispute is at least CHF10,000. The time limit for the filing of an appeal is 30 days in ordinary proceedings and ten days in summary proceedings. The appellant may submit that the first-instance court has (i) applied the law incorrectly, and/or (ii) established the facts incorrectly. The conduct of the proceeding is, to a large extent, at the discretion of the appeal instance, ie, the court of second instance will decide whether to conduct a second round of written submissions or to hold an oral hearing. The appeal instance may conclude the proceedings either by confirming the challenged decision, by rendering a new decision or by remitting the case to the court of first instance.

Appeal to the Swiss Federal Supreme Court

The decision of the court of second instance may be appealed to the Swiss Federal Supreme Court if the amount in dispute is at least CHF30,000 or if a question of fundamental interest is to be decided. The time limit for filing the appeal is 30 days. The appellant may essentially claim that the previous instance has (i) violated federal law, and/or (ii) established the facts manifestly wrongly or in violation of the federal law, provided that such deficiency was relevant to the outcome of the case. The procedure will be conducted in writing

and will usually be limited to two written submissions. As in the previous instance, the Swiss Federal Supreme Court may confirm the challenged decision, render a new decision or remit the case to the previous instance.

Exception: Decisions of the Commercial Courts

There is only one legal remedy against a decision rendered by a commercial court, which is an appeal to the Swiss Federal Supreme Court. The procedure follows the same rules as described above.

2.12 Defences to Product Liability Claims

The Federal Product Liability Act provides for the strict liability of a producer. The producer is, however, not liable under the Federal Product Liability Act if it can prove that:

- it has not placed the product on the market;
- there was no defect when the product was put into circulation;
- it did not manufacture the product for sale, or any other form of distribution with an economic purpose, or manufacture or distribute the product in the course of its professional activity;
- the defect is due to the fact that the product complies with binding regulations issued by public authorities; or
- the defect could not have been detected according to the state of scientific and technological knowledge at the time the product was put into circulation.

Furthermore, the producer of a raw material or part product is not liable under the Act if it can prove that the product defect is due to the construction of the product or the instructions of the producer of the end product.

2.13 The Impact of Regulatory Compliance on Product Liability Claims

A producer's failure to meet the regulatory requirements is considered a breach of the product user's justified safety expectations and can be decisive in determining of the defectiveness of the product. Swiss courts, however, have repeatedly found that adherence to regulatory requirements is the minimum standard only when determining the justified safety expectations. The producer must assess, in each individual case, whether its product meets the user's safety expectations and may not rely on adherence to regulatory requirements or the conformity assessments of regulatory bodies.

2.14 Rules for Payment of Costs in Product Liability Claims

With the enactment of partial revision of the Swiss Civil Procedure Code on 1 January 2025, the court or the conciliation authority may demand that the claiming party makes an advance payment not exceeding one half of the expected court costs to initiate court proceedings. Prior to the revision, the advance payment could amount to the total of the expected court costs. For certain proceedings, eg, summary proceedings, advance payment of the total estimated court costs may be requested. The payment of the advance is a procedural requirement for bringing an action, meaning that if no payment is made the case will be declared inadmissible. This can be a significant hurdle for claiming parties in general, and in particular in product liability cases involving consumers, given that the amounts to be advanced are calculated based on the amount in dispute and are typically relatively large. It remains to be seen whether halving the potential court costs resulting from the revision will actually facilitate access to justice.

The claiming party may be reimbursed for the advance payment if it wins the case as, in Switzerland, the "*loser pays*" principle applies. Accordingly, the costs follow the event, which means that the losing party must bear the court costs and, on top of that, must compensate the successful party for its legal costs. Court costs are determined and allocated by the court *ex officio*, while party costs are awarded upon request. Advance payments paid by the successful party will be directly refunded from the court.

The compensation for legal costs is determined in accordance with a tariff that is primarily based on the amount in dispute. The tariffs vary between cantons, but in the majority of cases the compensation granted does not cover the real legal costs incurred by a party; depending on the amount at stake, the amount payable as compensation for legal fees can be higher or lower than the actual costs incurred.

If no party succeeds entirely, the costs are allocated in accordance with the outcome of the case and unnecessary costs are charged to the party that caused them, independently of whether it was the losing party.

2.15 Available Funding in Product Liability Claims

Third-Party Funding

Third-party funding is permitted in Switzerland and does exist, although it is not very common. In principle, there are no restrictions on third-party funding, as long as the funded party is still in control of the claim. If the funded party is represented by legal counsel, it is important to avoid any set-up that might impair the counsel's ability to act independently and to pursue only their client's interests. Otherwise, such a set-up might interfere with the counsel's obligations pursuant to the rules of professional conduct.

Contingency Fee Agreements “*No win, no fee*” and contingency fee agreements are not permitted under Swiss law since they are considered to stand in contradiction to the counsel’s obligations to act independently. According to the Swiss Federal Supreme Court, the attorney’s rules of professional conduct require a base salary, which does not only cover the attorney’s costs but must also guarantee a certain profit. Only if this precondition is met may the parties agree on an additional success fee element in the sense of a top-up fee.

Legal Aid

Legal aid is available (mostly) for private individuals under the preconditions that (i) the requesting party does not have the funds to finance the proceedings, and (ii) the case is not devoid of any chance of success. The request must be placed with the same court that is also deciding on the merits. The court will decide on the request in a formal, preliminary proceeding, during which the requesting party must fully disclose its financial situation and state its position on the merits. If legal aid is granted, the applicant is relieved from the obligation to pay any court costs (including any advance on costs) and the state will cover any reasonable lawyer’s fees. Legal aid does, however, not relieve the applicant from the obligation to pay party compensation to the opposing party in the case of defeat.

Legal Protection Insurance

Since the threshold for receiving legal aid is high and the costs for initiating proceedings are considerable, legal protection insurance is becoming increasingly common among consumers. Even standard insurance packages include a legal protection policy. While the conditions of such policies vary significantly and most insurance policies tend to avoid litigation and to settle potential disputes, it is, however, difficult to

quantify the impact of legal protection insurance on product liability claims.

2.16 Existence of Class Actions, Representative Proceedings or Co-Ordinated Proceedings in Product Liability Claims

There are no real collective redress procedures in Switzerland. However, it is possible to jointly bring several claims (eg, by a number of claimants filing their claims together when there are similar facts and legal grounds) in one proceeding or by way of an assignment of the individual claims to a claimant party. However, since this is usually cumbersome, it is rarely used.

When the general revision of the Swiss Civil Procedure Code was initiated in 2018, it included proposals to introduce certain collective redress mechanisms. However, the proposed amendments triggered so many debates that the Federal Council decided to split them off and to deal with them in a separate revision project in order not to jeopardise the broader revision process.

Such a separate revision project is currently being examined by parliament. The bill includes measures aimed at introducing collective redress mechanisms to enhance access to justice for groups of affected individuals, particularly in areas such as consumer and environmental protection. These measures are seen as a shift towards a more collective approach to legal redress in Switzerland, aligning with similar developments in other jurisdictions. However, on 18 October 2024, the National Council’s Committee for Legal Affairs (RK-N) voted not to consider the bill on collective legal protection. The committee came to the conclusion that the proposed instruments of collective redress were not compatible with the Swiss legal system. Rather, in the eyes of the majority of the committee, the bill carried

the risk of an “*Americanisation*” of the legal system. On 17 March 2025, the National Council followed the proposal of the RK-N and decided not to enter into discussions (non-entry). The bill is now to be debated by the second chamber, the Council of States. If the Council of States also decides not to take up the matter, the bill will have definitively failed. Otherwise, the bill will be referred back to the National Council.

2.17 Summary of Significant Recent Product Liability Claims

There are not many published decisions concerning product liability in Switzerland as most cases are resolved through settlement. However, the following cases are noteworthy.

On 22 April 2024, the Federal Supreme Court issued a ruling on jurisdiction under the Lugano Convention in a product liability case involving a bicycle accident in Italy. The Swiss-based plaintiff, who had designed a defective bicycle, sought a negative declaratory judgment in Switzerland to establish that no liability existed, after the defendant had brought a claim in Italy. The court ruled that the dispute qualified as a tortious action under Article 5, paragraph 3 of the Lugano Convention. Although the bicycle was assembled and manufactured in China and the Netherlands, the court considered the design work carried out in Switzerland as the relevant harmful act. Therefore, Swiss courts admitted jurisdiction in accordance with Article 5, paragraph 3 of the Lugano Convention (4A_249/2023).

On 26 November 2021, the Higher Court of the Canton of Berne found in its decision (ZK 20 399) that the court of first instance had unjustifiably rejected a claim for product liability brought against Johnson & Johnson by a patient who had suffered from several complaints after the implant of a hip prosthesis, which was eventu-

ally removed. The Higher Court held that it was reasonable to conclude that a prosthesis which had caused a toxic reaction in half of the cases:

- had to be removed in more cases than expected;
- was the object of an “*Urgent Field Safety Notice*”;
- was revoked from the Swiss market after five and a half years; and
- for which the producer had declared (thereby not accepting any liability) to cover all costs for examinations, treatments and revision surgeries, did not meet the user’s justified safety expectations and was, therefore, faulty in the sense of Article 4 of the Federal Product Liability Act.

In its decision of 15 March 2021, the Swiss Federal Supreme Court clarified that the provisions of food law also apply to intermediaries. In the case at hand, the package leaflet was qualified as inadmissible, even though it was only directed at the sales staff of drugstores and pharmacies (2C_733/2020).

In its decision of 31 May 2019 (2C_60/2018), the Federal Supreme Court specified that missing expert information from a preparation label, which therefore does not warn of a preparation-specific risk, is not to be considered a product defect in every case.

In its decision of 5 January 2015 (4A_365/2014; 4A_371/2014), the Federal Supreme Court held that in the case of prescription drugs, the justified safety expectations of the product need to be assessed with regard to the safety expectations of the patient, but also with regard to the knowledge of the prescribing physician. In the specific case (concerning the contraceptive pill “*Yasmin*”), it was deemed sufficient that the

warning of a possible increased risk of a thromboembolic event, compared to earlier generation contraceptive pills, was only included in the expert information, not in the patient information.

In its decision of 9 September 2013 (2C_13/2013), the Federal Supreme Court held that the malfunction of a product is considered a product defect if the product's value is specifically based on its serviceability (ie, a fire extinguisher).

On 18 March 2011 (137 III 226), the Federal Supreme Court decided that a producer was not liable for any defects that were not detectable at the time of the market placement according to the then current state of scientific and technological knowledge (so-called development risks).

On 4 October 2010, the Federal Supreme Court found that the compensation of an injured party is to be reduced if that party has failed to carefully study the product manual before using the product (4A_319/2010).

In its decision of 19 June 2010 (4A_255/2010), the Federal Supreme Court had to rule on a product liability claim relating to a defective window. The Court held that the producer was not liable because the window was manipulated after it had been placed on the market, which was beyond the reasonable expectation of the producer.

3. Recent Policy Changes and Outlook

3.1 Trends in Product Liability and Product Safety Policy Medical Devices

Until May 2021, market access for medical devices between the EU and Switzerland was facilitated by the [MRA](#) (Agreement between the

Swiss Confederation and the European Community on mutual recognition in relation to conformity assessment). This agreement aims to remove trade barriers between Switzerland and the EU. At that time, an update of the MRA was necessary to take into account the application of the [EU Medical Device Regulation](#) (MDR) and the corresponding legislation in Switzerland. However, for political reasons, it was not possible to update the chapter in the MRA on medical devices. As a result, since 26 May 2021, medical device providers established in Switzerland have no longer benefitted from the trade facilitations under the MRA. Since 26 May 2022, the same problem has applied to in vitro diagnostics. For medical devices and in vitro diagnostics, the EU has classified Switzerland as a third-party country, which means that previously existing trade facilitations under the MRA are now suspended.

To mitigate the negative effects of the end of harmonisation under the MRA, the Swiss government adopted various mitigation measures with, eg, unilateral recognition of a medical device bearing an EU conformity assessment. In addition, it continues to align its legislation with developments in the EU to maintain equivalence with EU legislation, eg, Switzerland has adapted its legislation to reflect the updated transitional periods under the MDR.

In parallel, the Parliament adopted "*Motion 20.3211 – For greater room for manoeuvre in the procurement of medical devices to supply the Swiss population*" to allow the authorisation of medical devices approved under regulatory systems other than the EU. At the time of writing, the competent authority is still examining the options for implementing this political motion.

Tobacco Regulation

As of 1 October 2024, a new [Federal Act on Tobacco Products and Electronic Cigarettes](#) (the “*Tobacco Products Act*”) and the implementing [Federal Council’s Ordinance on Tobacco Products and Electronic Cigarettes](#) came into force. These regulations cover tobacco products (ie, product consisting of or containing parts of leaves of plants of the genus *Nicotiana* (tobacco) and intended for smoking, inhalation after heating or snuffing, as well as nicotine products for oral use and herbal products for smoking) and electronic cigarettes. With regard to the protection of minors, advertising for tobacco products and electronic cigarettes that is directed at minors or that may reach minors is prohibited. As a result, the Tobacco Products Act prohibits, for example, the advertising of tobacco products and electronic cigarettes on posters, in cinemas, on sports fields, in and on public buildings, or in and on public transport. It also prohibits the sponsorship of events for minors or events of an international character.

Unfair Competition Act

A new regulation outlining strict standards for climate-related claims in commercial communications came into force at the beginning of 2025. Under the new Article 3, paragraph 1, letter x of the [Federal Act on Unfair Competition](#) (UCA), claims relating to the environmental impact of a product (eg, “*climate friendly*”, “*CO₂ neutral*” or “*net zero*”) must be substantiated with objective and verifiable information and may not be misleading, vague or imprecise.

Product Eco-design and Disposal

On 1 January 2025, an amendment to the [Federal Act on the Protection of the Environment](#) (EPA) came into force aiming to strengthen the circular economy and reduce environmental pollution. The revised EPA provides, among others, for the obligation to reuse or recycle waste if this

is technically possible, economically viable and has less of an impact on the environment than alternative options. In addition, it authorises the Federal Council to impose obligations regarding the disposal and life cycle of products and packaging. Although the Federal Council has not yet exercised its new powers or announced a respective timeline, further regulations on eco-design and product sustainability are expected, aligning Swiss law more closely with EU developments.

Biocidal Products and Fertilisers

As of 1 January 2024, amendments to the [Ordinance on Biocidal Products](#) came into effect that aim to improve data interpretation in order to identify potential health and environmental risks caused by the use of biocidal products. The amendment introduces a new annual reporting requirement for biocidal products placed on the market. This reporting obligation applies to the person who first places a biocidal product on the market in Switzerland within the supply chain. Such notification must include information on the responsible party as well as information on the biocidal products placed on the market (eg, the quantity of biocidal products distributed, the active ingredients in the biocidal products and their concentrations). Notifications must be made electronically. The first report, covering the data of 2024, was due by 31 May 2025. Additionally, indicators based on water measurements have been established to assess and reduce the risks posed by biocidal products. Repeated significant instances of exceeding the limits set in the [Waters Protection Ordinance](#) may lead to the modification or revocation of biocidal product authorisations.

Furthermore, following the entry into force of the new [EU Regulation 2019/1009](#) with provisions for the making available on the market of EU fertiliser products, the [Fertilisers Ordinance](#) was

completely revised in order to avoid technical barriers to trade, with effect from 1 January 2024. The content of the EU regulation was adopted as far as possible or adapted to the Swiss context. In particular, the approval system, the names of the fertilisers and the structure of the Ordinance have been harmonised with the EU Regulation.

Drop-Shippers Are Considered Distributors

In a recent ruling, the Federal Administrative Court (A-4413/2021 of 20 September 2023) specified the definition of “*placing on the market*” according to the Ordinance on Low-Voltage Electrical Products (LVEO). The court ruled that an operator offering products for sale on its website while acting as a drop-shipper (ie, selling products to customers without delivering or storing the products itself but instead having them delivered to customers by a wholesaler or supplier) is considered to be a distributor placing a product on the market in accordance with the LVEO. By selling the product, the definition of making the product available on the market is fulfilled, regardless of whether the operator owned and stored the product. Drop-shippers are therefore obliged to comply with the regulations of the LVEO on market access and post-market surveillance of low-voltage electrical products. This ruling is presumably transferable to other sector-specific ordinances that use the term “*placing on the market*”.

3.2 Future Policy in Product Liability and Product Safety

There are several areas of focus concerning future policy development in respect of product liability or product safety. The following developments are noteworthy.

Partial Revision of the Swiss Product Safety Act

With the enactment of the [Regulation \(EU\) 2023/988 on General Product Safety](#) in Decem-

ber 2024, a partial revision of the Swiss Product Safety Act will be expected pursuant to the State Secretariat for Economic Affairs, the responsible Swiss authority. The Regulation provides for a new EU framework for general product safety in the context of digitalisation and e-commerce. It can be assumed that the partial revision of the Swiss Product Safety Act not only serves to reflect these developments but also to maintain the existing harmonisation with EU law.

Swiss Product Liability Act – Mandate for Revision is Still Missing

On 8 December 2024, the new [Directive \(EU\) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products](#) and repealing Council Directive 85/374/EEC entered into force. With its entry into force, the existing system on product liability has been adapted to developments linked to transition towards a circular and digital economy as well as AI. Since the Swiss Product Liability Act has been aligned with the repealed [Directive 85/374/EEC](#), an adaption of Swiss law to such new developments seems conceivable. However, the competent Swiss authority has not yet received a mandate to initiate a revision of the Swiss Product Liability Act (as of publication of this chapter).

Partial Revision of the Swiss Therapeutic Products Act

In the light of new technologies and legal developments in the EU, Switzerland is currently revising the Swiss [Therapeutic Products Act](#), inter alia, in relation to drug safety for patients and drug safety in paediatrics, namely by creating a legal basis for a mandatory electronic medication plan or by establishing an obligation to use electronic systems to calculate drug dosages for children. In light of [Regulation \(EC\) No 2007/1394](#), new regulations in relation to advanced therapy medicinal products (ATMPs)

shall also be implemented in order to grant access to new products and create a comparable level of safety to that in the EU. In relation to veterinary medicinal products, the partial revision aims to ensure equivalence of the Swiss law with EU law and to guarantee market access to novel and innovative therapies.

AI Legislation

Currently, Swiss law does not provide for comprehensive legislation on AI. However, in February 2025, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) and the Federal Department of Foreign Affairs (FDFA) submitted a report to the Federal Council outlining possible regulatory approaches to AI. Following this report, the Federal Council has decided to incorporate the [Council of Europe's Framework Convention on Artificial Intelligence](#) (the "AI Convention") into Swiss law.

The AI Convention is an international legal framework which aims to ensure that activities within the lifecycle of AI systems are fully aligned with human rights, democracy and the rule of law. It outlines legal principles to ensure, among others, human dignity and individual autonomy, transparency, equality and non-discrimination, and respect for privacy and personal data protection. Signatory states are required to implement measures that ensure AI systems are developed, deployed and monitored in compliance with these principles, including setting up supervisory authorities and providing effective legal remedies. The AI Convention was signed by Switzerland on 27 March 2025.

Going forward, the Federal Department of Justice and Police (FDJP), DETEC and FDFA will prepare a consultation draft by the end of 2026 to implement the AI Convention into Swiss law, focusing on transparency, data protection, non-discrimination, and supervision. An additional implementation plan will address non-legislative measures (ie, publication of guidelines). This interplay between binding rules in key areas and flexible guidelines in other areas is intended to create a balance between the need for a stable legal framework and the flexibility required to promote responsible AI innovation and ensure Switzerland's competitiveness in the global market. The Federal Council plans to focus initially on regulating the public sector but will also impose obligations on private actors where necessary.

Plant Protection Products Ordinance

A comprehensive revision of the [Plant Protection Products Ordinance](#) is planned, aiming to align the ordinance with EU legislation ([Regulation \(EC\) 1107/2009](#)). Under the proposed draft, active ingredients approved in the EU will be considered approved in Switzerland, though exceptions may apply. The draft also simplifies the authorisation of plant protection products already approved in EU member states and includes provisions for environmental organisations' involvement in the approval process. Additionally, a new digital system for submitting and processing authorisation applications and recording sales volumes of plant protection products will be introduced. Authorisation fees will significantly increase to cover the related costs. The legislative process for these amendments is currently underway (June 2025).

Trends and Developments

Contributed by:

Annemarie Lagger and Amina Chamamah
Walder Wyss Ltd

Walder Wyss Ltd is a Swiss commercial law firm with offices in Zurich, Geneva, Basel, Berne, Lausanne and Lugano. Its 300 legal experts specialise in corporate and commercial law, banking and finance law, intellectual property and competition law, industrial know-how, public and administrative law, dispute resolution and tax law. The firm's clients include na-

tional and international companies, publicly held corporations and family businesses as well as public law institutions and private clients. With regard to product regulatory and product liability matters, its experts advise and represent clients in administrative, civil and criminal proceedings, contract negotiations and regulatory compliance at all its locations.

Authors



Annemarie Lagger is a managing associate in Walder Wyss's regulated markets, competition, technology and IP team. She provides advice in the legal fields of life sciences

(including foodstuff) and information technology, specialising in advisory work, including contract drafting in all phases of the supply chain, and litigation. Annemarie advises and supports clients with their product compliance, product safety and product liability issues as well as in matters of market access and market surveillance. She represents clients before all Swiss cantonal and federal courts and administrative bodies (including Swissmedic and the Federal Office of Public Health).



Amina Chamamah is an associate in Walder Wyss's regulated markets team. She advises on product compliance throughout the entire product life cycle, including market access

and market surveillance, as well as product liability, intellectual property, information technology and data protection. Amina is a member of the Braunschweig Bar Association (Germany) and listed on the list of attorneys pursuant to Article 28 BGFA (EU/EFTA attorneys) of the canton Zurich, Switzerland.

Walder Wyss Ltd

Seefeldstrasse 123
8034 Zurich
Switzerland

Tel: +41 58 658 51 93
Fax: +41 58 658 59 59
Email: annemarie.lagger@walderwyss.com
Web: www.walderwyss.com/en

walderwyss

The Current Legal Situation in Switzerland Against the Backdrop of Evolving Product Liability, Safety and Sustainability Regulations in the EU

In the context of digitalisation, new technologies and ESG considerations, legislators have enacted, or are in the process of enacting, new laws. In the EU, several regulations have already been enacted or are currently being discussed. While Switzerland is not a member of the EU, it has adapted (and may continue to do so) its legislation to new legal developments in the EU to facilitate trade between the EU and Switzerland. This article provides an overview of some important developments in the EU and the corresponding current situation in Switzerland in the fields of product liability, safety and sustainability.

GPSR and the Swiss Product Safety Act

On 13 December 2024, [Regulation \(EU\) 2023/988 on General Product Safety](#) (GPSR) entered into force. It replaced the general product safety directive from 2001 and provided a new EU framework for general product safety in the context of digitalisation and e-commerce.

The GPSR applies to products that are placed or made available on the (EU) market. “Product” means any item which is intended for consumers or is likely, under reasonably foreseeable con-

ditions, to be used by consumers even if not intended for them. This also includes products sold online or through other means of distance sales if the offer is targeted at consumers in the EU.

The GPSR, for example, imposes the following obligations.

- It provides for various obligations for economic operators. “Economic operators” means the manufacturer, the authorised representative, the importer, the distributor, the fulfilment service provider or any other natural or legal person who is subject to obligations in relation to the manufacture of products or making them available on the market in accordance with the GPSR. As specific obligations for providers of online marketplaces are listed in the GPSR, they also fall under its scope of application.
- It requires an EU-based economic operator fulfilling the obligations set out in Article 4 (3) of [Regulation \(EU\) 2019/1020 on market surveillance and compliance of products](#).
- It defines the required information to be included in the recall notice in the case of a product safety recall or a safety warning (Article 36 GPSR).

- It requires economic operators responsible for a product safety recall to offer consumers effective, cost-free and timely remedies, which include at least two of the following remedies:
 - (a) the repair of the recalled product;
 - (b) a replacement of the recalled product with a safe one of the same type and at least the same value and quality; or
 - (c) an adequate refund of the value of the recalled product, provided that the amount of the refund shall be at least equal to the price paid by the consumer.

The State Secretariat for Economic Affairs, ie, the responsible Swiss authority, is now analysing the GPSR and will partially revise the [Swiss Product Safety Act](#) (PSA) and the [Swiss Product Safety Ordinance](#) (PSO) accordingly. However, no further information regarding this partial revision is available at the time of writing. Since the PSA transposed the former EU general product safety directive into Swiss law in order to reduce technical barriers to trade by harmonising legislation with the rules of the EU, it can be assumed that the partial revision of the PSA is also designed to maintain existing harmonisation to facilitate trade and secure continued access to the EU market. Even though the PSA has not yet been revised, Swiss companies operating in the EU or in Switzerland should be familiar with the GPSR, as the GPSR is relevant for them, either directly because of their EU business or indirectly due to the expected change in Swiss law. In the meantime, differences between the EU and Swiss legal systems should be considered from a practical perspective, eg, Switzerland is not a member of the EU “*Safety Gate*” system, formerly known as RAPEX, which enables the rapid exchange of information on dangerous non-food products in the EU. Therefore, any corrective measures (including recalls if necessary) must be co-ordi-

nated separately with the respective surveillance authorities in the EU and Switzerland.

EU Directive on Liability for Defective Products and the Swiss Product Liability Act

On 8 December 2024, [Directive \(EU\) 2024/2853 on liability for defective products](#) (PLD) entered into force, requiring EU member states to implement it into their national laws by 2026. With its entry into force, the existing system on product liability, under which producers compensate consumers for damage caused by defective products, has been updated to reflect developments linked to the transition towards a circular and digital economy as well as the rise of AI.

The PLD provides a number of important provisions.

- It provides for the inclusion of software in the definition of “*product*”, excluding however free and open-source software that is developed or supplied outside the course of a commercial activity.
- The PLD also provides for the enlargement of potentially liable parties, for example, liability of online platforms for defective products under certain circumstances. In addition to the manufacturer of a defective product, the manufacturer of a defective component can also be held liable. Since “*component*” means any item, whether tangible or intangible, or raw material or any related service, that is integrated into, or inter-connected with, a product, liability can also extend to service providers such as data providers. For defective products manufactured outside the EU, the importer, the authorised representative of the manufacturer or the fulfilment service providers can be held liable.
- In terms of damages, the PLD provides compensation for the destruction or corrup-

tion of data that are not used for professional purposes.

- Lastly, it provides further relief for the plaintiff in relation to the disclosure of evidence by the defendant and the burden of proof of the defectiveness of the product if the plaintiff faces excessive difficulties.

Since the [Swiss Product Liability Act](#) was aligned with the repealed Directive 86/374/EEC, an adaption of Swiss law to the PLD seems conceivable. However, the competent Swiss authority has not yet received a mandate to implement any changes of the EU revision into Swiss law. In the context of civil law, there is no “*harmonisation*” automatism so that a revision may only be initiated by a political decision. At the time of writing, such a decision has not yet been made. Companies are, however, advised to monitor any developments in this area.

Sustainability Reporting and Due Diligence Obligations

In recent years, the EU has introduced two directives to strengthen corporate accountability and sustainability: (i) [Directive \(EU\) 2022/2464 as regards corporate sustainability reporting \(CSRD\)](#), and (ii) [Directive \(EU\) 2024/1760 on corporate sustainability due diligence \(CSDDD\)](#).

- Under the CSRD large companies and small and medium-sized enterprises of public interest established in the EU must report comprehensively on sustainability topics in relation to their business activities, including ESG aspects. The aim of the Directive is to achieve transparency and comparability for investors and the public.
- The CSDDD establishes a corporate due diligence duty. The core elements of this duty are identifying and addressing potential and actual adverse human rights and environ-

mental impacts in the company’s own operations, their subsidiaries and those of their business partners. To fulfil their due diligence obligations the affected companies must, for example:

- (a) integrate adequate measures to identify, prevent and mitigate actual and potential adverse human rights or environmental impacts;
- (b) monitor, document and report on the due diligence measures taken;
- (c) adopt a transition plan for climate change mitigation; and
- (d) if not established in the EU, designate an authorised representative.

The CSDDD applies to large EU and non-EU companies that exceed certain thresholds. Small and medium-sized enterprises are not directly affected by the CSDDD, but they may be impacted indirectly, for example as suppliers to larger companies.

Following criticism regarding the bureaucratic and practical effort entailed by the CSRD and CSDDD, the European Commission is currently assessing further measures and has already proposed an omnibus package to ease the regulatory burdens. The package includes measures to limit the scope of the CSRD, postpone its applicability for certain companies, simplify due diligence requirements under the CSDDD, and extend its transposition and application deadlines. At the time of writing, the postponing proposals have already passed the EU legislative process ([Directive \(EU\) 2025/794](#)). The additional simplifications are currently under discussion in the Council of the European Union.

While Swiss law also provides for due diligence and reporting duties in the fields of human rights

and environmental protection, these are more limited in scope than EU requirements.

Under Article 964a et seqq of the [Swiss Code of Obligations](#) (CO), certain undertakings of public interest (eg, financial companies) must publish an annual report on non-financial matters. This report must cover environmental goals, social and employment matters, human rights, and anti-corruption. The report should give a clear view of the company's performance, results, and impact in these areas. An exemption applies if the company is controlled by a parent undertaking that issues a comparable report under Swiss or equivalent foreign law. While the law does not define what constitutes an equivalent report, it is broadly recognised that reports under [Directive 2014/95/EU](#) or the CSRD would be considered equivalent.

Swiss due diligence obligations are also less comprehensive than those set out in the CSD-DD. Under Article 964j et seqq of the CO, companies are obliged to conduct a risk analysis of their supply chains to identify possible violations related to child labour and environmental standards. The law only applies to companies whose seat, head office or principal place of business is located in Switzerland and that either place in free circulation or process in Switzerland minerals containing tin, tantalum, tungsten or gold or metals from conflict-affected and high-risk areas or offer products or services where there is a reasonable suspicion of child labour involvement. Affected companies are, among other obligations, required to establish a risk management plan, implement adequate measures to minimise the identified risks and publish an annual due diligence report. The [Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour](#) provides for certain exemptions

from these obligations, eg, if companies remain below certain thresholds or adhere to selected internationally recognised equivalent standards, such as the OECD Conflict Minerals Guidance or [Regulation \(EU\) 2017/821](#).

The Swiss Federal Council is currently preparing draft legislation to expand due diligence and reporting obligations. The revised rules aim to align with EU law and extend coverage to a broader range of companies as well as human rights and environmental topics. According to the draft documents, the reporting obligation shall be suspended if the affected company already prepares an equivalent report under foreign law, eg, EU legislation.

Deforestation Regulations

[Regulation \(EU\) 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation](#) (EUDR) introduces strict due diligence obligations for operators and traders placing or exporting specific commodities within the EU. The EUDR applies to cattle, cocoa, coffee, oil palm, rubber, soy, and wood, including many derived products. Under the EUDR, any natural or legal person who places these commodities on the EU market, or exports from it (ie, operators), must, among others, ensure and demonstrate that:

- products do not originate from land deforested after 31 December 2020;
- in the case of relevant products that contain or have been made using wood, the wood has been harvested from the forest without inducing forest degradation after 31 December 2020; and

- products were produced in compliance with the relevant environmental and human rights legislation in the country of production.

Operators must also comply with respective documentation and annual reporting obligations.

While the EUDR was initially scheduled to apply from 30 December 2024, it was granted a 12-month additional phasing-in period. To avoid unnecessary administrative costs and burdens for companies, the European Commission published a guidance document in April 2025, outlining clarifications and simplifications on the interpretation of the EUDR's interpretation. It also updated respective FAQs and published a draft delegated act ([Delegated Regulation amending Annex I of Regulation \(EU\) 2023/1115](#)), which is, at the time of writing, pending final adoption.

Switzerland has, to date, not adopted a corresponding regulation. According to a statement from the Federal Council, it is closely following the approach of the EU but does currently not see a requirement to harmonise Swiss law. Although the EUDR does not apply directly to Swiss entities, as its scope is limited to a natural person whose place of residence is in the EU or a legal person established in the EU, Swiss companies acting as suppliers to EU operators may be indirectly affected due to its supply chain-wide approach and are expected to support compliance with the Regulation's due diligence requirements.

Battery Legislation

[Regulation \(EU\) 2023/1542 concerning batteries and waste batteries](#) (the "Battery Regulation") establishes a comprehensive legal framework covering the full battery life cycle. Under the Regulation, market operators must, for example:

- implement a due diligence policy to ensure responsible sourcing of raw materials;
- affix QR codes and digital battery passports to certain batteries, providing key data on capacity, chemical composition, and expected lifetime, with information uploaded to a central EU database;
- meet specific collection, recycling efficiency and material recovery targets; and
- finance collection, treatment and recycling systems for used batteries.

The Battery Regulation provides for implementation timelines between 2024 and 2031, depending on the type of batteries. It applies to all market operators placing batteries on the EU market, including operators established in third countries.

Switzerland has not yet implemented an equivalent battery legislation. The current Swiss law is comparable to the former EU battery directive ([Directive 2006/66/EC](#)) and is limited to certain content, labelling and waste obligations, outlined in [Annex 2.15 of the Chemical Risk Reduction Ordinance](#), the [Waste Movements Ordinance](#) and specifying ordinances. Key obligations include:

- a prohibition on the sale of batteries containing more than 5mg of mercury per kilogram;
- mandatory labelling of batteries with the symbol for separate collection; and
- indication of chemical symbols if the content exceeds specific thresholds for mercury, cadmium or lead.

The Swiss Federal Office for the Environment, ie, the responsible Swiss authority, has stated that it is monitoring developments in the EU and assessing whether existing Swiss instruments

remain adequate or if legislative amendments will be required.

Ecodesign and the Right to Repair *EU Ecodesign for Sustainable Products Regulation*

[Regulation \(EU\) 2024/1781 establishing a framework for the setting of ecodesign requirements for sustainable products](#) (ESPR) replaces the former EU Ecodesign Directive ([Directive 2009/125/EC](#)) and covers nearly all physical goods placed on the EU market. It empowers the Commission to adopt delegated acts specifying product-specific requirements on durability, reparability, recyclability, substances of concern, energy efficiency, and minimum recycled content. The ESPR also introduces a digital product passport to improve traceability, compliance and consumer information. Certain reporting obligations are already in force for large entities. Further implementation will be phased per product category, beginning with a ban on the destruction of unsold apparel, clothing accessories, and footwear, effective from 18 July 2026.

EU Right to Repair Directive
[Directive \(EU\) 2024/1799 on common rules promoting the repair of goods](#) (the “*Repair Directive*”) introduces a right for consumers to demand the repair of selected goods both during and after the warranty period. It obliges market operators to offer repair services for certain product categories (currently limited to certain electronic devices) and ensures access to spare parts and technical documentation. Further, it provides for a free online repair platform at EU level and standardises information through a repair form. The Repair Directive applies to manufacturers established in or represented by an authorised representative within the EU. If no such representative exists, the EU-based importer assumes full responsibility. Member states are

obliged to transpose the Repair Directive into national law by 31 July 2026 at the latest.

Swiss approach

Switzerland has not (yet) adopted the changes proposed by the above EU legislation, but is partially aligned with the currently applicable EU law. In Switzerland, the following regulations relating to the ecodesign and reparability of products are in place.

The [Swiss Energy Efficiency Ordinance](#) (EEO) applies to certain electronic equipment specified in the annexes to the Ordinance. The Ordinance outlines the minimum requirements for energy consumption, energy efficiency, the energy performance testing procedure and corresponding labelling requirements. The EEO mainly refers to the currently applicable product specific EU legislation, including the regulations regarding reparability, availability of spare parts, provision of relevant firmware, security updates and repair-related information.

On 1 January 2025, an amendment to the [Swiss Environmental Protection Act](#) (EPA) came into force aiming to strengthen the circular economy and reduce environmental pollution. Among others, the revised EPA sets out the following provisions.

- It provides for the obligation to reuse or recycle waste if this is technically possible and economically viable and has less impact on the environment than alternative disposal or the manufacture of new products (Article 30d, EPA).
- It authorises the Federal Council to:
 - (a) impose requirements in proportion to the environmental impact of products and packaging, in particular with regard to (i) the lifespan, reparability and recyclability

of products; (ii) the avoidance of harmful effects and the increase of resource efficiency during the life cycle; the (iii) the standardised, comparable, visible and comprehensible labelling and information; and (iv) the introduction of a repair index (Article 35i, EPA); and

- (b) oblige manufacturers, importers and foreign online retail companies that place products on the market that are suitable for recovery to pay a prepaid disposal fee (Article 32abis, EPA).

So far, the Federal Council has not exercised its new competences, and no timeline for action has been published. However, given Switzerland's former partial alignment with EU law in this field, further developments on ecodesign and product reparability are likely. Notably, even before the EPA amendments took effect, the Federal Council was tasked by the Swiss Parliament with drafting a bill to align Swiss warranty and consumer remedies law, including the right to repair, with EU standards. This draft is still pending.

Packaging Legislation

[Regulation \(EU\) 2025/40 on packaging and packaging waste](#) (the “*Packaging Regulation*”) establishes an updated legal framework to reduce the environmental impact of packaging across the EU. It aims to reduce the environmental footprint of packaging by introducing strict prevention, design and reuse obligations. The Packaging Regulation focuses on the food, delivery and retail sector. It requires, among other things, that all packaging placed on the EU market is fully recyclable by 2030 and sets minimum thresholds for the use of recycled material. The Regulation will apply from 12 August 2026.

Switzerland does not provide for such extensive packaging and packaging waste legislation. Aside from the general changes to the EPA mentioned above, Swiss law only provides for sector-specific regulations - for instance, certain content restrictions for packaging that comes into contact with food, as set out in the [Food Contact Materials Ordinance](#). At present, only glass beverage containers are subject to an advance disposal fee in Switzerland.

Greenwashing and Green Claims

[Directive \(EU\) 2024/825, as regards empowering consumers for the green transition through better protection against unfair practices and through better information](#) (the “*Greenwashing Directive*”), introduces strict rules with regard to advertising and labelling services and products as sustainable and environmentally friendly. It also enhances information obligations on durability and reparability of products. Among other things, the Greenwashing Directive prohibits unsubstantiated generic terms relating to sustainability and environmental aspects and restricts the use of sustainability labels not based on approved certification schemes or established by public authorities. The Greenwashing Directive will be applicable to market operators from 27 September 2026 and applies to all kinds of products placed on the EU market.

In addition, the European Commission proposed a [Directive on substantiation and communication of explicit environmental claims](#) (the “*Green Claims Directive*”), which is currently under review by the Council of the European Union. The draft of the Green Claims Directive introduces harmonised rules on, for example, the substantiation of environmental claims by using reliable, state-of-the-art methods and the transparent communication of such claims. It will require EU member states to establish inde-

pendent third-party conformity assessment bodies to verify the affected trader's compliance with the Green Claims Directive. The Green Claims Directive will apply to all traders making voluntary explicit environmental claims to consumers in the EU, subject to limited exemptions for microenterprises.

In Switzerland, the [Unfair Competition Act \(UCA\)](#) expressly addresses misleading green claims. Article 3, paragraph 1, letter x, UCA, which came into force on 1 January 2025, sets strict standards for climate-related claims in commercial

communications. Claims on products such as “*climate friendly*”, “*CO₂ neutral*” or “*net zero*” as well as forward-looking and comparative claims like “*net zero by 2050*” or “*50% reduced emissions*” must be substantiated with objective and verifiable information. Claims may not be misleading, vague or imprecise and must be up to date, otherwise they would constitute a violation of the UCA. Additionally, false or misleading green claims can have contractual consequences under Swiss law if the environment-related characteristics were contractually agreed upon.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Rob.Thomson@chambers.com