I. Introduction

The European Justice Forum (EJF) appreciates the opportunity to provide our members' perspectives on the Draft Bill, which seeks to implement the EU's new Product Liability Directive ("PLD") into Swedish law. Our members support effective, fair and predictable legal frameworks for consumer protection, including accessible avenues for redress in the event that people are harmed by defective products.

We are concerned that the Draft Bill, if enacted in its current form, will generate significant unintended negative consequences for businesses and especially innovative companies in Sweden, by importing – and in some cases even going beyond – the flawed provisions of the PLD, without any counter-balancing benefits for consumers.

Such frameworks must account for the interests of diverse stakeholders, including innovators, who take on substantial cost and risk to develop cutting-edge solutions that provide jobs and boost economy. To continue to invest in R&D and commercialise new products, our members require legal certainty and predictability. The Draft Bill undermines both and, if implemented, will open the door to mass litigation in Sweden, undermining the existing framework for redress.

Mass litigation is already a growing phenomenon in Europe due to an increase in opaque funding from third-party litigation funders. These professional investors view product liability cases as an asset class, funding litigation on a strategic basis in order to maximise their returns, under the guise of consumer protection and at the expense of productive companies that create jobs and drive innovation. The Draft Bill makes such investments in legal actions more attractive, creating a risky and unpredictable business environment for innovators, especially Sweden's SMEs. That practice undermines the critical goals of promoting competitiveness, growth and innovation in Sweden, and contributes to the affordability crisis by increasing the costs of innovators, other producers and prices for consumers. [1]

As set out in more detail in the body of this submission, our key concerns with the Draft Bill are as follows:

- The Draft Bill fails adequately to balance the interests of consumers and producers; it is likely to drive an increase in spurious claims and risks undermining its goal of securing accessible and balanced outcomes for consumers.
- The Draft Bill compounds the PLD's use of vague, subjective and unduly broad legal standards, which create significant legal uncertainty, including in relation to core issues such as how the burden of proof is allocated between claimants and respondents.

[1] More information in EJF policy brief on Third Party Litigation Funding and in ECIPE study The Impact of Mass Litigation in Europe, ECIPE, February 2025

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- Most concerningly, the Draft Bill reverses the burden of proof in a range of poorly defined circumstances, forcing manufacturers to prove a negative, i.e. that their product is not defective and did not cause harm.
- Products will be subject to the reversal of the burden of proof even where they comply with rigorous EU and national safety and quality regulations, come with clear warnings and instructions, and where the product was misused outside the control of the manufacturer.
- The Draft Bill, in its current form, requires manufacturers to disclose high volumes of complex, novel and commercially sensitive material, such as software source code, algorithms, AI training data, risk assessments and design specifications. The existing procedural rules are insufficiently adapted to deal with this type of material, and the Draft Bill fails to provide the additional protections that are needed to protect such highly sensitive information.

On the international stage, we are also concerned that the Draft Bill, like the PLD itself, violates core WTO obligations, including the requirements that WTO Members administer their laws and regulations affecting international trade in a reasonable manner and do not impose regulatory burdens that are more trade-restrictive than necessary. With respect to the WTO rules, EJF would like to highlight the following in brief:

- To promote a uniform, impartial, and reasonable administration of laws as required by Article X:3(a) of the General Agreement on Tariffs and Trade (GATT) 1994, Sweden should avoid implementing mechanisms that effectively reverse the burden of proof or create broad presumptions of defectiveness. Such approaches may be perceived as departing from basic civil-law principles of fairness and could give rise to concerns regarding the reasonableness of administration. Basing the new rules on a balanced burden of proof and introducing any presumptions with extreme care would support alignment with Article X:3(a).

- To ensure the measure is no more trade restrictive than necessary to achieve its legitimate objective, in line with Article 2.2 of the Agreement on Technical Barriers to Trade (TBT), it is important to assess the chosen regulatory approach in light of the gravity of the risk of non-fulfilment. The product liability objective should be the fair apportionment of risk between producers and consumers but measures such as burden-shifting, broad presumptions, or the use of vague terminology can create uncertainty and may not advance that objective. A narrowly tailored approach, with clear and specific terminology, would better support consistency with Article 2.2.

In sum, a very careful and narrow implementation of the provisions on burden of proof and the new presumptions, coupled with more precise definitions and terminology, would help ensure that the Draft Bill remains consistent with WTO obligations.

EJF is open to discussing in detail any aspects of this submission, in which we set out:

- Background and context to the EU PLD and the Draft Bill

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- Key concerns with the Draft Bill
- The disproportionate impact the Draft Bill will have on innovative sectors of the Swedish economy
- Recommendations and next steps: Administrative actions, Required modifications to the text of the Draft Bill
- Conclusions

II. Background and Context: The EU PLD and the Draft Bill

EJF welcomes the inclusive consultation process and we appreciate the significant work and careful analysis set out in the Inquiry Report, including efforts to explain the Draft Bill. At the same time, we consider that the existing legal framework for product liability in Sweden is already very well calibrated to address the needs of different stakeholders, including through mechanisms such as specialised claims boards offering out-of-court dispute resolution. These existing mechanisms deliver swift, low-risk redress with predictable outcomes for consumers in Sweden, while keeping transaction costs low and limiting court involvement. The current liability framework in Sweden has many advantages over an enforcement model based on private litigation that is applied in many other countries, and it should be kept and protected.

In particular, according to the Annual Report of the Swedish National Board for Consumer Disputes (ARN), the Swedish Ombudsman body has handled a growing caseload over the past decade, with over 25,000 cases in 2024 alone. There is a high level of compliance with the recommendations of the Ombudsman (around 75%). This highlights that Sweden already has a highly effective and well-functioning system that protects consumers.

We are concerned that the new regime will discourage use of these mechanisms and undermine the current carefully struck balance between different stakeholders, thereby creating unintended negative consequences for companies operating in Sweden and for Sweden's existing model of redress.

In view of these concerns, we urge the Swedish Government to call for an EU pause in implementation of the PLD and to consider alternative approaches to implementation (set out in our recommendations below).

III. Disproportionate Impact on Innovative Companies

The current Draft Bill will disproportionately affect innovative companies in Sweden as the burden of proof for "complex" products will be more likely to be reversed on the grounds that proving a defect or causation is just "difficult". This threshold is too low.

Products involving multiple, intersecting technologies may involve inherent difficulties in proving defectiveness, harm and causation, meaning that producers would be subject to a presumption effectively by default, regardless of other circumstances. Unintended use or misuse can occur even when products meet safety and quality standards and are accompanied by clear instructions and warnings. Strict liability should not extend to cases of unintended use or misuse, which could arise under the current Draft Bill, and this should be corrected in the final text.

The Draft Bill should remain technology and sector-neutral. It is likely to give rise to particular risk and legal uncertainty for innovative solutions and to drive an increase in mass litigation involving these technologies. This will affect decisions by innovators on whether to commercialise new products in Sweden, making Sweden (and the EU) less attractive as a site for R&D, manufacturing and innovation, with potential negative consequences for the Swedish economy.

IV. Recommendations and Next Steps

a. Administrative actions

1. Undertake an urgent impact assessment of the role of professional investors in product liability litigation in Sweden, in particular the impact on SMEs, and make recommendations for a fair and balanced product liability regime, including appropriate transparency regarding the role of professional investors.
2. Given that the Draft Bill seeks to transpose vague and uncertain language from the PLD, Sweden should request the European Commission to issue written guidance clarifying core terms used in the PLD, especially those relevant to product defectiveness and the reversal of the burden of proof, and to ensure harmonization in these important rules across the EU. Without such interpretative guidance, EJF considers that implementation by the Member States will not be harmonized, leading to inconsistent application by national courts and fragmentation of the single market.
3. To allow time for these actions at EU level, as well as a more complete evaluation of compliance with applicable WTO rules, Sweden should request the Commission to extend the PLD implementation deadline for all Member States.

b. Modifications to the text of the Draft Bill

EJF recommends the following specific modifications:

1. Chapter 1, Section 7 should include definitions of “manufacturer’s control” and “substantial modification”.
2. Chapter 2, Section 2 should correctly transpose Article 7(1) of the PLD by including compliance with applicable health and safety regulations as part of the primary legal standard.
3. Chapter 2, Section 2 should clarify vague and poorly defined terms.

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4. Chapter 2, Section 3 should add the word “substantially” before “modifying the product”.
5. Chapter 3, Section 2 should ensure that presumptions apply only where difficulties are “excessive” and due to “technical and scientific complexity”.
6. Chapter 3, Section 2 should clarify vague trigger conditions for presumptions.
7. The Draft Bill should limit disclosure orders to information that is necessary and relevant.
8. The Draft Bill should include additional protections for highly confidential business information, including source code, algorithms and training data.

V. Conclusion

While we support the objective of ensuring effective consumer protection and access to redress, the Draft Bill, as currently framed, risks undermining legal certainty, discouraging innovation and weakening Sweden’s position as a hub for the development and launch of innovative new technology.

By importing and, in some respects, amplifying the PLD’s use of vague terms, expansive presumptions and disclosure burdens without adequate safeguards, the Draft Bill tilts the balance away from the predictable and proportionate liability framework that already functions well in Sweden. The principal beneficiaries will be professional investors, while innovative Swedish SMEs are likely to bear the costs. Ultimately, this will harm Swedish and EU economic growth, competitiveness and innovation.

We therefore urge the Swedish Government to reconsider key elements of the Draft Bill, to clarify and narrow the circumstances in which burdens are reversed, and to preserve Sweden’s well-functioning existing product liability framework. We further recommend pausing implementation to conduct a comprehensive impact assessment and to seek clarification from the European Commission on key elements of the PLD.

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