ALERTER

EU Judgment on Limitation and Long-stop provisions of the PLD

Noel Dilworth

On 26 March 2026, the Court of Justice of the European Union issued an interesting (if short and unsurprising) judgment in *LF v Sanofi Pasteur SA* (Case C-338/24), dealing with three questions arising from the Product Liability Directive (85/374) (below, the "PLD"), concerning: the rights of claimants to run fault-based claims in parallel with PLD-based claims; the validity of the 10-year long-stop period; and the trigger for the primary limitation period.

BACKGROUND FACTS

On 20 March 2003, the Claimant ("LF") had received the Revaxis vaccine (diphtheria tetanus poliomyelitis), manufactured by the Defendant. From 2004, LF reported multiple symptoms and progressive illness. Medical examinations in 2008 revealed macrophagic myofasciitis, indicating residual aluminium hydroxide. An expert procedure before the French Conciliation and Compensation Board from Medical Accidents concluded on 20 September 2016 that causation between the illness and the vaccine could not be established, and LF's application was dismissed. LF then sued Sanofi Pasteur in June 2020 before the Tribunal Judiciaire d'Alençon on grounds of both defective product liability and fault-based liability. The case preparation judge dismissed claims as time barred and, on 31 May 2022, the Cour d'Appel de Caen largely confirmed inadmissibility on both claims.

On 5 July 2023, the Cour de Cassation set aside the appellate judgement, holding that, for a progressive illness where stabilisation cannot be determined, the three-year limitation under Article 1245-16 of the French Code Civil cannot begin to run, and remitted the case to the Cour d'Appel de Rouen. The Rouen Court referred 3 questions to the CJEU concerning: (i) Article 13 of the PLD and the coexistence of fault-based liability; (ii) the validity of Article 11 of the PLD (10-year long-stop) in light of Article 47 of the Charter of Fundamental Rights of the European Union (below, the "CFR"); and (iii) the start of the three-year limitation under Article 10 for progressive illnesses.

THE QUESTIONS RAISED WITH THE CJEU

Question 1 asked whether Article 13 of the PLD permits a victim of a defective product to claim under a general fault-based regime for wrongful conduct linked to product safety such as maintaining a known defective product and circulation or failure of vigilance. Question 2 asked whether Article 11's 10-year extinction is incompatible with Article 47 of the CFR by depriving victims with progressive injuries of access to a court. Question 3 asked whether Article 10's three-year period runs only from stabilisation or from the date when damage has definitively become apparent and is linked to the defective product, regardless of subsequent evolution together with knowledge of defect and producer identity.

EU Judgment on Limitation and Long-stop provisions of the PLD

Noel Dilworth

THE CJEU'S ANSWERS

Question 1: Article 13 and fault-based reliability

The CJEU held (paragraph [35]) that Article 13 of the PLD does not preclude an injured person from seeking compensation on the general basis of fault for wrongful conduct linked to product safety, provided this basis is different from defect under Article 6. Thus, claims for maintaining a product in circulation despite known defects of or failure of due care may proceed alongside the PLD regime.

Question 2: Validity of Article 11 and Article 47 CFR

The Court found (paragraph [76]) no factor affecting the validity of Article 11. The 10-year long-stop is compatible with Article 47 of the CFR, because access to a court remains available within that framework, particularly given the interpretation of Article 10 and the possibility to interrupt the long stop by instituting proceedings within 10 years.

Question 3: Article 10 and start of limitation

The Court ruled (paragraph [50]) that the three-year limitation period starts when the claimant became aware, or reasonably should have become aware, of: (i) damage that has definitively become apparent and is linked to the defective product irrespective of later evolution; (ii) the defect; and (iii) the producer's identity. Stabilisation cannot be required as the starting point.

INFLUENCE OF THE DECISION IN ENGLAND AND WALES?

Whilst the PLD forms part of retained EU law under the European Withdrawal Act 2018, and pre-IP Completion Day (31 December 2020) case-law is binding, by virtue of section 6(3) and (7) of the European Withdrawal Act 2018, this CJEU judgment is, of course, not binding on the courts of England and Wales. Following the UK's departure from the EU, decisions of the CJEU delivered after the end of the transition period are only persuasive, and the Court may, under s.6(2) of EUWA 2018, "have regard" to them. The persuasive force of such judgments is, however, viewed through the lens of the observations, for example, of Warby LJ in *Farley et al v Paymaster* [2025] EWCA Civ 1117, who noted that divergent interpretations of same legislative text undermined legal certainty.

It seems almost certain that an English Court would reach the same conclusions on the first and second questions. It seems surprising that the first question had been raised after 40 years of application of the PLD, but there had been decision of the CJEU in 2022, *González Sánchez* (C-183/00, EU:C:2002:255), which had given rise to some uncertainty. In that case, Article 13 of the PLD had been interpreted as meaning that the rights conferred under the legislation of a Member State on the victims of damage caused by a defective product under a general system of liability having the same basis as the system put in place by that directive may be limited or restricted as a result of the transposition of the directive into the domestic law of that State. Thus, the re-confirmation of the availability of parallel systems of liability (depending on state rules) is to be welcome.

So far as the long-stop provisions are concerned, it is difficult to conceive of any independent procedural requirement to separate negligence claims from claims brought under the Consumer Protection Act 1987 (and, by the same token, any substantive rationale for inhibiting the bringing of such claims together). Moreover, the 10-year long-stop has formed part of the fabric of product liability claims within the UK. However, decision in 2014 of the European Court of Human Rights in *Howald Moor & ors v Switzerland* (CE:ECHR:2014:0311JUD005206710) had raised a question mark over the validity of the long-stop provisions.

The third question is also likely to yield the same answer on this side of the Channel. The CJEU adopted a conventional approach, retraining the focus on the text of the PLD – and the primary requirements of constructive knowledge of damage, defect and producer. Moreover, there had not been a movement in the UK courts towards recognising "stabilisation" as providing a rival basis for the test for triggering the start of the primary limitation period.

FUTURE CHANGES?

The answer to the first question is also highly likely to remain the same under the new product liability

EU Judgment on Limitation and Long-stop provisions of the PLD

Noel Dilworth

regime, which entered into force on 9 December 2024 within the EU (Directive 2024/2853). The long-stop period, however, has been subject to significant revision under the new product liability regime, not least in terms of the extension, in certain, defined circumstances, to 25 years. The policy considerations which underpinned the grounds on which the extension of the long-stop period is available under the new regime formed a small part of the CJEU's discussion.

Practitioners in England and Wales should also bear in mind more generally that the Law Commission will have a formal public consultation on its proposals for reform of the UK product liability regime. One potential area in which proposals might be formulated could relate to the adequacy of the existing long-stop period and whether the UK should follow the EU in providing for an extended period. *LF v Sanofi Pasteur* certainly provides some food for thought in that regard.

ABOUT THE AUTHOR

Noel Dilworth

Noel Dilworth is recommended as a leading junior in the field of Product Liability, his practice spanning the range from health & safety, environmental and regulatory aspects of product liabilities to consumer claims in group litigation or unitary actions. He regularly advises or represents companies in the pharmaceutical, energy, transport and medical sectors.

View Noel's profile here.

2 Harcourt Buildings, Temple
London EC4Y 9DB
Tel: +44 (0)20 7583 9020 | DX: LDE1039 Chancery Lane
Web: www.hendersonchambers.co.uk | Email: clerks@hendersonchambers.co.uk