

Reading the New Product Liability Directive Through a Global Value Chain Lens

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1. Introduction

The Product Liability Directive is a law concerned with Global Value Chains (GVCs). It constitutes rights to compensation for damages caused by defective products – mainly consumers – and imposes mirroring liability on the actors that are involved in their production, and to a lesser extent the distribution, and presumably have caused the defectiveness. However, product liability, including the recent revised Directive, is mostly discussed from the perspective of tort, internal market or consumer law, and rarely put into the context of GVCs.¹ The present chapter aims to fill this void by discussing the new Product Liability Directive through the lens of GVC theory. In the overall spirit of this collection, we aim to take a doctrinal (though not comparative) as well as normative perspective using GVC theory as our analytical and normative frame.

Before starting, we would like to clarify what it means to take a GVC perspective on this topic. The term GVC denotes a multi-step production process where economic value is added in each step of the process of production, organised in the form of a “chain” with a global reach. While this representation is over-simplistic of the complexity of global production and supply of products and services in today’s globalised economy, it still does provide a first, helpful, account of the reasons of why product liability legislation could be read in connection with such a collective and multi-layered process of production. By making the dynamics behind producing goods as well as the distributional consequences visible, GVC theory provides

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¹ Two notable exceptions to this general absence are J Salminen, ‘From Product Liability to Production Liability: Modelling a Response to the Liability Deficit of Global Value Chains on Historical Transformations of Production’ (2019) 23 *Competition & Change* 420 who compares the historical development of product liability as a means to establish proximity between consumer and manufacturer in times of fragmented distribution processes with a current need to think similar for establishing production liability for lead firms and those affected by value chains and V Ulfbeck, ‘Supply Chain Liability for Workers’ Injuries - Lessons to be Learnt from Product Liability?’ (2018) 9 *Journal of European Tort Law* 269 who discusses the potential of product liability or developing GVC liability for workers affected by supply-chain operations.

context for product-centred regulation, such as product safety and, to some extent also product liability. Moreover, the transition to a GVC-based organisation of production has affected the link between production and consumption. This link is conceptualised not only through the typical transactional lenses of contract law, but also through the lenses of GVCs whereby economic operators and consumers represent nodes holding a specific function in the value chain. The product characteristics, and for the present topic more specifically product safety characteristics, do not depend on the manufacturer as one single actor, but rather on a multiplicity of actors involved in the production process. At the same time, the allocation of liability requires providing consumers with a clearly identifiable (set of) actor(s) to whom they can address product liability claims, in order not to impair the effectiveness of their rights to safety.² Striking a balance between the protection of consumer rights and a fair allocation of liability for defective products among the actors involved in the GVC becomes therefore a task that requires an analysis of how GVCs function. This analysis must account for their fragmentation and distribution and for how the delineation of liable actors and their relations in product liability fits within that scheme.

The contribution unfolds along the following line of argument. It first presents the concept of GVCs by placing it in relation with production processes and consumption dynamics. GVCs are traditionally associated only with production and are rarely connected to consumption (section II). Despite this disconnect, we show how the PLD invites establishing such a connection between the two sides of the economic exchange. This entry point serves the purpose of introducing the model of liability proposed by the PLD as a network-based approach to GVC liability (section III). This model recognises the complexity and the multiplicity of actors involved in the product-making process and creating mechanisms for allocation of liability among the network members according to certain criteria and identifying first and second-order liability towards the consumer. However, looking at the PLD model of liability through the lens of GVC theory in a normative manner requires us to think of PLD network liability slightly differently than how it is set up in the new Directive. To that end, we argue that the network-approach that inspires the PLD has clear value, but that the normative criteria for allocating liability and hierarchising actors do not hold. We therefore sketch some

² S Weatherill, *EU Consumer Law and Policy* (Cheltenham, Edward Elgar Publishing, 2005); D Fairgrieve and others, 'Product Liability Directive' in P Machnikowski (ed), *European Product Liability*, (Cambridge, Cambridge University Press, 2017).

consequences for PLD liability when re-reading the Directive through a GVC lens (section IV). In addition, we also discuss, albeit in a more cursory overview (concluding section V), the possible use of the network-based approach in the general discussion of GVC liability. To that end, we argue that the more GVC-oriented network approach adopted by the PLD is more advantageous compared to approaches that focus on negligence and fault-based responsibilities of pre-determined actors in the chain. We suggest that such a network-based framework might be more responsive to GVC dynamics than models centred on the responsabilisation of lead firms.

2. The Concept of Global Value Chains

2.1. GVC Theory and the Understanding of Global Production

Today, GVCs represent the most common way of organizing production processes. The concept of GVCs, developed in scholarly discourse, refers to the full range of steps in producing a good, from the extraction of raw materials and the provision of technological and human inputs, to manufacturing, marketing, shipping and the distribution of the final product.³ Over the past four decades, GVCs have become dominant primarily for two major factors: trade liberalisation and the widespread adoption of information technologies (ICTs).⁴ These two factors have positively affected the ability of manufactures to expand production abroad while coordinating their activities through ICTs.

From a legal perspective, the move from factories to GVCs has been accompanied by a significant contractualisation of production processes. The fragmentation of production that is characteristic of GVCs is reflected in law through the growing reliance on contracts as the primary legal instruments to govern and coordinate GVCs.⁵ The advent of GVCs has thus

³ S Ponte, G Gereffi and G Raj-Reichert (eds), *Handbook on Global Value Chains* (Cheltenham, Edward Elgar Publishing, 2019); J Bair (ed), *Frontiers of Commodity Chain Research* (Stanford, Stanford University Press, 2008).

⁴ R Baldwin, *The Great Convergence: Information Technology and the New Globalization* (Cambridge/Mass, The Belknap Press, 2016).

⁵ For the pivotal role of contract in GVC processes: KH Eller, 'Transnational Contract Law' in P Zumbansen (ed), *Oxford Handbook of Transnational Law* (Oxford, Oxford University Press, 2021), 513; KH Eller and J Salminen (eds), *Re-Imagining Contract in a World of Global Value Chains* (2020) 16 *European Review of Contract Law*, Special Issue; R Vallejo, 'Voyaging through standards, contracts, and codes: the transnational quest of European regulatory private law' in M Cantero Gamito and H-W Micklitz (eds), *The Role of the EU in Transnational Legal Ordering: Standards, Contracts and Codes* (Cheltenham, Edward Elgar Publishing, 2020); A Beckers, 'The Invisible Networks of Global Production: Re-Imagining the Global Value Chain in Legal Research' (2020) 16 *European Review of Contract*

profoundly transformed how products are made, giving rise to the phenomenon of “manufacturers without factories”. This term refers to the circumstance where a corporation may market a product with its own brand without directly performing any of the production process passages. These are entirely externalised to third parties while being orchestrated by the externalising corporation. This set-up represents an extreme in the possible arrangements of a GVC but is helpful to convey the importance of the dynamics of coordination, power and control which sustain GVC-based production processes.

Scholarly inquiry into GVCs has developed along two main lines. Each of these two lines of inquiry provides for a distinct set of normative insights through which the liability framework delineated in the PLD can be analysed.

The first line of GVC scholarship examines the patterns of global production that emerged from the post-WWII global trade arrangements. From this perspective, the promotion and facilitation of international trade were expected to foster world-wide peace and offer an effective alternative to colonialism by promoting the development of under-industrialised countries.⁶ Within this approach, scholars identified the driving forces among actors involved in global production which affected the trajectories of economic development. This line of inquiry was initially commodity-centre and referred to the network of production as global commodity chains (GCCs).⁷ The reference to commodity instead of value chains reflects the roots of this first line of scholarship in comparative development studies. By placing GCC-analysis in this field, scholars could distinguish between producer-driven and buyer-driven GCCs/GVCs. This conceptualisation, today known as the “governance as driving” approach to GVC analysis, highlights the presence of “driving” forces behind the geography and the quality of work performed by actors in GVCs. Less industrialised countries, in particular, tend

Law 95; F Cafaggi (n 9); F Cafaggi, 'The regulatory functions of transnational commercial contracts: new architectures' (2013) 36 *Fordham Int'l LJ* 1557.

⁶ D Elms and P Low, *Global Value Chains in a Changing World* (WTO, Global Value Chain Development Report 2017); World Bank, *Trading for Development in the Age of Global Value Chains* (2020); OECD, *Trade for Growth and Poverty Reduction: How Aid for Trade Can Help, The Development Dimension* (OECD Publishing, 2011).

⁷ G Gereffi and M Korzeniewicz (eds), *Commodity Chains and Global Capitalism* (Westport/Connecticut and London, Praeger, 1994); J Bair, 'Global Capitalism and Commodity Chains: Looking Back, Going Forward' (2005) 9 *Comp & Ch* 153.

to participate more in buyer-driven and labour-intensive industrial sectors, such as the apparel industry.⁸

The second line of scholarship approaches GVCs as a distinctive model of production organisation, drawing on insights from corporate governance studies⁹ as well as from transaction-cost and institutional economics.¹⁰ This perspective conceives of GVCs as a form of business organisation situated along a continuum between horizontal and vertical modes of production. GVCs are horizontal insofar as production is not fully integrated within a single structure governed by property rights, as in the relationship between a parent company and its (incorporated) subsidiaries. Instead, GVCs generally rely on contractual linkages between formally independent firms. However, they do not form a purely horizontal model either, since some actors in the chain exercise greater influence over others. This influence translates into the exercise of stronger contractual and economic power, enabling companies to coordinate activities along the chain in ways that are more characteristic of vertical organisations. The focus of this second line of scholarship is therefore on the qualities of the intra-firm linkages that maintain and support GVCs activities. This line of research, often referred to as “governance as linking” approach, examines the variety and functioning of the coordination mechanisms adopted by firms. These mechanisms enable firms both to contribute to the overall purpose of the value chain and to pursue their own economic interests through value capturing, upgrading, and scaling.¹¹

2.2. The Normative Stakes in GVC Theory

⁸ G Gereffi and O Memedovic, *The Global Apparel Value Chain: What Prospects for Upgrading by Developing Countries* (Vienna, United Nations Industrial Development Organization, 2003).

⁹ S Grundmann, F Cafaggi and G Vettori (eds), *The Organizational Contract: From Exchange to Long-Term Network Cooperation in European Contract Law* (London, Routledge, 2016); S Grundmann, F Möslin and K Riesenhuber (eds), *Contract Governance* (Oxford, Oxford University Press, 2015); F Cafaggi, ‘Transnational Private Regulation of Environmental Sustainability through Commercial Contracts. Reassessing Contractual Governance in Global Supply Chains’ (2024) 20 *European Review of Contract Law* 25.

¹⁰ Fundamentally, O E Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*, (New York, Free Press, 1985).

¹¹ G Gereffi, H-C Lim and J Lee, ‘Trade Policies, Firm Strategies, and Adaptive Reconfigurations of Global Value Chains’ (2021) 4 *Journal of International Business Policy* 506; G Gereffi, J Humphrey and T Sturgeon, ‘The Governance of Global Value Chains’ (2005) 12 *Review of International Political Economy* 78; Bair and Mahutga, ‘Power, Governance and Distributional Skew in Global Value Chains: Exchange Theoretic and Exogenous Factors’ (2023) 23 *Global Networks* 814; E Baglioni, L Campling and G Hanlon, ‘Global Value Chains as Entrepreneurial Capture: Insights from Management Theory’ (2019) 27 *Review of International Political Economy* 903.

Both the “governance as driving” and the “governance as linking” approaches to GVC analysis provide an analytical framework for understanding the developmental and geographical implications of GVCs. Those approaches do not necessarily make the normative implications explicitly visible. However, such normative implications can be derived from the concepts that the two approaches adopt and the dynamics that they reveal. In this section we analyse such normative implications in preparation for the assessment of the liability framework of the PLD in that light. The “governance as driving” approach places emphasis on the role of chain leaders in the value chain even for macro-economic development. According to this approach, the core idea is that leading firms, typically identified with large (Western) corporations, play a decisive role in influencing and driving their own chain in terms of value and cost distribution along the actors of the chain. Depending on the type of industry, value generation and capturing dynamics can differ, providing either the supply-side or the demand-side of the chain with more influencing capacity over the rest of the chain. This difference has led to the classic distinction between buyer-driven and producer-driven commodity/value chains.¹² The concept of “lead firm” is an important legacy of this view that has been introjected by recent EU legislation on GVCs. This concept has also catalysed a variety of normative considerations that have been scrutinised by critical scholarship mostly with respect to corporate sustainability. Based on the framework provided by the “governance as driving” approach, such critical scholarship has increasingly targeted the responsibility of lead firms for the externalities of production, noting that manufacturing tasks are often allocated to jurisdictions with weak labor, human rights, and environmental protections so as to minimise costs.¹³ As a result, instead of reducing inequalities, GVCs have reinforced existing patterns of economic dependence and the division of labour between the core and the periphery. Law and political action have largely failed to meet demands for fair and sustainable production, constrained by the global fragmentation of GVC operations and the liberalisation of trade.¹⁴ This dynamic has

¹² G Gereffi, ‘The Organization of Buyer-Driven Global Commodity Chains: How U.S. Retailers Shape Overseas Production Networks’, in G Gereffi and Miguel Korzeniewicz (n 7).

¹³ O De Schutter, *Transnational Corporations and Human Rights* (Oxford, Hart Publishing, 2006); O De Schutter, ‘Corporate Social Responsibility European Style’ (2008) 14 *European Law Journal* 203; R McCorquodale, ‘Corporate Social Responsibility and International Human Rights Law’ (2009) 87 *Journal of Business Ethics* 385; R McCorquodale, ‘Business, the International Rule of Law and Human Rights’ (2012) *The Rule of Law in International and Comparative Context* (BIICL, 2010) 27; R McCorquodale, *Business and Human Rights* (Oxford, Oxford University Press, 2024).

¹⁴ For a critical appraisal of such a narrative, see: D Alessandrini, *Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO’s Development Mission* (Oxford, Bloomsbury Publishing 2010); D Alessandrini, ‘Global Value Chains, Development and the Long Duree of Trade and Investment Law’ (2022) 35

been described as a form of neo-colonial power exercised by Western corporations, countries and consumers at the expense of workers and the environment in less industrialised countries, which are often former colonies.¹⁵ In short, the normative implications of governance as driving suggest a focus on specific controlling firms within the GVC as bearers of responsibility, the core/periphery distinction as having normative significance for determining the inside and outside of the chain as well as the need to consider Western, including EU-based consumption and its legal protection, as a relevant factor in the chain.

The “governance as linking” approach of GVC analysis has stressed a different set of normative implications. From this approach, the presence of leading firms characterises only certain types of inter-firm linkages, specifically those defined as “captive”. In these linkages, leading firms can determine the degree of value distribution among GVC participants, thereby influencing the ability of smaller actors to upgrade their economic or functional position in the chain.¹⁶ However, captive linkages are the form of GVC linkage most closely resembling hierarchical business structures. Not all GVC linkages possess the same degree of captivity, meaning that it is possible that leading companies may have limited influence over some other businesses. As a result, the exercise of power in GVCs is a more nuanced phenomenon.¹⁷ Power structures need to be understood not only in the bilateral or chain-wide dynamic but also in consideration to the wider geographical dimensions and function-specific roles in the chain. Responsibility may, consequently, not only rest ex ante with a particular governance actor but may need to be determined in light of the dynamics of the production network, its geographies and the specific value-capturing activity. The driving forces within a value chain may vary

Leiden Journal of International Law 619; N M Coe and H W-C Yeung, *Global Production Networks: Theorizing Economic Development in an Interconnected World* (Oxford, Oxford University Press, 2015).

¹⁵ C Lichuma, ‘(Laws) Made in the “First World”: A TWAIL Critique of the Use of Domestic Legislation to Extraterritorially Regulate Global Value Chains’ (2021) 81 *Heidelberg Journal of International Law* 533; D Bose, ‘Decentering Narratives around Business and Human Rights Instruments: An Example of the French Devoir de Vigilance Law’ (2023) 8 *Business and Human Rights Journal* 18; M Mason, L Partzsch and T Kramarz, ‘The Devil is in the Detail—The Need for a Decolonizing Turn and Better Environmental Accountability in Global Supply Chain Regulations: A Comment’ (2023) 17 *Regulation & Governance* 970; D Palombo, ‘Transnational Business and Human Rights Litigation: An Imperialist Project?’ (2022) 22 *Human Rights Law Review* 1; C Mak, ‘On the Europeanness of Transnational Private Law: Human Rights Due Diligence Inside and Out’ (2025) 32 *Maastricht Journal of European and Comparative Law* 396.

¹⁶ G Gereffi, J Humphrey and T Sturgeon (n 11); S Ponte and T Sturgeon, ‘Explaining Governance in Global Value Chains: A Modular Theory-Building Effort’ (2013) 21 *Review of International Political Economy* 195.

¹⁷ M P Dallas, S Ponte and T Sturgeon, ‘Power in Global Value Chains’ (2019) 26 *Review of International Political Economy* 666; M P Dallas, ‘Cloth without a Weaver: Power, Emergence And Institutions Across Global Value Chains’ (2014) 43 *Economy and Society* 315; S Ponte, J Bair and M Dallas, ‘Power and Inequality in Global Value Chains: Advancing the Research Agenda’ (2023) 23 *Global Networks* 679.

depending on the functional and spatial subdivision of tasks among the different actors. Furthermore, different industries present different value generation and capturing dynamics: for instance, agriculture, digital products or pharmaceuticals are characterised by value capturing dynamics through IP rights on research and development activities. In other industries, such as technological products, value capturing dynamics take place both through IP rights and through spatial arrangements of certain production stages for cost reduction.¹⁸ In turn, these dynamics affect the capacity to influence value and risk distribution among actors or to regulate the process of production through standards.¹⁹ From a normative perspective, this suggests that economic benefit deriving from value capture may hold a particular place in the allocation of risks and responsibility.

Both the “governance as driving” and the “governance as linking” approaches to GVCs are very helpful as they suggest that GVCs operate through the exercise of coordination and power. From a legal perspective, coordination and power are exercised through the employment of legal tools that, due to the need to be applicable across different jurisdictions, are often of private and self-regulatory nature. These tools typically consist of codes of conduct, standards and certificates, which require compliance by the different actors involved in the chain. Ensuring compliance with the standards and requirements implies therefore that these legal tools are transferred along the chain either via internal corporate policies or via contracts.²⁰ The transferring along the chains of responsibility and of costs of compliance is one of the outcomes of the dynamics of power and control delineated by both the “governance as driving” and the “governance as linking” approaches. As a consequence of these dynamics, not all GVC participants – or economic operators in the language adopted by the PLD – are equally accountable for production processes. It is specifically the regulatory power centres in

¹⁸ See for instance: G Tups and P Dannenberg, 'Supplying Lead Firms, Intangible Assets and Power in Global Value Chains: Explaining Governance in the Fertilizer Chain' (2023) 23 *Global Networks* 772; H Zhu, F Xu and Q He, 'Moving from OEM to OBM?' (2018) *Development with Global Value Chains: Upgrading and Innovation in Asia* 247; critically on monopolization of IP rights C Durand and W Milberg, 'Intellectual Monopoly in Global Value Chains' (2018) *NSRR WP* 07/2018.

¹⁹ S Barrientos, G Gereffi and A Rossi, 'Economic and Social Upgrading in Global Production Networks: A New Paradigm for a Changing World' in G Gereffi (ed), *Global Value Chains and Development* (Cambridge, Cambridge University Press, 2018); Gereffi, Humphrey and Sturgeon (n 16); G Gereffi and X Luo, 'Risks and Opportunities of Participation in Global Value Chains' in G Gereffi (ed), *Global Value Chains and Development*.

²⁰ O E Williamson, 'Transaction Cost Economics Governance' (1979) 22 *The Journal of Law and Economics* 233.

GVCs, through standards, internal policies and certification, that need to be understood as decisive in terms of shaping the distributional consequences of the chain.

In the EU context, the safety of products that enter in the EU single market is ensured through the adoption of standards which are defined by the EU standardisation bodies CEN, CENELEC, and ETSI.²¹ The compliance with these standards is ensured by the adoption of private self-regulation that applies across the functional and spatial domains of the value chain. In the EU regulatory context, product safety standards also serve as benchmarks for assessing product defectiveness in liability cases, thereby linking consumer protection and standards of production in GVCs. However, the linking occurs in a specific manner: Product safety standards are included in laws to serve the benefit of consumers (and the functioning of the internal market), while their inclusion in GVCs has significant distributional consequences for the production process. Concretely, standards are meant to shape consumer expectations and are regularly cascaded down the chain. This comes with benefits for the powerful value-capturing actors (in terms of their marketing of products on the EU market towards consumers) and with unclear financial consequences for weaker parties in the production process who often have to bear the burden of compliance. The cascading down of standards also shapes the priority given to certain problem areas in changing production dynamics. For instance, standards shaping the quality of the product for EU consumers are more likely to be realised in the chain, compared to standards that are framed as labour conditions.²²

From a normative perspective, we suggest that the factual linking of production and consumption through standards requires striking a balance between two normative concerns: ensuring consumer safety on the one hand, and addressing the complex dynamic structure of production, including the implications for weaker parties in the chain, on the other. In concrete terms, this poses a challenge to the rationale behind the rules of liability allocation defined by

²¹ M Cantero Gamito and H-W Micklitz (eds), *The Role of the EU in Transnational Legal Ordering: Standards, Contracts and Codes* (Cheltenham, Edward Elgar Publishing 2020); H Schepel, *The Constitution of Private Governance: Product Standards in the Regulation of Integrating Markets* (Oxford, Hart Publishing, 2005).

²² Although not empirical evidence in the strict sense, this impression has been shared with us on different occasions by actors in the field. One reoccurring issue was, for instance, that standards related to the production process became much more important and quickly implemented in GVCs when they could be linked to the safety of the product and affected consumers in contrast to standards that mainly addressed labour conditions and worker safety. What we learned from those conversations is that consumption-relevant standards significantly drive the chain for a wide range of actors.

the PLD. The liability model delineated by the PLD appears to prioritise consumer protection, overlooking the dynamics and the distributional consequences that this may have on GVCs.

Hence, the GVC lens opens up a perspective on production dynamics and laws that allow us to look beyond the issue of consumer protection and allocation of liability due to presumed proximity to the defect. It suggests that economic benefit through value capture, regulatory control and connection of consumption and production are particularly important. With a GVC lens, we are thus able to consider questions of power relations, control mechanisms, dynamics of value capturing and distribution, development and geography. The following section analyses the PLD's model of liability in the light of these GVC dynamics, followed by a normative assessment of its problems and potential opportunities.

3. Product Liability as GVC Laws

3.1. EU Approaches to Value Chain Regulation: Company, trade and network

Discussing the PLD from a GVC perspective requires first to address with more depth what regulating GVCs through law – or in short GVC laws – entails. As discussed above, GVC studies have mostly been an interdisciplinary endeavour with economists, economic sociologists and political economists at the forefront. GVC studies were interested in understanding production organisation, their dynamics and the spatial embedding of production with their developmental consequences. GVC studies also excavated some important distributional consequences that GVCs bring. However, the role of the law in these dynamics was long neglected in these studies.²³ It is only recently that legal scholarship began to look at GVCs and their legal underpinnings. Besides notable studies that centre on what has been coined the “constitutive role” of law for GVC trade,²⁴ several other specific regulatory

²³ Most prominently emphasized by IGLP Law and Production Working Group, 'The Role of Law in Global Value Chains: A Research Manifesto' (2016) 4 *London Review of International Law* 57.

²⁴ For the constitutive role of trade law D Alessandrini, 'Global Value Chains, Development and the Long Duree of Trade and Investment Law' (n 14), for international law in general, M Koskenniemi, 'The Laws that Rule Us: The Legal Infrastructure of Global Capitalism' (2025) 154 *New Left Review* 15; on the constitutive role of law for private regulation in GVCs, see Joel Bakan, 'The Invisible Hand of Law: Private Regulation and the Rule of Law' (2015) 48 *Cornell Int'l LJ* 279.

objectives have been pursued through the development of “GVC laws”.²⁵ GVC laws denote those laws that seek to extend to and hereby regulatorily intervene into GVCs by means of legal rules pursuing specific policy objectives. In the context of these types of rules, the EU has – at least in the last years – been forefront.²⁶ The EU has been very active in adopting a variety of laws that regulate GVCs (or regulate through GVCs) to extend the EU’s power beyond the internal market.²⁷ In the course of this endeavour, EU laws use different regulatory approaches that each connect to different overarching political objectives.²⁸

In earlier research, the GVC concept in EU law has been analysed as falling within three main regulatory patterns. The first one is company centric. By means of imposing value chain governance obligations on corporations within its jurisdiction, the EU regulates GVCs as an extension of the corporation.²⁹ This is visible in rules that relate to sustainability and human rights,³⁰ but also seems inherent in some of the legal frameworks that aim at creating resilient supply chains and foster regional strategic autonomy.³¹ These laws thus build on the organisation of GVCs through the lead firm governance, retaining the “governance as driving” approach as theoretical model for regulatory intervention.

In a different manner, GVCs have become also a matter of unilateral measures in trade law that target specifically the import of products. This approach has been used mainly in relation

²⁵ For the conceptual proposal of “GVC laws”, see P F Kjaer, *The Law of Political Economy as Transformative Law: A New Approach to the Concept and Function of Law* (2021) 2 *Global Perspectives* 1. Critically on GVCs as a legal concept, KH Eller, ‘Is “Global Value Chain” a Legal Concept?’ (2020) 16 *European Review of Contract Law* 3. For due diligence as a core of the evolving legal concept on GVCs, J Salminen and M Rajavuori, ‘Transnational Sustainability Laws and the Regulation of Global Value Chains: Comparison and a Framework for Analysis’ (2019) 26 *Maastricht Journal of European and Comparative Law* 602.

²⁶ How far that regulatory dominance of the EU will remain in light of recent debates and policies on “simplification”, “deregulation”, “removing red tape” and, concretely “Omnibus”-packages, is of course and open question.

²⁷ J Salminen, M Rajavuori and KH Eller, ‘Global Value Chains as Regulatory Proxy: Transnationalizing the Internal Market Through EU Law’ in A Beckers, H-W Micklitz, R Vallejo and P Letto-Vanamo (eds), *The Foundations of European Transnational Private Law* (Oxford, Hart Publishing, 2024).

²⁸ On the various modes of institutionalization of GVCs within specifically EU law: A Beckers, ‘Global Value Chains in EU Law’ (2023) 42 *Yearbook of European Law* 322.

²⁹ A Beckers, ‘The Remains of the Corporation: A Future of Fragmented Corporate Personhood’, in H-W Micklitz and G Vettori (eds) *The Future of the Person* (Oxford, Hart Publishing, 2025).

³⁰ Salminen and Rajavuori (n 25).

³¹ See, for the EU: Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities (Critical Entities Resilience Directive); Regulation (EU) 2024/2747 of the European Parliament and of the Council of 9 October 2024 establishing a framework of measures related to an internal market emergency and to the resilience of the internal market and amending Council Regulation (EC) No 2679/98 (Internal Market Emergency and Resilience Act).

to upholding very specific environmental or labour standards, such as through the bans on forced labour products³² and prohibition of putting on the market products that contribute to deforestation.³³ Here, it is the product and the moment of import into the regulating country or region that is elevated to having regulatory significance. There are also EU laws that target trade practices in GVCs, hereby developing a law for unfair commercial practices for sector-specific GVCs.³⁴ These laws institutionalise GVCs with a view to their character as global trade structures that may shape economic development on a macro-level.

In-between those two extremes of addressing GVCs through hierarchy (companies) and heterarchy (trade), there is a third way that directs us to the PLD. Mostly located in consumer and internal market law, product safety and product liability rules, the value chain is approached as a network.³⁵ The goal behind this type of GVC regulation is to serve the consumer and the proper functioning of the internal market by placing obligations on different actors involved in the production and distribution of products (defined as “economic operators”) to ensure product safety.³⁶ In this context, the mode of GVC regulation is one of rights of the demand actor in the supply chain, typically consumers or businesses when buying and using products, to address the global collective of production in case of problems related to product safety.³⁷ In this context, the PLD network-based liability concept is closely oriented on the “governance-as-linking” approach that acknowledges different modes of production

³² See, for a detailed description of the use of trade law in GVCs, F C Ebert and others, ‘Tackling Forced Labour in Global Value Chains: What Role for Trade Instruments?’, in H Shamir, B Arora, S Banerjee and T Barkay (eds), *Modern slavery and the governance of global value chains* (Cambridge, Cambridge University Press, 2025).

³³ Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 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 and repealing Regulation (EU) No 995/2010 OJ L 150, 9.6.2023.

³⁴ The most evident example for this type of practice-oriented GVC regulation is Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ L 111, 25 April 2019.

³⁵ For this network conception of GVCs, cf M Fenwick, T Kono and R Yatsunami, et al., ‘The Global Value Chain, Networks & The New Possibility of Private Ordering’ (2024) *University of Edinburgh School of Law Research Project Papers*.

³⁶ See, specifically, the current discussion in the Market Surveillance, Product Safety and Product Liability Rules on the concept and delineation of who qualifies as an ‘economic operator’ and what the relation between different ‘operators’ is. Cf for a discussion on the justification of duties of various operators, G Veldt, ‘The Fulfilment Service Provider in Product Safety and Liability: A Silver Bullet for the Enhancement of Safety and Compensation in E-Commerce, or a Leap of Faith?’ (2024) 1 *European Journal of Risk Regulation* 4.

³⁷ In the following, we will refer to the term consumer to mean the party using/consuming the product but want to acknowledge that this is not limited to consumers (as parties protected under consumer law) but may include other consuming parties.

and considers a variety of actors involved. In the following analysis, this network approach is thus very relevant.

3.2. PLD's Network Liability: Characteristics, boundaries and hierarchisation in GVCs

Both the original and the revised Product Liability Directive (PLD) take a stance in relation to three aspects: 1) the delineation the responsible network, 2) identification of the liable actors and 3) specification of the role of the consuming party vis-à-vis the network. Three aspects are of particular importance for understanding the type of network approach to GVCs that the PLD entails.

First of all, the PLD, as other product safety rules, places the consumer vis-à-vis the network of economic operators involved in the process of production which include manufacturers and component manufacturers, importers and distributors. Hence, the liability model adopted in the PLD is a form of network liability that considers the consumer not as part of the production process. Rather, consumers rights are prioritised through liability allocation on the production network, without qualitatively distinguishing between the position of the actors within such network. This is in contrast to other network-based approaches in legal regulation that treat the ultimate user (hence the consuming actor) as part of the network that may be placed under an obligation.³⁸ Similarly, in the legal literature on networks, it is difficult to coherently understand the network without integrating the consumer.³⁹

Secondly, the PLD draws the boundaries of the production network in a rather specific manner by means of a function-specific delineation. This was already the case in the 1985 Directive. Consisting of just a handful of provisions, this Directive has introduced almost innocently a far-reaching network-based liability framework in the EU. Although the Directive appeared to focus on a single actor – the 'producer' of a product, it expanded the definition of what the producer can be. Taking a closer look at Art. 3 of the 1985 Directive, one can see an extension

³⁸ A notable example for a network approach that includes the user is the AI Act (Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) that treats the 'deployer' (understood as the user of a system) as part of the AI network who has related obligations.

³⁹ See, in detail, on the problem of determining the boundaries of the network in terms of internal/external actors and liability and the difficulty of placing the consumer outside of the network: H Collins, 'Introduction to Networks as Connected Contracts' in G Teubner, *Networks as Connected Contracts* (Oxford, Hart Publishing, 2011) 64 f.

of the concept of the producer to many different actors in the GVC, ranging from raw materials producer to component manufacturer to trademark owner and, explicitly integrated, the importer. Producer liability under the original PLD was, thus, not a singling out of one actor to be held responsible for production wrongs towards the consumer; instead, already the original Directive interpreted the producer as a role that different actors can fulfil in the production process. The enumeration in Art. 3 of the original PLD is, as it has been clarified by the Court of Justice early on, exhaustive and does not allow national laws to include other actors.⁴⁰ Quite similar to the original PLD, the Product Safety Directive has been delineating the 'producer' as the central actor in the supply chain to then understand the producer as a fluid category that can encompass different actors, including 'other professionals in the supply chain, insofar as their activities may affect the safety properties of the product'.⁴¹

With the newest revisions of both the rules on product safety and product liability and the introduction of rules on Market Surveillance, the legal structure of this network has been slightly, but not substantively, transformed. Rather than targeting one core actor within the network (the producer) that bears obligations, and then broaden that definition to include several additional actors, the new rules work, from the start, with the concept of a collective of "economic operators" responsible for product safety and compliance with EU law. The 2008 Market Surveillance Regulation was the first to adopt the definition of economic operators and enumerated as such manufacturers, authorised representatives, importers, and distributors.⁴² The more recent 2019 Market Surveillance Regulation extends the concept of economic operators in one significant way: Next to the actors involved in the manufacturing, import, and distribution of the product, the Regulation also introduces fulfilment service providers as new targeted actors. According to the Regulation, fulfilment service providers are actors that provide essential posting and transporting services, such as warehousing, packaging, addressing and dispatching.⁴³ A similar approach to both defining economic operators and enumerating these actors can be found in the revised Product Safety Regulation,⁴⁴ and it is this

⁴⁰ C-402/03 Skov Æg v Bilka Lavprisvarehus A/S and Bilka Lavprisvarehus A/S v Jette Mikkelsen and Michael Due Nielsen, EU:C:2006:6, para 32, 33.

⁴¹ Art. 2 (e)(iii) Product Safety Directive.

⁴² Art. 2 Market Surveillance Regulation 2008.

⁴³ Art. 3 (11) Market Surveillance Regulation 2019.

⁴⁴ Art. 3 (13), Art. 9 Product Safety Regulation.

model upon which the revised Product Liability Directive relies.⁴⁵ To be sure, the public law framework related to market surveillance and product safety and the private law rules on liability cannot be equalised entirely. While the general approach of delineating a collective with an enumeration of actors is similar in both, significant deviations exist with respect to the captured enumerated actors. In this context, the public law frameworks that place obligations on economic operators appear broader in what actors to include compared to the private law rules on liability. Compared to the former, the latter still centre around the manufacturer and the industrial perspective on goods production while omitting, in the enumeration of actors, central intermediaries that increasingly govern production processes.⁴⁶ On this point, the network approach adopted in the PLD differs from other approaches to networks as discussed in the literature. Whereas the general academic debate on networks focuses mainly on relational ties in the network to determine boundaries, and acknowledges some subjectivity in that regard,⁴⁷ the function-specific delineation in relation to the (defective) good and, consequently, the enumeration of actors in the legal framework is rather specific to product liability (and product safety law). While this pre-defined approach may be beneficial from the perspective of legal certainty, it falls short of capturing the highly volatile production environment in which the relation between the actors and the integration of particular functions into a production network remain fluid.

Third, the network approach in the PLD also contains a very specific approach towards the hierarchising of actors in terms of their liability. While the enumerated “economic operators” constitute a pool of operators that might be held liable for the damages deriving from defective products, the PLD does not treat them all equally. The Directive identifies some criteria to support a priority order for consumers to be followed when presenting a claim for product liability. In that context, the core target of liability remains the manufacturer. Intermediary actors⁴⁸ are treated as subsidiary liable. The allocation of liability among the economic

⁴⁵ Art. 8 Product Liability Directive.

⁴⁶ A reason for this may also be the historical development with the Product Liability Directive being an early value chain liability framework in the EU that entered into force (1985) when the objective was the regulation of inter-EU trade in the interest of consumers and not yet considered the global dimension of value chains. Further, the Directive contained an early policy choice of narrowing liability to the producer and not to different actors in the chain, as the US model on product liability foresaw.

⁴⁷ On network theory and its role in delineating (tort) law liability of different actors, A Lior, ‘The “Accident” Network: A Network Theory Analysis of Proximate Causation’ (2022) 106 *Marquette Law Review* 377, 390 ff.

⁴⁸ G Veldt (n 36).

operators of the GVC can be understood as forming a matrix along two main criteria: *proximity to territory* (of the EU) of the economic operator and *proximity to defectiveness* of the economic operator. The former criterion leads to prioritisation of the economic operator located on the EU territory, while the latter prioritises the economic operator that is assumed to be the closest cause of defect of the product. This form of allocating responsibility is equally a deviation from what the scholarly debate on networks discusses as potential hierarchisation of network participants. While there are also, specifically from the perspective of economic analysis, valid reasons to support a prioritisation of the manufacturer,⁴⁹ other contributions on network responsibility argue convincingly that network liability requires singling out actors that qualify as network centres – by controlling the network or exercising central governance functions.⁵⁰

The choice of having such a modular approach to network liability with a clear focus on consumer rights, delineated actors and hierarchisation around the manufacturer and the EU-based actor, is appreciable insofar as it creates certainty for consumers. However, the criteria that have been selected for defining the priority order may not hold when seen from the perspective of GVC theory.

4. Re-reading the PLD through a GVC Lens: Network liability, value and power

When reading the three characteristics of network liability in the PLD in the light of GVC theory, the overall architecture of the PLD might not result in a responsive approach to value chain dynamics. As we seek to show below, the PLD does not consider the inequalities of value capture and capacities among actors within the governance of GVCs and the regulatory standards as well as the spatial distribution of actors involved in the production process sufficiently. Therefore, we suggest a different allocation of liability which, while still acknowledging for the need of consumers to have clear rules on the actors to whom they can address their claims for damages, also takes into account power relations, value distribution or capturing within the chain, as well as exercise of control within the GVC.

⁴⁹ G Wagner, 'Next Generation EU Product Liability – For Digital and Other Products' (2024) 15 *Journal of European Tort Law* 172.

⁵⁰ R van Loo, 'The Revival of Respondeat Superior and Evolution of Gatekeeper Liability' (2020) 109 *Georgetown Law Journal* 141, 182 ff; R Condon, *Network Responsibility: European Tort Law and the Society of Networks* (Cambridge, Cambridge University Press, 2022), ch 4.

Taking the characteristics of GVCs, there are at least three aspects in which the PLD would need to be re-interpreted through a value chain lens.

First, when it comes to drawing the boundaries of the network, a GVC perspective would suggest a much stronger focus on delineating the network along governance functions as opposed to product proximity. As the GVC literature has emphasised, governance functions are exercised by different actors depending on how a particular GVC is organised. Of course, the overall approach to delineating the network along governance functions would lead to a significant expansion of the relevant actors.⁵¹ Compared to the PLD, a GVC-oriented reading of liability would not only and primarily target the manufacturer or any of the related actors, but also focus on those actors that govern the chain through control, standards, contracts or certifications. It would, specifically, and very centrally, include standardisation organisations, auditing and certification companies as parts of the network whenever their activities is connected to the safety of the product. In addition, a GVC perspective on the network liability would need to accept some arbitrage related to drawing the network boundaries given that GVCs rarely have those defined.⁵² However, instead of defining the boundaries in a clear-cut manner between function-specific inside/outside of the production network, a more helpful distinction may be the one between core/periphery. This distinction has the advantage of emphasising the core of the GVC, both spatially (in terms of connected regions in a particular sector) and in terms of integration into the GVC (prioritisation of actors with stable connections). On a concrete level, this suggests that the liability related to defective products would need to determine who of the actors in a GVC would be at the centre of the governing network and place actors at the periphery into a position of subsidiary liability.

Second, a very important re-reading of the PLD network liability through the GVC lens concerns precisely this primary/subsidiary liability construction and thus the hierarchisation of the relevant actors. On this point, the GVC perspective offers alternative criteria for determining primary and secondary liability. Instead of the assumed proximity to the cause of defect (which, on a factual basis is not always possible to prove in any case), the GVC perspective would place the emphasis on the proximity to the value generated in the chain and the power that is exercised by a particular actor. Primary liability needs thus to be

⁵¹ J Salminen (n 1).

⁵² Important arguments on this point by KH Eller (n 25) 15 f.

allocated on actors capturing the value and exercising central governance functions for the safety of products in the production process. This would, again, place trademark owners and intermediary actors much more at the centre of the discussion on liability. By emphasising the impact of governance dynamics on value capturing and distribution, such an approach to liability allocation for defective products would therefore be much more responsive to the “governance as linking” approach to GVC analysis rather than to the “governance as driving” approach.

And third – and this may be the most revolutionary point of all – a GVC perspective as we suggest here would, if taken seriously, consider consumption patterns not as the outside but as intrinsically linked to production.⁵³ The consequence of such understanding for consumer law and the PLD would, of course, be significant. It would mean to consider the consumer as a potential participant in the collective that is responsible for product safety. While the consumer may not be directly involved in the production of a defective product, the consumption demands (such as requesting cheap goods or expecting products to be constantly available for purchase) may be considered in determining how far consumers may be treated as the victims entitled to liability instead of being represented as the co-producers of the instable and dangerous production system that leads to defective products. This shift in paradigm would equally entail to consider that defective products do not just affect consumers but also harm those involved in the production process. These insights may thus, depending of course on the specificity of the harm, lead to partial responsibility allocation to consumers (for harms of others in the production process) or a limitation of the liability claim. This move from rights and liability entitlement to responsabilisation is, of course, highly controversial and may overburden consumer and liability law as it stands. Yet, such uncomfortable truth requires discussion if we aim to make the body of EU consumer law, including product liability and the PLD, future-proof and responsive to the most pressing problems occurring in the commodity production.⁵⁴

⁵³ On a conceptual level, this argument is developed by R Ravalli, *Connecting Interrupted Chains* (Oxford, Hart Publishing 2026, forthcoming).

⁵⁴ Most clearly on this issue and with a similar direction H-W Micklitz, 'The Price to Pay for Pick-a-Pack Dependency: Consumer Policy and Law Between Internal Market and Digital-Green Economy' (2025) 48 *Journal of Consumer Policy* 337, 342.

It is clear that such normative re-reading of the PLD through the GVC lens may prove difficult to adapt in the text as it stands. The function-specific roles have been delineated, and the allocation of primary and subsidiary liability is set in the text and not easy to move in a different direction. Hence, our normative contribution is less a call for a re-interpretation of the text than a broader call for the product liability lawyers to re-think their central assumptions in the light of the global production dynamics that the legal rules relate to. Whether some of these aspects become effective in the implementation of the PLD, in a long-term future revision or the ever-more sophisticated case law by the CJEU on consumer rights and responsibilities must remain open in this contribution..

5. Outlook: The prospects of GVC network liability and the relevance of the PLD-approach

Throughout this contribution, we have argued that the Product Liability Directive is a part of what qualifies as GVC laws and that, in this context, it adopts a very specific network-centred approach to regulating GVCs and attributing liability. We have also taken a normative perspective to develop some recommendations on how to re-interpret the network liability for product defects in light of the insights from GVC theory.

However, while we have criticised the PLD's lack of responsiveness to the GVCs that they attempt to regulate, we do acknowledge, at the same time, that the PLD's approach to GVCs is, on an overall level, a very welcome development. If we broaden the perspective from specifically liability for damages resulting from defective products to the broader liability discussions in GVCs for negative externalities, we see clear advantages of this network-based approach compared to other approaches.

In the liability debate on GVCs, the main discussion surrounds liability of the chain leader. This is true for both human rights violations in global supply-chains as well as the supply-chain dimension of environmental, such as climate, obligations, and it is fostered both through legislation and case law. Most GVC liability discussions thus implicitly, and sometimes uncritically, adopt the actor-centric view on GVCs. This approach to supply-chain liability is predominantly based on a fault-based form of liability, i.e. on negligence. This is the case for the EU Corporate Due Diligence Directive that in its former Art. 29 linked liability to the failure of an obligated lead firm to conduct proper due diligence. It is also the case in the evolving case law on liability for human rights and environmental violations in GVCs where the legal

basis for assigning liability for lead firms remains the tort of negligence.⁵⁵ Accordingly, the liability debate in GVCs has predominantly been focused on normatively justifying lead firm liability in the context of fault-based liability through the legal construction of a duty of care.⁵⁶ However, from a GVC perspective, this approach has clear disadvantages, and it is also confronted with multiple practical obstacles, such as proving fault and causality between fault and damage. Hence, in line with other authors,⁵⁷ we suggest that – on a general level – the network approach that is taken by the PLD is productive for further advancing liability in GVCs. Reading the PLD through a GVC lens is emphatically not only a matter of re-interpreting product liability to be more GVC-responsive, but also circles back to re-evaluating GVC liability in light of product liability as one of its models. In that regard, the network approach adopted in product safety and liability, even if imperfectly constructed in the PLD, is a model that is responsive to the character of GVCs insofar as it already frames the global commodity production system as a collective endeavour rather than one linked to a particular (large) lead firm. It may, if amended to fit the specifics of GVCs, perhaps become a model or an institutional repository within existing liability law that can inspire the further development of the (case) law in relation to GVC liability.

⁵⁵ *Vedanta Resources Plc v Lungowe* [2019] UKSC 20; *Okpabi and Others v Royal Dutch Shell Plc and Another* [2021] UKSC 3; The Hague Court of Appeal, *Milieudefensie and Others v. Royal Dutch Shell PLC and Others*, case number 200.302.332/01, Judgment of 12 November 2024.

⁵⁶ C Bright, A Marx, N Pineau, J Wouters, 'Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?' (2020) 22 *Business & Politics* 667.

⁵⁷ Specifically J Quinn and R Condon, 'Beyond the Individual-Company: From Corporate Social Responsibilities to Corporate Social Liability' (2025) 16 *Trans Legal Theory* 226; A Sommerfeld, 'Eine Haftung für die Lieferkette: Kaskadierende, subsidiäre Haftung von Wirtschaftsakteuren derselben Lieferkette' in H Hamann, M Belke, M Esmer, J Halbach, J Knapp, Z Reil, D Verres, J Weigl and S Weyhofen (eds), *Blinde Flecken der Zivilrechtswissenschaft* (Baden-Baden, Nomos, 2026).