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SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Second Chamber)

26 March 2026 *

(Reference for a preliminary ruling – Approximation of laws – Liability for defective products – Directive 85/374/EEC – Article 13 – Relationship with the fault-based liability system – Fault by the producer linked to the defective nature of the product – Article 10 – Starting point of the three-year limitation period in the case of damage consisting in a progressive illness – Concept of 'becoming aware of the damage' – Article 11 – Extinguishment of the rights of the injured person – Validity – Article 47 of the Charter of Fundamental Rights of the European Union – Right of access to a court)

In Case C-338/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour d'appel de Rouen (Court of Appeal, Rouen, France), made by decision of 25 April 2024, received at the Court on 7 May 2024, in the proceedings

LF

v

Sanofi Pasteur SA,

THE COURT (Second Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, F. Schalin (Rapporteur), M. Gavalec and Z. Csehi, Judges,

Advocate General: L. Medina,

Registrar: G. Chiapponi, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 26 March 2025,

after considering the observations submitted on behalf of:

– LF, by M. Leroux, avocate,

– Sanofi Pasteur SA, by A. Aviges, D. Lapillonne, F. Molinié and F. Monteret-Amar, avocats,

– the French Government, by M. de Lisi, B. Fodda and B. Travard, acting as Agents,

– the German Government, by J. Möller, M. Hellmann and A. Sahner, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,

– the Council of the European Union, by D. Bringuier and N. Brzezinski, acting as Agents,

– the European Commission, by M. Owsiany-Hornung and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 June 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 10 and 13 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29), and the validity of Article 11 of that directive in the light of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between LF, who is a natural person, and Sanofi Pasteur SA concerning an application for compensation for alleged harm following a vaccination.

Legal context

European Union law

3 The first, ninth to eleventh and thirteenth recitals of Directive 85/374 state:

‘Whereas approximation of the laws of the Member States concerning the liability of the producer for damage caused by the defectiveness of his products is necessary because the existing divergences may distort competition and affect the movement of goods within the common market and entail a differing degree of protection of the consumer against damage caused by a defective product to his health or property;

…

Whereas the protection of the consumer requires compensation for death and personal injury as well as compensation for damage to property; …

Whereas a uniform period of limitation for the bringing of [an] action for compensation is in the interests both of the injured person and of the producer;

Whereas products age in the course of time, higher safety standards are developed and the state of science and technology progresses; whereas, therefore, it would not be reasonable to make the producer liable for an unlimited period for the defectiveness of his product; whereas, therefore, liability should expire after a reasonable length of time, without prejudice to claims pending at law;

…

Whereas under the legal systems of the Member States an injured party may have a claim for damages based on grounds of contractual liability or on grounds of non-contractual liability other than that provided for in this Directive; in so far as these provisions also serve to attain the objective of effective protection of consumers, they should remain unaffected by this Directive; whereas, in so far as effective protection of consumers in the sector of pharmaceutical products is already also attained in a Member State under a special liability system, claims based on this system should similarly remain possible.’

4 Article 1 of Directive 85/374 provides:

‘The producer shall be liable for damage caused by a defect in his product.’

5 Article 4 of that directive provides:

‘The injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage.’

6 Article 6 of that directive states:

‘1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:

(a) the presentation of the product;

(b) the use to which it could reasonably be expected that the product would be put;

(c) the time when the product was put into circulation.

2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.’

7 Under Article 10 of that directive:

‘1. Member States shall provide in their legislation that a limitation period of three years shall apply to proceedings for the recovery of damages as provided for in this Directive. The limitation period shall begin to run from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.

2. The laws of Member States regulating suspension or interruption of the limitation period shall not be affected by this Directive.’

8 Article 11 of Directive 85/374 provides:

‘Member States shall provide in their legislation that the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a period of 10 years from the date on which the producer put into circulation the actual product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer.’

9 Article 13 of that directive provides:

‘This Directive shall not affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability or a special liability system existing at the moment when this Directive is notified.’

French law

10 Article 1240 of the code civil (Civil Code) provides:

‘Any act by an individual which causes damage to another obliges the one whose fault has caused it to make good the damage.’

11 Article 1245 of that code is worded as follows:

‘The producer shall be liable for the damage caused by a defect in its product, whether or not it is bound to the injured person by contract.’

12 Article 1245-15 of that code provides:

‘Except where the producer is at fault, the producer’s liability pursuant to the provisions of this chapter shall be extinguished 10 years from the date on which the actual product which caused the damage was put into circulation, unless the injured person has, in the meantime, instituted proceedings.’

13 Article 1245-16 of that code states:

‘An action for compensation based on the provisions of this chapter shall be subject to a limitation period of three years from the date on which the claimant became aware or should reasonably have become aware of the damage, the defect and the identity of the producer.’

14 Article 1245-17 of the Civil Code provides:

‘The provisions of this chapter shall not affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability or under a special liability system.

The producer shall remain liable for the consequences of its own fault and of the fault of the persons for whom it is accountable.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 Having been vaccinated against diphtheria, tetanus and poliomyelitis with the Revaxis vaccine, manufactured by Sanofi Pasteur, on 20 March 2003, LF complained of various symptoms, infections and pain from 2004 (digestive problems, sore throat, pain in the shoulders, arms and hands, neck pain, urinary infections, lower back pain and hair loss). She was placed on repeated periods of sick leave from 3 December 2005.

16 Various medical examinations having, in 2008, revealed macrophagic myofasciitis, indicating the residual presence of aluminium hydroxide, an adjuvant used in certain vaccines, on 2 June 2015, LF brought her case before the commission de conciliation et d’indemnisation des accidents médicaux (Conciliation and Compensation Board for Medical Accidents, France), which ordered that an expert report be drawn up. That expert procedure found that LF’s state of health had stabilised on 20 September 2016 and that it could not be concluded that the illness from which LF suffered had been brought about by the vaccination with Revaxis. Accordingly, that board dismissed LF’s application.

17 In June 2020, taking issue with the conclusion of the expert report, LF brought proceedings against Sanofi Pasteur, in particular, before the tribunal judiciaire d’Alençon (Court of Alençon, France), seeking compensation for the harm that

she considered she had suffered as a result of that vaccination, on the basis of liability for defective products and of fault-based liability.

18 LF's claims were dismissed by an order of 10 June 2021 of the judge preparing the case for trial at the tribunal judiciaire d'Alençon (Court of Alençon), who held, inter alia, that the action against Sanofi Pasteur, in so far as it was based on the producer's liability for defective products, was time-barred under Article 1245-16 of the Civil Code.

19 By judgment of 31 May 2022, the cour d'appel de Caen (Court of Appeal, Caen, France) essentially confirmed that order, holding that both LF's claims based on Article 1245-1 et seq. of the Civil Code and those based on Articles 1240 and 1241 of that code were inadmissible.

20 On 5 July 2023, the Cour de cassation (Court of Cassation, France) set aside that judgment, on the ground, in particular, that 'in the case of a progressive [illness], which makes it impossible to determine a stabilisation date, the limitation period laid down by [Article 1245-16 of the Civil Code] cannot begin to run'. The Cour de cassation (Court of Cassation) referred the case back to the cour d'appel de Rouen (Court of Appeal, Rouen, France), which is the referring court, before which LF submits that she is entitled to bring proceedings against Sanofi Pasteur both on the basis of liability for defective products and on the basis of the general fault-based liability system.

21 As regards fault-based liability, on the one hand, LF claims that there was fault on the part of Sanofi Pasteur separate from a lack of safety on the part of the Revaxis vaccine, since, despite being alerted on numerous occasions to the harmful effects of that vaccine, Sanofi Pasteur took no action and failed to carry out any research or any monitoring after it had been placed on the market.

22 In so far as concerns, on the other hand, the admissibility of her action based on liability for defective products, LF submits that the 10-year limitation period laid down in Article 1245-15 of the Civil Code, which began to run from the time when the vaccine administered to her was put into circulation, deprives her of her right of access to a court because her illness is complex and progressive. In addition, the three-year limitation period laid down in Article 1245-16 of the Civil Code, which begins to run from the time when the damage, the product defect and the identity of the producer are known, can only begin to run from the date on which the damage stabilises. Accordingly, it is necessary to take into account in that respect her particular situation associated with the fact that her bodily harm is the result of a progressive illness.

23 Sanofi Pasteur, for its part, disputes all LF's arguments. That company asserts that, first of all, in the present case, the action for damages claiming fault-based liability is inadmissible because the fault on which LF relies, that is to say, a lack of due care or failure to monitor the product after its placing on the market, is not separate from the lack of safety relied on in relation to liability for defective

products. Sanofi Pasteur then states that the limitation under Article 1245-15 of the Civil Code has been triggered because more than 10 years have passed since the Revaxis vaccine was placed on the market. Last, the three-year limitation period under Article 1245-16 of the Civil Code, which began to run on the date on which LF became aware of the damage, has also expired.

24 The referring court is uncertain, in the first place, as to the scope of Article 13 of Directive 85/374, as interpreted by the Court in the judgment of 25 April 2002, *González Sánchez* (C-183/00, EU:C:2002:255). In that judgment, the Court held that Article 13 must be 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. The Cour de cassation (Court of Cassation), for its part, has held that a person injured by damage attributed to a defective product can bring an action for damages against the producer of that product on the basis of the fault-based liability system, if he or she establishes that the damage is the result of a fault by the producer, such as maintaining a product in circulation where it is aware of a defect in that product or a failure to comply with its duty of care in respect of the risks posed by the product. In those circumstances, the referring court is uncertain, in essence, whether that case-law of the Cour de cassation (Court of Cassation) is compatible with the interpretation of Article 13 of Directive 85/374 adopted by the Court of Justice.

25 In the second place, the referring court has doubts as regards the validity of Article 11 of Directive 85/374. In so far as that provision provides that the rights conferred on the injured person pursuant to that directive are extinguished on expiry of a period of 10 years from the date on which the product giving rise to the damage was put into circulation, that court wishes to ascertain whether the application of that regime has the effect of depriving a person suffering progressive harm caused by a defective product of his or her right of access to a court.

26 In the third place, as regards the interpretation of Article 10 of Directive 85/374, the referring court wishes to know, in essence, how the starting point of the three-year limitation period laid down in that provision is to be determined. According to case-law of the Cour de cassation (Court of Cassation), Article 1245-16 of the Civil Code, which transposes Article 10 of the directive into French law, should be interpreted as meaning that, in respect of bodily harm, the starting point of that limitation period must be the date on which the damage stabilises. That interpretation appears to depart from the wording of Article 10, which merely sets as that starting point the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.

27 In those circumstances, the cour d'appel de Rouen (Court of Appeal, Rouen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 13 of Directive [85/374], as interpreted by the judgment of 25 April 2002, [*González Sánchez* (C-183/00, EU:C:2002:255)], according to which an injured person may rely on systems of contractual or non-contractual liability having a different basis from that put in place by [that] directive, be interpreted to mean that the victim of a defective product may seek compensation for his or her injury from the producer under a general system of fault-based liability, relying in particular on the fact that the product has been allowed to remain in circulation, a failure to exercise vigilance with respect to the risks associated with the product or, more generally, a safety defect in that product[?]

(2) Is Article 11 of Directive [85/374], under which the rights conferred on the victim by that directive are extinguished upon the expiry of a period of 10 years from the date on which the harmful product was put into circulation, incompatible with the provisions of Article 47 of the [Charter] in that it deprives a victim suffering from a progressive injury caused by a defective product [of] the right of access to a court?

(3) Can Article 10 of [Directive 85/374], which determines the date on which the three-year limitation period begins to run as "the day on which the plaintiff became aware, or should reasonably have become aware, of the damage", be interpreted as meaning that the period starts to run only on the day on which the whole of the damage is known, in particular by the establishment of a stabilisation date, defined as the moment from which the condition of the victim of physical injury is no longer evolving – meaning that, where [an illness] is progressive, the limitation period does not start to run – rather than as the day when the damage has clearly appeared and can be linked to the defective product, regardless of its subsequent development?'

Consideration of the questions referred

The first question

28 By its first question, the referring court asks, in essence, whether Article 13 of Directive 85/374 must be interpreted as precluding a person injured by a defective product from seeking compensation for the damage from the producer on the basis of the general fault-based liability system, claiming that the producer in question maintained a product in circulation where it was aware of a defect in that product, that it failed to comply with its duty of care in respect of the risks posed by the product or engaged in any other wrongful conduct linked to a lack of safety in respect of the defective product.

29 While Article 1 of Directive 85/374 provides that the producer is to be liable for damage caused by a defect in its product, Article 4 of that directive states that the injured person is required to prove the damage, the defect and the causal relationship between defect and damage. Read in the light of the first recital of that directive, those provisions lay down the principle that the producer can incur no-fault liability founded on the product defect, defined, according to Article 6 of that directive, as a failure to provide the safety which consumers are entitled to expect from the product in question, taking all circumstances into account.

30 Against that background, Article 13 of Directive 85/374 provides that the directive is not to affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability or a special liability system existing at the moment when the directive is notified in national law.

31 In its judgment of 25 April 2002, *González Sánchez* (C-183/00, EU:C:2002:255), the Court stated that Article 13 of Directive 85/374 cannot be interpreted as allowing the Member States an option to maintain a general system of liability for defective products other than that laid down by that directive. Indeed, according to settled case-law, Directive 85/374 seeks to achieve, in the matters regulated by it, complete harmonisation of the laws, regulations and administrative provisions of the Member States (judgment of 21 December 2011, *Dutrueux*, C-495/10, EU:C:2011:869, paragraph 20 and the case-law cited). It follows that a national system of producer liability founded on the same basis as that put in place by Directive 85/374 and not limited to a given sector of production cannot be maintained in force (see, to that effect, judgment of 25 April 2002, *González Sánchez*, C-183/00, EU:C:2002:255, paragraph 33).

32 By contrast, the foregoing is not true of the systems of contractual or non-contractual liability referred to in Article 13, which are founded on different bases, such as a warranty in respect of latent defects or fault. That provision does not preclude an injured person from relying on those other systems of liability in order to seek compensation for the damage he or she has suffered (see, to that effect, judgment of 25 April 2002, *González Sánchez*, C-183/00, EU:C:2002:255, paragraph 31).

33 In the present case, LF brought proceedings for compensation against Sanofi Pasteur, under both Article 1245 of the Civil Code, transposing the system of liability for defective products laid down by Directive 85/374 into French law, and under Article 1240 of that code, which establishes a general system of fault-based liability. As regards, specifically, her action for damages claiming fault-based liability, it is clear from the order for reference that LF argues that Sanofi Pasteur acted wrongfully by maintaining the vaccine at issue in the main proceedings in circulation despite being aware of the lack of safety in respect of that vaccine. According to LF, that company also failed to comply with its duty of care as regards the known risks posed by the product in question.

34 In that regard, it should be noted that the requisite wrongful conduct in the context of a national system of fault-based liability constitutes a different basis from a product defect as defined in Article 6 of Directive 85/374. That difference in basis is precisely the criterion that serves to determine, in accordance with Article 13 of that directive, whether a national liability system can be relied on alongside the liability system laid down by that directive.

35 In those circumstances, the answer to the first question is that Article 13 of Directive 85/374 must be interpreted as not precluding a person injured by a defective product from seeking compensation for that damage from the producer on the basis of the general fault-based liability system, claiming that the producer in question maintained a product in circulation where it was aware of a defect in that product, that it failed to comply with its duty of care in respect of the risks posed by that product or engaged in any other wrongful conduct linked to a lack of safety in respect of the defective product.

The third question

36 By its third question, which it is appropriate to examine before the second question, the referring court asks, in essence, whether Article 10(1) of Directive 85/374 must be interpreted as meaning that the starting point of the limitation period laid down by that provision is the date on which the claimant became aware, or should reasonably have become aware: of the damage, which has definitively become apparent, linked to the defective product, irrespective of its subsequent evolution; of the product defect; and of the identity of the producer, and as precluding a situation in which that starting point can only be the date on which the damage stabilised.

37 It should be borne in mind that, according to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see judgments of 6 October 1982, *Cilfit*, 283/81, EU:C:1982:335, paragraph 20, and of 19 December 2024, *Ford Italia*, C-157/23, EU:C:2024:1045, paragraph 42).

38 As regards the wording of Article 10(1) of Directive 85/374, that article provides that an action against the producer is subject to a limitation period of three years which ‘shall begin to run from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer’. Accordingly, that provision cannot be interpreted as envisaging the date on which the condition of the injured person stabilised, that is to say, the date on which that damage ceased to evolve, as the starting point for the limitation period. It merely provides that that period only begins to run subject to awareness of three factors, including awareness of the damage, and makes no reference to the stabilisation of that damage or to the date on which it stabilised.

39 As regards the context of Article 10(1) of Directive 85/374, first, it must be recalled that, according to Article 4 of that directive, the injured person is required to prove the damage, the defect and the causal relationship between defect and damage. Second, it should be noted that Article 9 of that directive defines damage as, inter alia, damage caused by death or by personal injuries, while the ninth recital of the directive states that consumer protection requires compensation for, inter alia, damage caused by personal injury. However, it cannot be inferred from those provisions or from that recital that the compensation should correspond to a particular system and be subject to stabilisation of the condition of the injured person or to that person being aware of the full extent of the damage caused to him or her.

40 In addition, given that Article 11 of that directive provides that the rights conferred on the injured person under that directive are extinguished on expiry of 10 years from the date on which the producer put the product into circulation, setting the date on which the damage stabilises as the starting point for the limitation period laid down in that provision could undermine the effectiveness of the protection put in place by Directive 85/374. Indeed, it is not inconceivable that the damage may stabilise subsequently to expiry of that period of 10 years from the date on which the product is put into circulation, with the effect that the injured person would be unable to establish liability on the part of the producer.

41 As regards the objectives pursued by Directive 85/374, as is clear from its first recital, the directive seeks to end the divergences between national bodies of law likely to entail a differing degree of consumer protection within the European Union. The harmonisation of rules undertaken by the directive is also intended, according to its eleventh recital, to ensure that the liability of producers is limited, at EU level, to a reasonable length of time. Last, it is apparent from the tenth recital of that directive that it is in the interests both of the injured person and of the producer that actions for compensation are subject to a uniform three-year limitation period. In that context, one of the aims of Article 10 of Directive 85/374 is to satisfy the requirements of legal certainty in the interests of the parties involved (see, to that effect, judgment of 9 February 2006, *O'Byrne*, C-127/04, EU:C:2006:93, paragraph 26).

42 Setting the date on which the damage stabilises as the starting point of the three-year limitation period could undermine those various objectives. As is apparent from paragraph 40 of the present judgment, that interpretation of Article 10(1) of Directive 85/374 would not necessarily ensure consumer protection and compensation for harm caused to consumers by defective products. It would also be contrary to the maintenance of legal certainty, by rendering implementation of the liability system under Directive 85/374 subject to an arbitrary condition. In that regard, it must be observed that the date on which the damage stabilises, in the case of a progressive illness, is inherently uncertain and could moreover be the date of death of the injured person.

43 Conversely, even in the case of damage consisting in a progressive illness, setting as the starting point of the three-year limitation period the date on which the claimant became aware, or should reasonably have become aware, of the damage – in the sense that the damage in question has definitively become apparent, linked to the defective product, irrespective of its subsequent evolution – and of the defect and of the identity of the producer serves to ensure compliance with the principle of legal certainty in the interests of both the victim and of the producer. In particular, it makes it possible to identify a certain, uniform date from which the three-year limitation period begins to run.

44 Last, it should be noted that the foregoing interpretation of Article 10(1) of Directive 85/374 does not disregard the right of the injured person to obtain full compensation for the harm caused to him or her.

45 Indeed, it is apparent from the case-law of the Court that full and proper compensation for persons injured by a defective product must be available, within the limits laid down by that directive, in respect of damage arising from death or personal injury which is the result of products being defective (see, to that effect, judgment of 5 March 2015, *Boston Scientific Medizintechnik*, C-503/13 and C-504/13, EU:C:2015:148, paragraphs 45 and 46).

46 In that regard, it should nevertheless be noted that, although full and proper compensation must be available, Directive 85/374 does not govern all aspects relating to that compensation.

47 Accordingly, pursuant to Article 10(2) of Directive 85/374, the provisions relating to the suspension or interruption of the limitation period, which are matters within the competence of the Member States, apply to the period laid down in Article 10(1) of that directive. Similarly, Article 11 of that directive provides that the rights conferred on the injured person are to be extinguished on the expiry of a period of 10 years from the date on which the product which caused the damage was put into circulation by the producer, unless the injured person has, in the meantime, instituted proceedings against the producer. Consequently, once an action for compensation has been brought within those time limits, Directive 85/374 does not preclude those time limits from being interrupted or suspended pursuant to national law, pending the subsequent evolution of the illness, with the effect that the claimant is able, on the basis of that directive, to obtain full compensation for the harm caused to him or her. However, the directive does not specify the conditions under which those time limits may be interrupted or suspended.

48 In those circumstances, pursuant to the principle of procedural autonomy and subject to the principles of equivalence and effectiveness, it is for the national legal order of each Member State to determine the rules affording full and proper compensation for persons injured by a defective product (see, to that effect, judgment of 21 June 2017, *W and Others*, C-621/15, EU:C:2017:484, paragraph 25).

49 As regards more specifically the principle of effectiveness, it requires, in terms of the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from EU law, that those rules do not render practically impossible or excessively difficult the exercise of rights conferred by EU law (judgment of 21 June 2017, *W and Others*, C-621/15, EU:C:2017:484, paragraph 26).

50 In the light of the foregoing considerations, the answer to the third question is that Article 10(1) of Directive 85/374 must be interpreted as meaning that the starting point of the three-year limitation period laid down by that provision is the date on which the claimant became aware, or should reasonably have become aware: of the damage, which has definitively become apparent, linked to the defective product, irrespective of its subsequent evolution; of the product defect; and of the identity of the producer, and as precluding a situation in which that starting point can only be the date on which the damage stabilised.

The second question

51 As a preliminary point, it should be noted, first, that the referring Court's second question arises in a specific national context. It is clear from the order for reference that the referring court is uncertain, in essence, whether Article 11 of Directive 85/374 is valid, on the premiss that the period that it lays down of 10 years from the time when the product is put into circulation, on expiry of which the rights conferred on the injured person by that directive are extinguished, is insufficient to enable a person suffering from a progressive illness caused by a defective product to bring an action for compensation.

52 According to case-law of the Cour de cassation (Court of Cassation), recalled in paragraph 26 of the present judgment, the starting point of the three-year limitation period for an action for compensation, laid down in Article 10 of that directive, which has been transposed into French law in Article 1245-16 of the Civil Code, should be the date on which the damage stabilises. However, in the case of progressive illnesses, that stabilisation date may be a date after expiry of the aforementioned period of 10 years, that is to say, after the extinguishment, pursuant to Article 11 of Directive 85/374, of the rights conferred on the injured person by that directive. Accordingly, were Article 10 of that directive to be interpreted in that way, the effect would be that an action for damages, which could only be brought once the damage had stabilised, might be devoid of purpose for injured persons suffering from progressive illnesses for whom the condition stabilises after 10 years.

53 However, it is clear from the Court's answer to the third question, in paragraph 50 of the present judgment, that that interpretation cannot be adopted. Article 10 of Directive 85/374 should in fact be interpreted as meaning that the starting point of the limitation period laid down by that provision is the date on which the claimant became aware, or should reasonably have become aware: of the damage, which has definitively become apparent, linked to the defective product, irrespective of

its subsequent evolution; of the product defect; and of the identity of the producer, and as precluding the starting point of that period from being the date on which the damage stabilised.

54 Defined in that way, the starting point of the limitation period laid down in Article 10 of Directive 85/374 is likely to be before expiry of the 10-year period laid down in Article 11 of that directive, even in the case of injured persons suffering from progressive illnesses, with the effect that those persons' right to an effective remedy is likely to be safeguarded.

55 Second, it is necessary to emphasise that, according to settled case-law, when national courts apply domestic law, they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive, and consequently comply with the third paragraph of Article 288 TFEU (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 66 and the case-law cited).

56 It should further be noted that the principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the directive in question is fully effective and to achieving an outcome consistent with the objective pursued by it (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 67 and the case-law cited).

57 As the Court has held, the requirement to interpret national law in conformity with EU law entails, in particular, the obligation for national courts to change established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive. Consequently, a national court cannot, in particular, validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraphs 72 and 73 and the case-law cited).

58 It is, in the present case, for the referring court, so far as possible, to fulfil its obligation under EU law to check, in the light of the principles set out in the three preceding paragraphs of the present judgment, whether an interpretation which is consistent with EU law is possible.

59 Nevertheless, by its second question, the referring court asks, in essence, whether Article 11 of Directive 85/374, which establishes a limitation period of 10 years from the date on which the product is put into circulation, is valid in the light of Article 47 of the Charter, in so far as a person suffering from a progressive illness

caused by a defective product may be deprived of his or her rights of access to a court or tribunal in view of the specific characteristics of an illness of that kind.

60 According to settled case-law, the right to effective judicial protection, enshrined in Article 47 of the Charter, is not an absolute right and, in accordance with Article 52(1) of the Charter, limitations may be placed on it under certain conditions. In that regard, those limitations should (i) be provided for by law, (ii) respect the essence of the rights and freedoms at issue, and (iii) in compliance with the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (judgment of 26 January 2023, *Ministerstvo na vatreshnite raboti (Recording of biometric and genetic data by the police)*, C-205/21, EU:C:2023:49, paragraph 89 and the case-law cited).

61 As regards, at the outset, the first condition referred to in the preceding paragraph, the 10-year limitation period is expressly referred to in Article 11 of Directive 85/374. In its judgment of 2 December 2009, *Aventis Pasteur* (C-358/08, EU:C:2009:744), the Court noted that Article 11 of Directive 85/374 derives from an intention to achieve complete harmonisation at EU level, inasmuch as it provides for a uniform period on expiry of which the rights conferred on the injured person by Directive 85/374 are extinguished. Similarly, Article 11 establishes as the mandatory starting point of that period the date on which the product that caused the damage was put into circulation by the producer, and specifies that only the bringing of proceedings against that producer can be a ground for interrupting that period (see, to that effect, judgment of 2 December 2009, *Aventis Pasteur*, C-358/08, EU:C:2009:744, paragraphs 37 and 38).

62 As regards, next, the second condition, concerning respect for the essence of the rights of the injured person to have access to a court, it follows from the Court's case-law that the essence of the right to an effective remedy enshrined in Article 47 of the Charter includes, among other aspects, the possibility, for the person who holds that right, of accessing a court or tribunal with the power to ensure respect for the rights guaranteed to that person by EU law. To that end, that court or tribunal must be in a position to consider all the issues of fact and of law that are relevant for resolving the case before it (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 66 and the case-law cited).

63 In the present case, it can be observed from the answer to the third question that the essence itself of that right is not affected by the mechanism put in place by Directive 85/374.

64 Where the damage consists of a progressive illness, it is clear from paragraph 47 of the present judgment that, under Directive 85/374, a person suffering from a progressive illness is, in any event, able to have access to a court with jurisdiction in order to obtain a declaration on the basis of that directive of the damage caused

to him or her, within three years from the date on which the damage, linked to the product defect, definitively became apparent, meaning that the injured person in question was aware or should reasonably have become aware of the existence of that damage, irrespective of its subsequent evolution.

65 It is also apparent from paragraphs 53 and 54 of the present judgment that the fact that the three-year limitation period in question is confined within the 10-year period laid down in Article 11 of that directive is likewise not such as to affect that right. It should be borne in mind, in that respect, that Article 11 provides for the interruption of that latter period where, during that 10-year period, the injured person in question brings proceedings against the producer.

66 In addition, as is apparent from the examination of the first question, that system is established without prejudice to the possibility of applying a national system of contractual or non-contractual liability or a special liability system existing at the time when Directive 85/374 is notified. As is clear from Article 13 and the thirteenth recital of that directive, the directive does not affect the application of such systems (see, to that effect, judgment of 2 December 2009, *Aventis Pasteur*, C-358/08, EU:C:2009:744, paragraph 43).

67 Furthermore, it is apparent from paragraph 47 of the present judgment that Directive 85/374 similarly does not preclude an injured person, after obtaining a declaration of the damage caused to him or her on the basis of that directive and being awarded initial compensation, from then applying, in more than one stage if necessary, for additional compensation for that damage in the event that the damage has evolved, it being nevertheless for the Member States to provide for that possibility.

68 As regards, last, the third condition, the Court has noted that, as is clear from the tenth recital of Directive 85/374, the harmonisation of the rules on limitation pursued by that directive was intended by the EU legislature in the interests both of the injured person and of the producer (judgment of 2 December 2009, *Aventis Pasteur*, C-358/08, EU:C:2009:744, paragraph 39).

69 First, that harmonisation contributes to the overall objective, expressed in the first recital of Directive 85/374, consisting in ending the divergences between national bodies of law likely to entail a differing degree of consumer protection within the European Union. Second, pursuant to the eleventh recital of Directive 85/374, that harmonisation seeks, at EU level, to limit the liability of the producer to a reasonable length of time, having regard to the gradual ageing of products, to increasingly strict safety standards and to constant progress in the state of science and technology (judgment of 2 December 2009, *Aventis Pasteur*, C-358/08, EU:C:2009:744, paragraphs 40 and 41).

70 The Court has also noted that the intention of the EU legislature is to place specific time limits on the no-fault liability system established by Directive 85/374. It is also necessary, in order not to restrict technological progress and in

order to ensure that the risks connected with that specific liability remain insurable, to take into account the fact that the no-fault system represents a greater burden, for the producer, than a traditional system of liability (see, to that effect, judgment of 2 December 2009, *Aventis Pasteur*, C-358/08, EU:C:2009:744, paragraph 42).

71 Moreover, it must be recalled that the Court has recognised that consumer protection is not absolute and that the setting of reasonable limitation periods, in the interests of legal certainty, is compatible with EU law (judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 57 and the case-law cited).

72 It must also be noted that the situation of an injured person suffering from a progressive illness differs from that of an injured person suffering from a latent illness.

73 As regards the latter situation, it is true that, in its judgment of 11 March 2014, *Howald Moor and Others v. Switzerland* (CE:ECHR:2014:0311JUD005206710, §§ 78 and 79), the European Court of Human Rights held that 'the fact that it [was] impossible [for an injured person] to know that he or she suffers from a particular illness, [was] a circumstance that should be taken into account in the calculation of the limitation period'. In the light of those exceptional circumstances, that court was able to find that the application of limitation periods had restricted the very substance of the right of an injured person to have access to a court.

74 Nevertheless, although an injured person suffering from a progressive illness may be uncertain as to the evolution of his or her condition, that person is not deprived of access to a court or tribunal, because it is likely that the damage linked to the product defect will become definitively apparent within the period of 10 years laid down in Article 11 of Directive 85/374, with the effect that his or her rights are not affected.

75 Accordingly, the principles identified by the European Court of Human Rights in its judgment of 11 March 2014, *Howald Moor and Others v. Switzerland* (CE:ECHR:2014:0311JUD005206710), cannot be relied on to dispute the validity of Article 11 of Directive 85/374 in the case of an injured person suffering from a progressive illness due to a defective product.

76 In the light of the foregoing considerations, the answer to the second question is that consideration thereof has disclosed no factor of such a kind as to affect the validity of Article 11 of Directive 85/374.

Costs

77 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that

court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 13 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products**

   must be interpreted as not precluding a person injured by a defective product from seeking compensation for that damage from the producer on the basis of the general fault-based liability system, claiming that the producer in question maintained a product in circulation where it was aware of a defect in that product, that it failed to comply with its duty of care in respect of the risks posed by that product or engaged in any other wrongful conduct linked to a lack of safety in respect of the defective product.

2. **Article 10(1) of Directive 85/374**

   must be interpreted as meaning that the starting point of the three-year limitation period laid down by that provision is the date on which the claimant became aware, or should reasonably have become aware: of the damage, which has definitively become apparent, linked to the defective product, irrespective of its subsequent evolution; of the product defect; and of the identity of the producer, and as precluding a situation in which that starting point can only be the date on which the damage stabilised.

3. **The answer to the second question is that consideration thereof has disclosed no factor of such a kind as to affect the validity of Article 11 of Directive 85/374.**

[Signatures]