

Howden Re

Casualty in focus

The New EU Product Liability Directive (EU) 2024/2853

What changes, why it matters
and what insurers should do

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Introduction

The new EU Product Liability Directive (EU) 2024/2853 (EUPLD 2024) structurally recalibrates product liability for the digital economy. By explicitly extending strict liability to software, AI-enabled systems, digital manufacturing files and post-market updates, the directive aims to reshape who may be held liable and how liability can be determined.

While commentary has often focused on the expanded definition of 'product', the reform reflects a broader shift: strengthening claimants' procedural position through court-ordered disclosure and disprovable presumptions, expanding the scope of compensable damage and extending potential defendants across modern supply chains.

For insurers and reinsurers, this represents a material shift in the claims landscape. Claimants will be better equipped to pursue claims, and more likely to succeed. At the same time, liability extends across the full digital lifecycle, reshaping exposure within product liability portfolios.

A clear understanding of these structural changes is therefore essential ahead of the 9 December 2026 application date.

The following analysis examines the key implications of EUPLD 2024 for (re)insurance markets.

A short history of the 'digital-age' reboot from 1985 to 2024

The EU's first Product Liability Directive 85/374/EEC (1985) (EUPLD 1985) established a common liability framework across the EU, aligning previously fragmented national approaches and ensuring a consistent level of consumer protection across member states.



However, by the 2010s and early 2020s, the European Commission and Parliament increasingly viewed EUPLD 1985 as inadequate for software-driven, connected and AI-enabled products. It was also seen as overly complex for claimants, particularly where key evidence is embedded within opaque systems and dispersed across global supply chains.

The new directive responds to these concerns, recognising that technological developments (including AI), circular economy models and global supply chains have introduced legal uncertainty, particularly regarding what constitutes a 'product'. It also acknowledges that these developments made it more difficult for injured parties to prove claims in complex cases.



Key differences between EUPLDs 1985 and 2024

EUPLD 2024 is best understood as (i) expanding the scope of 'product' and 'damage', (ii) broadening the range of potentially liable actors, and (iii) strengthening claimants' litigation tools, including disclosure and rebuttable presumptions. It also reflects an updated approach to product lifecycles, addressing software updates, AI learning and cybersecurity risks.

2.1 'Product' now clearly includes software, AI and digital manufacturing files

Where EUPLD 1985 struggled to address 'intangible' products, EUPLD 2024 expressly defines 'product' to include software, digital manufacturing files, raw materials and electricity.

It further clarifies that related digital services (whether integrated or interconnected) may be treated as product components if they are within the manufacturer's control and are necessary for the product's core functions. Free and open-source software developed or supplied outside commercial activity is excluded from the scope.

2.2 'Damage' broadened: psychological injury and non-professional data corruption; caps and deductibles removed

EUPLD 2024 expands the definition of compensable damage to include:

- Medically-recognised harm to mental health, in addition to bodily injury and property damage already covered under the EUPLD 1985;
- The destruction or corruption of non-professional data, with compensation covering material losses and, where permitted under national law, non-material losses.

In addition, EUPLD 2024 interdicts member states from imposing financial caps on liability for death and personal injury, removing the previous EUR 500 minimum limit.

EUPLD 2024 also stipulates that all material and non-material losses are recoverable, where such non-financial losses are recognised under applicable national law.

2.3 More potential defendants: a broader 'economic operator' cascade (incl. platforms and fulfilment)

EUPLD 2024 broadens the range of potentially liable actors, particularly where the manufacturer is established outside the EU. It enables claims to be brought against importers, authorised representatives, fulfilment service providers and, under certain conditions, distributors and online platforms. This includes situations where a platform presents a product or transaction in a way that leads consumers to believe it is the trader.

2.4 Disclosure of evidence and rebuttable presumptions: litigation is structurally easier for claimants

EUPLD 2024 introduces a significant procedural shift:

- Courts can require defendants to disclose relevant evidence where the claimant presents sufficient facts to establish the plausibility of a claim. Courts must also consider proportionality between the protection of trade secrets and confidential information.
- Presumptions of defect and causation apply in defined circumstances, including where there is a failure to disclose evidence, non-compliance with mandatory safety requirements, an obvious malfunction, or where technical or scientific complexity makes proof "excessively difficult."

2.5 Lifecycle responsibility: updates, cybersecurity and 'learning' systems

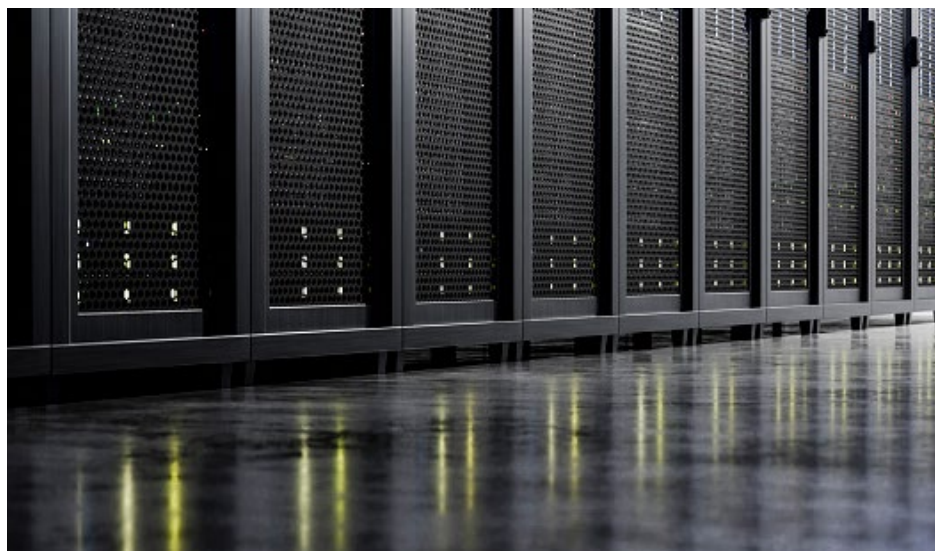
Under EUPLD 2024, product defectiveness assessments now explicitly consider:

- A product's ability to learn or acquire new features and the resulting impact on the safety of interconnected products;

- Safety-relevant cybersecurity requirements;
- The manufacturer's control after the product has been placed on the market (e.g., by providing updates). Liability may therefore persist where defectiveness arises from software updates, related services or the failure to provide necessary updates to maintain safety, where these remain within the manufacturer's control.

2.6 Time limits: extended expiry period for latent injuries

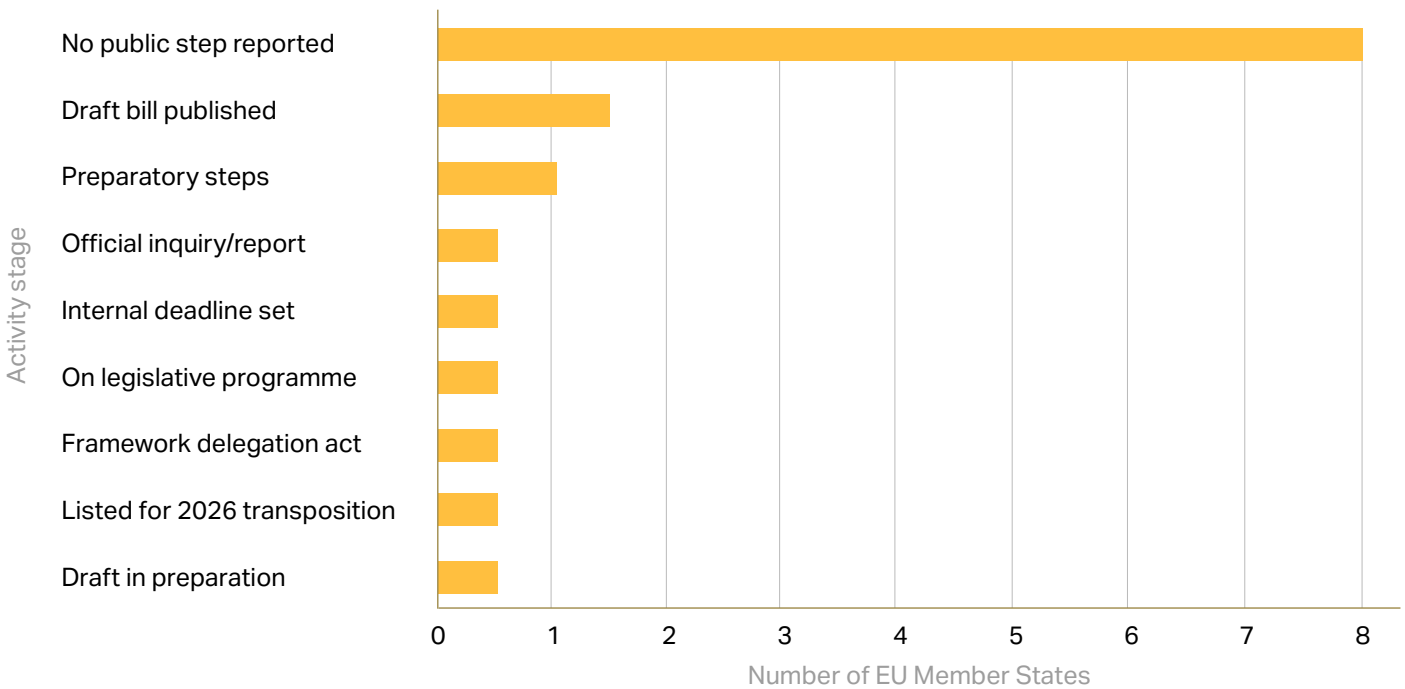
While the general expiry period under EUPLD 1985 remains 10 years, EUPLD 2024 extends this period to 25 years in exceptional cases involving latent personal injury.



Current state of transposition

Although member states have until 9 December 2026 to transpose EUPLD 2024, progress has so far been limited.

Transposition activity for Directive (EU) 2024/2853 (status in sources up to Nov 2025)



As of late 2025, some countries, namely the Netherlands, Sweden and Germany have published draft legislation or taken formal steps towards implementation. Others, including Italy, Hungary, Denmark, Austria, the Czech Republic, Romania, Slovakia and Finland, have undertaken preparatory or scheduling measures. However, the majority of EU member states have not yet publicly reported any updates (see graph above).

What are implications of EUPLD 2024 for insurers?

4.1 Product lifecycle in focus: underwriting must follow the 'product + software + service' lifecycle

As 'product' under EUPLD 2024 explicitly includes standalone and embedded software, and as related services can be treated as components where they determine functionality or safety, insurers should assess risk across an expanded lifecycle:

- **Design and development:** coding, training data selection, model updates and human factors
- **Manufacture and distribution:** global supply chains, component integration and remanufacturing or substantial modification
- **Post-sale control:** patching, upgrades, vulnerability management and model drift or continuous learning

This lifecycle approach is not optional. EUPLD 2024 explicitly links defectiveness assessment and certain liabilities to post-market control through updates and services.

Insurance implication:

Traditional product liability rating factors (e.g. sector, loss history, quality control) should be supplemented with software governance and cyber-safety controls, in line with EUPLD 2024's reformed defectiveness assessment, which includes safety-relevant cybersecurity. Measures include secure development practices, patch cadence, vulnerability disclosure processes, logging and traceability and third party component management.

4.2 Risk management: documentation, logging and disclosure of evidence

Under EUPLD 2024, insurers' risk management frameworks must align more closely with those of their insureds. The Directive's court-ordered disclosure regime and evidentiary presumptions place greater emphasis on internal governance and recordkeeping. Where a claimant establishes plausibility, defendants may be required to disclose relevant evidence, and failure to do so may trigger presumptions of defect.

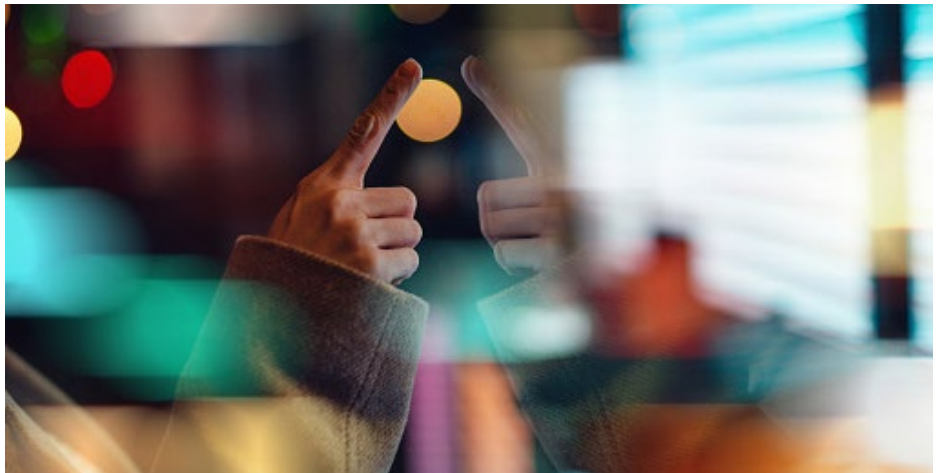
Practical adjustments for insureds and corresponding claims protocols:

- Evidence hygiene: maintaining design history files, change logs, update approvals, vulnerability tracking and incident response records
- Software Bill of Materials (SBOM): ensuring component traceability, particularly where multiple actors may be implicated
- 'Control' mapping: clearly identifying responsibility for which updates and related services are authorised or controlled by the manufacturer, which is important for allocating liability

4.3 Underwriting: broadened exposure, higher severity tails, new defendant classes

EUPLD 2024 introduces several underwriting implications arising from its expanded scope:

- **New loss types:** mental injury and non-professional data corruption and destruction will likely increase claim frequency and severity, particularly in consumer technology, medical devices, automotive and smart home products.
- **Expanded defendant pool:** claimants can pursue EU-based economic operators even where manufacturers are located outside the EU, potentially increasing frequency and defence costs for importers, fulfilment, distributors and platforms.
- **Longer tail:** the 25-year expiry period for latent injuries increases reserving uncertainty for bodily injury classes.



Portfolio actions for insurers:

Policy wordings review

- Clarify the treatment of software and AI as 'products', including the role of 'related services' and updates.
- Reassess cyber and data carve-outs: EUPLD 2024 considers corrupting or destroying non-professional data as damage, creating potential friction with cyber exclusions or "electronic data" definitions.

Limits, aggregates and attachments

- Remove historical caps set to EUPLD 1985 and review wider damage concepts, which may pressure limits adequacy and pose questions on attachment points.

Risk selection and pricing

- Add questionnaires on update governance, AI model lifecycle, vulnerability handling, and third-party software supply chain.

Accumulation management

- Monitor systemic defect risk, which might become more visible under the new disclosure and presumption regime, particularly where common software is deployed across many insureds.

4.4 Claims handling: earlier evidence gathering, multi-party strategies and litigation posture

EUPLD 2024's procedural tools mean claims teams should expect:

- Earlier and broader requests for technical disclosure, including disputes over proportionality, trade secrets and data protection boundaries
- More frequent multi-defendant scenarios encompassing the whole value chain, as well as disputes on 'substantial modification' and 'control' over updates and services
- Greater reliance on evidentiary presumptions in complex-product cases, potentially reducing the current defence advantage accrued by difficulties establishing causation for a defect

Claims playbook upgrades:

- **Technical triage:** create early "engineering review" routines and vendor panels, including software forensics, AI explainability specialists, and cyber incident experts.
- **Disclosure governance:** implement internal protocols for court disclosure, privilege and trade secret protection measures
- **Contribution/recourse mapping:** allocate across the supply chain early because joint and several liability, as well as recourse rights remain central.
- **Claims reserving:** adjust assumptions to include longer latent tails and changing probabilities within reserve assumptions.



If a member state misses the deadline, existing national legislation remains in force, but the relevant courts must adjudicate in a manner consistent with EUPLD 2024. That allows individuals, in certain scenarios, to rely on clear, unconditional provisions of EUPLD 2024 (“vertical immediate effect”), even without transposition, creating legal uncertainty and a likely rise in the total number of disputes.

However, EUPLD 2024 contains a firm transitional rule. The directive applies only to products coming to market or entering into service after 9 December 2026, while older products remain covered by EUPLD 1985.

Practical consequences for claims handling in non-transposing jurisdictions:

1. Two-track legal analysis

- For ‘pre 9 December 2026’ products: EUPLD 1985.
- For ‘post 9 December 2026’ products: expect arguments based on
 - **(a)** national law as written;
 - **(b)** directive-consistent interpretation; and,
 - **(c)** attempts to invoke directive provisions, raising uncertainty and litigation.

2. Forum risk & strategy

- Claimants may prefer jurisdictions with transposed rules that offer clearer procedures on disclosure and presumptions; defendants may contest venue and jurisdiction more aggressively.

3. Operational approach

- Claims teams should maintain jurisdictional playbooks and decision trees that reflect a member state’s transposition status, as well as local judicial trends on ‘consistent interpretation’ and disclosure practice.

It is important to note that the European Commission may launch infringement proceedings against non-transposing member states, including a referral to the European Court of Justice. That process could push late-moving states to accelerate transposition, while not necessarily clarifying pending private disputes any quicker.

EUPLD 2024 and its mechanisms may change claims and reinsurance dynamics in the following ways:

6.1 Higher frequency and defence costs even before indemnity increases

Disclosure applications, expert battles, and multi-party allocation disputes are likely to increase claims expense. Insurers may anticipate manufacturers being successfully sued more frequently owing to new disclosure obligations and presumptions, which at the same time could increase defence and adjustment costs.

6.2 Tail extension and uncertainty: latent injury and software systemic risk

Extending expiry periods in latent injury cases to 25 years increases reserving uncertainty, especially for sectors where harm may manifest slowly, such as pharma-type exposures or those explicitly deemed complex.

Software and AI components could produce systemic aggregation concerns, resulting from a common defect in widely deployed code or a ubiquitous component, which could trigger correlated losses across insureds and geographies.

6.3 Claims operations: more technical claims and cross-border coordination

As more member states transpose in 2026, claims will harmonise yet become more operationally complex, as evidence disclosures and technical presumptions enter into force.

That creates a need for:

- Coordinated panel counsel strategies;
- Technical expert networks;
- Structured recourse and contribution workflows (to manage joint and several outcomes).

6.4 Reinsurance implications: tighter terms, higher attachment and more scrutiny of wording alignment?

Reinsurers tend to react to regimes that increase uncertainty and tail risk by:

- Tightening aggregation language, such as batch clauses, 'series' and systemic defect treatment;
- Demanding higher attachment points or tighter sublimits for certain perils;
- Scrutinising primary policy wordings that unintentionally include perils, which might undermine intended cyber exclusions.

Conclusion

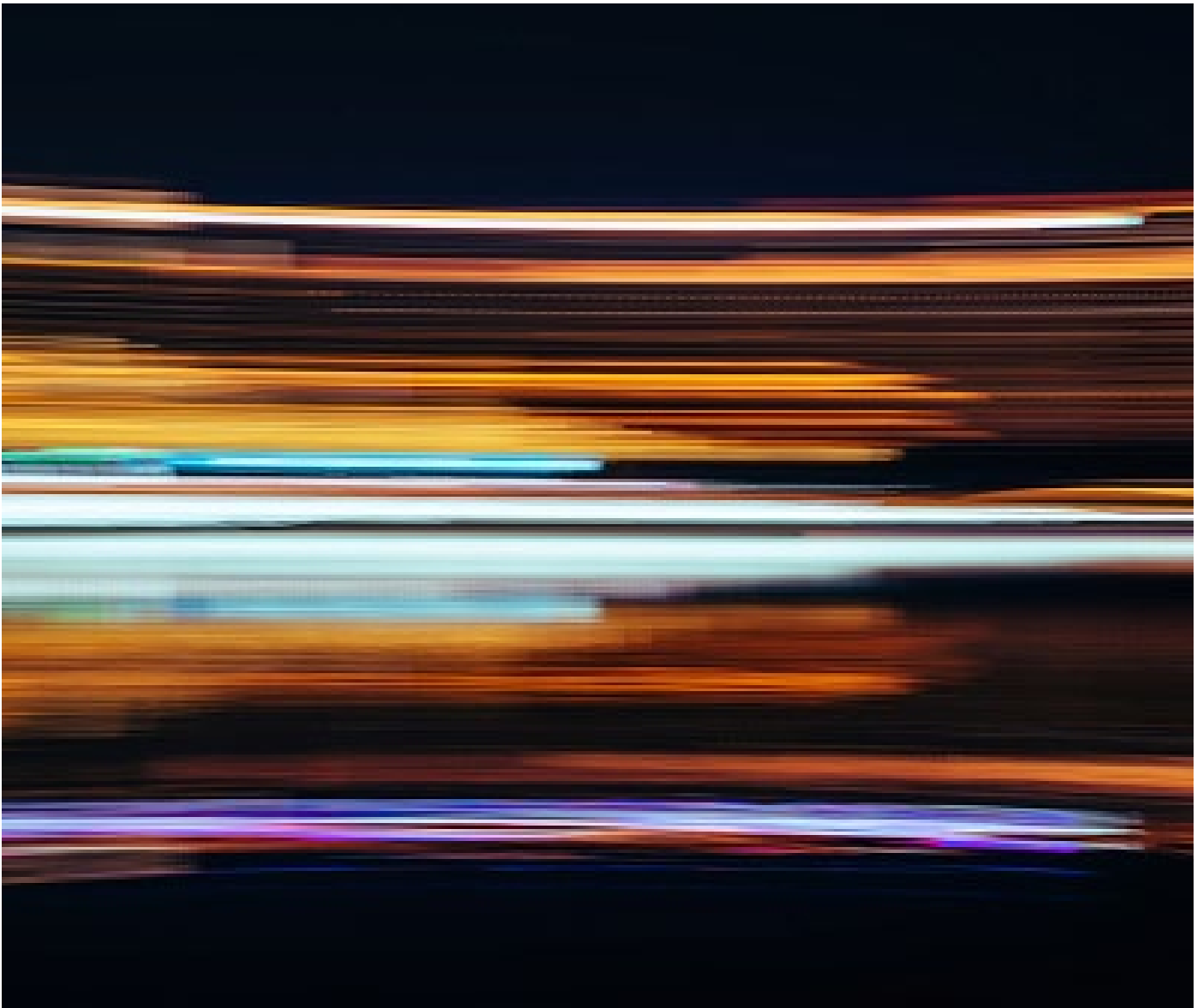
EUPLD 2024 materially expands how claims can be pursued across modern supply chains, particularly in the digital economy.

For insurers, product liability must now be assessed as a technology-governed lifecycle risk rather than a static manufacturing exposure, as liability tails lengthen and loss types increase.

Insurers should support their clients in aligning their processes with EUPLD 2024, while also ensuring that value chains across their own products are prepared for the changes arising from its transposition into national law.

Portfolio developments should be reviewed with reinsurers to ensure any adjustments to risk management, underwriting strategy and claims management adequately resolve the adverse effects EUPLD 2024 might produce.

Insurers that recognise that EUPLD 2024's structural changes are significant and align underwriting discipline, claims capability and reinsurance strategy accordingly will be well positioned, while those that do not risk underestimating its scope and impact.



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Every business
faces unique exposures,
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in focus insights series**

Each edition will provide insight into the challenges facing the casualty market in today's environment, providing perspectives on emerging trends.

Whether you're managing global portfolios, advising clients, or assessing risk, this series offers the clarity and context needed to navigate complexity and uncover new opportunities.

[Read the previous whitepaper](#)
by this author

The logo for Howden, featuring the word "HOWDEN" in a bold, yellow, sans-serif font. The letters are thick and blocky, with a slight shadow effect.

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