

Public Consultation on the rules on liability of the producer for damage caused by a defective product

Fields marked with * are mandatory.

INTRODUCTION

This consultation concerns the application of Council Directive 85/374/EEC on liability for defective products, as modified by Directive 1999/34/EC. If a defective product causes any damage to consumers, the producer has to provide compensation irrespective of whether there is negligence or fault on the part of the producer.

This legislation applies to any product marketed, including primary agricultural products and also electricity, in the European Economic Area (28 Member States, Iceland, Liechtenstein and Norway). The injured party has to prove the defect, the damage and the causality link between damage and defect. However, he does not have to prove negligence or fault of the producer.

In certain circumstances, the producer is not recognised as liable if he proves, for example, that he did not put the product into circulation or that the state of scientific and technical knowledge at the time when the product was put into circulation was insufficient to identify the defect. However, no contractual clause may allow the producer to limit his liability to the injured person.

The Directive on liability for defective products applies to damage caused by death or by personal injuries and also to damage caused to an item of property intended for private use or consumption. In this case, the compensation is limited to damage to property, other than the defective product itself, exceeding € 500.

The injured person has three years to seek compensation. In addition, the producer is no longer liable ten years after the date the product was put into circulation.

The purpose of the consultation is to collect information from various stakeholders, including businesses, their legal advisors, consumers and industry associations, insurers, public authorities and members of the academic community, on their experiences related to the application of the Directive on liability for defective products during the last fifteen years.

In that respect, the views gathered will help feed into the evaluation of the Directive and will provide data on its application and performance, in particular between 2011-2015.

More information on the reports of the Commission on the application of the Directive on liability for defective products can be found in the [background document](#).

Replies can be submitted in any of the EU's official languages.

Any other comment or information is welcome, in particular, other documents, reports, studies, etc. which may be relevant.

The questionnaire is divided into three parts:

- A. General Information on respondents
- B. Questions on the application of the Directive on liability for defective products
- C. Questions on the performance of the Directive on liability for defective products and submission

The deadline for replies is **26.04.2017**.

At the end of the questionnaire you will have an opportunity to upload a position paper for the evaluation of the Directive on liability for defective products.

A. GENERAL INFORMATION ON RESPONDENTS

This part consists of questions about the respondent. We would like to know who our respondents are in order to better understand their perspective, expectations and needs in the context of damages caused by a defective product.

*** 1. Are you replying as:**

- An individual in my personal capacity
- The representative of an organisation / business
- The representative of a public authority / international organisation

*** 1.1 Please indicate which type of organisation or business do you represent:**

- Public authority
- Law firm not replying on behalf of a client
- Research and Academia
- Other

*** Please specify:**

200 character(s) maximum

Insurance Europe is the European insurance and reinsurance federation.

*** 2. Does your organisation focus on a particular sector of the economy? * If yes, please select the relevant sector(s) (multiple choice possible) – n.b.: if your organisation has no particular sectoral focus, please select “Horizontal organisation”**

- Horizontal organisation
- Agricultural products (primary products that have not undergone initial processing):
- Agricultural products - products of the soil
- Agricultural products - farming
- Agricultural products - fisheries
- Agricultural products - game
- Cableways
- Chemical substances
- Construction products
- Cosmetics
- Electricity
- Electrical appliances and equipment
- Electronic communications
- Energy
- Explosives for civil uses
- Gas appliances
- Lifts
- Machinery
- Marine equipment
- Measuring instruments
- Medical devices
- Motor vehicles
- Noise emissions for outdoor equipment
- Pharmaceutical products
- Personal protective equipment
- Pressure equipment
- Pre-packaged products
- Pyrotechnics
- Radio and telecommunications equipment
- Recreational craft
- Robotics
- Smart devices
- Software
- Telecommunications
- Textile and Footwear
- Toys
- Other

* Please specify:

200 character(s) maximum

N/A

Please give more details on the activities of your organisation

Insurance Europe is the European insurance and reinsurance federation. Through its 35 member bodies, the national insurance associations, Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs.

Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of €1 200bn, directly employ over 985 000 people and invest nearly €9 900bn in the economy.

*** 3. Where are the headquarters of your organisation located?**

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other country

*** 4. Do you represent interests or carry out activity at:**

- Regional level
- National level (your country only)
- EU / EEA level
- International level

Please specify in which EU/EEA States you are active, other than your Member State of primary establishment

Belgium

***5. Information about you:**

Name

Matti Salakari

***Email**

salakari@insuranceeurope.eu

*** Organisation (please reply N/A if responding as an individual)**

Insurance Europe

More information

*** 6. Your contribution:**

Your feedback will be published on the Commission's website unless this would damage your legitimate interest. Please choose from one of the following options on the use of your contribution:

Note that, whatever your chosen option, your answers may be subject to a request for public access to documents under Regulation (EC) No 1049/2001.

- My/our contribution can be published with my personal/organisation information (I consent to publication of all information in my contribution in whole or in part including my name/the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication).
- My/our contribution can be published provided that I/my organisation remain(s) anonymous (I consent to publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that this is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication).

B. QUESTIONS ON THE APPLICATION OF THE DIRECTIVE ON LIABILITY FOR DEFECTIVE PRODUCTS

Part B focuses on the application of the Directive on liability for defective products. We would like to know whether and how this legislation is applied, and the experiences and/or views of consumers over the last fifteen years.

We are also interested in having feedback related to the application of the Directive to the new technological developments and, more specifically, to damage caused by a defect in products based on digital technologies. This includes apps and other non-embedded software, smart devices and Internet of Things (IoT) objects (*), as well as different categories of automated and autonomous systems (e.g. robots).

Hands-on experience will represent important feedback for us.

() A smart device/ Internet of Things (IoT) are those which embeds connectivity elements (like Internet), sensors or artificial intelligence to perform its functions, as e.g. a smart watch or a smart fridge.*

7. Do you know that the Directive on liability for defective products provides for the following:

	I am aware	I am <u>not</u> aware
*Consumers in the European Union have the right to seek compensation for damage caused by a defective product	<input checked="" type="radio"/>	<input type="radio"/>
*This legislation applies to any product, including primary agricultural products but also electricity.	<input checked="" type="radio"/>	<input type="radio"/>
*Services are not covered.	<input checked="" type="radio"/>	<input type="radio"/>
*Producers and/or importers into the European Union must compensate consumers for damage caused by their defective product, regardless of whether the producers are at fault or negligent	<input checked="" type="radio"/>	<input type="radio"/>
*The injured party has to prove the defect, the damage and the causal link between defect and damage to be compensated.	<input checked="" type="radio"/>	<input type="radio"/>
*Producers and/or importers into the European Union are liable for any damage caused by death or by personal injuries	<input checked="" type="radio"/>	<input type="radio"/>
*To be covered, damages caused to property should exceed a threshold of € 500	<input checked="" type="radio"/>	<input type="radio"/>
*The liability is limited to material damage caused by a defective product that was used for private purposes (i.e. non-professional use)	<input checked="" type="radio"/>	<input type="radio"/>
*The three year period for the injured party to start the proceedings for the recovery of damages	<input checked="" type="radio"/>	<input type="radio"/>
*The expiry period of ten years from the moment the producer put the product in circulation.	<input checked="" type="radio"/>	<input type="radio"/>

*** 8. Have you had any experience related to this legislation?**

Your involvement may have been direct or indirect, legal advice, technical support, institutional involvement (e.g. as a judge in a related trial), academic research, etc.

- Yes
- No

Please give more details on the specific defective product(s) you had to pay compensation for.

*** 9. What are the three most frequent reasons for which the injured parties are not compensated? (multiple answers possible)**

- The consumer gave up trying to achieve compensation before the claim was launched
- The consumer was not able to prove the defect
- The consumer was not able to prove the link between the defect and the damage
- The manufacturer was found not liable since he had not put the product into circulation
- The manufacturer was found not liable since the defect did not exist at the time when the product was marketed
- The manufacturer was found not liable since the product was not for sale or for distribution for economic purposes
- The manufacturer was found not liable since the defect was due to compliance of the product with mandatory regulations
- The manufacturer was found not liable since the state of scientific or technical knowledge at the time when the product was marketed did not enable the defect to be discovered
- The manufacturer was found not liable since he manufactured only a component of the product, following the instructions given by the manufacturer of the product
- Expiration of the three year period for the injured party to start the proceedings for the recovery of damages
- Expiration of the ten year period from the moment the producer put the product in circulation.
- Other
- I do not know / no opinion

*** 10. Based on your experience, can you provide an estimation of the relative frequency (in %) of the types of damages claimed?**

- Yes
- No

If yes, please consider also the damages which have not (yet) been compensated

	Relative frequency (%)
Physical well-being	
Damage to property	
Other	

11. From your point of the view, which aspects in the judicial proceeding for recovering damage could be burdensome for the consumer?

	Burdensome	Neutral	Easy
*Proving that the product was defective	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Proving the link between the defect and the damage	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Attributing liability to a specific person or entity	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Discovering where exactly the defect occurred	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Proving the damage	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*That the compensation is granted only for property damage of at least € 500	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Having to prove that the defective product was intended and used for private purposes	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Proving that the damage was caused by the product and not by a related service	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Proving that the damage was caused by the product and not by an installed software	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*The three year period for the injured party to start the proceedings for the recovery of damages	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*The expiry period of ten years from the moment the producer put the product in circulation.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Other	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

* Please specify

500 character(s) maximum

N/A

12. In your experience, do producer firms have an insurance contract to cover their compensation costs?

- Yes
- No
- I do not know

* **13. In the EU country where you are established, are you aware of the existence of specific rules on liability for damage caused, for instance, by smart objects, robots and other new technologies?**

- Yes
- No
- I do not know

Please provide here any other comments related to the questions you replied so far that could be relevant for this evaluation

3500 character(s) maximum

C. QUESTIONS ON THE PERFORMANCE OF THE DIRECTIVE ON LIABILITY FOR DEFECTIVE PRODUCTS

The responses to this questionnaire will give a first overview of the most important issues in the application of the Directive on liability for defective products and relevant feedback related in particular to the effectiveness, relevance and European Union added value of this piece of legislation to all products, including the innovative technological developments, such as smart devices, robots, etc.

14. In your opinion, what are the advantages and disadvantages of having a Directive on liability of defective products?

	Strong advantage	Minor advantage	Neutral	Minor disadvantage	Serious disadvantage
*Consumers can enjoy the same rights in terms of compensation wherever they are in the EU	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Member States cannot implement diverging product liability rules to those already covered by the Directive for national producers that would lead to different levels of protection	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Producers have the same product liability rules in all Member States they export to	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*There is a common minimum threshold of € 500 in the EU for compensation of damages to property	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

* Please specify

500 character(s) maximum

N/A

Feel free to provide further information

1000 character(s) maximum

Insurance Europe believes that overall the Directive provides strong advantages by ensuring consumer protection and allowing for technological innovation (please refer also to our position paper, attached).

* **15. To what extent do you think the Directive is effective in guaranteeing consumers that producers are liable for damage caused by defective products?**

- Yes, to a significant extent
- Yes, to a moderate extent
- No
- Not at all
- I do not know

* **16. Do you think that the Directive on liability for defective products covers the needs of producers dealing with innovative technological developments, based on data and interconnectivity such as smart devices, robots or automated systems?**

- Yes, to a significant extent
- Yes, to a moderate extent
- No
- Not at all
- I do not know

Please explain why:

1000 character(s) maximum

Insurance Europe believes that the PLD covers the needs of producers vis-à-vis new technological developments, please refer to the answer to Q18.

*** 17. Do you think that the Directive on liability for defective products covers the needs of consumers dealing with innovative technological developments based on data and interconnectivity, such as smart devices, robots or automated systems?**

- Yes, to a significant extent
- Yes, to a moderate extent
- No
- Not at all
- I do not know

Please explain why:

1000 character(s) maximum

The PLD provides a comprehensive, extra-contractual and no-fault liability regime which protects the consumer - even in cases of new technological developments. New technologies may change the reasons for claiming compensation, but do not negatively impact the consumer's liability instruments nor let the consumer uncompensated for losses suffered.

*** 18. Do you think that the Directive on liability for defective products strikes a fair balance between the interest of consumers and those of the producers?**

- Yes, to a significant extent
- Yes, to a moderate extent
- No
- Not at all
- I do not know

Please explain why:

1000 character(s) maximum

Insurance Europe believes that the current Directive manages to strike this balance. Of special importance is the developmental risk defense provided in Article 7(e), which provides a defense to liability if the producer can show that the state of scientific and technological knowledge at the time of the product's circulation was not such to enable the existence of the defect to be discovered. This defense acknowledges that scientifically and technologically developed products can carry risks, but that the interest in compensating these risks may be outweighed by the overall societal interest in encouraging product innovation that benefits consumers in the long-run, including new technologies.

19. From your experience, how do you assess the following characteristics of the Directive on liability for defective products to face the needs raised by new technological developments?

	Future-proof	Needs to be adapted	No opinion
*The Directive applies to very heterogeneous products (e.g. to malfunctioning pacemakers and defective staplers)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The producer is considered liable independently of his fault or negligence.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Compensation is granted only for financial damage of at least € 500	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The obligation of the injured party to prove the defect to obtain compensation	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Compensation is granted for property damage of a least € 500	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The requirement that only damage caused by defective items intended and used for private purposes can be compensated	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The three year period for the injured party to start the proceedings for the recovery of damages	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The expiry period of ten years from the moment the producer put the product in circulation.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Further comments

1000 character(s) maximum

As noted elsewhere in this consultation, Insurance Europe does not see any evidence that the Directive needs to be adapted to respond to new technological developments. Specifically, the provisions in the Directive as listed above allow for a sound balance between safeguarding consumer protection and facilitating the development of innovative products highly beneficial to society.

20. From your experience, please evaluate the burden related to the following issues in the context of new technological developments?

	Burdensome	Neutral	Easy	No opinion
*Allocation of liability in case of products interacting with other products or services (e.g. a smartphone malfunctioning because of an app downloaded from the internet)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Injured party having to prove the defect of a product interacting with other products or services (e.g. a smartphone malfunctioning because of an app downloaded from the internet)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Exemption of liability under certain circumstances, for instance when the producer proves that at the time when the product was marketed, he was not able to detect the defect due to the state of scientific and technical knowledge	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Application of the principle of liability without fault to some innovative products that need experimentation (e.g. autonomous cars or other connected devices).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Distinguishing a product from a service when they are bundled together	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Distinguishing between private and professional use of a product	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Further comments

1000 character(s) maximum

Insurance Europe believes that technological innovation is not a recent development and sees no evidence that the issues listed above have resulted in additional burden. The Directive establishes a solid extra-contractual liability regime that has allowed enough time for insurers to develop adequate products. This regime should remain stable in order for insurers to follow innovation, as any rapid change would likely hamper technological developments and could potentially disrupt insurance markets.

21. Do you believe that the following issues (same as in the previous question) with regard to the Directive on liability for defective products require action at European Union level?

	Need for action	No action needed	No opinion
*Allocation of liability in case of products interacting with other products or services (e.g. a smartphone malfunctioning because of an app downloaded from the internet)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Injured party having to prove the defect of a product interacting with other products or services (e.g. a smartphone malfunctioning because of an app downloaded from the internet)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Exemption of liability under certain circumstances, for instance when the producer proves that at the time when the product was marketed, he was not able to detect the defect due to the state of scientific and technical knowledge	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Application of the principle of liability without fault to some innovative products that need experimentation (e.g. autonomous cars or other connected devices).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Distinguishing a product from a service when they are bundled together	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Distinguishing between private and professional use of a product	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Further comments

1000 character(s) maximum

Insurance Europe does not believe that EU action is required with regard to the Directive, which functions well at member state-level. In addition, it must be taken into account that the product liability regime co-exists with other contractual and extra-contractual liability regimes that are sufficient to protect consumers against any potentially negative impact of new developing technologies.

*** 22. Do you consider that there are products for which the application of the Directive on liability for defective products is or might become uncertain and/or problematic?**

- Yes, to a significant extent
- Yes, to a moderate extent
- No
- Not at all
- I do not know

*** 23. Based on your experience, is there a need to adapt the Directive on liability of defective products for the products listed in the previous question?**

- Yes
- No
- I do not know

*** Please explain**

1500 character(s) maximum

Insurance Europe believes that changing the Directive at this stage would be premature and would not take account of other available liability instruments. Some of the technologies referred to above, in addition to being new, can potentially evolve during their lifetime (software updates, self-learning, etc.). Insurance companies need time and hindsight in order to properly assess the risks. Therefore, the liability regime should remain stable allowing insurers to adapt to technological developments.

*** 24. If it is the case, how would you suggest proceeding?**

- Guidelines to clarify the rules of Directive on liability for defective products
- Revision of Directive on liability for defective products
- New dedicated legislation
- Other

* Please specify

1500 character(s) maximum

Guidelines clarifying the rules of the Directive are not needed, as member states have already implemented the Directive and are best suited for determining any potential clarification which takes into account their individual markets.

Insurance Europe does not believe either that new dedicated legislation is necessary, as already stated in preceding questions. The current co-existence of different liability regimes, including this Directive, function well in practice. A specific liability regime or any changes to the Directive could have a huge impact on insurance and availability of products.

25. Concerning the products listed in question 22, to what extent do you agree with the following statements related to compensation for damages caused by a defect in one of those products?

	Agree	Do not agree	No opinion
*Maintain the rule of liability without fault in case of damage caused by a defective or malfunctioning product	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Liability for damage caused by a defective or malfunctioning product should be on the producer	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Liability should not necessarily be attributed to the producer, but to the entity best positioned in the value chain to avoid accidents	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Providers of software, applications and algorithms should potentially be held liable	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Data providers should potentially be held liable	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Special exemptions from the general liability framework should be foreseen for innovative products under experimentation.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Liability should be extended to damages caused by services when there are bundled with the product	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Removal of the obligation for the injured party to prove the defect to obtain compensation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Removal of the obligation for the injured party to prove the causal link between defect and damage to obtain compensation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Maintain the threshold of € 500 for property damage	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Removal of the threshold of € 500 for property damage	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Removal of the requirement that only damage caused by defective items intended and used for private purposes can be compensated	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please provide further suggestions on the potential adjustment of the applicable legislation

2000 character(s) maximum

Please refer to the attached position paper on insurance and liability of emerging technologies.

Please provide here any other comments (if any) that could be relevant for this evaluation

3500 character(s) maximum

Please refer to the enclosed Insurance Europe position paper on liability insurance and emerging technologies.

Feel free to upload relevant information!

[cbd2345c-f522-46a8-a88a-cebee4e82dd5/Insurance_Europe_-_insurance_and_liability_of_emerging_techologies.pdf](#)

Contact

GROW-B4@ec.europa.eu
