

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

National body representing barristers - see further below

*** 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

The General Council of the Bar of England & Wales - the national body representing barristers in those jurisdictions of the UK. European Transparency register number: 39850528734-23

Please give more details on the activities of your organisation

The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

*** 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

Evanna Fruithof

***Email**

evanna.fruithof@barcouncil.be

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

The General Council of the Bar of England and Wales ("The Bar Council")

More information

Evanna Fruithof is the Brussels representative of the Bar Council, and has coordinated this response, which was prepared by practitioner experts. Any queries should be addressed to her as above.

*** 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 us some details**

We at the Bar of England & Wales have, since 1987, had extensive experience of litigating under the Consumer Protection Act 1987, as amended, (the CPA) which implemented the 1985 PL Directive, as amended, into UK law. Our responses below relate to the Act, but our remarks can be read as applying to the underlying directive unless expressly stated otherwise.

*** 8.1 If yes, for what type of products? (multiple answers possible)**

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

Not applicable.

8.2 If yes, in which context was the claimed damage suffered?

- Within a household
- Sport, leisure, or other social activity
- Professional activity
- Medical (e.g. in a hospital)
- Other

8.3 If yes, how often have injured parties been compensated for the damage suffered in the different scenarios below?

	Always	Often	Rarely	Never
*Thanks to an extrajudicial arrangement	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Thanks to a judicial decision	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

*** 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	85
Damage to property	15
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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Proving the link between the defect and the damage	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Attributing liability to a specific person or entity	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Discovering where exactly the defect occurred	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Proving the damage	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*That the compensation is granted only for property damage of at least € 500	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Having to prove that the defective product was intended and used for private purposes	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Proving that the damage was caused by the product and not by a related service	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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"/>
*Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

* Please specify

500 character(s) maximum

Longstop overrides Fraud, knowledge etc. It provides little protection from products giving rise to some of society's greatest fears. Could a drug cause cancer within 10 years? Asbestos products would not be caught by the Directive. The aim of the longstop was to balance the "strict liability" against the producer's interests. Our members who represent claimants consider that the present position favours producers, particularly in those instances where fraud is involved.

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

- Yes
- No
- I do not know

12.1 If yes, do they have a specific insurance contract to cover compensation costs in case of defective products or a general insurance contract covering different risks?

- Most have a specific insurance contract
- Most have a general insurance contract covering different risks
- 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

1. It is difficult to argue that the Act has achieved what the Directive set out to achieve.
2. As to Defect, our concern is best illustrated by an example. One of our cohort is instructed on a case where a drain cleaner gave off a lethal gas killing one, rendering another paraplegic, and destroying two young

families. If the Act had achieved what it set out to achieve, liability would be clear. In fact because the precise chemical mechanisms are unknown, because the product in question complied with EU labelling requirements, and because of a minor departure from instructions for use, the case (though it should succeed) is by no means certain.

3. Anecdotally, some we have spoken to for the purposes of preparing this response say that the current "Wilkes" approach to the CPA is so close to that of negligence as to negate the value of the CPA/Directive. Wilkes is a recent case in which the court decided (among other things), that safety was an inherently relative concept, that the Risk/Benefit approach is applicable and that evidence of regulatory compliance is important. Thus Wilkes arguably erodes strict liability and moves us back towards Negligence / Reasonableness. Some who represent claimants consider that they are now obliged to "prove a specific failing on the part of the supplier; that the testing was inadequate; that the material was inappropriate; that quality control wasn't good enough; that they failed to foresee a particular risk". These would all amount to allegations of negligence. On this view, a consumer cannot expect to succeed based only on the product turning out to be more dangerous than expected.

4. Re Longstop, the directive's use of the word "extinguished" has been interpreted as overriding Fraud/Disability etc. The main problem in the case law in the UK has centred on defining the Directive's "put into circulation" and its domestic Act equivalent "last supplied".

5. As to the Development Risk Defence (DRD) in s.4(1)(e) CPA, it is instructive to look towards the impetus for the Directive - the Thalidomide tragedy. It was this case, which caused so much harm to so many, that paved the way for the Directive. A product did something (cause birth defects) which it was obviously not meant to do and yet the Claimants faced an enormous uphill legal struggle. The directive was intended to resolve that imbalance.

6. If the "undiscoverability by reasonable means" interpretation of the DRD is correct however, then the purpose of the Directive has not been achieved, for it re-introduces by the back door the very principles of negligence and industry standard which were so problematic and which created the impetus for change.

7. It is also instructive to step back, and have regard to the socially desirable goals of tort law more generally. It is hard to see that those are achieved, at least from the perspective of claimants, who frequently face years of litigation, followed, due to legal uncertainty, by discounted settlements which do not fully meet their medical needs. Nor does such a process lead to a sense of "vindication" or "retribution", nor act as a deterrent.

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 type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

* Please specify

500 character(s) maximum

Open Ended Drafting to allow Margin of Appreciation

Feel free to provide further information

1000 character(s) maximum

The principles in the Act have not been elucidated by case law (as was envisaged they would be). The Report on Product Liability in the European Union countenanced defining “defect” with greater precision but opted against recommending that course, partially on the basis that doing so might hamstring the ability of the court to deal with cases ‘on the facts’. The Report anticipated that a “body of case law will emerge that will provide a guide to the interpretation of this concept...” This has not happened. As (Mildred &) Goldberg notes “there is little doubt that the definition of defect is greatly challenged by the complexity of medicinal products and the paucity of case law has done little to help matters”. Thus the intended benefit of flexibility has become the burden of vaguery.

* **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

Re Software there are many legal complexities in English law implementing the PLD. Re Digital downloads there is greater clarity: "downloading of information without transfer of physical matter" is outside the scope of the Act. What is given with one hand is taken with another. Here exists greater certainty but of course to this extent the CPA appears to be an awkward bedfellow with the Internet of Things.

The flexibility of the Directive is advantageous but it also creates uncertainty as regards the application of the Act to new technology. If this is resolved by case law over time then it may be said that there is nothing "wrong" with the extant wording. By the same token, however, at the time of writing, the Act in this regard is beset by the uncertainty and technicality which bedevils its application in a more traditional context. It is also questionable whether a focus on, for example, "physical matter" benefits anybody in the Information Age to come.

*** 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

As above.

*** 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

Take Longstop as an example. The aim of longstop was to balance strict liability against "the producer's interests that he should be able to close his books on a product". It is arguable that the present position is balanced too far in favour of producers. It is less clear still why these provisions should come to the aid of a fraudulent producer. It is therefore hard not to cast covetous glances at "genuinely" strict liability regimes such as in the neighbouring field of property damage. S.209 Water Industries Act 1991 is a good example. This proves just how eminently possible it is to come up with a wording that works: "Where an escape of water, however caused, from a pipe vested in a water undertaker causes loss or damage, the undertaker shall be liable...". One can also look to the USA where "real" strict liability exists. It is not uncommon for producers to settle cases in the USA only to robustly resist the same allegations in the UK.

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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Compensation is granted only for financial damage of at least € 500	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*The obligation of the injured party to prove the defect to obtain compensation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Compensation is granted for property damage of a least € 500	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Further comments

1000 character(s) maximum

The Act's inherent flexibility means nothing precludes its application to new technological developments. However, again, uncertainty abounds.

It is unclear and undecided whether computer software can constitute a defective "product" for these purposes. Section 1 (2) (c) defines a product as "any goods or electricity and ... includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise".

Some suggest that as software can constitute intellectual property, which can be protected, it can also be attacked, and ergo treated as a "product". However, not all agree, and the rationale of the Consumer Rights Act 2015 is the inability of existing consumer protection legislation to deal with digital content. The fact that Article 2 of the PLD expressly includes electricity also suggests that no other intangibles were intended. The lack of a transfer of physical matter in digital downloads may also preclude them.

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 checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input 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"/>	<input type="radio"/>
*Distinguishing between private and professional use of a product	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Further comments

1000 character(s) maximum

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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Distinguishing a product from a service when they are bundled together	<input type="radio"/>	<input checked="" type="radio"/>	<input 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

*** 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

*** If yes, are those products among those mentioned below? Please indicate which one(s):**

- Products on which software and applications from different sources can be installed after purchase
- Products connected to the internet
- Products purchased as a bundle with related services
- Products that are used both in the private and professional life
- Products performing automated tasks based on algorithms and data analysis (e.g. cars with parking assistance)
- Products performing automated tasks based on self-learning algorithms (Artificial Intelligence)
- Products shared with other users through collaborative platforms
- Other

*** Please specify**

500 character(s) maximum

Downloads, apps, computer viruses, Data storage etc.

*** 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

*** 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

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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Liability for damage caused by a defective or malfunctioning product should be on the producer	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Providers of software, applications and algorithms should potentially be held liable	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Data providers should potentially be held liable	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Special exemptions from the general liability framework should be foreseen for innovative products under experimentation.	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

2000 character(s) maximum

See above.

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

3500 character(s) maximum

Feel free to upload relevant information!

Contact

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