

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

Fields marked with \* are mandatory.

## INTRODUCTION

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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

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*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

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

- Consumer association
- Other

**\* Please specify:**

*200 character(s) maximum*

Organisations representing churches and religious communities (Section V of the EU Transparency Register)

**\* 2. What is your country of residence?**

- 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

**\*3. Information about you:**

Name

Alessandro Calcagno

\*Email

alessandro.calcagno@comece.eu

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

COMECE Secretariat

\* More information

The COMECE Secretariat carries out at the operational level the aims of the Commission of the Episcopates of the European Community (COMECE), namely in partnering the political processes of the European Union in the areas of relevance to the Episcopates of the EU Member States; in monitoring the activities of the European Union and informing the Episcopates in such matters; and in communicating to the European institutions and authorities the opinions and views of the Episcopates of the EU Member States concerning European integration. COMECE is formed by the Bishops delegated by the Episcopate of each of the Member States of the European Union to represent itself.

\* 4. 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

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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.*

**\* 5. In which sector have you had experience with liability issues? (multiple choice 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 specify:

200 character(s) maximum

None

**6. 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"/>
*Producers and/or importers into the European Union must compensate consumers for damage caused by their defective product, regardless of whether producers/importers are at fault or negligent.	<input checked="" type="radio"/>	<input type="radio"/>
*This legislation applies to defects caused by any product, including primary agricultural products but also electricity.	<input checked="" type="radio"/>	<input type="radio"/>
*Damages caused by malfunctioning services are not covered.	<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"/>
*In case of damage caused to an item of property, the liability of the producer/importer is limited to property damage above € 500.	<input checked="" type="radio"/>	<input type="radio"/>
*Liability for property loss is limited to cases where the defective product was used for private purposes(i.e. non-professional use)	<input checked="" type="radio"/>	<input type="radio"/>
*A period of three years for the injured party to start the proceeding for the recovery of damages	<input checked="" type="radio"/>	<input type="radio"/>
*An expiry period of ten years from the moment that the producer put the product into circulation	<input checked="" type="radio"/>	<input type="radio"/>



\* 7. Have you suffered damage due to a defective product?

- Yes
- No

\* 8. In the EU country where you live, 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 any other relevant information

*3500 character(s) maximum*

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

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*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.*

**9. 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Producers have the same liability rules in all Member States they export to	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

\* Please specify

*500 character(s) maximum*

We consider the approach currently proposed by the EU Directive on liability for defective products as opportune, with particular regard to a strong protection of consumers across the Union.

**Feel free to provide further information**

*1000 character(s) maximum*

\* **10. To what extent do you think the Directive on liability of defective products is effective in guaranteeing consumers that producers are liable for damage caused by defective products?**

- Very effective
- Effective
- Ineffective
- Very Ineffective
- I do not know

\* **11. Do you think that the Directive on liability of defective products provides for 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*

**12. From your experience, how do you assess the following characteristics of the Directive on liability of 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 damages caused by malfunctioning pacemakers or by 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"/>
*The injured party has to prove the defect to obtain compensation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*The injured party has to prove also the causal link between defect and damage to obtain compensation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Compensation is granted only for property damage above € 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 purpose can be compensated	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*The three year period for the injured party to start the proceeding for the recovery of damages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*The expiry period of ten years from the moment that the producer put the product into circulation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Further comments

*1000 character(s) maximum*

**13. From your experience with the Directive on liability of defective products to what extent do you agree with the following statements with regard to the Directive?**

	Agree	Do not agree	No opinion
*It is difficult for an injured party to prove the defect of a product to obtain compensation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*It is difficult for an injured party 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 checked="" type="radio"/>
*It is difficult for an injured party to prove the link between the defect and the damage to obtain compensation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*The producer can exclude his liability under certain circumstances, for instance when he 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 checked="" type="radio"/>
*The producer can exclude his liability under certain circumstances, for instance when he proves that the defect was due to compliance of the product with mandatory rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*It is sometimes difficult to distinguish a product from a service, since they are bundled together	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*It is sometimes difficult to distinguish between private and professional use of a product	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*The principle of liability without fault is not appropriate for some innovative products (e.g. smartphones or other connected devices)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*It is difficult to allocate 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 checked="" type="radio"/>
*Property damages are often below € 500	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Further comments

*1000 character(s) maximum*

**\* 14. Based on your experience, is the Directive on liability of defective products adequate to cover the needs of consumers/users of innovative technological products 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*

**\* 15. According to your experience, are there products for which the application of the Directive on liability of 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

**\* 16. 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*

We consider the approach currently proposed by the EU Directive on liability for defective products as opportune, also with regard to liability of defective products listed in the previous question.

\* 17. 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

**18. Concerning the products listed in question 15, 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 checked="" type="radio"/>	<input 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 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 type="radio"/>	<input checked="" type="radio"/>
*Removal of the obligation for the injured party to prove the defect to obtain compensation	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>



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

*2000 character(s) maximum*

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

*3500 character(s) maximum*

The COMECE Secretariat expresses its concern for the recommendation made in Para 59, f) of the recent European Parliament resolution on Civil Law Rules on Robotics, according to which the Commission should reflect on the possibility of "...creating a specific legal status for robots... so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently".

The human person is the foundation of every legal order. For a natural person, legal personality derives from his/her existence as a human person. That personality implies rights and duties that are exercised within the frame of human dignity. Placing robots on the same level as human persons would be at odds with Art. 6 UDHR, which states that "Everyone has the right to recognition everywhere as a person before the law". The Parliament's proposal also contradicts the very concept of responsibility, based on ultimate human rights and duties. Responsibility rooted in legal personality shall only be exercised in presence of a certain capacity for freedom. Freedom is more than autonomy.

As underlined in the EP study on "European Civil Law Rules in Robotics" "Legal personality is assigned to a natural person as a natural consequence of their being human; ...its assignment to a legal person is based on legal fiction. Legal persons are able to act within the legal sphere solely because there is a human being behind the scenes to represent it...". Furthermore, a legal person exists only because of an initial expression of human will. However, in the case of robots, the Resolution links their possible legal personality to their alleged "autonomous features/decision-taking" (Recitals Z, AF).

We share the conclusions of the same study, according to which "...it would be inappropriate and out-of-place not only to recognise the existence of an electronic person but to even create any such legal personality. Doing so

risks not only assigning rights and obligations to what is just a tool, but also tearing down the boundaries between man and machine, blurring the lines between the living and the inert, the human and the inhuman" (p. 16).

While the European Parliament leaves the question open, other passages imply granting "legal personality" to robots (Recitals AB, AC), without any solid scientific and technological grounds (e.g. see the considerations on "unpredictable behaviour" of robots at Recital AI).

Legal consequences have been grossly overlooked: legal personality does not apply only to liability. Recognising legal personality to robots could open up possibilities for their capability of having a full range of legal rights and duties (e.g. under contract law, copyright law and even family law). Issues related to the use of "law enforcement machines" at the borders could also come into play.

We would not be in favour of using for robots rules on liability for animals, which would lead to an unacceptable shift towards considering robots as belonging to the area of "the living". Existing applicable legal regimes relying on liability of humans already provide viable legal solutions: e.g. provisions on defective products; rules about liability for damages or injury caused by things in one's care.

**Feel free to upload relevant information!**

## **Contact**

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