

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

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

- Consumer association
- Other

*** Please specify:**

200 character(s) maximum

*** 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

***Please specify:**

***3. Information about you:**

Name

*Email

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

* More information

*** 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

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

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 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 type="radio"/>	<input type="radio"/>
*This legislation applies to defects caused by any product, including primary agricultural products but also electricity.	<input type="radio"/>	<input type="radio"/>
*Damages caused by malfunctioning services are not covered.	<input 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 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 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 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 type="radio"/>	<input type="radio"/>
*A period of three years for the injured party to start the proceeding for the recovery of damages	<input type="radio"/>	<input type="radio"/>
*An expiry period of ten years from the moment that the producer put the product into circulation	<input type="radio"/>	<input type="radio"/>

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

- Yes
- No

*** Please describe the product(s)**

*** 7.1 If yes, in which context did you suffer the damage?**

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

Please specify:

500 character(s) maximum

*** 7.2 What was the defect which caused the damage? Please specify**

1000 character(s) maximum

*** 7.3 What was the nature and/or extent of the damage?**

- Physical well-being
- Property damage
- Other

Please indicate the amount of your loss in euros (apart from the defective product itself):

 Euros

* Please specify

* **7.4 If the damage involved a property loss, for which purpose was the product intended and used?**

- Intended and used only for private purposes
- Intended and used for both private and professional purposes
- Intended and used only for professional purposes
- I do not know

* **7.5 Do you know whether the defect concerned many other identical or similar products?**

- Yes
- No

* Please give some details

500 character(s) maximum

* **7.6 Who did you contact first to seek compensation?**

- Producer/Manufacturer
- Importer/ Brand-name holder
- Supplier/ Retail shop
- Public authority
- Consumer association
- Lawyer
- Insurer
- Other

* Which one?

500 character(s) maximum

* Please briefly explain your experience:

1500 character(s) maximum

* **7.7 Did you launch a judicial proceeding against the producer to obtain compensation for damage caused by a defective product?**

- Yes
 No

* Please describe the proceeding briefly:

1500 character(s) maximum

* **7.8 Were you aware at the time that, for recovering damages, the injured party has to prove the defect, the damage and the causal link between defect and damage?**

- Yes
 No

*** 7.9 Did you recover compensation for the damage caused by the defective product under the liability for defective products legislation?**

- Yes, by an extrajudicial arrangement
- Yes, by judicial decision
- Judicial procedure related to recovering compensation is still pending
- No

*** Please indicate the year**

*** Please explain why not.**

1000 character(s) maximum

*** 7.9.1 Did you find the procedure for recovering damages burdensome?**

- Yes
- No

Which aspects?

	Burdensome	Neutral	Easy
*Proving that the product was defective	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Proving the link between the defect and the damage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Attributing liability to a specific person or entity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Discovering where exactly the defect occurred	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Proving the damage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The requirement that compensation is granted only for property damage of at least € 500	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Having to prove that the defective product was intended and used for private purposes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The three years period for the injured party to start the proceeding for the recovery of damages	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
*Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* Please specify

500 character(s) maximum

*** 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

If possible, please indicate the reference of the rules below

Please provide any other relevant information

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.

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 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"/>				
*Producers have the same liability rules in all Member States they export to	<input type="radio"/>				
*There is a common minimum threshold of € 500 in the EU for compensation of damages to property	<input type="radio"/>				
*Other	<input type="radio"/>				

* Please specify

500 character(s) maximum

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The producer is considered liable independently of his fault or negligence	<input 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 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 type="radio"/>
*Compensation is granted only for property damage above € 500	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 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 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 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 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 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 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 type="radio"/>
*It is sometimes difficult to distinguish between private and professional use of a product	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
*Property damages are often below € 500	<input type="radio"/>	<input type="radio"/>	<input 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

* 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

* **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

* **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

* Please specify

1500 character(s) maximum

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Liability for damage caused by a defective or malfunctioning product should be on the producer	<input 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 type="radio"/>
*Providers of software, applications and algorithms should potentially be held liable	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Data providers should potentially be held liable	<input 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 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 type="radio"/>
*Removal of the obligation for the injured party to prove the defect to obtain compensation	<input 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 type="radio"/>	<input type="radio"/>
*Maintain the threshold of € 500 for property damage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Removal of the threshold of € 500 for property damage	<input type="radio"/>	<input type="radio"/>	<input 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 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

Feel free to upload relevant information!