

Product Liability Directive & AI liability

The Commission is revising the Product Liability Directive and preparing an initiative on civil liability for artificial intelligence. [redacted]

Main messages

- People, who are injured or whose property is damaged by defective products, should be adequately compensated by the producer, whether the product is equipped with digital technologies or not. To achieve this, the Product Liability Directive needs updating.
- Besides, the opacity and increasing autonomy of certain AI-systems challenge existing civil liability rules. Certain adaptations to national liability rules could therefore be necessary to create the right conditions for the development and use of AI in Europe. The objective of this proposal is to promote the rollout of trustworthy AI to harvest the full benefits of AI and avoid legal uncertainty.
- Today, it is not clear if injured people can get compensation from providers of defective software, including providers of AI systems. And it is not clear who is responsible when defective software updates cause harm. The revised Directive should make it possible to get compensation from software providers when their software is defective and causes personal injury or property damage.
- As products become ever more complex, we also need to make sure it is not too difficult for injured people to prove liability and get compensation, especially since the producer knows much better how the product works.

Defensives

How will the Product Liability Directive affect AI?

- The Directive needs to work for all products and technologies, including digital and AI-enabled products. The revision will achieve this, but the Commission is not planning rules that specifically target AI technology in the Directive.

How does the Product Liability Directive relate to the AI liability initiative?

- The Product Liability Directive is about producer liability for all kinds of defective products, regardless of the product type or technology used.
- The AI liability initiative is about liability under national fault-based rules and is mainly about the liability of users of AI.
- Together, they should ensure that victims of damage caused by AI-systems have the same level of protection compared to damage caused by traditional products, no matter which route to compensation is taken.

Why should the Commission propose legislation on AI liability if many of these products and services are not on the market yet? Why not to wait?

- The Commission wants to create an ecosystem of trust when it comes to AI and digital technologies. Many of these technologies are not on the market yet, but we cannot wait that accidents occur and trust is affected.
- We want to be ahead of the curve with limited and targeted measures to make sure we have the right environment to promote the rollout of trustworthy AI.

Why does the Commission want to propose legislation on AI liability while the AI Act is still being negotiated? The AI Act will improve the gaps identified, so liability gaps should be assessed after the AI Act enters into force.

- Safety and liability are two sides of the same coin, but they have a different function; they apply at different moments and reinforce each other. The AI Act provides for rules to reduce risks for safety and fundamental rights, not to compensate victims.
- While these rules will reduce risks, harm will still occur. When this happens, the liability rules of this proposal will come into play to provide victims with adequate compensation.
- Effective liability rules also provide an economic incentive to comply with safety rules and contribute therefore to preventing the occurrence of harm.

Background

Product Liability Directive

The Product Liability Directive lays down common rules at EU level for the liability of producers for personal injury or material damage caused by defects in their products. If an injured party is able to prove the damage, the defect and the causal link between the two, the producer is obliged to pay financial compensation irrespective of any fault on its part (no-fault liability). It covers a vast range of products, from raw materials to complex AI-driven devices.

The 2018 evaluation of the Product Liability Directive found that it had several shortcomings:

- how to apply the Directive to products using digital technologies, such as AI. It needs to be ensured that people injured by defective products are compensated whether the damage was caused by defective hardware or software, or other digital elements;
- the difficulties of proving liability in the case of complex products. The burden of proof should not make it disproportionately difficult to get compensation;
- products purchased directly from non-EU producers, e.g. via online marketplaces. There needs to be someone in the EU (the non-EU producer's authorised representative or a fulfilment service provider) from whom an injured person can get compensation.

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AI liability

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