
- European Stakeholder Forum – Workshop on Regulatory challenges for a digitizing industry

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Dir. 85/374/EEC on Liability for Defective Products (LDP)

sets conditions under which an injured person may claim compensation for damages caused by defective products in circulation in the internal market.
Objectives of LDP

- Facilitates the free movement of goods in the Internal Market;
- Guarantees a high degree of protection to EU consumers against damage caused to health or property by defective products;
- Ensures undistorted competition by avoiding divergences in the area of liability for defective products.
Scope of LDP

- Applies to any product marketed in the European Economic Area;
- Introduces the principle of strict liability (liability without fault) on the side of the producer;
- Provides extra-contractual regime of liability; not affected: rights of injured party according to contractual law or other non-contractual liability regime.
- **Product**: all movables (even if incorporated into another movable or immovable) including electricity (Dir. 1999/34/EC extended the scope to include agricultural and fishery products);

- **Producer**: the manufacturer of a finished product; any person who by putting his name, trade mark or other distinguishing feature on a product presents himself as its producer;

- A product is considered **defective** when it is not as safe as consumers are entitled to expect, taking into account all circumstances (e.g. presentation, expected use of the product).
Damage: a) if death or personal injury → no limitation to compensation claims;  
   b) if caused to goods for private use or consumption → lower threshold of €500;

Burden of proof: injured person required to prove the damage, the defect and causal relationship between defect and damage;

Limitation for recovery of damages: 3 years since the plaintiff became aware of the damage;

Any clauses limiting or excluding strict liability are forbidden.
Producer may be **exonerated** from strict liability **under specific conditions**, notably if:

- He did not put the product into circulation;
- The defect is due to compliance with mandatory regulations issued by public authorities;
- The state of scientific/technical knowledge did not allow detection of the defect, when the product was put into circulation;
- The defect did not exist when the product was put into circulation.
LDP has been implemented in all Member States; **no complaints** on its application submitted to the Commission.

Commission to report every five years to the Council on the application of LDP.


**CJEU case-law** contributed in defining the scope and ensuring uniform implementation of LDP.
Why an Evaluation of LDP?

Directive never been subject to any formal evaluation since adoption (1985).

2015:

- **Digital Single Market Strategy**: underlined need for legal certainty on allocation of liability for roll-out of Internet of Things;

- **Commission initiatives on Free flow of Data and emerging issues**: liability aspects to be addressed;

Questions raised on LDP application, particularly as regards new technological developments.
Purpose of the LPD evaluation

- Assess whether fit for purpose and **meets its objectives**;
- Assess if fit for purpose **vis-à-vis new technological developments** (e.g. apps, non-embedded software, IoT based products, automated systems);
- Assess its **coherence** with other EU rules;
- Identify **possible problems** related to its strict liability regime.

On basis of the evaluation conclusions, possible improvements of LDP could be envisaged.
Assessment of overall functioning and performance of LDP;

Particular focus to implementation by Member States.

5 Evaluation criteria: effectiveness, efficiency, coherence, relevance, EU added value of LDP.

Evaluation supported by an external study; will cover the territory of 28 Member States.
Effectiveness

- To what extent LDP meets its objectives?
- Have technical and technological developments affected effectiveness of LDP?
- Effectiveness of judicial proceedings at national level? (to include assessment of damages caused by defect in apps or other non-embedded software, interconnected products etc)
Efficiency

- LDP's main benefits for stakeholders and consumers?
- LDP strikes the right balance between costs borne by the producers and requirements of the injured to obtain compensation?

Coherence

- To what extent is LDP coherent with other EU policies?
Relevance

- LDP objectives correspond to current needs, including those created by innovative products?
- LDP basic concepts (terms) adequate to correspond to new technological developments?
- Distinction between products/services in the LDP is apt to new technological developments?
EU added value

- LDP’s EU added value for stakeholders (consumers and manufacturers including software developers)?
- To what extent does LDP strict liability require action at EU level?
- What would be the consequences at EU level of reducing or enlarging (e.g. to cover services) the LDP scope?
Data collection

- Desk research / literature review;
- Feedback from relevant stakeholders

List of **relevant stakeholders** include:

- Public administrations;
- Industry associations, producers, importers, suppliers (including SMEs);
- Consumers, consumer organizations;
- Federation of insurers, insurers;
- Relevant public-private partnerships
- Other stakeholders (e.g. academia, think-tanks, consultants, etc.)
Consultation methods and tools will include:

1. **Open public consultation**
   Launched on 10 January, at the same time as the consultation on the 'Building the European Data Economy' package and will run **until 26 April 2017**

2. **On-line targeted survey**
   Contractor in charge of study to collect qualitative and quantitative data from different categories of stakeholders.

3. **Interviews** with stakeholders concerned by the application of LDP.
Consultation on LDP

You can find the consultation on:


You can answer as
-a public authority, research, or law firm
-a producer
-a citizen or other stakeholder
Evaluation of the Machinery Directive 2006/42/EC

- The Machinery Directive is a product safety Directive with a very wide scope (i.e. machinery, safety components, lifting accessories, removable mechanical transmission devices, partly completed machinery etc.)
- E.g. products such as robots have to comply with the essential health and safety requirements of the Directive when they are placed on the market or put into service
- The manufacturer is held responsible for their safety while a number of European harmonized standards are already available.
Evaluation of the Machinery Directive 2006/42/EC

- E.g. automated robots and collaborative robots (proximity to humans), developed for both manufacturing and individual use, are covered by a comprehensive set of health and safety requirements laid down in the Directive.

- The definition of safety requirements for AI robots/autonomous robots (not controlled by humans) requires further research and thorough analysis to which legislative framework such requirements fit.

- The results of the evaluation will help in assessing the situation.
Evaluation of the Machinery Directive 2006/42/EC

- European harmonized standards are available for personal care robots (service robots) and for industrial robots.
- New standardization activities on human interaction with machinery are carried out at ESO's level in co-operation with ISO/TC299 "Robotics".
- The Commission services responsible for the Machinery Directive will adopt in 2017 a new standardization request, asking ESOs to revise the existing stock of European harmonised standards and define new ones based on the market needs.
Evaluation of the Machinery Directive 2006/42/EC

- An evaluation study was launched in January 2016, carried out by Technopolis Group.
- An open public consultation was finalized on 16 December 2016.
- The final report of the study (including the results of the consultation) will be delivered in April 2017.
Evaluation of the Machinery Directive 2006/42/EC

-The evaluation study analyses also if the Directive is still fit for purpose to new emerging robotics applications, Industry 4.0 or IoT.

-Following the final report the Commission will then assess if a revision of the Directive is necessary or not.

http://ec.europa.eu/growth/sectors/mechanical-engineering/machinery_en
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Directive 85/374/EEC: