



The evaluation of Directive 85/374/EEC on liability for defective products and Directive 2006/42/EC on machinery

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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.

LDP

Concepts (1)



- **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).

LDP

Concepts (2)



- **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.

Exonerated from strict liability



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.
- **Four Reports on the Application** of the Directive presented until now. Fifth Report (2011-2015) to be submitted in 1st semester 2017.
- **CJEU case-law** contributed in defining the scope and ensuring uniform implementation of LDP.

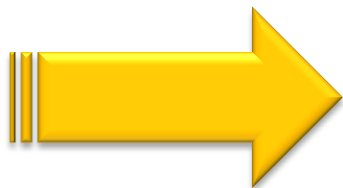
Why an Evaluation of LDP ?



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;

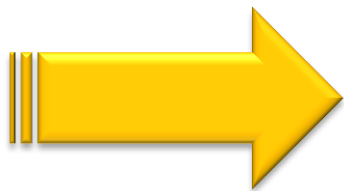


Questions raised on LDP application, particularly as regards new technological developments.

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.

Scope of the LPD evaluation



- 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:

http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=9048

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 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:

<http://ec.europa.eu/growth/single-market/goods/free-movement-sectors/liability-defective-products/>