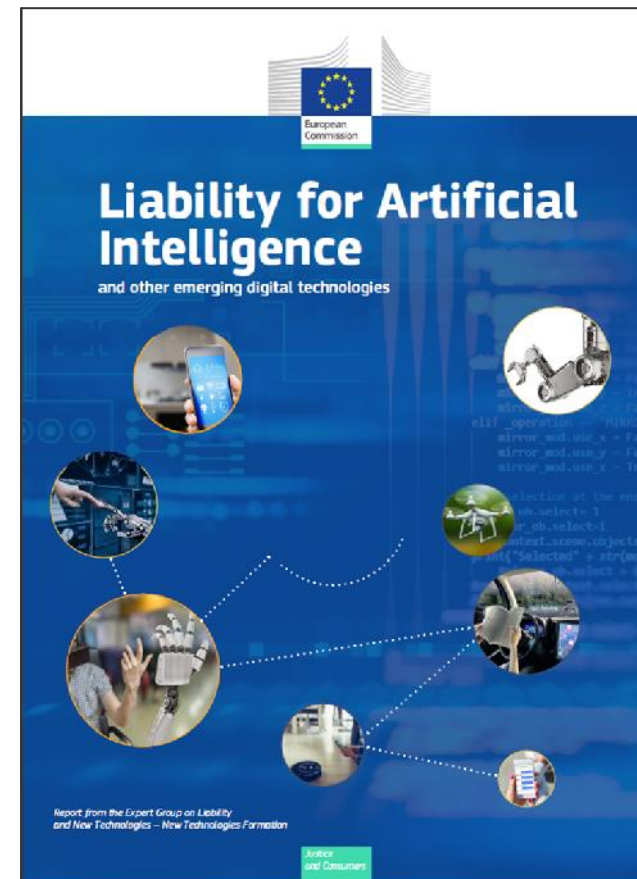


Product Liability Directive: protecting consumers in the Digital Single Market

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- Expert Group on Liability and New Technologies – New Technologies Formation
- Mission: to assess whether and to what extent existing liability schemes are adapted to the emergence of new technologies such as AI, and, where shortcomings are identified, make recommendations for amendments
- Product liability as an extremely important building block within the wider liability framework
- Report submitted in mid 2019



1

Definition of ‘product’

It is already unclear whether ‘product’ includes software that is not embedded in a tangible movable item, and ‘product’ does not include services. In AI systems, digital content, digital services and tangible items permanently interact and a sharp separation between them is impossible.

2

Over-the-air supply

Even if software is included the problem arises that it is often provided over-the-air from a country outside the EEA, which is why there is no importer within the EEA against whom the consumer can seek redress.

3

Types of eligible 'damage'

PLD covers only death, personal injury, and damage to consumer property, which possibly does not even cover damage to data or other digital assets. Moreover, the harm caused by AI-driven technologies is often about, e.g., privacy, discrimination, or pure economic loss.

4

Proof of defect & causation

In a networked environment, and due to the complexity, opacity, and self-modifying capacities of AI-driven technologies, it is often close to impossible for a victim to prove the existence of a defect and that it has caused the loss. There may thus be a need for sophisticated alleviations from the burden of proof and, in appropriate cases, for a duty to employ logging facilities.

5

Relevant point in time

The PLD relies on the notion that products are put into circulation at one particular point in time and that the producer may therefore become liable only for defects that existed at that point in time.

With connected and AI-driven products, however, the product may become unsafe only later due to a software update or a data feed.

6

Failure to monitor

Given that, with connected and AI-driven products, the producer often remains in control of product features during the life-cycle of a product, there may be a need for enhanced product monitoring duties and for liability under the PLD for breach of such duties.

7

Failure to update

Where a safety problem becomes known that might be fixed by way of a software update it might be justified under certain conditions to hold the producer liable if such update fails to be provided.

8

Development risk defence

**With fast moving digital technologies, in particular AI, state-of-the-art at a particular point in time often includes safety gaps.
The option for Member States to allow for a development risk defence may therefore no longer be appropriate.**

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- 2 Over-the-air supply
- 3 Types of eligible 'damage'
- 4 Proof of defect & causation

- 5 Relevant point in time
- 6 Failure to monitor
- 7 Failure to update
- 8 Development risk defence