



2020/2014(INL)

7.7.2020

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on Civil liability regime for artificial intelligence
(2020/2014(INL))

Rapporteur for opinion: Svenja Hahn

(Initiative – Rule 47 of the Rules of Procedure)

PA_INL

SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible:

- to incorporate the following suggestions into its motion for a resolution:
 - A. whereas the use of emerging digital technologies, such as Artificial Intelligence (AI), the Internet of Things and of Services (IoT/IoS) or robotics, will continue to play an increasing role in our everyday lives;
 - B. whereas such emerging digital technologies have the potential to contribute to the development of innovation in many sectors and offer benefits for consumers through innovative products and services, for businesses, in particular start-ups, micro, small and medium enterprises (SMEs), through optimised performance and increased competitiveness, and for public administration, through improved, more inclusive and customised public services;
 - C. whereas the use, deployment and development of AI and other emerging digital technologies might also present risks to and challenges for the existing liability framework on products which is not necessarily adapted to such new applications, thus potentially undermining consumer trust and protection;
 - D. whereas product safety and product liability are two complementary mechanisms pursuing the same policy goal of a functioning single market for goods and services, and this opinion contains suggestions as to possible adjustments of the Union liability framework in light of the increased importance of emerging digital technologies;
 - E. whereas robust liability mechanisms triggering remedies for damage and harm contribute to better protection of citizens and consumers from damage and harm, creation of trust in emerging digital technologies while ensuring legal certainty for businesses, in particular start-ups, micro, small and medium enterprises (SMEs), thereby enabling them to innovate;
 - F. whereas in order to build acceptance, the theoretical benefits of AI should also contribute effectively to prosperity and development;
 - G. whereas the Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the safety and liability implications of Artificial Intelligence, the Internet of Things and robotics¹ and the White Paper On Artificial Intelligence - A European approach to excellence and trust² should be considered as the basis for the future European legislation;
- 1. Welcomes the Commission's aim of making the Union legal framework fit the new technological developments, deployments and uses of AI and other emerging digital technologies, thereby ensuring a high level of protection for consumers from damage

¹ COM (2020) 64

² COM(2020) 65

and harm caused by new technologies based on artificial intelligence, robotics and related technologies, while maintaining a balance with the objective of digitalisation of industrial and consumer products and supporting technological innovation;

2. Calls on the Commission to update the existing liability framework, and in particular Council Directive 85/374/EEC³ (the Product Liability Directive - ‘PLD’), to adapt it to the digital world;
3. Calls on the Commission to revise the PLD, by addressing the challenges posed by emerging digital technologies such as artificial intelligence, the Internet of things (IoT) or robotics, thereby ensuring a high level of effective consumer protection as well as legal certainty for consumers and businesses, while avoiding high costs and risks for SMEs and start-ups;
4. Highlights that any update of the product liability framework should go hand in hand with the update of Directive 2001/95/EC of the European Parliament and of the Council⁴ (the Product Safety Directive) in order to ensure that AI systems integrate safety and security by design principles;
5. Emphasises that any revision of the existing liability framework should aim to further harmonise liability and consumer protection rules in order to ensure a level playing field and to avoid inequalities in consumer protection and fragmentation of the single market;
6. Asks the Commission to assess whether a regulation on general product liability could contribute to this aim; stresses, however, the importance of ensuring that Union regulation remains limited to clearly identified problems for which feasible solutions exist and leaves room for further technological developments, including the developments based on free and open source software; highlights that this should be done in full compliance with the applicable legislation, including Directive (EU) 2019/790 of the European Parliament and of the Council⁵;
7. Calls on the Commission to update the product liability framework by taking into account the specific challenges of digitalisation for liability law; considers that challenges may arise, for example, due to products being inter-connected, data-dependent or vulnerable to cybersecurity risks;
8. Underlines, in particular, the need to take into account processes in AI applications that may not be well documented, or which may occur autonomously after the product has been placed on the market;
9. Urges the Commission to clarify the definition of ‘products’ under the PLD, by determining whether digital content and digital services fall under its scope and to consider adapting such concepts as ‘producer’, ‘damage’ and ‘defect’; underlines the

³ Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).

⁴ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4)

⁵ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (OJ L 130, 17.5.2019, p. 92)

need to take into account the consumer acquis when doing so and in particular the current Directive (EU) 2019/770 of the European Parliament and of the Council⁶ (the Digital Content Directive) and Directive (EU) 2019/771 of the European Parliament and of the Council⁷ (the Sale of goods Directive);

10. Recommends that AI should not be granted its own legal personality; asks the Commission to also examine whether the product liability framework needs to be revised in order to protect, and indemnify injured parties efficiently as regards products that are purchased as a bundle with related services and to consider privacy-by-design and security-by-design rules as being a reasonable expectation of consumers regarding their digital products;
11. Highlights the fact that online marketplaces, acting as importers or suppliers of the products sold online in the supply chain, fall under the PLD and therefore are liable for damage caused by a defect in the products they have sold, except where they act as a supplier and the producer is identified, in accordance with the relevant provisions of the PLD;
12. Calls on the Commission to assess, in close coordination with corresponding possible adjustments to the Union safety framework, whether the notion of 'time when the product was put into circulation' is fit for purpose for emerging digital technologies, and whether the responsibility and liability of producer could go beyond this notion, taking into account that AI-driven products may be changed or altered under the producer's control after they have been placed on the market, which could cause a defect and ensuing damage;
13. Stresses the importance of ensuring a fair and efficient allocation of liability in the chain of commercial transactions in order to attribute liability in the most appropriate way; highlights that due to the complexity, connectivity and opacity of the products based on AI and new technologies, it could be difficult for consumers to prove what defect in a product caused damage, as it cannot be assumed that consumers have all of the necessary information or specific technical knowledge;
14. Underlines therefore the relevance of making it possible for consumers who have suffered harm or whose property has been damaged to prove that a defect in a product caused damage, even if third party software is involved or the cause of a defect is difficult to trace, for example when products are part of a complex interconnected Internet of Things environment;
15. Calls on the Commission to consider reversing the rules governing the burden of proof for harm caused by emerging digital technologies in clearly defined cases and after a proper assessment, in order to empower consumers who have suffered harm or whose property has been damaged to defend their rights while preventing abuse and providing legal certainty for businesses, as well as to ensure fairness and to mitigate the

⁶ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1)

⁷ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28)

informational asymmetries impairing the situation of injured parties;

16. Asks the Commission to assess the possibility of introducing an obligation for producers of emerging digital technologies to equip their products with means of recording information about the operation of the technology, in accordance with applicable data protection provisions and the rules concerning the protection of trade secrets, taking into account, inter alia, the likelihood that a risk of the technology materialises, whether such a duty is appropriate and proportionate and the technical feasibility and costs of it; suggests that failing to comply with this duty or refusing to give the consumer in question reasonable access to this information would trigger a rebuttable liability presumption on the part of the producer;
17. Highlights the need for a risk based approach to AI within the existing liability framework, which takes into account different levels of risk for consumers in specific sectors and uses of AI; underlines that such an approach, that might encompass several levels of risk, should be based on clear criteria and an appropriate definition of high risk and provide for legal certainty;
18. Further considers that those involved in the different stages of the development, deployment and use of AI-based systems should be held into account in proportion to their liability in their internal relationship; stresses, however, that in relation to the party who has suffered harm or whose property has been damaged the joint and several liability of these different actors should be guaranteed; suggests that product traceability be improved, for instance via the use of distributed ledger technologies, such as blockchain, in order to better identify those involved in the different stages;
19. Underlines that explainability, interpretability and traceability of AI systems are key to ensuring that liability mechanisms offer an adequate, efficient and fair allocation of responsibilities;
20. Asks the Commission to carefully assess the introduction of a separate yet complementary strict liability regime for AI systems presenting a high risk of causing harm or damage to one or more persons or their property in a manner that is random and impossible to predict in advance, taking into account, inter alia, its likely impact on the protection of citizens and consumers from harm, the capacity of businesses, particularly SMEs, to innovate, the coherence of the Union's safety and liability framework and on the principles of subsidiarity and proportionality; considers that this regime should ensure that victims are effectively compensated for damage caused by AI driven systems;
21. Calls on the Commission to propose concrete measures, such as a registry of products liability cases, to enhance transparency and to monitor defective products circulating in the Union; highlights that it is essential to ensure that there is a high level of consumer protection in relation to, and a high degree of information about, the products that could be purchased.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	7.7.2020
Result of final vote	+ : 39 - : 0 0 : 5
Members present for the final vote	Alex Agius Saliba, Andrus Ansip, Alessandra Basso, Brando Benifei, Adam Bielan, Hynek Blaško, Biljana Borzan, Vlad-Marius Botoș, Markus Buchheit, Dita Charanzová, Deirdre Clune, David Cormand, Petra De Sutter, Carlo Fidanza, Evelyne Gebhardt, Alexandra Geese, Sandro Gozi, Maria Grapini, Svenja Hahn, Virginie Joron, Eugen Jurzyca, Arba Kokalari, Marcel Kolaja, Kateřina Konečná, Andrey Kovatchev, Jean-Lin Lacapelle, Maria-Manuel Leitão-Marques, Adriana Maldonado López, Antonius Manders, Beata Mazurek, Leszek Miller, Kris Peeters, Anne-Sophie Pelletier, Christel Schaldemose, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Kim Van Sparrentak, Marion Walsmann, Marco Zullo
Substitutes present for the final vote	Pascal Arimont, Maria da Graça Carvalho, Edina Tóth, Stéphanie Yon-Courtin

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

39	+
EPP	Pascal Arimont, Maria da Graça Carvalho, Deirdre Clune, Arba Kokalari, Andrey Kovatchev, Antonius Manders, Kris Peeters, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Edina Tóth, Marion Walsmann
S&D	Alex Agius Saliba, Brando Benifei, Biljana Borzan, Evelyne Gebhardt, Maria Grapini, Maria-Manuel Leitão-Marques, Adriana Maldonado López, Leszek Miller, Christel Schaldemose
RENEW	Andrus Ansip, Vlad-Marius Botoș, Dita Charanzová, Sandro Gozi, Svenja Hahn, Stéphanie Yon-Courtin
ID	Alessandra Basso
GREENS/EFA	David Cormand, Petra De Sutter, Alexandra Geese, Marcel Kolaja, Kim Van Sparrentak
ECR	Adam Bielan, Carlo Fidanza, Beata Mazurek
EUL/NGL	Kateřina Konečná, Anne-Sophie Pelletier
NI	Marco Zullo

0	-

5	0
ID	Hynek Blaško, Markus Buchheit, Virginie Joron, Jean-Lin Lacapelle
ECR	Eugen Jurzyca

Key to symbols:

+ : in favour

- : against

0 : abstention