

**Comments of the  
German Insurance Association (GDV\*)  
ID Number 6437280268-55**

**on legal liability and liability insurance in the context of  
emerging technologies  
relating to the evaluation of the PLD and further discussions at EU level**

The German insurers are following the discussions on civil law liability in the light of emerging technologies with great interest. This holds particularly true for the evaluation processes of the Product Liability Directive (PLD) where European insurers are actively engaged.

Liability insurers have great experience as risk takers. Insurers are immediately affected by changes to the liability framework as it has direct bearing on insurance scope of coverage and terms and conditions. Based on their expertise, the German insurers have several concerns regarding the current discussion at EU level.

**Summary / Main messages**

**The existing legal liability framework is fully adequate to address the risks posed by emerging digital technologies such as smart devices, automated, connected or robotic systems as well as 3D printing. This is especially the case for manufacturers' liability under the Product Liability Directive 85/374/EEC.**

**Insurance solutions are readily available to cover the liability of owners and operators as well as of manufacturers. Introducing additional compulsory insurance requirements or compensation funds is unnecessary and counter-productive.**

**Scientific and technical research into emerging digital technologies should be encouraged and promoted. Specifically, developing rules and industry standards on product safety and product security should be prioritised.**

The GDV's main considerations in more detail:

**1. Existing principles of liability for damage caused to third parties are adequate and appropriate to address the risks posed by emerging digital technologies.**

- Producers should continue to be held liable only if damage was caused because their product was defective. There is no need for a systematic reallocation of liability towards producers. It would be impractical and counter-productive to assign primary liability to the producer in all cases where an innovative system causes damage, thereby exonerating the user/operator (and all other parties such as maintenance/repair operations) of all responsibility for damage, whatever the cause.
- Strict liability may be contemplated to specifically address the operation or use of certain classes of highly advanced, fully autonomous and self-learning robots as and when such

\*The Berlin-based German Insurance Association (GDV) is the federation of private insurers in Germany. Its about 460 member companies offer comprehensive coverage and retirement provisions to private house-holds, trade, industry and public institutions, through 431 million insurance contracts. The German insurance industry stands for risk cover, security and financial precautions in all areas of private and public life. It makes risks calculable and bearable for individuals and it is an indispensable basis for economic activity. The insurance industry moreover provides gainful employment for 524,000 persons either as employees with insurers and in the intermediation business or as self-employed insurance intermediaries and advisers.

- systems become technologically feasible – which is not the case yet. It is a well-established concept of liability that anyone creating, sustaining or controlling a potential source of particular danger must take responsibility and be accountable for the consequences if that risk materialises and damage occurs as a consequence. Accordingly, strict liability for personal injury and property damage is commonly imposed on the operator of a motor vehicle or of an aircraft, to include drones. Smart devices, robots and automated systems will all continue to be operated by humans who will remain responsible and can be held liable for damage resulting from their use.
- It is neither practical nor effective to endow robots, however advanced or autonomous, with an own legal personality. However autonomous robots may become, it is humans who design, manufacture, program and market robots, and it is humans who operate or use them. Thus, it should be the respective humans to take responsibility (be held liable) for damage caused by the use of robots.

## **2. The Product Liability Directive 85/374/EEC (PLD) is fully fit for purpose to address manufacturers' liability for damage caused by emerging digital technologies.**

- The PLD has implemented a well-balanced system of liability by providing a high level of protection to injured parties while at the same time taking into account manufacturers' legitimate interests and thereby encouraging economic growth and technological progress. Being technology neutral, it fully applies to manufacturers of emerging technologies, to include 3D printing. 3D printing is an alternative process used to manufacture material objects. As such, it does not affect the obligations or responsibilities in law of those engaged in the production process. Therefore, there is no need for additional liability regulations covering producers of new technologies.

The European insurance association Insurance Europe also considers the Product Liability Directive to be future-proof.<sup>1</sup> The GDV supports Insurance Europe's position.

- Product Liability should continue to be distinguished from contractual remedies. Product Liability provides compensation for personal injury and property damage that is consequential to a harmful event or other harmful properties. Redress for impairment arising solely out of a product's being defective (where the product simply does not function as intended or as agreed, but with no consequential injury or damage resulting) is provided by remedies under contract law. Remedies include provisions for the violation of product warranty/guarantee and other special contractual agreements.
- The development of product safety and product security standards should be prioritised. The PLD imposes strict liability for defective products. Under the Directive, a product is defective when it does not provide the safety which a person is entitled to expect. This technology neutral abstract definition needs to be concretised in the context of the digital economy. E. g., when exactly does a particular automated or connected product fail to "provide the safety a person is entitled to expect", and is therefore defective? These are, however, questions of product safety, not liability, to be answered by product safety regulations, industry standards and technical norms. Another vital area to be considered is product security, i.e. a data-driven system's ability to withstand external attack ("cyber risk").

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<sup>1</sup> See [here](#) Insurance Europe's response to the Commission's Public Consultation on the rules on liability of the producer for damage caused by a defective product

### 3. Introducing additional compulsory insurance requirements would be unnecessary and would not work in practice.<sup>2</sup>

- A free voluntary insurance market is best able to provide tailored insurance solutions that are designed to cover the individual insured's risks and liabilities. "Emerging digital technologies" covers a wide range of different appliances and uses, and effective insurance protection must be geared towards individual risk exposure. Compulsory insurance of necessity introduces a "one size fits all" approach when defining minimum requirements. These tend to be orientated towards higher risks. Insureds with a lower risk profile are forced to buy an excessive level of insurance that is uneconomical (higher premiums). Particularly exposed insureds, on the other hand, may be deterred from purchasing the (higher) level of insurance that would be appropriate for their individual risk profile, as a lower level of protection would come cheaper and still meet legal requirements.
- Making manufacturers' insurance obligatory would be unnecessary as liability insurance on voluntary basis is already standard. The GDV assumes that almost all companies in Germany, which are liable for risks arising from the manufacturing and marketing of "emerging technologies", have already taken out respective liability insurance cover which takes adequate account of the potential risk associated to their products.
- Insurance solutions are readily available to cover both owners' and operators' liability and manufacturers' liability as per the above.

### 4. Compensation funds are unnecessary and detrimental.<sup>3</sup>

- The insurance industry is fully able to provide protection for manufacturers and owners/operators. But the very existence of a fund would disincentivise manufacturers and operators from buying adequate levels of insurance and thereby pose a moral hazard: Manufacturers and operators who do buy adequate insurance would be penalized with higher costs (not only in insurance premiums, but also in contributions to the fund), whereas those who do not would be rewarded by the fund's taking over part or all of their liability despite saving on costs.
- Manufacturers would also be discouraged from developing and implementing a high level of product safety as the fund would pay out regardless of whether they invest in product safety or not. As a result, the level of victim protection could actually decrease by deterring the use and development of innovative safety technologies and procedures.
- Funds are difficult to set up and costly to run. Determining who contributes how much and how to organize and administer a fund invariably presents a number of highly contentious issues difficult to solve in practice.

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<sup>2</sup> See [here](#) the summary of the European Parliament's public consultation on the future of robotics and artificial intelligence (AI) with an emphasis on civil law rules. Therein page 7: "Stakeholders do not see a necessity for establishing an obligatory insurance scheme for damages caused by autonomous robots, nor a compulsory insurance and compensation fund."

<sup>3</sup> See footnote 2