



Council of the European Union
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From:	Presidency
To:	Delegations
N° Cion doc.:	ST 13134 2022 ADD 1 + ST 13134 2022 ADD 4 + ST 13134 2022 INIT + ST 13134 2022 ADD 2 + ST 13134 2022 ADD 3
Subject:	Proposal for a Directive of the European Parliament and of the Council on liability for defective products - Presidency note

Delegations will find in Annex a Presidency note in view of the JHA Counsellors meeting on 8 December 2023.

Dear colleagues,

We would like to thank you for all the contributions you have already sent regarding our previous requests. As the date for the final trilogue comes close, we would like to know your position on the following points during our next counsellors meeting:

- Recital 17: The Presidency proposal had enough support from the MS. Nevertheless, the EP proposed the following amendment highlighted in yellow to Recital 17. MS are asked to assess their flexibility as to this wording for Recital 17: “(17) *In the interests of legal certainty, it should be clarified that personal injury includes medically recognised damage to psychological health. This should be certified by a independent medical expert, including psychologists, and limited to damage that affects the victim’s general state of health, which requires therapy or medical treatment, taking into account, inter alia, the International Classification of Diseases of the World Health Organisation.*”

This proposal is based on our previous proposal: “*In the interests of legal certainty, it should be clarified that personal injury includes medically recognised damage to psychological health. This should be certified by a independent medical expert, including psychologists, and limited to damage that affects the victim’s general state of health, taking into account, inter alia, the International Classification of Diseases of the World Health Organisation.*”

- Data loss: MS are asked to assess the following possibility in case EP continues to insist on a threshold:

Art. 5a(1)(c) based on CSL text plus new subparagraph :

(c) loss **destruction** or corruption of data that is not used exclusively for professional purposes.

Member States may choose to limit the award of compensation for damage referred to under point (c) to cases in which material losses exceed EUR 500.

So, no threshold unless MSs choose to impose one. Obviously, the concern would be the appearance of this not being Single Market friendly, so we would not want to be the ones putting this on the table.

- **Line 106:** MS are asked to assess their flexibility as to this wording for Article 6 (1), point (c); “(c) the effect on the product of any ability to continue to learn or acquire new features after ~~deployment~~ it is placed on the market or put into service.”. The only change to the General Approach consists of the addition of “or acquire new features”.
- **Right to recourse:** MS are asked to consider their flexibility for this wording on Article 12 a:

“Art. 12a

1. **Member States shall ensure that rules regulating recourse for economic operators against other jointly and severally liable economic operators are in place in their national legal systems.** ~~where more than one economic operator is liable for the same damage, any economic operator that has compensated the injured person or was ordered to do so by an enforceable judgment shall have a right of recourse against any other jointly and severally liable economic operator. Member States shall lay down the~~

~~conditions for exercising such right of recourse which shall not be less favourable to the claimant than in comparable national cases.~~

- 2. Member States may ensure that national courts ~~may~~are able, where appropriate, to apply Article 9(2) to (5) in cases in which the right of recourse is exercised."**

[Alternative: Delete para 2, and include idea in recital: "....rules regulating recourse, **including rules on the extent of the availability of alleviations of the burden of proof provided for in this Directive...**"]