Adapting liability rules to the digital age and artificial intelligence

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Section I – Product Liability Directive

General

Question. *How familiar are you with the Directive?*

X	I have detailed knowledge of the Directive, its objectives, rules and application
	I am aware of the Directive and some of its contents
	I am not familiar with the Directive
	No opinion

Adapting the Directive to the digital age

Question. *Do you agree or disagree that consumers should get compensation under the Directive if the following intangible items are defective and cause physical /property damage?*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
Software embedded in a tangible product at the moment the tangible product is placed on the market		X				
Software made available separately via download for use on a tangible product (e.g. domestic robot) that has already been placed on the market				X		
Software upgrades and updates (e.g. to deliver new functionalities or fix a security flaw)		X				
Software that controls how a product operates (e.g. a car's engine control system, a robot's operating system)		X				

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	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
Software that is used on a device but does not drive the device (e.g. a gaming app on a computer or other device)					X	
Bespoke software (e.g. software customised to control the production line in a factory)		X				
Digital services that control how a product operates (e.g. cloud- based service for operating smart thermostat)					X	
Data capable of influencing how a product operates (e.g. training data for an autonomous vehicle)					X	
Data that comprises only information (e.g. a digital map, a menu)					X	
Software that provides immediate decision-triggering information (e.g. blood glucose meter)					X	
Software that provides only guidance or advice to an end user (e.g. software that interprets medical imaging and provides diagnoses)					X	

Question. *Do you agree or disagree with the following statements?*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
The proposals for a Digital Services Act and General Product Safety Regulation are sufficient to ensure consumer protection as regards products bought through online marketplaces where there is no EU-based producer or importer.		X				
The Product Liability Directive needs to be adapted to ensure consumer protection if damage is caused by defective products bought through online marketplaces where there is no EU-based producer or importer.					X	

Question. *What do you think is the appropriate approach for consumers to claim compensation when damage is caused by a defective product bought through an online marketplace and there is no EU-based producer or importer?*

- Consumers should claim compensation directly from producers, even if they are not EU-based. Online marketplaces do not produce, import or supply any of the goods that are sold by others on their platforms. However, more broadly, the responsibilities of these platforms should be clearly defined and reflect what platforms could do to supervise those that sell products on them.

Digital technologies may bring with them new risks and new kinds of damage.

Question. *Do you agree or disagree with the following statements? Please specify.*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
Producers should potentially be held strictly liable for damages caused as a result of failure to provide necessary security updates for smart products		X				
The Directive should harmonise the right of consumers to claim compensation from producers who are not simultaneously data controllers or processors, for privacy or data protection infringements (e.g. a leak of personal data caused by a defect)					X	
The Directive should harmonise the right of consumers to claim compensation for damage to, or destruction of, data (e.g. data being wiped from a hard drive even if there is no tangible damage)					X	
The Directive should harmonise the right of consumers to claim compensation for psychological harm (e.g. abusive robot in a care setting, home-schooling robot)					X	
Some products, whether digital or not, could also cause environmental damage. The Directive should allow consumers to claim compensation for environmental damage (e.g. caused by chemical products)					X	
Coverage of other types of harm					X	

- The PLD should continue to be restricted to personal injury and property damage. Adding damages other than physical injury or property damage is likely to provoke a conflict of statutes. Basic rights infringements (data protection, discrimination, privacy, etc.) should continue to be dealt with exclusively by existing, dedicated EU legislation such as the General Data Protection Regulation. Coherence across legislation should be ensured.
  - Psychological harm/emotional pain and suffering are already compensable if consequential to personal injury.
  - Damage to soil and water that are privately owned constitutes property damage and, as such, is already compensable.
  - Damage to the environment in the sense of a public good is governed by the Environmental Liability Directive, and there is no scope for this under the PLD because there is no injured person.
  - Destruction of data may fall under property damage, for example if a computer catches fire resulting in data loss.

Adapting the Directive to the circular economy

Question. *Do you agree or disagree with the following statements?*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
Companies that remanufacture a product (e.g. restoring vehicle components to original as-new condition) and place it back on the market should be strictly liable for defects causing damage	X					
Companies that refurbish a product (e.g. restoring functionality of a used smartphone) and place it back on the market should be strictlyliable for defects causing damage	X					
The manufacturer of a defective spare part added to a product (e.g. to a washing machine) during a repair should be strictly liable for damage caused by that spare part	X					

- It is important to make a distinction between repair and refurbishment/remanufacture. While repairers offer a service, refurbishers are entities that go beyond maintenance, repair and overhaul by altering an existing product in such a way that it becomes a new product. As they market these "new products" themselves, refurbishers could be classified as producers. However, questions may arise around how consumers can verify whether the product they purchase is repaired or refurbished.

Policy approach and impacts of adapting the Directive to the digital and circular economy

Question. *Please rank the following <u>options</u> for adapting the Directive to the digital and circular economy from 1 (like best) to 3 (like least)*

	1	2	3
Option 1: No legislative change	X		
Option 2: Make explicit that strict liability rules apply to products incorporating digital content (e.g. software, data). Address defects resulting from changes to products after they are put on the market (due to circular economy activities such as refurbishments, software upgrades, interactions with other products and services, or due to safety- related cybersecurity risks)		X	
Option 3: Address defects resulting from changes to products as in Option 2 and extend strict liability to digital content itself (and producers of such digital content) when placed on the market separately from the tangible product			X

Question. *In addition to the policy options presented in the previous question, should the EU take the following <u>additional measures</u> to adapt the Directive to the digital and circular economy?*

	Yes	No	No opinion
Harmonise right to claim for non-material damages under the Directive (e.g. privacy infringement, psychological harm, environmental damage)		X	
Define liability rules where there is no EU importer		X	
Other measures		X	

Question. *Please specify all the relevant impacts that you think the option you 'like least' and, if any, additional measures that you were against will have on the following aspects, compared to Option 1 (no legislative change).*

	Large increase	Small increase	No/ negligible impact	Small decrease	Large decrease	No opinion
Legal certainty					X	
Costs for your company	X					
Consumer protection					X	
Consumer uptake of products in the digital and circular economy					X	
Purchase price of products	X					
Incentives for companies to place innovative products on the market					X	
Competitiveness of micro, small- and medium-sized enterprises (SMEs)					X	
Ability of producers to obtain product liability insurance					X	

Question. *What action, if any, should the EU take to address the challenges posed by the digital and circular economy?*

X	Issue guidance on how to interpret the current rules of the Directive
	Revise the Directive to change the rules
	No action needed
	Other

Reducing obstacles to getting compensation

Question. *To what extent do you think that the following types of product present difficulties in terms of proving defectiveness and causality in the event of damage? (See additional burden of proof question concerning AI in Section II)*

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no answer
All products					X	
Technically complex products					X	
Pharmaceuticals					X	
AI-enabled products					X	
IoT (Internet of Things) products					X	

Question. *When should producers be able to use the 'development risk defence'?*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
The defence should remain available without any change	X					
The defence should be removed					X	
The defence should not be available for products designed to be influenced by other interconnected products or services (e.g. complex IoT systems)					X	
The defence should not be available for AI products that continue to learn and adapt while in operation					X	
The defence should not be available for any AI products					X	

Question. *Please specify any other conditions you think should apply to the use of the development risk defence:*

- Existing defence mechanisms should not be removed, as this would deter technological innovation and hinder economic development. The development risk defence is also necessary to help EU producers remain competitive in the international market.

Reducing obstacles to making claims

Question. *To what extent do the following features of the Directive create obstacles to consumers making compensation claims?*

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no answer
Producers are released from liability for death/personal injury 10 years after placing the product on the market					X	
Producers are released from liability for property damage 10 years after placing the product on the market					X	
Consumers have to start legal proceedings within 3 years of becoming aware of the damage					X	
Consumers can claim compensation only for damage to property worth more than EUR 500					X	
Consumers can claim compensation only for damage to property intended and used for private purposes					X	

Policy approach and impacts of reducing obstacles to getting compensation and making claims

Question. *Please rank the following <u>options</u> for adapting the Directive to the digital and circular economy from 1 (like best) to 4 (like least)*

	1	2	3	4
Option 1. No legislative change	X			
Option 2. Alleviate the burden of proof for technically complex products by: a) obliging the producer to disclose technical information (e.g. data from clinical trials or log data of a robot vacuum cleaner) to the injured party to better enable the latter to prove their claim; and b) allowing courts to infer that a product is defective or caused the damage under certain circumstances (e.g. when other products in the same production series have already been proven to be defective or the product clearly malfunctioned).		X		
Option 3. Reverse the burden of proof for technically complex products. In the event of damage, the producer would have to prove the product was not defective.			X	
Option 4. In addition to option 2 or 3: a) adapt the notion of 'defect' and the alleviation/reversal of burden of proof to the specific case of AI; and b) remove the 'development risk defence' to ensure producers of products that continuously learn and adapt while in operation remain strictly liable for damage.				X

Question. *In addition to the policy options presented in the previous question, should the EU take the following <u>additional measures</u> to adapt the Directive to reduce obstacles to making claims? Please specify.*

	Yes	No	No opinion
Harmonise right to claim for non-material damages under the Directive (e.g. privacy infringement, psychological harm, environmental damage)		X	
Define liability rules where there is no EU importer		X	
Other measures		X	

- With regard to limitations on liability, Insurance Europe believes that existing limits adequately balance the interests of consumers and producers. Furthermore, there are practical consequences associated with any changes to these limits, and the interplay between the PLD and requirements around data retention and destruction under the GDPR must also be considered.

Question. *Please specify all the relevant impacts that you think the option you 'like least' and, if any, additional measures that you were against will have on the following aspects, compared to Option 1 (no legislative change).*

	Large increase	Small increase	No/ negligible impact	Small decrease	Large decrease	No opinion
Legal certainty					X	
Costs for your company	X					
Consumer protection					X	
Consumer uptake of products in the digital and circular economy					X	
Purchase price of products	X					

	Large increase	Small increase	No/ negligible impact	Small decrease	Large decrease	No opinion
Incentives for companies to place innovative products on the market					X	
Competitiveness of micro, small- and medium-sized enterprises (SMEs)					X	
Ability of producers to obtain product liability insurance					X	

Question. *What action, if any, should the EU take to address obstacles to making claims and getting compensation under the Directive? Please specify.*

	Issue guidance on how to interpret the current rules of the Directive
	Revise the Directive to change the rules
X	No action needed
	Other

- Our members are not aware of any existing obstacles to making claims and getting compensation under the Directive. Moreover, recent EU collective redress legislation should facilitate consumers' access to legal actions.

Section II –Liability for AI

Problems – general

Question. *Do you agree or disagree with the following statements?*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
There is uncertainty as to how the Product Liability Directive (i.e. liability for defective products) applies to damage caused by AI					X	
There is uncertainty as to whether and how liability rules under national law apply to damage caused by AI					X	
When AI operates with a high degree of autonomy, it could be difficult to link the damage it caused to the actions or omissions of a human actor				X		
In the case of AI that lacks transparency (opacity) and explainability (complexity), it could be difficult for injured parties to prove that the conditions of liability (such as fault, a defect, or causation) are fulfilled				X		
Because of AI's specific characteristics, victims of damage caused by AI may in certain cases be less protected than victims of damage that didn' t involve AI					X	

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
It is uncertain how national courts will address possible difficulties of proof and liability gaps in relation to AI					X	

- With regard to boxes 3 and 4, more transparency around the inner workings of AI-driven products (eg, logging obligations and tracking of software updates) could assist injured parties in, in the case of 3, linking the damage caused to the actions or omissions of a human player and, in the case of 4, proving that the conditions of liability are fulfilled. However, this raises questions around the level of access to logged data that should be granted, and under which circumstances, as well as whether courts have sufficient expertise to be able to interpret and make use of logged information from AI-driven products. A lack of technical expertise in courts should be addressed through the provision of training courses.

- Furthermore, it is important to underline that the answers to this consultation reflect the insurer's perspective. Insurance Europe is of the view that problems do not stem from legal uncertainty but could instead arise from the inner complexity of the AI-driven products and therefore could only be tackled by their developers. In other words, addressing these challenges will mostly require a technological answer.

Question. *Do you agree or disagree with the following statements?*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
The lack of adaptation of the current liability framework to AI may negatively affect trust in AI					X	
The lack of adaptation of the current liability framework to AI may negatively affect the uptake of AI-enabled products and services					X	

Question. *If the current liability framework is not adapted, to what extent do you expect the following problems to occur in relation to the production, distribution or use of AI-enabled products or services, now or in the foreseeable future?*
Please elaborate on your answers, in particular on whether your assessment is different for AI-enabled products than for AI-enabled services.

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no answer
Companies will face additional costs (e.g. legal information costs, increased insurance costs)					X	
Companies may defer or abandon certain investments in AI technologies					X	

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no answer
Companies may refrain from using AI when automating certain processes					X	
Companies may limit their cross-border activities related to the production, distribution or use of AI-enabled products or services					X	
Higher prices of AI-enabled products and services					X	
Insurers will increase risk- premiums due to a lack of predictability of liability exposures					X	
It will not be possible to insure some products/services					X	
Negative impact on the roll-out of AI technologies in the internal market					X	

■ Liability insurance is generally sold on an all-risks basis, meaning that unless specific exclusions are written in, all liabilities would be cover under the policy. As regards possible future developments, additional costs for companies could stem from the technological evolution itself and not from legal uncertainty. Additional legal requirements could act as a barrier to innovation, leading to fewer new entrants in the market and probably to higher prices for AI-enabled products and services. This could, in turn, lead to higher insurance premiums or, most likely, **insurers could not be interested in developing such insurance products, leading to a lack of product offerings**.

Question. *If Member States adapt liability rules for AI in a divergent way, or national courts follow diverging interpretations of existing liability rules, to what extent do you expect this to cause the following problems in the EU?*
Please elaborate on your answers, in particular on whether your assessment is different for AI-enabled products than for AI-enabled services, as well as on other impacts of possible legal fragmentation.

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no answer
Additional costs for companies (e.g. legal information costs, increased insurance costs) when producing, distributing or using AI-equipped products or services					X	
Need for technological adaptations when providing AI-based cross-border services					X	
Need to adapt AI technologies, distribution models (e.g. sale versus service provision) and cost management models in light of diverging national liability rules					X	
Companies may limit their cross-border activities related to the production, distribution or use of AI-enabled products or services					X	

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no answer
Higher prices of AI-enabled products and services					**X**	
Insurers will increase premiums due to more divergent liability exposures					**X**	
Negative impact on the roll-out of AI technologies					**X**	

■ The above will not create more barriers than currently exist for companies trading in non AI-driven products across the EU. Adopting a separate liability regime for AI would rather act as a barrier to innovation, leading to fewer new entrants in the market and probably to higher prices for AI-enabled products and services. This could, in turn, lead to higher insurance premiums, not due to increased risk, but rather to an increase in the operating costs of the producer.

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Policy options

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> **Question.** *Do you agree or disagree with the following approaches regarding the burden of proof? The answer options are not mutually exclusive. Regarding the Product Liability Directive, the following approaches build on the general options in the first part of this questionnaire.*
> *Please elaborate on your answers and describe any other measures you may find appropriate.*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
The defendant (e.g. producer, user, service provider, operator) should be obliged to disclose necessary technical information (e.g. log data) to the injured party to enable the latter to prove the conditions of the claim		**X**				
If the defendant refuses to disclose the information referred to in the previous answer option, courts should infer that the conditions to be proven by that information are fulfilled		**X**				
Specifically for claims under the Product Liability Directive: if an AI-enabled product clearly malfunctioned (e.g. driverless vehicle swerving off the road despite no obstacles), courts should infer that it was defective and caused the damage					**X**	
If the provider of an AI system failed to comply with their safety or other legal obligations to prevent harm (e.g. those proposed under the proposed AI Act), courts should infer that the damage was caused due to that person's fault or that, for claims under the Product Liability Directive, the AI system was defective					**X**	

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
If the user of an AI system failed to comply with their safety or other legal obligations to prevent harm (e.g. those proposed under the proposed AI Act), courts should infer that the damage was caused by that person's fault			X			
If, in a given case, it is necessary to establish how a complex and/or opaque AI system (i.e. an AI system with limited transparency and explainability) operates in order to substantiate a claim, the burden of proof should be shifted from the victim to the defendant in that respect					X	
Specifically for claims under the Product Liability Directive: if a product integrating an AI system that continuously learns and adapts while in operation causes damage, the producer should be liable irrespective of defectiveness; the victim should have to prove only that the product caused the damage					X	
Certain types of opaque or highly autonomous AI systems should be defined for which the burden of proof regarding fault and causation should always be on the person responsible for that AI system (reversal of burden of proof)					X	
EU action to ease the victim's burden of proof is not necessary or justified	X					

- In general, there should always be a causal relation, and never an automatic assumption that damage has been caused by either a producer or user's failure to comply with their obligations. The court should be entitled to infer, but should not automatically infer, that the damage was the fault of that person.
- With regard to box 1 specifically, provided that there is a causal relation, producers could be obliged to disclose technical information, but only information that is "necessary" for the case. Producers must have the possibility to rebut the request to disclose technical information, especially if such information is classified and could be considered a trade secret.

Question. *Do you agree or disagree with the following approaches regarding liability for operating AI-enabled products and providing AI-enabled services creating a serious injury risk (e.g. life, health, property) for the public?*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
Full harmonisation of strict liability for operating AI-enabled products and providing AI- enabled services, limited to cases where these activities pose serious injury risks to the public					X	

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
Harmonisation of strict liability for the cases mentioned in the previous option, but allowing Member States to maintain broader and/or more far-reaching national strict liability schemes applicable to other AI-enabled products and services					X	
Strict liability for operating AI- enabled products and providing of AI-enabled services should not be harmonised at EU level	X					

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
Parties subject to possible harmonised strict liability rules as described in the previous question would likely be covered by (voluntary or mandatory) insurance			X			
In cases where possible facilitations of the burden of proof would apply (as described in the question on approaches to burden of proof), the potentially liable party would likely be covered by (voluntary or mandatory) liability insurance					X	
Insurance solutions (be they voluntary or mandatory) could limit the costs of potential damage for the liable person to the insurance premium		X				
Insurance solutions (be they voluntary or mandatory) could ensure that the injured person receives compensation					X	

- Mixing voluntary and mandatory in this context (box 1) does not work. When insurance is voluntary it means that its take-up is dependent on the decision of the concerned party. Predicting likelihood is therefore not possible.

- Strict liability schemes coupled with mandatory insurance only work when the risks to be covered are sufficiently similar and when specific market pre-conditions are met (availability of sufficient data, adequate competition, insurers' interest in providing cover and sufficient reinsurance capacity). This is not the case for AI, which covers a very wide range of different appliances and uses.

- Without these conditions in place, making product liability insurance mandatory could end up doing more harm than good at national level and especially at EU level. Mandatory insurance could also lead to insufficient prevention measures on the part of policyholders, as they feel the burden is on the insurer. Such a scheme could also potentially result in:

- A lack of underwriting/contractual freedom, stifling insurance product innovation. Compulsory insurance could have an adverse effect on market penetration if, depending on minimum legal requirements, the insurance market was unable to provide sufficient cover for the whole spectrum of affected producers at terms that are economically viable for insurance buyers.
- Higher premiums.
- Insufficient prevention, as policyholders feel the burden is on the insurer.
- Difficulties in identifying the "operator" of the AI application obliged to take out the insurance. Given that AI operators are likely to be found in various fields of activity, there does not seem to be an obvious source of information (such as the vehicle registers for motor insurance).

- Box 3 and 4 merely describe how insurance works, however insurance solutions can never guarantee ("ensure") compensation, neither can they be the only solution. Deductibles and possible limits on cover should also be taken into consideration, as well as reinsurance capacity.

Question. *Do you agree or disagree with the following approach on insurance for the use of AI systems that poses a serious risk of injury to the public? Please elaborate.*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
A harmonised insurance obligation should be laid down at EU level, where it does not exist yet, for using AI products and providing AI-based services that pose a serious injury risk (e.g. life, health, property) to the public					**X**	

- Under the present regime, insurance can lessen the negative consequences of accidents involving AI by ensuring that the victim receives compensation. There are already many such insurance solutions available in the European insurance market. Protection against material damage incurred by AI generally falls within the remit of general liability insurance policies, which are sold on an all-risks basis. Existing product liability policy wordings are adequate to cover risks arising out of new digital technologies.

- As AI encompasses a set of technologies that are still at an early stage of development, legislating on liability for such highly advanced systems should be deferred until their specific risk potential can be better understood in the context of their use in different lines of business and the needs of those sectors. Any new rules at EU level would be useful and appropriate only to address any potential gaps where current rules and regulations are found to be insufficient. Insurance Europe is of the view that this is currently not the case.

Question. *Taking into account the description of various options presented in the previous questions, please rank the following options from 1 (like best) to 8 (like least).*

	1	2	3	4	5	6	7	8
Option 1: (Aside from measures to ease the burden of proof considered in Section I) Amending the Product Liability Directive to ease the burden on victims when proving an AI-enabled product was defective and caused the damage		**X**						

	1	2	3	4	5	6	7	8
Option 2: Targeted harmonisation of national rules on proof, e.g. by reversing the burden of proof under certain conditions, to ensure that it is not excessively difficult for victims to prove, as appropriate, fault and/or causation for damage caused by certain AI-enabled products and services			X					
Option 3: Harmonisation of liability irrespective of fault ('strict liability') for operators of AI technologies that pose a serious injury risk (e.g. life, health, property) to the public				X				
Option 4: option 3 + mandatory liability insurance for operators subject to strict liability						X		
Option 5: option 1 + option 2					X			
Option 6: option 1 + option 2 + option 3							X	
Option 7: option 1 + option 2 + option 4								X
Option 8: No EU action. Outside the existing scope of the Product Liability Directive, each Member State would be free to adapt liability rules for AI if and as they see fit	X							

Types of compensable harm and admissibility of contractual liability waivers

Question. *Do you agree or disagree with harmonising compensation for the following types of harm (aside from bodily injury and property damage), specifically for cases where using AI leads to harm?*
Please specify any other types of harm.

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
Pure economic loss (e.g. loss of profit)					X	
Loss of or damage to data (not covered by the GDPR) resulting in a verifiable economic loss					X	
Immaterial harm like pain and suffering, reputational damage or psychological harm					X	
Loss of or damage to data (not covered by the GDPR) not resulting in a verifiable economic loss					X	
All the types of harm mentioned above					X	

- The scope of the PLD is already very broad and, for instance, psychological harm/emotional pain and suffering are already compensable if consequential to personal injury. In a similar vein, damage to soil and water that are privately owned constitutes property damage and, as such, is already compensable. Destruction of data may also fall under property damage, especially data embedded in a physical object that is either physically impaired or the use of which is impaired.
- Extending the scope of damages to include damages other than physical injury or property damage is likely to result in legal uncertainty and/or provoke a conflict between provisions:

  - Damage to the environment in the sense of a public good is governed by the Environmental Liability Directive, and there is no scope for this under the PLD because there is no injured person.

  - Basic rights infringements (data protection, discrimination, privacy, etc.) should continue to be dealt with exclusively by existing, dedicated EU legislation, such as the General Data Protection Regulation. Coherence across legislation should be ensured.

Question. *If the liability of operators/users for damage caused by AI is harmonised at EU level, do you agree or disagree with the following approaches regarding contractual clauses excluding or limiting in advance the victim's right to compensation? Please elaborate.*

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
The admissibility of contractual liability waivers should not be addressed at all						**X**
Such contractual clauses should be prohibited vis-à-vis consumers						**X**
Such contractual clauses should be prohibited vis-à-vis consumers and between businesses						**X**
The contractual exclusion or limitation of liability should be prohibited only for certain types of harm (e.g. to life, body or health) and/or for harm arising from gross negligence or intent						**X**

- N/A: Insurance Europe doesn't believe that the liability of operators/users for damage caused by AI should be harmonized at EU level.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out almost €1 000bn annually — or €2.7bn a day — in claims, directly employ nearly 950 000 people and invest over €10.4trn in the economy.