

Position paper on liability insurance and emerging technologies

This paper responds to EU discussions relating to emerging technologies and consequential liability insurance needs.

Insurance Europe welcomes the aims behind various EU initiatives outlined in the Commission's Digital Single Market Strategy, notably the Commission's European Data economy consultation or its evaluation of the Product Liability Directive. Digitalisation is key to enhancing the quality of products and services available to consumers and Insurance Europe fully supports the Commission's efforts to promote such innovation.

Digitalisation and, consequentially, new technological developments bring about new risks and raise new liability questions. A thorough understanding of these new risks, of the difficulty in assessing them and of the manner in which liability insurance covers them is a pre-requisite to any EU policy discussion.

General considerations

Insurance Europe believes that the current existing liability regimes are adequate and cover both the needs of consumers and producers. In addition, Insurance Europe is of the opinion that new dedicated legislation is not necessary to address emerging technologies: the current co-existence of different liability regimes, including the Product Liability Directive, functions well in practice.

Even a small change to the current liability regime could have a very significant impact on insurance and availability of products and thus negatively impact consumers and hamper innovation. The same could be said of imposing a compulsory insurance scheme, which in the case of new technologies the right market pre-conditions are not met. Unintended consequences include high premiums in conjunction with scarce insurance availability.

Liability issues for all identified emerging risks cannot be addressed in a single piece of legislation

Different technological innovations, even within the same area (eg the Internet of Things), present very different risks and raise different liability issues. They are thus likely to require a specific insurance cover. Examining the use of emerging technologies and the role of insurance as a single type of activity ignores the different risks, insurance models and insurance market structures that exists for each separate technology.

The impact that new technologies have on liability rules, as well as liability insurance claims, varies between member states depending on the use of the new technology and the culture surrounding that use (eg safety practices or standards, licensing or certification for use). Attention should be given to each technological area and market separately so as not to introduce a "one size fits all" solution that may, in fact, prove detrimental to those insurance markets lacking sufficient capacity and/or a sufficient amount of competing insurance products.

The right market preconditions need to be in place for compulsory insurance to work

It is sometimes considered that a compulsory insurance regime encourages the take-up of liability insurance and ensures that compensation is available. This is however generally not the case. Rather, compulsory insurance can make it more difficult for small and specialised insurance markets to develop. It can also discourage an insurance market for risks that are difficult to quantify or where the current market capacity is insufficient to sustain large demand. Such markets are particularly important in the case of emerging technological risks that are not yet widely understood.

Compulsory insurance only works in specific cases and when certain market pre-conditions are met; such as the availability of sufficient claims data, a high level of standardisation and plentiful insurance capacity to manage risks and cover claims. The unintended consequence of introducing compulsory insurance when the pre-conditions are not met is high premiums in conjunction with scarce insurance availability, both of which can deter producers of innovative, emerging technologies from placing their products on the market.

Access to data will enable more sophisticated risk modelling and is crucial for product development

Insurers continuously utilise new risk modelling methods and build more sophisticated claims handling expertise in order to adapt to technological developments. The largest future challenge for insurers will be to predict, within a reasonable degree of certainty, the frequency and severity of risks associated with these technologies. Granular access to and optimising the use of data generated by new technologies will enhance insurers' ability to predict emerging risks and foster the growth for more innovative cover.

Product liability and emerging technologies

As risk transfer specialists, product liability insurers play an important role in the compensation of consumers injured by defective products. Insurance Europe believes that the Product Liability Directive (PLD) is fit for purpose to continue to provide consumers with adequate compensation for potential risks that may be introduced by the use of new and emerging technologies.

- The PLD provides consumers with genuine opportunities to claim for damages and encourages the rapid resolution and settlement of those claims quickly and efficiently.
- All member states have strict product liability rules in place to protect consumers. Therefore no further harmonisation of strict liability at EU level is necessary.
- In cases where the PLD may, for one reason or another, not adequately address a specific situation, consumers have additional liability compensation options through co-existing civil liability regimes (contractual and extra-contractual).

Insurance Europe believes the PLD achieves an appropriate balance between safeguarding consumer protection and facilitating the development of innovative products that are highly beneficial to society. This sound balance should not be disturbed without careful consideration of the impact that any amendment to the PLD may have on all types of distributors and producers throughout the EU.

Finally, it should be kept in mind that any single change to the PLD can affect a vast number of areas drastically, including insurers' capacity to cover claims, should the scope of product liability be broadened. Insurance Europe stresses that any proposal to amend the PLD should not be considered until:

- a thorough assessment of the current situation under the PLD has been conducted, taking both consumer and distributor/producer impact into account;
- pending completion of that assessment, a widespread and consistent problem with consumer access to compensation under the PLD has been clearly identified.