

Response to the European Commission's call for feedback on the Artificial Intelligence Liability Directive

Position – Executive Summary

December 2022

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On 2 December 2022, ESBG submitted its position in response to the European Commission's call for feedback on the Artificial Intelligence Liability Directive. All feedback received will be summarised by the Commission and presented to the Parliament and the Council with the aim of feeding into the legislative debate.

Consumer protection and a framework for trust in AI

The European Savings and Retail Banking Group (ESBG) welcomes the European Commission's proposal for an Artificial Intelligence Liability Directive (AILD). The AILD supports the protection of consumers whilst adapting liability rules to the digital age, thereby setting out a framework for excellence and trust in Artificial Intelligence.

Clarification of the presumption of a causal link

However, ESBG understands from the proposed Directive that the presumption of a causal link in the case of fault is mainly a matter of "non-compliance of due diligence duties". In this context, we believe that it should be clarified what could be considered a "non-compliance with a duty of care laid down in Union or national law directly intended to protect against the damage that occurred". ESBG wonders whether the presence of bias or discrimination could be considered a noncompliance of due diligence duties. In addition, clarification is needed about what are the tools that providers and users of AI systems have to refute the causal link.

Alignment with Rome I and Rome II Regulation

As the AILD is a directive, it is important to take the cultural and legal differences between Member States into account when implementing. For instance, level of public openness can vary among Member States, which in turn can lead to proprietary information concerning the specific application of AI unintentionally becoming public. ESBG members therefore call for alignment between the Rome I Regulation (No 593/2008) and the Rome II Regulation (No 864/2007) regarding the conflict of laws on the law applicable to non-contractual obligations.

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