Open Letter to the European Commission on the announced withdrawal of the AI liability Directive

7 April 2025

Dear Executive Vice-President Virkkunen,
Dear Commissioner McGrath,

We, the undersigned representatives of civil society, are writing to express our concerns regarding the European Commission's announcement to withdraw the proposal for a directive on adapting non-contractual civil liability rules to artificial intelligence (AILD).[1]

While the proposal could be improved, we are concerned with this decision and urge the European Commission to immediately begin preparatory work on **new AI liability rules** in line with the Better Regulation policy. The EU needs rules to address the legal gaps left by the AILD withdrawal and ensure a fairer, simpler path to compensation for all people affected by AI systems, including consumers in the EU, in case of harm by an AI system.

Why clear AI liability rules matter

Today, many people face a daunting task if they are harmed by an AI system and try to seek compensation. This happens because it is very difficult, if not impossible, for the large majority of people to prove that it was the *faulty* behaviour of the AI operator that led to a certain harm.

That is too heavy a burden. For example, it is unrealistic to expect a consumer who has been discriminated against by an AI system used by an insurance company to prove that it was this specific AI system that led to some form of harm. Similarly, it is unfeasible for a citizen seeking welfare assistance to demonstrate that a risk assessment system led to an unjustified deprivation of their benefits. This is why any new AI liability rules replacing the AILD should at the very least include a **non-fault based liability approach**.

In addition, while the revised Product Liability Directive (PLD) also applies to AI systems, it is not comprehensive enough. Important legal gaps remain. For example, the PLD does not allow for claims against the deployer of the AI system (e.g. bank, insurance or public institution using an AI system from another provider), which would be the obvious point of contact for the affected person in case of harm. The PLD would not apply in case of specific harms, such as discrimination.

EU AI liability rules would prevent fragmentation and enhance trust in AI

Certain national regimes might adequately protect consumers and individuals affected by AI, but not all do. This leads to an unfair scenario where people harmed by an AI system in one Member State would have better chances at being compensated than those located in a different Member State. Such a difference in treatment should not happen in a well-functioning and integrated Single Market. This is also unfair for businesses.

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[1] Proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive): https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0496

In a period where the simplification of rules is increasingly important, the AI liability rules are the embodiment of this concept as it would mean going **from twenty-seven different regimes to a harmonised one**. This approach would likely contribute to give more legal certainty to companies and people alike.

EU AI liability rules would also have a **positive impact on the market**. Importantly, AI liability legislation is not about market access. This means that AI operators will not have to comply with certain obligations, and thus increase their compliance costs, before placing their AI systems on the EU market. Contrary to the AI Act, AI liability rules only apply *ex-post* if there is harm.

If the Commission wants to improve EU consumers and citizens' trust in AI, its priority should be on new EU AI liability rules. A consistent and ambitious AI liability framework would also contribute to the **social acceptance of this technology**, which would have a positive spillover effect on the uptake of this technology and, in turn, on innovation and growth.

Yours sincerely,