

**“STUDY ON THE ECONOMIC IMPACT OF THE DEVELOPMENT RISK CLAUSE AS PROVIDED BY DIRECTIVE 85/374/EEC ON LIABILITY FOR DEFECTIVE PRODUCTS”**

Fondazione Rosselli, by mandate of the Directorate for the Internal Market of the European Commission (DG III), is carrying out a study entitled “Analysis of the economic impact of the development risk clause as in the directive 85/374/EEC on the liability for defective products”. The study focuses on the implications of removing the development risk clause (art. 7,e of the Directive – which member states may derogate), that excludes liability for damage caused by a defect that could not be foreseen, given the technical and scientific knowledge available at the time the product was developed.

The study was commissioned as part of an ongoing process of assessment of Directive 85/374/EEC as a step towards a producer liability policy at community level. The Commission wants this process to be transparent and accessible to stakeholders such as producers, consumers, insurers and practitioners. The process has been started with the publishing of the Green Paper, followed by comments and replies by stakeholders.

The Commission would like the following criteria clarified by the study:

- how the variety of product liability regulations in the European Union work and what their economic impact is, focusing in particular on the state of art defense regime
- how consumers are protected by “product liability regimes”
- which is the best strategy for consumer protection
- what the implications would be for producers and consumers if the development risk clause is removed.

In order to best serve the Commission’s needs, Fondazione Rosselli’s research team has devised a multidisciplinary approach to the study. Two subgroups have been set up in order to divide the legal and economic aspects. The subgroup led by Dr. Palmigiano (Fondazione Rosselli) deals with the legal research, while the other subgroup led by and Prof. Calderini and Prof. Cantamessa (Politecnico of Turin) deals with the economic research.

*The legal part* of the research lays the groundwork for the rest of the study. It comprises a number of activities that involve both primary and secondary analysis of new and of existing research material.

The *economic study* led by Prof. Calderini and Prof. Cantamessa, on the basis of the legal framework and the issues raised by the Green Paper on product liability, proposes an analysis of the economic impact of the development risk clause. From the supply side, the topics covered include impact on the degree of innovation, percentage of plaintiffs, burden on insurance costs, competition on international markets.

On the consumer side, the researchers perform a comparative economic assessment of different strategies of consumer protection, studying the “distribution of” and “dislike for” risk, allocation of costs and the role of asymmetrical information.

The participative part of the analysis is designed to incorporate stakeholders’ points of view in the study. With this goal in mind, the research team has organised a workshop which represents a valuable chance for stakeholders to have their point of view duly represented in the study.

**QUESTIONNAIRE ON THE ECONOMIC IMPACT OF THE DEVELOPMENT  
RISK CLAUSE AS PROVIDED BY DIRECTIVE 85/374/EEC ON LIABILITY  
FOR DEFECTIVE PRODUCTS”**

**RESPONDENT:** \_\_\_\_\_

**COMPANY OR ASSOCIATION:** \_\_\_\_\_

**Contact person:** \_\_\_\_\_

**Phone number:** \_\_\_\_\_

**Fax number:** \_\_\_\_\_

**Email:** \_\_\_\_\_

This questionnaire has the objective of collecting information on the effects that the removal of the so called “Developmental Risk Clause” would have on consumer’s safety and producers’ strategies and economic performance. The clause states that:

*Article 7*

*The producer shall not be liable as a result of this Directive if he proves:*

*[.....]*

*(e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered;*

**SECTION A (please answer with respect to your company or the companies you represent)**

**1. Are you aware of the Development Risk Clause ( DRC ) ?**

No       Yes

**2. If yes has this been reflected in the safety assurance process you use in product development?**

No

Yes, by making our personnel aware of the need to be constantly updated about the current state of the art.

Yes, by putting in place a formal procedure for exploring the state of the art.

**3. In absence of DRC, (i.e. if your company was made liable with respect to development risk) which of the following would be your most likely strategic decision (one answer allowed)?**

There would not be any significant change.

We would stop or greatly reduce innovative activity.

We would invest additional resources in safety-related R&D activities, in order to reduce Development Risk.

We would try to get insurance coverage for the additional risk.

**4. Would you make different strategic decisions according to product specific features?**

No

Yes

**5. If yes, what product features would be most relevant in influencing your strategic behaviour?**

The size of potential liability

The position in the product life cycle and its innovative content

The pace of technological progress in the industry

**6. Finland and Luxemburg hold companies liable for development risk. When exporting to these countries, what is your behaviour?**

We have never exported to these countries

We have stopped exporting to these countries because of their national law regarding product liability.

We incur in greater insurance costs

There is no significant impact.

**SECTION B (your judgement with respect to the general problem)**

**7. Do you agree with the abolition of the state of art defence? Please explain your position.**

**8. On a scale from -2 to +2, please indicate the degree to which you agree/disagree with the following statements:**

(-2 = strongly disagree, -1 = disagree, 0 = not an issue, 1 = agree, 2=strongly agree)

Removing the DRC would prevent companies from innovating	-2	-1	0	1	2
Society benefits from innovation and should therefore cover development risk	-2	-1	0	1	2
It would be impossible to insure development risk	-2	-1	0	1	2
The DRC requires companies to prove their position, and this is demanding enough	-2	-1	0	1	2
Competitive pressure among firms is enough to promote the state of the art and safety of products	-2	-1	0	1	2
Firms are not able to advance the state of the art and should therefore not be given this burden	-2	-1	0	1	2
Removing the DRC could keep a firm liable after administrative authorization has been granted	-2	-1	0	1	2
Liability has to do with individual firms, and is not the right way to tackle wider risks at societal level	-2	-1	0	1	2
Development risks are different according to industries, and should be treated differently	-2	-1	0	1	2
Better safety can be obtained by coordinating licensing, monitoring and finally liability	-2	-1	0	1	2
Companies share the benefits of innovation with consumers and society, and should therefore share the related risk	-2	-1	0	1	2
The DRC introduces ambiguity in the principle of strict liability	-2	-1	0	1	2
Removing the DRC would not cause excessive increase of insurance costs and would anyway be paid by consumers	-2	-1	0	1	2
Manufacturers have the best knowledge on risk, so they should be held liable	-2	-1	0	1	2