Protection of consumers: liability for defective products (amend. Directive 85/374/EEC)

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This is the fourth report on the application of Directive 85/374/EEC which aims to approximate the Member States' laws concerning the liability of the producer for damage caused by defective products.

The Directive introduces the principle of strict liability on the part of the producer, whereby any producer of a defective movable must compensate any damage caused to the physical well-being or property of an individual, irrespective of whether or not there is negligence on the part of the individual. The report covers the period 2006-2010 and analyses the application of the Directive in the 27 Member States.

It begins by discussing the contribution to proper interpretation of the Directive by the European Court of Justice, which has clarified the scope of the Directive and ensured its correct and uniform implementation. Between 2006 and 2010 the Court handed down rulings on six occasions concerning Directive 85/374 /EEC, and the report discusses the implications of these rulings. It also discusses cases of incorrect transposition taken against France and Denmark.

Increase in claims: the Commission's data demonstrates that that some Member States, including Austria, France, Germany, Italy, Poland and Spain, recorded an increase in the number of product liability cases brought under national laws transposing the Directive. In some Member States, there was both an increase in the absolute number of cases brought on the grounds of product liability in the last few years and an increase in the relative use of the Directive against cases brought on the grounds of civil or contractual liability.

The increase in the number of product liability cases brought in recent years is thought to be mainly due to external factors such as greater consumer awareness and better organisation of consumer groups or improved means of accessing information. In contrast, it would seem that the costs of the action discourage this type of proceedings in some Member States, for example the United Kingdom.

This having been said, the swift resolution of a case brought before the national courts depends on the thoroughness and effectiveness of national systems of civil law. In cases where liability is not called into question (i.e. the defect, damage and causal link are clear), these claims are settled out of court, which contributes to the injured party being compensated quickly for the damages sustained. The report notes that there has been an increase in the number of out-of-court settlements for compensation reached between the injured party and the person who caused the damage.

Effectiveness of certain provisions: the report indicates that interested parties have differing opinions about the Directive as regards the effectiveness of certain provisions, in particular those concerning the **burden of proof**, **defence of regulatory compliance**, the **development risk defence** and **the EUR 500 threshold**. With regard to the latter, some national authorities are now expressing a certain preference for reducing, or even removing, the threshold in order to guarantee more effective consumer protection. In particular, the Romanian authorities suggested setting a threshold of between EUR 200 and EUR 500 and allowing Member States to fix the amount that best matches the prices in their respective countries.

As regards the parties concerned, the representatives of industry believe that the current threshold should at least be maintained in order to establish the compensation for strict liability from a given level of damage and to avoid a pile-up of claims for minor material damage, in particular those filed against small and medium-sized enterprises. Furthermore, they believe that this threshold should be raised in order to

match it to inflation. Consumer representatives are calling for the threshold to be removed in order to allow compensation for all material damage sustained. These two differing stances are also reflected among the national experts.

Maintaining balance between consumers and producers: in general, the Directive is seen as achieving a balance between consumer protection and the producers' interests. Most contributions to this report confirm the fact that Directive 85/374/EEC is an instrument that offers the real possibility of filing a claim for appropriate remedy and compensation for damage caused by a defective product.

The Commission takes the view that the differences that may arise do not create significant trade barriers or distort competition in the EU. In particular, it believes that injured parties can establish the causal link in cases where a defective product causes damage irrespective of the differences between national procedural rules. Similarly, it also noted that, from the information available on the impact of provisions for defences or the EUR 500 threshold, it is possible to conclude that the Directive provides a common level of consumer protection and a common basis for the producers' liability for defective products.

Taking into account that the information available is not sufficiently fact-based and that any amendment to one or more provisions has an effect on the overall balance of the Directive, the Commission is of the opinion that **it is premature to propose a review of the Directive at this stage**. Between now and the next report, the Commission will follow any development likely to affect the balance, where necessary using an in-depth evaluation involving national experts and interested parties, in order to identify the problems and find solutions that are acceptable to the majority of stakeholders.

The Commission would ask the European Parliament, the Council and the European Economic and Social Committee to take note of this report.