Consumer protection: civil liability for defective products (direct. 85/374/EEC). Green paper

1999/2158(COS) - 28/07/1999 - Non-legislative basic document

PURPOSE : by means of this Green Paper, the Commission is seeking to consult all those parties concerned in order to verify the impact of Directive 85/374/EEC relating to the liability for defective products and to test the reactions of the industry and the consumers in connection with the eventual revision of this directive. CONTENT : the Commission wishes to ensure that Directive 85/374/EEC assures the necessary efficiency to reinforce the consumers' confidence, which is essential for the success of businesses and the good working of the internal market. If the analysis of the consultations shows that this is not the case, the Commission will propose the necessary improvements. In this perspective, the Green Paper examines the next steps for eventual reform : 1) Burden of proof : without prejudice to the principle whereby the burden of proof lies with the victim, there is a need to look at the arrangements for its application. The fact of the victim having suffered an accident is not enough to bring action against the producer within the meaning of the Directive. The victim must prove that the damage is the result of a defect in the product. This burden may be great when such proof turns out to be technically complicated and/or expensive on account of the expert opinions required. The Directive does not define a standard of required proof for a complaint to succeed. In view of simplifying this proof, several options are open : - to infer a causal relationship when the victim proves the damage or defect, or the defect when the victim proves the existence of damage resulting from a product; - to establish the degree or standard of necessary proof of the three elements required by Article 4 of Directive 85/374/EEC (damage, defect, causal relationship). The victim should prove these three elements to a high degree of probability (for example, it would be sufficient for probability to be above 60%). However, according to the Commission, this option proves complicated in practice; - to impose on the producer the obligation to provide all useful documentation and information so that the victim can avail himself of concrete facts to prove his case; - to make the producer bear the costs of expert opinion under certain circumstances. 2) Development risks : in accordance with Article 7(e) of Directive 85/374/EEC, the producer of a defective product is absolved of liability if he can establish that the objective state of technical and scientific knowledge, at its most advanced level, at the time when he put the object into circulation was not such as to enable the existence of the defect to be discovered. In this context, the Commission is calling on operators to provide accurate information on the application of exemption in order to make an objective assessment whether the removal of the exemption would discourage producers from innovation, especially in the sectors that are more sensitive in this regard and whether it would still be feasible to insure this kind of risk in the insurance market. 3) Financial limits : the threshold indicated in Article 9 allows a producer not to compensate the victim for the damageto property with a threshold lower than ECU 500. In addition, the Directive produces a provision for the possibility to fix a maximum ceiling for product liability in the case of damage to persons caused by identical items with the same defect. This ceiling is set at ECU 70 million (an amount which, in practice, is seldom reached) but may be higher. The Green Paper calls on the interested parties to come to a decision on the possibility of suppressing this threshold and the maximum ceiling. 4) Prescription and liability periods : according to the Directive, a producer's liability ceases 10 years from the date the product was put into circulation. Furthermore, the Green Paper asks the question about if the 10 year period is to be amended, in a general or particular way for certain products or sectors. 5) Insurance requirement : the directive does not require producers to have any kind of financial cover, and in particular it does not impose any requirement to take out liability insurance for an amount that is adequate to cover any damage caused by a defective product. The question was asked about if it is necessary to require producers to have insurance cover for risks linked to production or, alternatively, to encourage voluntary arrangements between producers and the insurance market. 6) Products covered by the directive : the directive applies only to products (namely material moveables, whether for private use or not, including electricity). In addition, non-material damages are not covered. The Green Paper asks the the question about whether the directive needs to be extended to cover real estate property and should it

cover other damage caused by the defective products, such as moral damage, mental suffering and/or damage to property intended for professional use, which would allow firms to invoke the directive against the producers of defective goods. 7) Access to justice : it deals with the question of whether the implementation of Directive 85/374/EEC requires special measures to improve victims' access to justice. In this connection two measures need to be considered: injunctions and group actions. It is necessary to remember that the Green Paper does not at this stage deal with a revision of the 1985 Directive. Subsequent to the consultation, the Commission will assess the impact of the Directive and draw on the appropriate conclusions for its possible reform. This will be the subject of a report to be presented at the end of 2000 to the Community institutions, eventually accompanied by a duly motivated proposal for a revision.