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

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In accordance with Article 21 of Directive 85/374, the Commission is obliged to review the efficiency of the product liability legal framework on a regular basis. This third report takes account of results published in two studies, which were carried out for the European Commission. It also takes account of meetings with interested parties and their responses to a questionnaire, which the Commission sent out at the end 2005 dealing with the subject of product liability. Further, following a Council Resolution in December 2002, this report considers the issue of suppliers' liability.

Based on the findings of the two studies as well as the results of the questionnaire, the Commission concludes that, at this stage, there is no need to submit a proposal to amend the Directive. On the matter of the Council's Resolution on liability for defective products, the Commission takes the view that if the Resolution were to be given effect, it would mark a departure from the objective of harmonised product liability laws as defined by this Directive.

This, the Commission states, is not to underestimate the importance of seeking further harmonisation. Further harmonisation can be achieved by seeking common ground and by making better use of:

- ECJ case law.
- Accepting the European Commission's power of control (such as examining national transposition measures; starting infringement procedure for incorrect application etc.)
- Recognising the need for enhanced analysis within the working groups.

The Commission will, therefore, monitor closely:

- the burden of proof (article 4);
- the concept of defect (article 6);
- the development of risks defence (article 7 (e));
- the minimum threshold (article 9);
- the defence of regulatory compliance;
- novel products, design defects and failure to warn.

Bearing this in mind, the Commission proposes to continue, in the course of 2007, discussions on the legal framework for the liability of defective products. In addition, the Commission will continue to prepare regular reports to the Council and the Parliament on the effective implementation of the Directive. The Commission also pledges to continue monitoring implementation efforts and to evaluate whether or not there may be a need, at some future point, to propose amendments to the Directive.