Basic information

1997/0244(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Protection of consumers: liability for defective products (amend. Directive 85/374/EEC) **Subject** 4.60.08 Safety of products and services, product liability	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ENVI Environment, Public Health and Consumer Protection	ROTH-BEHRENDT Dagmar (PSE)	09/12/1997

Former committee responsible	Former rapporteur	Appointed
ENVI Environment, Public Health and Consumer Protection	ROTH-BEHRENDT Dagmar (PSE)	09/12/1997

Former committee for opinion	Former rapporteur for opinion	Appointed
AGRI Agriculture and Rural Development	MAYER Christine (ARE)	26/11/1997
ECON Economic and Monetary Affairs, Industrial Policy	ARGYROS Stelios (PPE)	21/01/1998
JURI Legal Affairs, Citizens' Rights	CASINI Carlo (PPE)	19/05/1998
PECH Fisheries		

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2051	1997-11-27
Competitiveness (Internal Market, Industry, Research and Space)	2149	1998-12-07
Competitiveness (Internal Market, Industry, Research and Space)	2094	1998-05-18
Fisheries	2152	1998-12-17
Industry	2174	1999-04-29

Key events

Date	Event	Reference	Summary
01/10/1997	Legislative proposal published	COM(1997)0478	Summary
20/10/1997	Committee referral announced in Parliament, 1st reading		
27/11/1997	Debate in Council		
18/05/1998	Debate in Council		
23/09/1998	Vote in committee, 1st reading		Summary
23/09/1998	Committee report tabled for plenary, 1st reading	A4-0326/1998	
04/11/1998	Debate in Parliament		
17/12/1998	Council position published	12872/1/1998	Summary
14/01/1999	Committee referral announced in Parliament, 2nd reading		
18/02/1999	Vote in committee, 2nd reading		Summary
18/02/1999	Committee recommendation tabled for plenary, 2nd reading	A4-0068/1999	
23/03/1999	Debate in Parliament		
29/04/1999	Act approved by Council, 2nd reading		
10/05/1999	Final act signed		
10/05/1999	End of procedure in Parliament		
04/06/1999	Final act published in Official Journal		

Technical information

Procedure reference	1997/0244(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/4/10658

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0326/1998 OJ C 328 26.10.1998, p. 0003	23/09/1998	

Text adopted by Parliament, 1st reading/single reading		T4-0637/1998 OJ C 359 23.11.1998, p. 0012-0027	05/11/1998	Summary
Committee recommendation tabled for plenary, 2nd reading		A4-0068/1999 OJ C 153 01.06.1999, p. 0004	18/02/1999	
Text adopted by Parliament, 2nd reading		T4-0212/1999 OJ C 177 22.06.1999, p. 0011-0028	23/03/1999	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	12872/1/1998 OJ C 049 22.02.1999, p. 0001	17/12/1998	Summary
Document attached to the procedure	15653/2002 OJ C 026 04.02.2003, p. 0002-0003	19/12/2002	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1997)0478 OJ C 337 07.11.1997, p. 0054	01/10/1997	Summary
Commission communication on Council's position	SEC(1998)2232	06/01/1999	Summary
Follow-up document	COM(2011)0547	08/09/2011	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0115/1998 OJ C 095 30.03.1998, p. 0069	29/01/1998	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 1999/0034
OJ L 141 04.06.1999, p. 0020 Summary

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

1997/0244(COD) - 08/09/2011 - Follow-up document

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.

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

1997/0244(COD) - 29/01/1998 - Economic and Social Committee: opinion, report

The Committee welcomes the Commission's proposal for a directive, which is consistent with its repeated calls in several earlier opinions, for primary agricultural products and game to be included within the scope of Directive 85/374/EEC. The Committee expects adoption of the proposal to lead to a

higher level of health and consumer protection and to put an end to distortions of competition. The Committee is also of the view that, following the adoption of this proposal, there ought to be an overall examination of the operation of Directive 85/374/EEC by means of a green paper.

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

1997/0244(COD) - 05/11/1998 - Text adopted by Parliament, 1st reading/single reading

In adopting the report by Mrs ROTH-BEHRENDT (PSE, D), the European Parliament expressed itself in favour of extending the scope of the Directive on liability for defective products to primary agricultural products (i.e. products of the soil, of stockfarming and of fisheries) and game. The principle posited is that the producer is responsible for damage caused by a defect in his products. 'Producer' is defined as the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product, presents himself as its producer (in the field of agriculture, this includes producers of agricultural inputs such as seeds, plant-protection and fertilising agents, animal feed, etc). The raw materials of agricultural and forestry products also include seeds or other genetic material used in their production and fertilising, plant-protection and nutrition agents used in the production of agricultural and forestry products. 'Damage' means damage caused by death or by physical and/or mental injuries. Parliament considered that if damage caused by a hidden defect became apparent only after a delay of more than ten years, the rights vested in the victim should lapse only after 20 years from the date on which the producer placed the product in circulation. Parliament adopted an amendment concerning the amount of damages payable in the event of death or physical injury caused by identical goods containing the same defect. It called for the limit on the total liability of the producer to be not less than ECU 140 m, rather than ECU 70 m. However, Parliament did not accept the rapporteur's proposal that 'hidden defect' should mean a defect which it was not objectively possible to detect when the product was put into circulation and which, because of its particular nature, could only be identified subsequently. Nor did it endorse the rapporteur's proposal that producers should not be allowed to claim exemption from liability on the grounds that it was not possible to discover the existence of the defect because of the state of scientific and technical knowledge when the product was put into circulation (development risk). Parliament called on the Commission: - to submit to Parliament and the Council every five years a report on the implementation of the Directive, accompanied by appropriate proposals where necessary; - to report to the Council and Parliament by 01/01/2000 on the implementation of the Directive with regard to agricultural raw materials and game products and its impact on agriculture.

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

1997/0244(COD) - 17/12/1998 - Council position

In its common position, the Council favours the Commission?s original proposal without any fundamental changes. The Council unanimously supported the Commission?s text, rejecting all amendments adopted by the European Parliament at first reading. These amendments aimed to: - substantially revise the basic directive of 1985, going beyond the aims of the proposal (amendments concerning psychological damage, the threshold, the time limits, the compensatory limit and the fundamental review of the directive in 2000); - clarify certain points specific to primary agricultural products (amendments on liability for intermediate products and means of production and the obligation to present an impact report in 2002). The only technical change incorporated into the Council?s text is the date of entry into force 18 months from the date of publication in the Official Journal, instead of 1 January 1999 as proposed by the Commission.

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

1997/0244(COD) - 06/01/1999 - Commission communication on Council's position

The Commission supports the common position of the Council as it corresponds to its original proposal without any substantial changes. The Commission indicated its intention to look into the points raised by the European Parliament when drawing up its second application report to be presented in 2000, following appropriate consultation with the parties concerned on the basis of a Green Paper.

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

1997/0244(COD) - 23/03/1999 - Text adopted by Parliament, 2nd reading

The Parliament approved the Council's common position unamended. Parliament's rapporteur was Ms. Dagmar ROTH-BEHRENDT (D, PES).

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

1997/0244(COD) - 10/05/1999 - Final act

PURPOSE: amendment of the Product Liability Directive to extend its scope to primary products. COMMUNITY MEASURE: European Parliament and Council Directive 1999/34/EC amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. CONTENT: This Directive extends the scope of Directive 85/374 to cover unprocessed agricultural products which had previously been excluded by virtue of Article 15, paragraph 1 (a). This is designed to help restore consumer confidence in the safety of agricultural products and will facilitate, for the benefit of consumers, legitimate compensation for damage to health caused by defective agricultural products. It should also be noted that for the purposes of this Directive, 'product' means all movables even if incorporated into another movable or into an immovable. 'Product' includes electricity. ENTRY INTO FORCE: 04.06.1999.

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

1997/0244(COD) - 01/10/1997 - Legislative proposal

OBJECTIVE: the proposal for a Directive is intended to harmonise at Community level liability for all types of defective agricultural products. SUBSTANCE: the Commission proposes extending liability for products, as instituted by Directive 85/374/EEC, to primary agricultural products and game produced in or imported into the single market. This initiative, which was called for by the European Parliament in its report on the inquiry into BSE, is intended to enable European consumers to seek compensation for damages caused by defective primary agricultural products (meat, cereals, fruit and vegetables) without having to prove negligence or fault on the part of the producer or importer. Thus all the rules laid down in Directive 85/374 /EEC will apply to agricultural products: the burden of proof resting with the injured party; joint and several liability where more than one person is liable; the concept of safety defect; the damage covered; the time limits for proceedings and for the lapsing of liability; the fact that liability may not voluntarily be limited or excluded, etc. The new provisions will not apply retroactively, however: they will apply to products placed on the market after the Directive has been transposed into national law, the deadline for which is January 1999.