Basic information

1999/2158(COS) COS - Procedure on a strategy paper (historic) Consumer protection: civil liability for defective products (direct. 85/374 /EEC). Green paper **Subject** 4.60.08 Safety of products and services, product liability	Procedure completed

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs and Internal Market	MACCORMICK Professor Sir Neil (V/ALE)	23/09/1999

Committee for opinion	Rapporteur for opinion	Appointed
ENVI Environment, Public Health, Consumer Policy	ROTH-BEHRENDT Dagmar (PSE)	24/11/1999

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2210	1999-10-28

Key events

Date	Event	Reference	Summary
28/07/1999	Non-legislative basic document published	COM(1999)0396	Summary
07/10/1999	Committee referral announced in Parliament		
28/10/1999	Debate in Council		
29/02/2000	Vote in committee		Summary
29/02/2000	Committee report tabled for plenary	A5-0061/2000	
29/03/2000	Debate in Parliament		
30/03/2000	Decision by Parliament	T5-0132/2000	Summary
30/03/2000	End of procedure in Parliament		
29/12/2000	Final act published in Official Journal		

Technical information	
Procedure reference	1999/2158(COS)
Procedure type	COS - Procedure on a strategy paper (historic)
Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 148
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/12034

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, single reading		A5-0061/2000 OJ C 377 29.12.2000, p. 0005	29/02/2000	
Text adopted by Parliament, single reading		T5-0132/2000 OJ C 378 29.12.2000, p. 0019-0088	30/03/2000	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(1999)0396	28/07/1999	Summary
Follow-up document	COM(2000)0893	31/01/2001	
Follow-up document	COM(2006)0496	14/09/2006	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0232/2000 OJ C 117 26.04.2000, p. 0001	01/03/2000	

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

1999/2158(COS) - 14/09/2006 - Follow-up document

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.

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

1999/2158(COS) - 30/03/2000 - Text adopted by Parliament, single reading

The Parliament adopted its resolution on the Commission's Green Paper 'Liability for defective products', drafted by Mr. Neil MacCormick (Greens/ALE, UK). It is of the opinion that any revision of the Product Liability Directive needs to be based on clearly established factual evidence. The Commission is called upon to collect factual evidence not only by asking concerned parties but also by applying scientific methods and by involving the academic community and civil society. Parliament suggests that research projects appropriate for this area of law at the interface of fault-based corrective justice and no-fault liability based on the principle of redistribution of risk could be launched. It recommends that European Community legislators should in any event engage in broad dialogue and review concerning development of European law on Product Liability, even if no immediate action is shown to be required on the basis of the Green paper and responses to it. The Parliament is of the opinion that the following aspects of the Directive have given rise to some concern and should be the subject of careful consideration: - the issue of the burden of proof and other procedural devices such as those that make it easier for an injured party to have access to information and documents in the possession of the maker or supplier of the product alleged to have caused damage; - exceptions to strict product liability, especially concerning 'development risk'; - the exclusion of liability for damage caused in the course of professional or commercial use of products that are also in general use as consumer products; - the appropriateness of the currently imposed time-limits on liability, having regard, for example, to the problem of latent defects whose injurious effects become apparent only after a long interval of time; - the categories of damage covered by product liability (for example, psychological as well as physical injury); - the approach of Courts to quantification of damages in product liability litigation as contrasted with their approach in cases of civil liability based on fault; - the appropriateness of lower and upper money limits for liability in damages; - relevant problems of access to justice.

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.