

**Proposal for a Council Directive relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products**

*(Submitted by the Commission to the Council on 9 September 1976)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the approximation of the laws of the Member States concerning the liability of the producer for damage caused by the defectiveness of his products is necessary, because the divergencies may distort competition in the common market; whereas rules on liability which vary in severity lead to differing costs for industry in the various Member States and in particular for producers in different Member States who are in competition with one another;

Whereas approximation is also necessary because the free movement of goods within the common market may be influenced by divergencies in laws; whereas Decisions as to where goods are sold should be based on economic and not legal considerations;

Whereas, lastly, approximation is necessary because the consumer is protected against damage caused to his health and property by a defective product either in differing degrees or in most cases not at all, according to the conditions which govern the liability of the producer under the individual laws of Member States; whereas to this extent therefore a common market for consumers does not as yet exist;

Whereas an equal and adequate protection of the consumer can be achieved only through the introduction of liability irrespective of fault on the part of the producer of the article which was defective and caused the damage; whereas any other type of liability imposes on the injured party almost

insurmountable difficulties of proof or does not cover the important causes of damage;

Whereas liability on the part of the producer irrespective of fault ensures an appropriate solution to this problem in an age of increasing technicality, because he can include the expenditure which he incurs to cover this liability in his production costs when calculating the price and therefore divide it among all consumers of products which are of the same type but free from defects;

Whereas liability cannot be excluded for those products which at the time when the producer put them into circulation could not have been regarded as defective according to the state of science and technology (development risks), since otherwise the consumer would be subjected without protection to the risk that the defectiveness of a product is discovered only during use;

Whereas liability should extend only to movables; whereas in the interest of the consumer it nevertheless should cover all types of movables, including therefore agricultural produce and craft products; whereas it should also apply to movables which are used in the construction of buildings or are installed in buildings;

Whereas the protection of the consumer requires that all producers involved in the production process should be made liable, in so far as their finished product or component part or any raw material supplied by them was defective; whereas for the same reason liability should extend to persons who market a product bearing their name, trademark or other distinguishing feature, to dealers who do not reveal the identity of producers known only to them, and to importers of products manufactured outside the European Community;

Whereas where several persons are liable, the protection of the consumer requires that the injured person should be able to sue each one for full compensation for the damage, but any right of recourse enjoyed in certain circumstances against other producers by the person paying such compensation shall be governed by the laws of the individual Member States;

Whereas to protect the person and property of the consumer, it is necessary, in determining the defectiveness of a product, to concentrate not on the fact that it is unfit for use but on the fact that it is unsafe; whereas this can only be a question of safety which objectively one is entitled to expect;

Whereas the producer is not liable where the defective product was put into circulation against his will or where it became defective only after he had put it into circulation and accordingly the defect did not originate in the production process; the presumption nevertheless is to the contrary unless he furnishes proof as to the exonerating circumstances;

Whereas in order to protect both the health and the private property of the consumer, damage to property is included as damage for which compensation is payable in addition to compensation for death and personal injury; whereas compensation for damage to property should nevertheless be limited to goods which are not used for commercial purposes;

Whereas compensation for damage caused in the business sector remains to be governed by the laws of the individual States;

Whereas the assessment of whether there exists a causal connection between the defect and the damage in any particular case is left to the law of each Member State;

Whereas since the liability of the producer is made independent of fault, it is necessary to limit the amount of liability; whereas unlimited liability means that the risk of damage cannot be calculated and can be insured against only at high cost;

Whereas since the possible extent of damage usually differs according to whether it is personal injury or damage to property, different limits should be imposed on the amount of liability; whereas in the case of personal injury the need for the damage to be calculable is met where an overall limit to liability is provided for; whereas the stipulated limit of 25 million European units of account covers most of the mass claims and provides in individual cases, which in practice are the most important, for unlimited liability; whereas in the case of the extremely rare

mass claims which together exceed this sum and may therefore be classed as major disasters, there might be under certain circumstances assistance from the public;

Whereas in the much more frequent cases of damage to property, however, it is appropriate to provide for a limitation of liability in any particular case, since only through such a limitation can the liability of the producer be calculated; whereas the maximum amount is based on an estimated average of private assets in a typical case; whereas since this private property includes movable and immovable property, although the two are usually by the nature of things of different value, different amounts of liability should be provided for;

Whereas the limitation of compensation for damage to property to damage to or destruction of private assets avoids the danger that this liability becomes limitless; whereas it is therefore not necessary to provide for an overall limit in addition to the limits to liability in individual cases;

Whereas by Decision No 3289/75/ECSC of 18 December 1975 <sup>(1)</sup> the Commission, with the assent of the Council, defined a European unit of account which reflects the average variation in value of the currencies of the Member States of the Community;

Whereas the movement recorded in the economic and monetary situation in the Community justifies a periodical review of the ceilings fixed by the Directive;

Whereas a uniform period of limitation for the bringing of action for compensation in respect of the damage caused is in the interest both of consumers and of industry; whereas it appeared appropriate to provide for a three-year period;

Whereas since products age in the course of time, higher safety standards are developed and the state of science and technology progresses, it would be unreasonable to make the producer liable for an unlimited period for the defectiveness of his products; whereas therefore the liability should be limited to a reasonable length of time; whereas this period of time cannot be restricted or interrupted under laws of the Member States, whereas this is without prejudice to claims pending at law;

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<sup>(1)</sup> OJ No L 327, 19. 12. 1975, p. 4.

Whereas to achieve balanced and adequate protection of consumers no derogation as regards the liability of the producer should be permitted;

Whereas under the laws of the Member States an injured party may have a claim for damages based on grounds other than that provided for in this Directive; whereas since these provisions also serve to attain the objective of an adequate protection of consumers, they remain unaffected;

Whereas since liability for nuclear damage is already subject in all Member States to adequate special rules, it has been possible to exclude damage of this type from the scope of the Directive,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

The producer of an article shall be liable for damage caused by a defect in the article, whether or not he knew or could have known of the defect.

The producer shall be liable even if the article could not have been regarded as defective in the light of the scientific and technological development at the time when he put the article into circulation.

#### *Article 2*

'Producer' means the producer of the finished article, the producer of any material or component, and any person who, by putting his name, trademark, or other distinguishing feature on the article, represents himself as its producer.

Where the producer of the article cannot be identified, each supplier of the article shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the article.

Any person who imports into the European Community an article for resale or similar purpose shall be treated as its producer.

#### *Article 3*

Where two or more persons are liable in respect of the same damage, they shall be liable jointly and severally.

#### *Article 4*

A product is defective when it does not provide for persons or property the safety which a person is entitled to expect.

#### *Article 5*

The producer shall not be liable if he proves that he did not put the article into circulation or that it was not defective when he put it into circulation.

#### *Article 6*

For the purpose of Article 1 'damage' means:

- (a) death or personal injuries;
- (b) damage to or destruction of any item of property other than the defective article itself where the item of property:
  - (i) is of a type ordinarily acquired for private use or consumption; and
  - (ii) was not acquired or used by the claimant for the purpose of his trade, business or profession.

#### *Article 7*

The total liability of the producer provided for in this Directive for all personal injuries caused by identical articles having the same defect shall be limited to 25 million European units of account (EUA).

The liability of the producer provided for by this Directive in respect of damage to property shall be limited per capita:

- in the case of movable property to 15 000 EUA, and
- in the case of immovable property to 50 000 EUA.

The European unit of account (EUA) is as defined by Commission Decision No 3289/75/ECSC of 18 December 1975.

The equivalent in national currency shall be determined by applying the conversion rate prevailing on the day preceding the date on which the amount of compensation is finally fixed.

The Council shall, on a proposal from the Commission, examine every three years and, if necessary, revise the amounts specified in EUA in this Article, having regard to economic and monetary movement in the Community.

*Article 8*

A limitation period of three years shall apply to proceedings for the recovery of damages as provided for in this Directive. The limitation period shall begin to run on the day the injured person became aware, or should reasonably have become aware of the damage, the defect and the identity of the producer.

The laws of Member States regulating suspension or interruption of the period shall not be affected by this Directive.

*Article 9*

The liability of a producer shall be extinguished upon the expiry of 10 years from the end of the calendar year in which the defective article was put into circulation by the producer, unless the injured person has in the meantime instituted proceedings against the producer.

*Article 10*

Liability as provided for in this Directive may not be excluded or limited.

*Article 11*

Claims in respect of injury or damage caused by defective articles based on grounds other than that provided for in this Directive shall not be affected.

*Article 12*

This Directive does not apply to injury or damage arising from nuclear accidents.

*Article 13*

Member States shall bring into force the provisions necessary to comply with this Directive within 18 months and shall forthwith inform the Commission thereof.

*Article 14*

Member States shall communicate to the Commission the text of the main provisions of internal law which they subsequently adopt in the field covered by this Directive.

*Article 15*

This Directive is addressed to the Member States.

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