

II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion on the proposal for a Council Directive concerning general product safety⁽¹⁾

(90/C 75/01)

On 12 June 1989, the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Protection of the Environment, Public Health and Consumer Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 12 January 1990. The rapporteur was Mrs Williams.

At its 273rd plenary session (meeting of 31 January 1990), the Economic and Social Committee adopted the following Opinion by 93 votes in favour to 59 against and 7 abstentions.

Introduction

1. The Committee approves in principle the introduction of Community legislation which makes it obligatory for all those involved in the design, manufacture and sale of products to comply with a general safety requirement. Indeed, the Committee cannot do otherwise than agree with this general aim, stated clearly and voted on unanimously in April 1988 in the context of its own-initiative Opinion on the general safety requirement for products⁽²⁾, which urged the Commission to prepare legislation on consumer product safety.

2. Nevertheless, it recognizes the need for clarification, inclusion of certain subjects, and overall simplification in order to facilitate the interpretation and the enforcement of the proposed legislation and to suppress legal uncertainty.

Aims and objectives of the draft Directive

3. The starting point is that all products must be safe. The basic aim of the proposal is therefore quite simply to ensure the free movement of safe products

and above all to avoid putting dangerous products on the market. This is the benchmark by which all aspects of the proposal must be measured.

4. Additional aims include the need to stress clearly and openly that supplying unsafe goods can be a form of unfair competition, as it gives the supplier of unsafe goods an unfair advantage over a competitor who accepts the costs associated with building-in safety. Moreover, there is the need to move rapidly towards harmonization of safety regulations in face of the increasing amount of national legislation which differs in scope and content from one Member State to another.

5. Additionally there is the need to strengthen the confidence of the citizens of Europe in the relevance of the internal market to their needs. The legal base of the draft directive is Article 100 A, paragraph 3 of the Single Act which states that 'The Commission, in its proposals (...) concerning health, safety, environmental protection and consumer protection will take as a base a high level of protection.'

6. Objectives fall quite clearly into two separate, though inevitably connected parts:

— In the Internal Market of 1993 it is the intention that goods should be freely sold in a Community

⁽¹⁾ OJ No C 193, 31. 7. 1989, p. 1.

⁽²⁾ OJ No C 175, 4. 7. 1988.

framework of harmonized safety requirements both specific and general, observed by all manufacturers, importers and suppliers. Until this Directive comes into force, it may occur that goods banned in one Member State could still legally be placed on the market in others. Accordingly the present proposal outlines voluntary and statutory requirements by which companies and enforcement officers can assess safety, and describes measures for the control of goods.

- It is essential to create in the Community an effective, practical and immediate method of dealing with emergency situations in cases where serious risks result from particular products.

Background: remedial and preventive measures

7. This draft Directive cannot be contemplated in isolation. The Committee stresses the importance of integrating and co-ordinating all Directives which concern aspects of health and safety.

The proposal must also be seen in special relation to:

- The new approach to technical harmonization and standards; in the Internal Market sound modern norms and methods of certification will be essential for products on sale and in use throughout the Community. It should also be seen in connection with the proposal on a global approach to certification and testing⁽¹⁾. Here the Committee emphasizes that such standards will need to be equivalent in all Member States and methods of interpretation and application consistent, though it notes that standards are voluntary, can be inadequate or out-of-date and may or may not include criteria for safety.
- The existence of specific Community legislation on particular subjects, including the 'new approach' Directives which do not draw a distinction between products in general and consumer products in particular. These are limited in number—and always will be—relating only to those products to which they apply. Consequently, there is a need for a broadly-based general framework directive to cope with products for which 'vertical' directives do not exist. There is also a need to deal with loopholes in

existing 'vertical' legislation: for example, the 'new approach' Directives:

- do not contain details of national emergency provisions,
- do not provide the means of co-ordination of such national emergency provisions at Community level,
- do not require a permanent monitoring of the market on the part of the Member States nor a monitoring of production on the part of the suppliers.
- The existing Directive on product liability dealing with the special responsibilities of the manufacturer. The Committee sees the proposal on general product safety as a necessary complement to the existing Directive on product liability. The difference between the two is that product liability is primarily remedial whereas the new draft is mainly preventive.

Unfortunately, the product liability Directive is not yet fully implemented in all Member States. The Committee accordingly deplores the present wide disparity of implementation and consequent legal uncertainty. It urges Member States to take immediate steps to enforce fully the present product liability Directive.

Scope of the draft Directive

8. The Committee notes that the present proposal concerns all products and does not provide for any exemptions by product sectors. Though it accepts that this application to all products has met with reservations on the basis of its wide approach, nevertheless on balance it agrees with the Commission's proposal and points out that many specific Directives do not differentiate between products according to their use by professionals or by consumers (e.g.: Directives on dangerous substances, on machines, on pressure vessels, ...). This broader-based draft Directive, in which safety is not divisible, will, inter alia deal with the increasing difficulty of differentiating between professional and consumer products (e.g. do-it-yourself, gardening and products). In many cases it is impossible to distinguish between finished and semi-finished goods and accessories in such a way as to make preventive action possible.

9. The Committee notes that the present proposal does not include services except when the service affects the safety of the product in installation or repair. It endorses this present limitation, though recognizing the close links between products and services and the inevitable problems which can arise. Nevertheless, it calls for additional legislation, also in the context of Article 100 A, to deal with safety services from a preventive and remedial standpoint.

⁽¹⁾ OJ No C 267, 19. 10. 1989.

General legislation supplemented by specific legislation

10. Against the background of the forthcoming completion of the Internal Market, it is essential that a general product safety requirement be promptly incorporated into Community law in the form of a Directive. This is the only way to protect all consumers against dangerous products before there is free movement of goods among the Member States.

The product safety proposal lays down basic general provisions with a framework for compulsory intervention, and thus eliminates existing disparities among the after-sales checks in individual Member States. This would provide all market participants with greatly improved legal certainty.

The Committee is of the opinion that the product safety Directive should apply only where there are no adequate specific Community safety rules.

The general safety Directive will apply if there is no specific directive on the matter or if an existing specific directive does not ensure product safety adequately.

But it is not expected that the general safety Directive will have to be used if safety is already adequately ensured by a specific Directive.

11. The Committee recommends that, in the interest of clarity, the Commission should include in relevant Articles reference to specific provisions applicable to particular products.

Definitions

12. If definitions are not clear and consistent, the opportunity is created of giving Member States the means of erecting trade barriers followed by endless arguments over meaning and costly procedures to settle disputes. The Committee feels that several of the Commission's definitions need clarification. These are dealt with in the context of individual Articles.

13. The meaning of 'general safety requirement' must be made quite clear: goods put into free circulation in the Community must provide the safety consumers are entitled to expect, taking into account the use to which they could normally or reasonably be expected to be put. It must also be borne in mind that defective goods are not necessarily also unsafe.

Collection of information

14. The Committee stresses that it is the collection and analysis of facts which should be the starting point

for any legislation on safety. It is accordingly disappointing that the Commission makes no direct reference to EHLASS. Moreover, it urges the Commission to make sure that, at the end of the current pilot period, adequate Community funding must be found to ensure a permanent and reliable system for assembling and analysing data on accidents and for initiating in-depth studies. It seems possible that the Commission intends devolution of EHLASS to Member States. Certainly Member States have a major part to play, but the Commission must also use EHLASS data at a co-ordinated Community level. It is such a system which can provide the means of finding out if the 45 million yearly accidents in Europe happen because products are badly designed and made, because instructions are inadequate and incomplete, or simply because of human ignorance or behaviour. An accident results from a product, a situation and a person—seldom from a product alone.

Who is involved?

15. With respect to safety, no one can opt out of making a positive contribution, whether the Commission, Member States nationally and locally, manufacturing industry, retailing and distribution, trade unions, consumer organizations and indeed individuals in their capacity as consumers, and particularly as parents in charge of small children. The Committee notes that 'impact statements' are included in annexes to the proposal. It endorses the need for business to monitor the safety of goods permanently, but stresses the importance of ensuring a simple system which can be put into practice with the minimum of fuss (e.g. by using commercially produced forms and spreadsheets). This would be of particular benefit to small and medium-sized enterprises where the new administrative commitments may impose unfamiliar but necessary burdens.

16. The Committee suggests that the particular obligations of retailers need further clarification (e.g. in relation to the safe assembly of products put together in the store). It suggests that they, as being in closest contact with consumers at the point of sale and at the moment of complaint, should have an obligation to tell suppliers about proven safety problems which are brought to their attention.

The Committee is concerned with the rights of redress and recompense for distributors, including retailers. It is not reasonable or fair for distributors to have to

suffer financial losses in respect of faults they have not created or been a party to. All such losses should be borne by those who created the faults.

Education and information

17. No form of protection can be completely successful if it is not at the same time accompanied by information and education. Consequently, the Committee urges the Member States to put into practice much more effectively the Council of Ministers' Resolution of May 1986 on consumer education in primary and secondary schools. It recognizes the particular role of consumer organizations in consumer education in general and in safety education in particular, with special emphasis on the importance of personal responsibility. The needs of the less-able user must be taken into account, with special regard to the communication of warnings. It also commends the work of product safety commissions, both in protection and in information, in those Member States where they already exist.

Safety requirements for imported and exported goods

18. In the case of imported products, special controls should be introduced and maintained at the first point of entry taking into account the requirements of the General Agreement on Tariffs and Trade (GATT). The Committee points to the need for cooperation between competent authorities and customs and excise officers.

19. The need to adapt manufacture of exported products to different, or sometimes stricter, safety standards in third countries must be borne in mind. The Committee feels that the export of dangerous products to non EC countries should be banned. The ban should apply in particular to third world countries where there is often much ignorance and little protective legislation. It notes that some unsafe goods which are exported find their way back as imports on the domestic market.

Specific comments

Article 1

The aim of the Directive should be clarified in order to emphasize the prime importance of the obligation on producers to place only safe products on the market.

(1) The Committee asks the Commission to make it quite clear that placing a product on the market means putting it in circulation not only on a commercial and contractual basis but also as the means of promoting gifts and free samples.

It points out that the concept of 'foreseeable time of use'—which implies use under normal circumstances—will need to be understood and reflected in the preparation, by voluntary consensus, of the standards which in practice will tend to define criteria for products.

The Committee draws attention to the possibility of legal problems regarding the use of the words 'without prejudice' in sub-sections (2) and (3) of Article 1, as their interpretation under the common law system may be at variance with that under Community law.

Article 2

b) 'Safe product' must be clearly defined in a positive instead of a negative manner, so as to give the purchaser (or user) a 'reasonable expectation of safety'. It should also be borne in mind that safety is inevitably relative and not absolute, depending on a number of varying economic and social factors.

It must be made quite clear that acceptability of the risk factor depends on the attitudes of society in general towards the minimal unavoidable risks people are prepared to tolerate. It must also be apparent that society progressively raises its standards towards the risks it will tolerate.

The Committee is not satisfied with the definitions of 'safe product' and the use of the term 'unacceptable risk' and requests the Commission to find suitable alternative wording. It considers that the definition of 'safe product' should be re-examined in the light of Article 6 of the product liability Directive (85/374/EEC)⁽¹⁾, namely the expectation of the concept of safety. This clarifies the definition used by the Committee in its previous Opinion⁽²⁾ as follows: 'safe' means 'that there is no risk, apart from a very minimal risk, that any of the following examples will injure or cause the death of anyone:

- the product itself,
- the keeping, use or consumption of the product,

⁽¹⁾ OJ No L 210, 7. 8. 1985.

⁽²⁾ OJ No C 175, 4. 7. 1988, p. 13, paragraph 2.2.

— the assembly of any product which is supplied unassembled,

— any emission or leakage from the goods or, as a result of their use, keeping or consumption,

— reliance on the accuracy of any measurement, calculation or other reading made by or by means of the goods.'

c) aa) In the context of 'foreseeable use', the Committee accepts that safety depends on the intended, normal and reasonably predictable use of products (including their packaging). At the end of this paragraph it would like the Commission to add a reference to the fact that sometimes even misuse is foreseeable, particularly in the case of children.

Where such misuse is foreseeable, it should be taken into account in standards, and appropriate warnings should be applied to the product.

Article 2(d) of the draft Directive should be amended by deleting the word 'may' and inserting the word 'actually' in its place.

Article 3

The Committee points out that it is the suppliers who in the first instance must accept responsibility through codes of good conduct for putting only safe products on the market since it is upon them that, according to Article 2, the general safety requirement mainly falls. It is the role of the Member States, who are sovereign, to make sure that they comply with this self-enforcement, and to take preventive measures if they do not. If criminal liability is envisaged for any manufacturer and distributor placing a dangerous product on the market, then defences (particularly to retailers) should be available in certain circumstances as stated in the Committee's own-initiative Opinion⁽¹⁾. The same comment applies to (1) of Article 4.

The Commission must make it clear in the first paragraph that free gifts and samples are included.

Article 4

(1) Add a third indent after (b):

'(c) takes into account evidence from accident data.'

(2) The Committee approves the intent of this Article. Nevertheless it suggests that Member States, the Commission and business should invest in research on behavioural studies, particularly in relation to instructions for use and warnings. And it points out that clear, consistent and systematic guidance is necessary for those who communicate with the public whether in words or in symbols.

Article 5

The Committee points out that this Article should be subject to Articles 3 and 4.

It suggests that the use of the word 'manufactured' in the first sentence is not enough, and that it should be rephrased to include items such as processing, packaging, transportation and installation. Also in this sentence the Committee points out the need for further clarification of the phrase 'presumed to comply'. Presumption should be made subject to 'the absence of evidence or reasoned representations to the contrary'.

The Committee notes that the present proposals no longer refer to standards or norms, and suggests that they should be included in (2) among the criteria to be taken into account when assessing compliance with general product safety requirements.

Whilst the existence of a voluntary standard for any product should not inevitably lead to the idea that it is therefore safe, since many standards may not be concerned with safety, reference should be made specifically to those standards drawn up by the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (Cenelec) at the request of the Commission.

These are the standards which follow agreement in the appropriate Standing Committees, in respect of the essential requirements of the new approach directives.

⁽¹⁾ OJ No C 175 of 4. 7. 1988, p. 16, paragraphs 6.3.3 and 6.3.4.

Also included in the list of criteria given in (2) should be accident statistics and studies in ergonomics.

- (2) Add 'presumed' to 'compliance'.

Article 6

The Committee emphasizes that prime responsibility for preventive product safety lies with suppliers and not with public authorities. This responsibility should also enable suppliers on their own initiative to withdraw a product. So that they can carry out their task effectively—in the light of increasing freedom and self-responsibility—the Committee points out that any system for monitoring safety aspects of products must be simple, practical and involve the minimum of administration. Nevertheless, it should be clearly spelled out that the more potentially dangerous the product, the more rigorous are the measures needed for monitoring. It is also essential for suppliers to inform public authorities about the dangers they may identify.

Article 7

- (1)(c) The Committee requires Annexes 1 and 2 to be integral and binding part of the proposal, and to tie in with Article 18.

It also raises the problem of particular groups such as small shopkeepers and mail order companies in adopting adequate preventive measures.

It questions whether the use of the words 'indicative list' is indeed an appropriate heading. This is particularly important with respect of the identification of the products which is a prerequisite to the effectiveness of preventive measures on the part of the Member States, the supplier and the Commission.

In the context of Annex 2, the Committee suggests that the draft Directive should be amended to protect innocent retailers, in the event of goods being seized, by including the legal right to recover the costs which have been incurred.

- (d) The Committee again stresses the importance of collecting data about accidents and personal injuries associated with products, and indicates that there must be a common basis so that results can be compared. The

Commission must retain responsibility for coordinating and evaluating data produced by EHLASS, and use it as a means of giving guidance on priorities for investigation and as a mechanism for feeding information into the standards-making and updating process.

- (d) Replace 'sickness' by 'illness' in the English text, and add 'disability'.

(e) Following the consideration to be given to collective complaints about identical products from reputable organizations, the Committee suggests that consideration could also be given to the possibility of individual consumers themselves, as well as consumers' associations, of undertaking administrative and court action to obtain preventive intervention.

(f) In the interest of building up consumer confidence, the Committee urges the widest possible publication of information. There should be a clear obligation to inform the general public. Publication in the Official Journal is not enough.

Add two new points:

'(g) at the request of the Commission ensure consistency of approach to testing throughout the EC, and take into account the fact that there will be national costs in extending public authority services.

(h) at the request of the Commission set up a coordinating body to monitor standards of enforcement and safety rules throughout the EC, and lay down criteria by which enforcement will be evaluated, since adequate enforcement by national authorities is a prerequisite of the successful implementation of this Directive in particular and of the single unified market as a whole.'

Article 8

- (1) The Committee has strong reservations about the use of the word 'local': with the free circulation of goods in the internal market, Member States can never be sure that the problems relating to unsafe products can be limited to a locality, a region or even to a single nation. Consequently, the Committee recommends the deletion of the last sentence of the first paragraph.

Article 9

The Committee endorses the need for a rapid information system at Community and at national levels, extended with full transparency.

(2) In the first sentence delete 'having not only local effects'. Add an extra sentence at the end of (2):

'Member States should have an obligation to inform the general public immediately in cases of serious and immediate risk.'

(5) The Committee approves the appointment of a single competent authority to cooperate effectively with the Commission. Nevertheless, it recognizes that measures must be taken to co-ordinate action in those Member States where there may be a number of different authorities and government departments involved in safety issues.

Article 10

(2) Add:

'Member States must also inform the public.'

Since the Directive includes perishable products, such as fresh foods, and seasonal products, such as toys and garden mowers, a prohibition notice up to three months may cause the product to be unsaleable altogether or unsaleable until a future season, even though the prohibition notice is subsequently removed because it was finally decided there was no unacceptable risk. Although an application can be made under paragraph 1(c) of the Directive to set aside the prohibition notice, the time taken to secure its removal and the costs involved may cause losses to distributors who should be entitled to compensation for all losses incurred. This might include a statutory right to return banned goods and to be repaid.

Articles 11 and 12

The Committee foresees problems in implementing Article 11 and asks the Commission to devise a much simpler and more practical procedure for initiating mechanisms in emergencies.

Moreover, it sees intervention from the Commission as necessary in cases only where action of a Member State is inadequate according to the requirements set out in this proposal. Primary action should normally be taken

at the most appropriate level, closest to the event. The role of the Commission is subsidiary, concentrating on co-ordination.

Articles 13 and 14

The Committee supports the need for the Commission to be assisted by a body to deal with emergency situations. Indeed it would like to see its role extended to cover the whole accident prevention policy, with powers to investigate EC-wide data on accidents, to monitor safety standards and recommend appropriate practical action, particularly in the fields of information, education and enforcement coordination.

The Committee notes that representation on the proposed 'committee on product safety emergencies' is confined to representatives of Member States and would therefore ask the Commission to establish an additional advisory committee which should include representatives from manufacturing, distribution, retailing and consumer interests.

It stresses that this committee must be flexible and free from rigid procedures so that it can take action quickly. Though it should have a small inner core with precise rules, in addition representation of a reasonable balance of interests, besides governmental representation, is crucial to its success.

The Committee also suggests that, provided there are no unreasonable delays, manufacturers should have the opportunity to comment on products with which they are involved.

Finally, the Committee also asks the Commission to recommend that each Member State should set up its own 'committee on product safety' at national level, on the basis of those already existing or about to be set up in some Member States.

Article 16

This Article is unnecessary and should be omitted, since there is no contradiction nor overlapping between this present proposal and the product liability Directive (85/374/EEC) (1). Any reference to this Directive could appear as an additional 'whereas' clause in the preamble.

Article 17

(1) 'Whenever feasible' is not legally precise and must be rephrased.

(1) OJ No L 211, 7. 8. 1985.

(2) The Committee does not like the phrase 'substantially relevant' and suggests its replacement by 'provided the clear intention of such statements is to be truthful, accurate and free from malice'.

(3) Add after 'redress' the words 'or compensation'.

After (3) include a new point. The earlier provision of previous Article 11 should be reinstated: 'Member States may make it mandatory for manufacturers to recall, replace or refund the price of products found to be unsafe, or to carry out necessary repairs free of charge.' The Committee also remains concerned about problems arising from unsafe goods which have caused actual injury. It suggests that the Commission should explore the possibilities of setting up a Community fund to compensate people who for a variety of reasons

(such as the bankruptcy of a firm) have no other effective remedy. This should not be seen as the means of escaping obligations.

Article 18

The Committee seeks clarification about the implications of the word 'sanctions'. It accepts that sometimes economic sanctions will be enough, but in several cases criminal proceedings may be necessary in the case of unsafe goods knowingly and deliberately produced and sold. It is the Member States who must introduce such sanctions since current EC law does not allow the imposition by the Commission of criminal proceedings.

The Committee stresses the urgent need for the Directive on product safety. Nevertheless, under present circumstances, it considers that enactment by 1 January 1991 is unrealistic and suggests completion before the introduction of the Internal Market in 1993.

Done at Brussels, 31 January 1990.

*The Chairman
of the Economic and Social Committee*

Alberto MASPRONE

APPENDIX 1

to the Opinion of the Economic and Social Committee

The following members, present or represented, voted for the Opinion:

Mr/Mrs/Miss: Amato, Aparicio Bravo, Aspinall, Ataide Ferreira, Bazianas, Beretta, Berger, Bernasconi, Bleser, Boddy, Boisserée, Bordes-Pages, Briganti, Vasco Cal, Calvet Chambon, Carroll, Cavazzuti, Ceballos Herrero, Christie, Alves Conde, Corell Ayora, Cortois, Coyle, Decaillon, von der Decken, Della Croce, Dos Santos, Drago, Drilleaud, van Eekert, Elstner, ETTY, Eulen, Flather, Flum, Forgas, Frandi, Freeman, Geuenich, Gomez Martinez, Gredal, Green, Haas, Hagen, Hilken Houthuys, Hovgaard, Jakobsen, Jaschick, Jenkins, Kaaris, Kitsios, de Knecht, Laka Martin, Lappas, Larsen, Liverani, Luchetti, Maddocks, Margalef Masia, Mayayo Bello, Mercier, Morales, Moreland, Mourgues, Muhr, Muñoz Guardado, Murphy, Nielsen B., Nielsen P., Nierhaus, Nieuwenhuize, Pelletier C., Petropoulos, Polyzos, Quevedo Rojo, Ramaekers, Rangoni-Machiavelli, Roseingrave, Rouzier, Santillan Cabeza, Schmitz, Silva, Smith A. R., Smith L. J., Speirs, Staedelin, Tiemann, Tixier, Vallejo Calderon, Velasco Mancebo, Vercellino, Williams, Zufiar Narvaiza.

The following members, present or represented, voted against the Opinion:

Mr/Mrs/Miss: Arena, Arets, Bagliano, Beltrami, Bento Gonçalves, Berns, Black, Bredima-Savopoulou, Broicher, Campbell, Ceyrac, Collas, van Dam, De Tavernier, Dodd, Donck, Fresi, Gardner, Germozzi, Giacomelli, Hancock, Kenna, Kirchfeld, Kröger, Laur, Löw, Lustenhouwer, Machado von Tschusi, Mainetti, Margot, Marvier, Meyer-Horn, Muller, Noordwal, Pardon, Pearson, Pelletier R., Perrin-Pelletier, Petersen, Poeton, Proumens, Ribière, Robinson, Rolão Gonçalves, Romoli, Schade-Poulsen, Schnieders, Schnitker, Schoepges, Storie-Pugh, Strauß, Tamlin, Telles, Termes Carrero, Tukker, Vidal, Wagner, Wick, Yverneau.

The following members, present or represented, abstained:

Mr: Bos, Matteoli, de Normann, Salmon, Serra Carracciolo, Solari, Whitworth.

APPENDIX 2

to the Opinion of the Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate:

Point 8

Delete entirely and substitute:

'The Committee notes that the present proposal concerns all products including 'any manufactured product and agricultural product'. Industrial products are already adequately covered by specific Regulations. Directives are being introduced to provide further legislation concerning health and safety at work. Agricultural products are an area subject to regulations tailored to specific requirements which are not capable or suitable for inclusion in a general consumer product directive. Indeed, there are some products, in addition to agricultural ones, where it is not entirely clear what hazards are involved and would be better dealt with by Directives dealing with specific issues.

The Committee is not in favour of the proposed wide scope of the Directive and believes it should be restricted to consumer products as defined in paragraph 1 of its own-initiative Opinion (OJ No C 175, 4. 7. 1988).'

Reason

Self-explanatory.

Voting

For: 46, against: 81, abstentions: 4.

Point 10

The third paragraph should be dropped.

The fourth paragraph should read:

'The general safety Directive must only apply if there is no specific Directive on the matter.'

Reason

The use of the word 'adequately' in the current text is vague and creates legal uncertainty.

The fifth paragraph can also be dropped.

Voting

For: 46, against: 77, abstentions: 8.

Point 15

Replace the final sentence with:

'This would be of particular benefit to small and medium-sized enterprises where the new administrative commitments will be a further burden which is completely unnecessary for the achievement of the aims of the Directive, and therefore undesirable.'

Reason

Self-explanatory.

Voting

For: 33, against: 80, abstentions: 6.

Point 16

The second sentence should read:

'It suggests that they ..., should be encouraged to tell their suppliers ... brought to their attention.' (rest unchanged)

Reason

The present text speaks of an obligation. At a time when the individual responsibility of businesses is clearly recognized and valued (see point 15 and the comment on Article 6), (legal) obligations should be rejected.

Voting

For: 48, against: 80, abstentions: 5.

Article 2 c) aa)

Delete second and third sentences.

Reason

There are the following arguments against proposing that the Commission add to its document a reference to the possibility of misuse:

- it is not necessary to draw explicit attention to something which is foreseeable,
- the proposal takes no account of the responsibility of parents for teaching their children how to handle certain objects,
- in practice, the proposal would for example mean that knives and matches would have to carry stickers warning of their dangers, although such warnings would not reach the main risk group, small children, as they cannot yet read ...

Voting

For: 51, against: 62, abstentions: 8.

Article 6

Add to the Opinion, as a separate paragraph, the following:

'Whilst the second sentence of this Article limits the obligations of retailers, the general duty of permanent monitoring does create obligations which are unclear, difficult to assess and seem to imply a check by retailers after sales which is not realistic and creates administrative and economic burdens, particularly for small shopkeepers and mail order companies. Article 6 should be amended to provide that the obligation to monitor should not apply to distributors and retailers.'

Reason

Self-explanatory.

Voting

For: 48, against: 64, abstentions: 10.

APPENDIX 3**to the Opinion of the Economic and Social Committee****Minority statement**

Following the vote by name on the Opinion the members of the Employers Group listed below who voted against the Opinion made the following declaration:

'Group I agrees that there is a need for a Directive on the safety of consumer products, in accordance with the Committee's own-initiative Opinion of April 1988 (OJ No C 175, 4. 7. 1988); however, it is opposed to the present proposal for three reasons:

- the scope of the Directive must be limited to consumer products and similar products,
- the definitions relating to safety and acceptable risks should be expressed in the same terms as those used in the Directive on civil liability for defective products,
- excessive extension of the administrative system would not only be intolerable for small and medium-sized enterprises (SME), distributors and retailers, but also ineffective because the appropriate means for monitoring the declarations envisaged by the Commission are lacking.'

Mr/Mrs/Miss: Arena, Arets, Bagliano, Beltrami, Bredima-Savopoulou, Broicher, Campbell, Ceyrac, Collas, van Dam, Dodd, Donck, Fresi, Gardner, Giacomelli, Hancock, Kenna, Kirchfeld, Kröger, Löw, Machado von Tschusi, Mainetti, Meyer-Horn, Noordwal, Pardon, Pearson, Pelletier R., Perrin-Pelletier, Petersen, Poeton, Proumens, Ribière, Robinson, Rolão Gonçalves, Romoli, Schade-Poulsen, Schnieders, Tamlin, Telles, Termes Carrero, Tukker, Wagner, Wick.
