

economic cycle; a policy that will put investment in education and training on an equal footing with other productive investment; a policy, finally, that will make

Europe and its citizens more competitive and at the same time more aware of their history, values and prospects for the future.

Brussels, 28 January 1998.

*The President  
of the Economic and Social Committee*

Tom JENKINS

**Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products' <sup>(1)</sup>**

(98/C 95/17)

On 30 October 1997, the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Community, on the above-mentioned 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 6 January 1998. The rapporteur was Mr Hernández Bataller.

At its 351st plenary session (meeting of 29 January 1998) the Economic and Social Committee adopted the following opinion by 99 votes to 14 with 7 abstentions.

## 1. Introduction

1.1. Council Directive 85/374/EEC of 25 July 1985, on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products <sup>(2)</sup>, excluded primary agricultural products and game from the scope of its definition of 'product'. For this purpose, primary agricultural products were defined as products of the soil, of stock-farming and of fisheries, excluding products which had undergone initial processing.

1.2. The initial proposal for the directive drafted by the Commission did not include the exclusion: this was inserted during the negotiation process, at the request of the European Parliament.

1.3. Directive 85/374/EEC introduces a framework

for producer liability for defective products along the following basic lines:

— liability without fault is established. Consequently, the injured person is required to prove the damage, the defect and the causal relationship between defect and damage, without having to prove fault;

— a product is deemed defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including: the presentation of the product, the use to which it could reasonably be expected that the product would be put and the time when the product was put into circulation; a product is not considered defective for the sole reason that a better product is subsequently put into circulation;

— 'damage' is taken to mean damage caused by death or by personal injuries, and damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of ECU 500;

<sup>(1)</sup> OJ C 337, 7.11.1997, p. 54.

<sup>(2)</sup> OJ L 210, 7.8.1985.

- a limitation period of three years is applied to proceedings for the recovery of damages, from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer; the rights conferred upon the injured person pursuant to this directive are extinguished upon the expiry of a period of ten years from the date on which the producer put into circulation the actual product which caused the damage;
- the liability of the producer arising from this directive may not, in relation to the injured person, be limited or excluded by a provision limiting his liability or exempting him from liability;
- a number of grounds for exemption from liability are listed ('producer's defence')
- any Member State may provide that a producer's total liability for damage resulting from a death or personal injury and caused by identical items with the same defect shall be limited to an amount which may not be less than ECU 70 million;
- every five years the Council, acting on a proposal from the Commission, is to examine and, if need be, revise the amounts in this directive, such as compensatory limit and threshold, in the light of economic and monetary trends in the Community.

1.4. As early as 1991, the Economic and Social Committee, in its opinion on consumer protection and completion of the internal market<sup>(1)</sup>, was expressing the view that 'the internal market can only operate effectively if the consumer has confidence in the safety of the products on offer. To this end it is important to pursue a consistent product safety policy, one aspect of which is liability for defective products. The Committee therefore asks the Commission to start work on extending the scope of the product liability directive to include agricultural food products and development risks. The principle of the free movement of products further requires the setting-up of a Community fund to compensate the victims of defective products'.

1.4.1. The ESC's opinion on bovine spongiform encephalopathy (BSE)<sup>(2)</sup> restated the need to look at the effectiveness of Directive 92/59/EEC on general product safety and to review Directive 85/374/EEC on liability for defective products, so as to broaden its scope to include agricultural products and the risks associated with them.

1.5. The European Parliament, in its resolution of 19 February 1997 on the results of the Temporary

Committee of Inquiry into BSE<sup>(3)</sup>, asked the Commission to follow up the recommendations contained in the Temporary Committee's report and to ensure that the appropriate legislative, administrative and staff-related steps were taken without delay.

1.5.1. One of the legislative steps which the European Parliament asked the Commission to take was the request for a proposal, by September 1997 at the latest, for Community legislation on product liability to be amended to include primary products.

1.5.2. Partly in response to this resolution, the Commission published a Green Paper on the General principles of food law in the European Union<sup>(4)</sup>, which set out several basic goals for Community food law. The regulatory approach should cover the whole food chain 'from the stable to the table', thereby raising a series of questions, including the issue of the principle of producers' civil liability for defective products, as laid out in Directive 85/374/EEC, being made obligatory for primary agricultural production.

1.5.3. The green paper mentioned the possibility of amending the scope of the product liability directive to cover unprocessed primary agricultural products; this was not, however, seen as an alternative to the development of appropriate product-safety regulations and effective official control systems, but as an additional measure in its own right.

1.5.4. The Committee, in its opinion on the green paper<sup>(5)</sup>, once again showed itself to be in favour of unprocessed primary agricultural products being covered by Directive 85/374/EEC.

## 2. The Commission's proposal

2.1. The proposal's objectives are to increase the level of consumer protection against damage caused to their health and property by a defective product and to further the approximation of national laws concerning civil liability for defective products.

2.1.1. These objectives form part of the strategic target of delivering a single market for the benefit of all citizens, as set out by the Commission in its action plan for the single market<sup>(6)</sup>.

<sup>(3)</sup> OJ C 85, 17.3.1997.

<sup>(4)</sup> COM(97) 176 final.

<sup>(5)</sup> OJ C 19, 21.1.1998.

<sup>(6)</sup> CSE (97) 1 final, 4.6.1997.

<sup>(1)</sup> OJ C 339, 31.12.1991 — point 5.3.4.

<sup>(2)</sup> OJ C 295, 7.10.1996.

2.1.2. Furthermore, the proposed measure is suitable for raising consumer confidence in all products sold in the single market and is one of the areas where the Community enjoys exclusive competence, i.e. the establishment and functioning of the single market.

2.2. The Commission's proposal deletes the exception regarding 'primary agricultural products and game' from Article 2 of Directive 85/374/EEC. The term 'agricultural products' is taken from Article 38(1) of the EC Treaty and covers those products listed in Annex II to the Treaty.

2.2.1. All of the rules of Directive 85/374/EEC will thereby apply to agricultural producers: the injured person's burden of proof of damage, defect and causal relationship; joint and several liability; where more than one person is liable; the notion of defect; the reasons for exemption from liability under Article 7<sup>(1)</sup>; the damage covered; the time limits for proceedings for recovery of damages; the fact that liability may not voluntarily be limited or excluded; and the fact that other rules of the law of contractual or non-contractual liability are not affected.

2.3. The new rules are to apply to agricultural products and game put into circulation from the date on which the directive enters into force, i.e. the directive will not have retroactive effect.

### 3. General comments

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

3.2. The Committee shares the Commission's view that greater health protection at every stage of the food chain is one of the European public's main expectations, and considers the adoption of measures, such as the present draft directive, intended to boost consumer confidence, to be a priority.

3.2.1. In attaining the objectives of the common agricultural policy, account must be taken of requirements in the general interest, such as the protection of consumers or of human health and life, with which the Community institutions must comply when exercising their powers.

3.2.2. The creation of a genuine single market requires that adequate safeguards be established in the field of public health, backed up by adequate quality controls. Moreover, paying heed to public health issues is not just about the need to raise or, in this particular case, restore consumer confidence so that the market functions properly. Ultimately it derives from the overriding requirement to protect citizens' rights, the foundation of the entire Community legal system.

3.2.3. The proposed directive should allow a higher level of protection of public health, which is one of the explicitly mentioned objectives of the Treaty.

3.2.4. The Committee deems the application of the prevention principle to be a health protection priority.

3.3. The application of the principle of free movement of goods must entail meeting those requirements that are especially vital for the protection of human health and life. On occasion, this may mean the adoption of appropriate measures aimed at ensuring an acceptable level of public health. In particular, the Committee is in favour of rules requiring producers to place on the market only such products as are safe and of making producers liable for repairing any damage caused by defective products.

3.4. The proposed directive would be a further step towards the harmonization of the single market and obviate distortions of competition between producers who are subject to different arrangements depending on where their product is placed on the market. The Committee is, therefore, in favour of eliminating such discrimination between Community producers.

3.5. The extension of the scope of Directive 85/374/EEC proposed by the Commission could lead to a higher level of consumer protection by:

- offering consumers justified grounds for redress for liability without fault previously denied to them, which will strengthen their legal position when it comes to safeguarding their legitimate interests, defending their rights as customers and securing compensation for damage caused by defective products;
- encouraging compliance with the general obligation to produce safer products, as it would apply through the entire food chain, from primary production to the final point of retail to the consumer;
- making it easier to trace the party responsible for putting a defective primary agricultural product into circulation ('product traceability'), since, if this

<sup>(1)</sup> Including, under (d) if 'the defect is due to compliance of the product with mandatory regulations issued by the public authorities'.

producer cannot be identified, each supplier of the product can be treated as its producer.

3.6. The Committee is also of the opinion that the proposed directive should not impose additional burdens on the producers involved. Furthermore, experience with the working of Directive 85/374/EEC suggests that the proposal is unlikely to lead to a substantial rise in either the number of complaints or the level of insurance premiums.

3.6.1. The Committee urges the Commission to ensure, when drawing Community legislation in the field of insurance, that new risks arising from market

developments (such as genetically modified organisms) can be insured.

3.7. The Committee is of the opinion that, following the adoption of this proposal, there ought to be an overall examination of the system set out in Directive 85/374/EEC in the light of the current state of Community law and the reports on its implementation.

3.7.1. The overall examination should take the form of a green paper, so that representatives of social and economic activity may be consulted.

3.7.2. The examination should focus especially on the burden of proof, development risks, economic ceilings, and time limits for certain products.

Brussels, 29 January 1998.

*The President*  
*of the Economic and Social Committee*  
Tom JENKINS

### Opinion of the Economic and Social Committee on 'Consumers in the insurance market'

(98/C 95/18)

On 20 March 1997 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on 'Consumers in the insurance market'.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 January 1998. The rapporteur was Mr Ataíde Ferreira.

At its 351st plenary session (meeting of 29 January 1998), the Economic and Social Committee adopted the following opinion by 77 votes in favour and three abstentions.

#### 1. Introduction: scope of the opinion

1.1. The importance of insurance in general economic activity in the single market is well recognized; it accounts for a substantial proportion of the volume of trade in financial services and a very high percentage of employment in the sector.

1.2. Furthermore, in today's world where technological progress entails an inevitable increase in risks and changes in the concept of fault for the definition of third party liability, the insurance industry is playing an increasingly important role in society.

Moreover, in the insurance sector the introduction of the euro is inevitably leading to new developments, marked in particular by greater transparency and easier subscription of cross-border contracts.

1.3. The demographic explosion associated with an ageing population, combined with the need for security which goes hand in hand with the inherently vulnerable nature of human existence, serves to intensify growing concern about the future. From this viewpoint, insurance constitutes an undeniable instrument for redistributing and spreading risks across society; it is moreover a