



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.10.1997

COM(97) 478 final

97/0244 (COD)

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. GENERAL COMMENTS

Context

A. Consumer health within the single market

1. The events surrounding the BSE crisis¹ have proved a challenge to the European Union, that of meeting consumers' legitimate expectation that their health will be protected within the single market. This expectation, which is primarily reflected in a strong concern regarding food safety,² is particularly legitimate in the single market. The free movement of goods, one of the basic objectives on which the completion and proper functioning of the single market rests, must not, under the terms of the Treaty, be to the detriment of consumer health protection. Article 36 explicitly refers to the protection of health as a concern which justifies measures derogating from the principle of the free movement of goods. This protection is therefore not sacrificed to the fundamental principle of this freedom.
2. In order to meet this expectation, the Commission has at its disposal a number of legal instruments concerned with general product safety (Council Directive 92/59/EEC of 29 June 1992) and compensation of victims of defective products (Council Directive 85/374/EEC of 25 July 1985). These instruments require all producers to place on the market only such products as are safe and makes them liable for repairing any damage caused by their defective products.

B. Council Directive of 25 July 1985 on liability for defective products (85/374/EEC)

3. Any modern society demands to be protected by means of a mechanism of compensation for damage resulting from the risks of industrial production, such as is provided for in Directive 85/374/EEC. This Directive approximated the Member States' laws concerning the producer's liability for damage caused by safety defects in his products. This legislation has been implemented in all Member States except France. The system of liability without fault introduced by the Directive means that producers are liable for the damage caused by a defect in their product where the victim provides evidence of the existence of the damage, the

¹ On 20 March 1996, the UK authorities announced the possible existence of a link between the variant of Creutzfeld-Jacob disease and bovine spongiform encephalopathy (BSE). This sparked an unprecedented crisis of consumer confidence in beef and beef products.

² 35% of EU citizens consider that food is not safe. Food safety tops the list of concerns of 68% of interviewees (90% in France and 39% in Finland), followed by the safety of pharmaceutical products, with 64% of those questioned considering that safety is not guaranteed beyond international borders. Source: Eurobarometer 47.0, 21 May 1997.

defect and the causal relationship between defect and damage. The Community thus struck a reasonable balance between the various interests involved:

- that of consumers to face up to the risks of a modern industrial society with a high degree of technicality for their health and physical and material safety;
 - that of producers
 - * to avoid distortions of competition resulting from the differences between existing systems of civil liability (liability with/without limited/unlimited fault), and
 - * to reduce the impact which these different systems have on investment initiatives in the field of innovation and development.
4. Despite the Commission's efforts during discussions within the Council, the harmonisation resulting from the 1985 Directive is not total. The unanimity required for the adoption of legislation on the basis of Article 100 of the Treaty led to compromises on several points of the Commission's proposal. These took the form of general rules from which Member States may derogate for a transitional period (Articles 15 and 16) at the end of which the Member State should, on a proposal from the Commission, adopt the permanent solution.
5. Thus, as a general rule, primary agricultural products (i.e. products of the soil, stock-farming and of fisheries) and game are not covered by the Directive's provisions. However, products which have undergone initial processing are covered (Article 2). Nevertheless, Member States may, under Article 15(1)(a), provide for liability on the part of agricultural producers for defective primary products. This derogation has been used by Greece, Luxembourg, Sweden and Finland.³
6. In 1995, the Commission adopted its first report on the application of the Directive and its effects on the proper functioning of the single market and consumer protection (COM(95) 617 final, 13.12.1995). It describes the Directive as being an important piece of legislation which has contributed towards an increased awareness of and emphasis on product safety and has eased the burden of the plaintiff in proving his case (since the producer's fault does not have to be proved). With regard to the information obtained regarding the application of the Directive, the Commission did not consider it necessary, at that stage, to submit any proposals for its amendment. Nevertheless, it indicated that certain aspects concerning the protection of consumers and the functioning of the internal market required continued monitoring, including the exclusion of primary agricultural products.

C. The European Parliament's recommendation that Directive 85/374/EEC be amended

³ In France, draft Law No 469 on liability for defective products, adopted (first reading) by the National Assembly on 13 March 1997, also includes primary products within its scope. National Assembly, Report No 3411 of the Committee on constitutional laws, legislation and general administration of the Republic on draft Law (No 469) by Mrs Nicole Catala, 6 March 1997: "*As the "mad cow disease" incident clearly shows, this type of product should be covered by the system of objective liability resulting from the Directive in order to offer the same protection to the consumer irrespective of the defective product in question*".

7. Further to the deliberations of the Temporary Committee of Inquiry into BSE (MEDINA Report, doc. 220.544), the European Parliament recommended that Directive 85/374/EEC be amended by September 1997 at the latest in such a way as to extend it to primary agricultural products. It called on the Commission, the Council and the Member States to take appropriate measures to follow up and implement this recommendation.⁴ The recommendation is not a resolution adopted pursuant to Article 138b of the Treaty (legislative initiative) but rather a suggestion made by the Committee of Inquiry under Article 138c of the Treaty.

Commission proposal to amend Directive 85/374/EEC to include primary agricultural products within its scope

8. The Commission considers that including primary agricultural products within the scope of Directive 85/374/EEC would be an important step towards improving consumer protection under Community law even if such a measure obviously cannot itself solve the problems likely to arise in this area.⁵ Including primary agricultural products within the scope of Directive 85/374/EEC would be of benefit to all the initiatives launched in an attempt to win back consumer confidence in agricultural products. The Commission takes the view that all agricultural products, whether consumed in their natural form or after processing, must be covered by the system of liability without fault laid down in the Directive. Consequently, it proposes to the European Parliament and to the Council that the Directive be amended in such a way as to restore its original proposal from 1976 on this point (COM(76) 372). Nevertheless, the Commission considers that extending the Directive's scope in this way will not dispense with the need for appropriate rules concerning product safety and efficient official control mechanisms but that it would constitute a complementary measure.
9. The European Parliament was originally opposed, in the face of strong pressure from the agricultural sector, to including agricultural products within the scope of the Directive. It was argued at that time that objective liability for defective agricultural products might be too great a burden if these products were not industrially manufactured (CALEWAERT Report, doc. 71/79, OJ No C 127, 21.5.1979, p. 61). In presenting its amended proposal (COM(79) 415), the Commission considered it justified, in line with Parliament's suggestion, to exclude natural agricultural products (as opposed to agricultural products manufactured industrially) from the scope of the Directive. Finally, the solution adopted (see point 5 above) was the result of a compromise between Member States opposed to excluding these products, which saw it as an unjustified restriction of consumer protection, and those which were in favour of excluding them.
10. In deciding to revive its previous proposal, the Commission has taken the following factors into account, over and above Parliament's recommendation :

- (a) **Public expectations of greater protection of health:** Harmonisation of standards designed to protect consumers are at the heart of demands by

⁴ Resolution on the results of the Temporary Committee of Inquiry into BSE, doc. PE 257.005, OJ No C 85, 17.3.1997.

⁵ Green Paper on the general principles of food law in the European Union (COM(97) 176, 30.4.1997).

European citizens. The Commission noted when drawing up its Green Paper on the general principles of food law in the European Union that requests for primary agricultural products to be included in the Directive's scope were being made with increasing frequency. They have become even more urgent in view of the fears raised by BSE.⁶ Parliament's recommendation merely echoes the great concern among the European public for greater food safety in general, and in particular with regard to primary agricultural products.

- (b) **The existence of national laws on the liability of agricultural producers:** The Commission shares with several Member States the concern that consumers' health should be protected with regard to agricultural products and that the system of compensation for damage should be more efficient. This is the reason for the various national provisions which lay down liability without fault on the part of agricultural producers, in accordance with the option provided for in Article 15 of the Directive.⁷ In this respect, the only Member State which has not yet transposed the Directive plans, largely as a result of the BSE crisis, to include these products within the scope of its implementing legislation.⁸
- (c) **The lack of irreversible effects on agricultural economies:** In the same way that no irreversible effects were observed for industries and insurers in general when the first report on Directive 85/374/EEC was drawn up (as was suggested would be the case when the Directive was adopted), there is nothing to indicate *a priori* that including agricultural products within its scope will have an irreversible negative impact on agricultural economies. Experience in those countries which have made use of the derogation provided for in Article 15 has revealed no evidence of any particular effects on agricultural economies.
- (d) **Uncertainty as to the scope of the exclusion resulting from the concept of "processing":** Directive 85/374/EEC covers products of the soil, stock-farming and of fisheries which have undergone "initial processing". This concept⁹ constitutes the dividing line between excluded agricultural products (primary products) and those which the Directive covers (processed product). It is obvious that agricultural production does not

⁶ See also the recommendation of the Consumers Committee of 9 October 1996 supporting inclusion.

⁷ Greece (Article 6.1. of Law No 2251/94), Luxembourg (Article 1.2.1. of the Law of 21.4.1989), Finland (Section 1, subparagraph 2, of Law No 694 of 17.8.1990), Sweden (Section 2 of Law 1992:18 of 31.1.1992).

⁸ France. See footnote 3. In addition, this proposal is consistent with legislation on liability for defective products in other countries where agricultural producers are considered liable without fault (the United States, Norway).

⁹ Judgment of the Court of Justice of 29.5.1974 in Case 185/73 *König*, ECR [1974] 619; "the concept of 'products of first-stage processing directly related' to the basic products, must be interpreted as implying a clear economic interdependence between basic products and products resulting from a productive process, irrespective of the number of operations involved therein. Processed products which have undergone a productive process, the cost of which is such that the price of the basic agricultural raw materials becomes a completely marginal cost, are therefore excluded."

escape the effects of industrialisation (e.g. the use of preserving techniques, deep-freezing, etc., which might involve risks), but the extent of such industrialisation is not apparent: the question is at what point the use of a technique on a primary agricultural product involves "initial processing". Aware as it is of doubts on this subject, the Commission considers that any uncertainty regarding this concept might discourage consumers from pursuing claims. Including primary products will put an end to these uncertainties.

- (e) **Imperfect harmonisation:** Directive 85/374/EEC has not led to complete harmonisation. Consequently, there is no uniform rule governing the liability of farmers, and this means that competition is distorted and the free movement of agricultural products is impeded. Producers are subject to different arrangements depending on where their product is placed on the market. Thus, free movement is affected in the sense that the decision to place one Member State's products on the market of another Member State might depend on whether or not there is a system of liability without fault for the products in question. The flow of trade in agricultural products is thus affected by conditions relating to the producer's liability.

Legal basis

11. Directive 85/374/EEC is based on Article 100 of the EEC Treaty. The Commission proposes that it be amended on the basis of Article 100a of the EC Treaty, as a derogation from Article 100. It considers that the proposal has an impact on the functioning of the single market to the extent that trade in agricultural products should not be affected by differences in rules governing the liability of producers. The amendment takes the form of a directive.
12. The Commission has taken due account of Article 7c of the EC Treaty and there is no need to envisage special provisions or exceptions for the time being. Likewise, it has examined the question of the high level of protection required in the area of health, safety, environmental protection and consumer protection under Article 100a(3) of the EC Treaty. In this respect, including agricultural products within the Directive's scope provides a high level of protection for consumers, as already exists in several Member States.
13. Directive 85/374/EEC relates to a field covered by the EEA Agreement (see Article 23(c) and Annex III "Product liability" of the EEA Agreement, OJ No L 1, 3.1.1994, pp. 11 and 321).¹⁰ Consequently, the amendment contained in this document should be extended to the EEA in accordance with that Agreement, in particular Articles 97 *et seq.* thereof.

Simplification and consistency with other Community policies

¹⁰ The EFTA states party to the Agreement (Iceland, Liechtenstein and Norway) have notified their national implementing measures for Directive 85/374/EEC. Source: EFTA Surveillance Authority, Interim Report on Transposition Status of Directives, 4 June 1997, p. 41.

14. The proposed amendment will simplify the provisions of Directive 85/374/EEC by eliminating the derogation provided for in Article 15(1)(a). Thus, the system of responsibility for defects will be extended throughout the single market to all types of product, without exception.
15. This proposal is consistent with the aims of all Community policies, in particular the protection of consumer health and the common agricultural policy. Amending Directive 85/374/EEC will help to achieve a higher degree of consumer protection, which is a Community objective pursuant to Article 129a of the EC Treaty. Moreover, trade in agricultural products will be made easier by the elimination of the legal differences which exist between Member States with regard to the civil liability of producers.

II. JUSTIFICATION OF THE PROPOSAL IN THE LIGHT OF THE PRINCIPLE OF PROPORTIONALITY

What are the objectives of the proposed measure, and how do they relate to the Community's obligations?

16. The measure'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 with regard to liability for defective products started by Directive 85/374/EEC. 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 (CSE(97)1, 4.1.1997). This means enhancing the advantages of the single market by strengthening the guarantees offered to consumers on the basis of a high level of protection in the fields of health and safety.

Is the measure in an area where the Community has exclusive competence or where it shares competence with the Member States?

17. The measure falls within the exclusive competence of the Community: the establishment and functioning of the single market. In addition, since Directive 85/374/EEC was adopted on the basis of Article 100 of the EEC Treaty, the Community has exclusive competence in the field of liability for defective products for all the aspects covered by the Directive.

Are the means of Community action proportionate to the objectives?

18. The proposed amendment is limited to revising the system of liability without fault laid down in Directive 85/374/EEC to the extent which is strictly necessary to increase consumer confidence in all types of products in circulation in the single market. It merely includes primary agricultural products within the scope of the Directive by eliminating any possibility of derogation.

III. ANALYSIS OF THE PROPOSAL

Article 1

19. This Article deletes the exception regarding "primary agricultural products and game" from Article 2 of Directive 85/374/EEC. This means that agricultural products and game must be deemed to constitute "products" for the purposes of the Directive. 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 (see Annex A to this document). Technically speaking, the proposal transforms the option granted to Member States under Article 15(1)(a) into a general rule.
20. Any consumer affected by one of these products supplied via the distribution network will be able to claim liability on the part of the producer as defined in Article 3, i.e. as
 - the manufacturer of a finished product,
 - the producer of any raw material,
 - the manufacturer of a component part,
 - any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer,
 - any person who imports into the Community a product for sale, hire, leasing or any form of distribution, or
 - the supplier, in accordance with the conditions of Article 3(3) (where the producer or the person who supplied him with the product cannot be identified).
21. All of the rules of Directive 95/374/EEC apply to agricultural producers: the injured person's burden of proof,¹¹ joint and several liability where more than one person is liable, the notion of safety defect, the reasons for exemption under Article 7, 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.

Article 2

22. This Article deals with the implementation by the Member States of provisions to comply with the Directive. The deadline for implementation will be added subsequently. This provision states that the new rules will apply to primary agricultural products and game put into circulation from the date on which the Directive enters into force, i.e. 1 January 1999. The directive will not have

¹¹ In the beef sector, the burden of proof should be made easier by the application of the system for identification and registration of bovine animals and labelling of beef and beef products established by Council Regulation (EC) No 820/97 of 21 April 1997 (OJ No L 117, 7.5.1997, p. 1), which has been in force since 1 July 1997.

retroactive effect, which means that any primary agricultural products and game placed on the market before that date will not be covered by it, even if damage is discovered after that date. The Commission would point out, however, that this rule does not prevent other rules of law on contractual or non-contractual liability from being applicable to such products put into circulation before the date in question. This interpretation is consistent with Article 13 of the Directive, which preserves the rights of injured persons under other such rules.

Articles 3 and 4

23. These indicate the date on which the Directive enters into force, in accordance with Article 191 of the Treaty, and the fact that it is addressed to the Member States.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the Economic and Social Committee,²

Acting in accordance with the procedure laid down in Article 189b of the Treaty³,

Whereas the safety of products and compensation for damage caused by defective products are overriding social needs which must be met within the internal market, an area in which products move freely; whereas the Community has responded to these requirements by means of Council Directive 85/374/EEC⁴ and Council Directive 92/59/EEC⁵ of 29 June 1992 on general product safety;

Whereas Directive 85/374/EEC established a fair apportionment of the risks inherent in a modern society in which there is a high degree of technicality; whereas the said Directive has thus struck a reasonable balance between the interests involved, in particular the protection of the health of consumers, the incentive for innovation and scientific and technological development, the guarantee of undistorted competition, and the easing of trade by means of a system of harmonised civil liability; whereas the said Directive has thus helped to raise awareness among traders of the issue of product safety and the importance accorded to it;

Whereas the degree of harmonisation between Member States' laws achieved by the Directive is not total in view of the derogations laid down, in particular with regard to its scope, from which unprocessed agricultural products are excluded;

Whereas the Commission monitors the implementation and effects of Directive 85/374/EEC and in particular its aspects relating to consumer protection and the functioning of the internal market;⁶ whereas, in this context, the Commission must, in accordance with Article 21, present a second report on the application of the Directive;

¹ OJ No C xxx, x.x.xxxx, p. x.

² OJ No C xxx, x.x.xxxx, p. x.

³ European Parliament readings and Council common position.

⁴ OJ No L 210, 7.8.1985, p. 29.

⁵ OJ No L 228, 11.8.1992, p. 24.

⁶ First report on the application of the Directive, COM(95) 617, 13.12.1995.

Whereas including primary agricultural products within the scope of Directive 85/374/EEC would help restore consumer confidence in the safety of agricultural products; where such a measure would meet the requirements of a high level of consumer protection;

Whereas circumstances call for Directive 85/374/EEC to be amended in order to facilitate the payment of legitimate compensation for any damage to health caused by defective agricultural products, to the benefit of consumers;

Whereas this Directive has an impact on the functioning of the internal market in that trade in agricultural products will no longer be affected by differences between rules on producer liability;

Where the principle of liability without fault laid down in Directive 85/274/EEC must be extended to all types of product, including agricultural products as defined by the second sentence of Article 38(1) of the Treaty and listed in Annex II to the said Treaty;

Whereas, in accordance with the principle of proportionality, it is necessary and appropriate in order to achieve the fundamental objectives of increased protection for all consumers and the proper functioning of the internal market to include agricultural products within the scope of Directive 85/374/EEC; whereas this Directive is limited to what is necessary to achieve the objectives pursued in accordance with the third paragraph of Article 3b of the Treaty;

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 85/374/EEC is hereby amended as follows:

1) Article 2 is replaced by the following text:

"Article 2

For the purpose of this Directive "product" means all movables even though incorporated into another movable or into an immovable. "Product" includes electricity."

2) In Article 15, paragraph 1(a) is deleted.

Article 2

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1999. They shall forthwith inform the Commission thereof. They shall apply these provisions with effect from 1 January 1999.

When the Member States adopt these provisions, the latter shall contain a reference to this Directive or be accompanied by such reference when they are published officially. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they subsequently adopt in the field governed by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

Annex A : List referred to in Article 38 of the EC Treaty

Chapter 1	Live animals
Chapter 2	Meat and edible meat offal
Chapter 3	Fish, crustaceans and molluscs
Chapter 4	Dairy produce; birds' eggs; natural honey
Chapter 5	
05.04	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof
05.15	Animal products not elsewhere specified or included; dead animals of Chapter 1 or Chapter 3, unfit for human consumption
Chapter 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
Chapter 7	Edible vegetables and certain roots and tubers
Chapter 8	Edible fruit and nuts; peel of melons or citrus fruit
Chapter 9	Coffee, tea and spices, excluding maté (heading No 09.03)
Chapter 10	Cereals
Chapter 11	Products of the milling industry; malt and starches; gluten; inulin
Chapter 12	Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder
Chapter 13	
ex 13.03	Pectin
Chapter 15	
15.01	Lard and other rendered pig fat; rendered poultry fat
15.02	Unrendered fats of bovine cattle, sheep or goats; tallow (including "premier jus") produced from those fats
15.03	Lard stearin, oleostearin and tallow stearin; lard oil, oleo-oil and tallow oil, not emulsified or mixed or prepared in any way
15.04	Fats and oil, of fish and marine mammals, whether or not refined
15.07	vegetable oils, fluid or solid, crude, refined or purified
15.12	Animal or vegetable fats and oils, hydrogenated, whether or not refined, but not further prepared
15.13	Margarine, imitation lard and other prepared edible fats
15.17	Residues resulting from the treatment of fatty substances or animal or vegetable waxes
Chapter 16	Preparations of meat, of fish, of crustaceans or molluscs
Chapter 17	
17.01	Beet sugar and cane sugar, solid
17.02	Other sugars; sugar syrups; artificial honey (whether or not mixed with natural honey); caramel
17.03	Molasses, whether or not decolourised
17.05	Flavoured or coloured sugars, syrups and molasses, but not including fruit juices containing added sugar in any proportion
Chapter 18	
18.01	Cocoa beans, whole or broken, raw or roasted
18.02	Cocoa shells, husks, skins and waste
Chapter 20	Preparations of vegetables, fruit or other parts of plants
Chapter 22	
22.04	Grape must, in fermentation or with fermentation arrested otherwise than by the addition of alcohol

22.05 Wine of fresh grapes; grape must with fermentation arrested by the addition of alcohol

22.07 Other fermented beverages (for example, cider, perry and mead)
ex 22.08 and ex 22.09 Ethyl alcohol or neutral spirits, whether or not denatured, of any strength, obtained from agricultural products listed in Annex II to the Treaty, excluding liqueurs and other spirituous beverages and compound alcoholic preparations (known as "concentrated extracts") for the manufacture of beverages

22.10 Vinegar and substitutes for vinegar

Chapter 23 Residues and waste from the food industries; prepared animal fodder

Chapter 24

24.01 Unmanufactured tobacco; tobacco refuse

Chapter 45

45.01 Natural cork, unworked, crushed, granulated or ground; waste cork

Chapter 54

54.01 Flax, raw or processed but not spun; flax tow and waste (including pulled or garnetted rags)

Chapter 57

57.01 True hemp (*Cannabis sativa*), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)

IMPACT ASSESSMENT

THE IMPACT OF THE PROPOSAL ON BUSINESS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

Title of proposal: 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

The proposal:

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

It is necessary for the purposes of harmonising at Community level civil liability for all types of agricultural product, without exception. It pursues the following objectives:

- to increase the level of consumer protection against any damage to their health and property caused by a defective product;
- to improve the functioning of the internal market by raising the degree of approximation between national laws on product liability started by Directive 85/374/EEC.

These objectives cannot be met satisfactorily by the Member States and may, in view of the dimension and effects of the proposed measure, therefore be better achieved at Community level on the basis of a directive.

In addition, these objectives form part of the strategic target of delivering a single market for the benefit of all citizens, as envisaged by the Commission in its Action Plan for the Single Market (CSE(97)1, 4.1.1997). This involves enhancing the advantages of the single market by strengthening the guarantees offered to consumers on the basis of a high level of protection in the fields of health and safety.

The impact on business

2. Who will be affected by the proposal?

- (a) The sector directly affected by the proposal is that of the production of products of the soil, of stock-farming and of fisheries, and that of game and game products: this sector comprises 7 814 800 farms and accounted for 5.3% of civilian employment in the fifteen Member States in 1995.⁷

The distributive trades will also be affected in that Directive 85/374/EEC provides for liability on the part of the supplier if he fails to indicate the identity of the producer to the injured person (Article 3(3)). In addition, any importer of

⁷ Source: Eurostat, data included in *The Agricultural Situation in the European Union, 1996 Report, statistical annex, DG VI.A.2.*

agricultural products from third countries will be affected in that Directive 85/374/EEC considers him liable as a producer.

- (b) The size of businesses affected will obviously vary: large agricultural enterprises exist alongside small and medium-sized farms which produce, supply and distribute agricultural products in their natural state.
- (c) As for its geographical scope, the proposal will not have any impact whatsoever in those countries in which agricultural producers are already subject to liability without fault under Directive 85/374/EEC (Greece, Luxembourg, Finland and Sweden).

3. What measures will business have to take to comply with the proposal?

The businesses concerned will not have to take any particular measures to comply with the proposed provisions. Since this proposal supplements the existing rules in force concerning safety and official control systems, it does not add any new constraint in this regard. This is because businesses are already subject to Community safety and quality standards. The proposal merely penalises any ignorance as to these rules in terms of civil liability for damage caused to third parties resulting from a safety defect. In this respect, the proposal does not require businesses to be insured, which means that it falls within the competence of each Member State to determine whether or not this requirement should be laid down.

4. What economic effects is the proposal likely to have?

- (a) on employment: experience in those Member States which already lay down liability without fault on the part of agricultural producers shows that there is no negative effect (e.g. bankruptcies, redundancies, etc.) directly attributable to the existence of a system of liability without fault.
- (b) on investment and the creation of new businesses: the proposal does not impose any new safety standards on businesses which would require them to adapt their production and be costly in terms of investment. While the Directive does not require them to take out insurance, it is highly likely that many of them will do so. This is why the proposal will probably give rise to indirect costs for businesses. Nevertheless, in view of the need to ensure the safety of agricultural products on the market for reasons of public health, the Commission considers that the advantages of this proposal significantly outweigh any costs.
- (c) on the competitive position of businesses: the measure will have a beneficial effect on the competitive position of businesses. It will help boost consumer confidence in agricultural production and to enhance undistorted conditions of competition within the internal market. The proposal means that all businesses in the sectors concerned will be subject to the same level of liability, irrespective of the national market on which products are introduced. At present, products placed on the Greek, Luxembourg, Finnish and Swedish markets are covered by liability without fault, and this fact gives rise to unequal conditions of competition within the European Union.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

The proposal is not particularly aimed at small and medium-sized firms. However, Directive 85/374/EEC takes account of the impact which a system of liability without fault has for businesses in general, including SMEs, by establishing a fair distribution of risks between the producer and the injured person. This means, for example, that the financial impact of including primary products is in any case reduced by the deduction of ECU 500 in the case of material damage and the fact that the burden of proof rests with the injured person, who must assess whether it is worth initiating legal proceedings against the business.

6. Consultation

In preparing this proposal, the Commission has taken account of the recommendation of the European Parliament that Community product liability legislation be amended in order to extend its scope to primary agricultural products.

The Commission has adopted this proposal in time to meet the deadline laid down by Parliament (September 1997), which does not allow prior consultation to take place.

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