

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

ON NEW DIRECTIONS

ON THE LIABILITY OF SUPPLIERS OF SERVICES

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Background

- (1) The idea of a Directive on the liability of suppliers of services cropped up only recently, after adoption of the Directive on liability for defective products in 1985¹. No Community measures had previously been taken in this domain, although the possibility of introducing measures concerning liability for services had already been envisaged, notably while preparing the Directive on general product safety.
- (2) The 1985 Directive established a system of no-fault liability for damage caused by defective products. As regards services, one initial approach was that the same system should apply to products and services, which would also have entailed a system of no-fault liability for services. However on closer scrutiny it was considered preferable not to overturn the national systems, which are generally based on with-fault liability. Ultimately, a system envisaging with-fault liability with reversal of the burden of proof was adopted in the Commission's proposal on 24 October 1990.

¹ Council Directive of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (85/374/EEC) - OJ EC L 210 of 7.8.1985, p. 29.

- (3) It should also be noted that the 1985 Directive on liability for defective products was motivated not only by a concern for consumer protection but also by the imperatives of competition, given the widespread movement of products.
- (4) Apart from concern for competition in the field of services, the main objective of the October 1990 proposal was safety of services in order to foster consumer confidence in the internal market. A measure envisaging harmonisation of the liability systems was the instrument adopted to achieve this safety objective. The idea was that suppliers would have an interest in rendering safe services which do not cause damage, rather than having to prove their absence of fault or, failing this, compensate the victims.

Work to date

- (5) The proposal was welcomed by the Committee on the Environment, Public Health and Consumer Protection of the European Parliament and, on the whole, by consumer associations. The European Parliament's Committee on Economic and Monetary Affairs also adopted certain amendments favourable to consumers.
- (6) On the downside, however, the Economic and Social Committee rejected the proposal in an opinion delivered in 1991 and many professional circles came out against it. It was the subject of intense discussion within the Committee on Legal Affairs and Citizens' Rights, responsible for this dossier at the European Parliament, and this finally led to the adoption of amendments which would have voided the

proposal of much of its substance, notably by excluding a number of important sectors. Since this dossier was referred back to it at the plenary session of the European Parliament in January 1993, the Legal Affairs Committee at its meeting of 22 and 23 November 1993 asked for the presentation of a new proposal in this domain.

(7) The debates on the Commission's proposal have seen the emergence of three alternative scenarios for a possible Community system.

a) With-fault liability with reversal of the burden of proof, as proposed by the Commission.

b) The Committee on Legal Affairs and Citizens' Rights at the European Parliament has developed a formula of with-fault liability for obligations as to the means to be employed and strict liability, i.e. without fault, for obligations as to the results to be achieved.

c) The third hypothesis has up to now only been envisaged but not debated. It would involve a system of with-fault liability with reversal of the burden of proof and would introduce the notion of defective service. The defective service would be defined in relation to legitimate expectations and would have to be proven by the consumer.

(8) From the discussions to date the following two major conclusions may be drawn:

– the consumer's sense of weakness in a dispute with a professional most often results from a gap between the consumer's expectations and the actual content of this professional's undertaking (see scenarios (b) and (c) referred to under point 7);

- on the other hand, is it necessary to consider the specific circumstances of different service sectors, notably construction services and medical services.
- (9) Under these circumstances, it seems that the Commission's proposal stands no chance of being adopted without sweeping changes which would risk voiding it of much of its substance.

Subsidiarity

- (10) The Edinburgh European Council noted, in one of its conclusions, that the Commission intended to review various proposals, including the Directive on the liability of suppliers of services, around general principles which the Member States could supplement.
- (11) Any future Community measure concerning safety of services will have to take into account Article 129a of the EC Treaty, according to which the Community must contribute to the attainment of a high level of consumer protection.

New directions for the Commission's work

- (12) The problem of the liability of suppliers of services must be placed in a wider context than that of the 1990 proposal. Apart from improving the safety of services, the Commission is generally concerned about the consumer's standing in relations with suppliers of services and the difficulty of bringing an action in the event of a dispute. All avenues must hence be explored in order to do greater justice to this general concern.

- (13) As regards relations between consumers and suppliers of services, better information of consumers is a must. This information ranges from ensuring the clearest possible definition of what the supplier is actually promising and, hence, the consumer's legitimate expectations. The development of standards, codes of conduct and rules of the trade, to which the supplier could refer, would make it easier to clarify the undertaking and the attendant legitimate expectation. The Commission wishes to encourage and support the development of such voluntary rules at Community level, even if this is a long-term task, and without excluding the possibility of introducing directives.
- (14) Finally, possible solutions may be identified in the context of the Commission's follow-up to the Green Paper which it adopted in 1993, concerning guarantees for consumer goods and after-sales services (COM(93) 509 of 15 November 1993).
- (15) As regards access to justice, the fact remains that it will continue to be difficult and costly even if a more simplified and consumer-friendly liability system would encourage the development of negotiated solutions. It is in the interest of consumers - but often too of the suppliers themselves - to develop procedures for the simplified settlement of disputes. The Sutherland report has already aired a number of ideas in this domain. The creation of arbitration committees and ombudsmen will bring tangible improvements, while meeting the specific needs of the different sectors. The Commission will make concrete proposals as a follow-up to the Green Paper it has adopted on the access of consumers to justice and the settlement of consumer disputes in the single market (COM(93)576 of 16 November 1993).

(16) Finally, the specific circumstances of different services deserve greater consideration. The Commission will if necessary prepare draft texts concerning sectors in respect of which particular needs are established.

Conclusion

(17) All the above considerations - the negative reaction of the Economic and Social Committee and the responsible Committee at the European Parliament, severe criticisms from various professional circles in the services sector, and the need to examine the problem of the liability of suppliers of services in a wider context - have led the Commission to adopt new directions in this important domain. This means that the proposal of 20 December 1990 has to be withdrawn. In doing so we are not abandoning our concern for the safety of services. On the contrary, it is necessary to reconsider the best way of achieving this goal on the basis of appropriate consultations.

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DOCUMENTS

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