



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.01.1999  
SEC(1998) 2232 final

97/0244 (COD)

COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 189 b (2) of the EC-Treaty

on the common position of the Council

on the proposal for a Directive of the European Parliament and of the Council 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

## 1. History

Date of submission of proposal to the EP and the Council: 2 October 1997  
Date of ESC opinion: 29 January 1998  
Date of EP opinion on first reading: 5 November 1998  
Date of adoption of the common position: 17 December 1998

## 2. Subject of the Commission's proposal:

The aim of the proposal is simply to extend Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products to cover primary agricultural products and game, following Parliament's recommendation of February 1997 on the BSE case.

## 3. Comments on the common position of the Council

### 3.1 General

In its common position, the Council favours the Commission's original proposal without any fundamental changes. The Council unanimously supported the Commission's text, rejecting all Parliament's amendments.

### 3.2 The European Parliament's amendments from the first reading

By partially adopting the report submitted by its competent committee, Parliament approved the Commission's proposal subject to 8 amendments. The Commission adopted **none of these amendments**, and therefore did not change its proposal.

The amendments approved by Parliament fall into two groups:

Group 1 amendments aimed at **substantially revising the basic directive** of 1985, going beyond the aims of the Commission proposal (amendments **5, 6, 9, 13 and 15** concerning psychological damage, the threshold, the time limits, the compensatory limit and the fundamental review of Directive 85/374/EEC in 2000)

Group 2 amendments aimed at **clarifying certain points specific to primary agricultural products** (amendments **1, 2** on liability for intermediate products and means of production and **10** on the obligation to present an impact report in 2002).

The Commission accepted none of the amendments in the first group on the grounds that they went beyond the scope of the original proposal (to extend Directive 85/374/EEC to cover primary agricultural products), and given that there had been no serious and thorough investigation of the justification for the proposed changes. Nevertheless, it said

that it intended to look into the points raised by Parliament when drawing up its second application report (stipulated under Article 21 of the Directive) to be presented in 2000, following appropriate consultation with the parties concerned on the basis of a Green Paper.

It accepted none of the amendments in the second group on the grounds that their aims were already catered for in Directive 85/374/EEC, and that the amendments were therefore superfluous if Articles 2, 3 and 21 were interpreted correctly.

In unanimously supporting the Commission's original proposal, the Council intends to disregard any question concerning the review of the 1985 directive under the current procedure, in view of the Commission's intention to draw up its application report in 2000. The delegations are also convinced that the amendments in the second group are superfluous. The Council has therefore not incorporated any amendments in its common position.

### 3.3 New provisions introduced by the Council and the Commission's position

The only technical change incorporated into the Council's text is the date of entry into force 18 months from the date of publication in the OJ, instead of 1 January 1999 as proposed by the Commission.

Since Parliament had urgently requested application of Directive 85/374/EEC to the primary agricultural sector, the Commission had proposed a short deadline (1 January 1999), reviewable in the event of a delay in the co-decision procedure (Cf. COM(97)478, point 22).

Since the first reading had taken longer than expected, the Commission did not object to the later date for application as decided by the Council.

### **4. Conclusion**

The Commission supports the common position of the Council, which corresponds to its original proposal without any substantial changes.

## ANNEX

ANALYSIS OF THE AMENDMENTS PROPOSED BY THE EUROPEAN  
PARLIAMENT

## First reading

## Liability for defective products (COM(97)478 – 97/0244 (COD))

Amend.	Provision concerned	Content	Accepted by Commission (YES/NO)	Accepted by Council (YES/NO)
1	Recit. 5	Liability of producers of intermediate agricultural products	NO	NO
2	Art. 1.1a (new) (Art. 3.1 Dir. 85/374/EEC)	Clarification of the concept of "primary product"	NO	NO
5	Art. 1.1b (new) (Art. 9.a Dir. 85/374/EEC)	Inclusion of psychological damage	NO	NO
6	Art. 1.1c (new) (Art.9.b Dir. 85/374/EEC)	Suppression of the ECU 500 threshold	NO	NO
13	Art. 1.1d (new) (Art. 11a Dir.85/374/EEC)	Period of 20 years for "hidden defect"	NO	NO
15	Art. 1.2a (new) (Art. 16.1 Dir. 85/374/EEC)	Financial limit of ECU 140 million	NO	NO
9	Art. 1.2b (new) (Art. 21 Dir. 85/374/EEC))	Presentation in 2000 of a proposal amending Directive 85/374/EEC	NO	NO
10	Art. 2.2a (new)	Report in 2002 on the impact of the new directive on the agricultural sector	NO	NO