



COMMISSION OF THE EUROPEAN COMMUNITIES

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**FIRST REPORT**

**ON THE APPLICATION OF**

**COUNCIL DIRECTIVE ON THE APPROXIMATION**

**OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS**

**OF THE MEMBER STATES CONCERNING**

**LIABILITY FOR DEFECTIVE PRODUCTS**

**(85/374/EEC)**

(presented by the Commission)

**First Report on the application of Council Directive  
on the approximation of laws, regulations and administrative provisions  
of the Member States  
concerning liability for defective products (85/374/EEC)**

This is the first report by the Commission on the application of Council Directive on the approximation of laws, regulations and administrative provisions of the Member States concerning liability for defective products (85/374/EEC) ("the Directive") as provided for under Article 21 of the Directive.

To date all Member States with the exception of France<sup>1</sup> have taken measures to implement the Directive into national law. The options given in the Directive in relation to the inclusion of agricultural products, the exclusion of a development risks defence and the existence of a ceiling on liability have been taken advantage of by a number of Member States. The Annex sets out precise details of how each Member State has implemented the Directive and how it has exercised its options. The Annex includes the new Member States and reflects the position as at 20 February 1995.

The Directive is generally perceived to have been an important piece of legislation. It has contributed towards an increased awareness of and emphasis on product safety. The Directive has eased the burden on the Plaintiff in proving his case. At this moment, the Directive does not appear to have had the effect of increasing the number of claims made, nor does there appear to have been an increase in the level of insurance premiums as a consequence of the Directive.

However, experience is still limited and is only likely to develop slowly. For example, there is only very limited jurisprudence from all the Member States and to date no national court has referred any question of interpretation to the European Court. The Commission requested a study on the application of the Directive and a copy of this study is available at the Office for Official Publications of the European Communities<sup>2</sup>.

Having regard to the information obtained regarding the application of the Directive, the Commission does not consider it necessary, at this stage, to submit any proposals for amendment to the Directive. Nevertheless, certain aspects of the Directive concerning the protection of consumers and the functioning of the Internal Market require continued monitoring. This is the case, for example, with the exclusion by the majority of Member States of unprocessed agricultural products, whose impact the Commission will evaluate. The Commission, in accordance with Article 21 of the Directive, must present periodic reports to the Council and the Parliament and the Commission continues to monitor the implementation and the effects of the Directive.

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<sup>1</sup> Infraction proceedings under Article 171 of the EC Treaty are being pursued by the Commission.

<sup>2</sup> The Study reflects the position as at May 1994 and therefore does not include material on Austria, Sweden or Finland, nor the changes made to Greek law in November 1994.

## 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), O.J. N° L 210/29 of 7.8.85

### **CURRENT POSITION ON IMPLEMENTATION IN MEMBER STATES**

1. **United Kingdom** Consumer Protection Act 1987, Part 1 and Consumer Protection (Northern Ireland) Order 1987  
entry into force : 1.3.88
2. **Greece** Decree of 31.3.1988, published in OJ of 22.4.88,  
entry into force : 30.7.88. Replaced by Act 2251/94,  
published in Gazette I, 191 of 16.11.1994
3. **Italy** Decree n° 224 of 24.5.1988, published in Gazzetta Ufficiale  
n° 146 of 23.6.88, entry into force : 29.6.88
4. **Luxembourg** Law of 21.4.89, published in Mémorial of 28.4.89,  
entry into force : 2.5.89  
and law of 6.12.89, published in Mémorial of 27.12.89
5. **Denmark** Law of 7.6.89, published in Lovtidende A n° 371, p. 1260,  
entry into force : 10.6.89
6. **Portugal** Decree n° 383 of 6.11.89, published in Diário da República n° 255,  
p. 4880, entry into force : 21.11.89
7. **Germany** Law of 15.12.89, published in Bundesgesetzblatt 1989 I 2198,  
entry into force : 1.1.90
8. **Netherlands** Law of 13.9.90, published in Staatsblad 1990 no. 487,  
entry into force : 1.11.90
9. **Belgium** Law of 25.2.91, published in Belgisch Staatsblad of 22.3.91,  
p. 5884, entry into force : 1.4.91
10. **Ireland** Liability for Defective Products Act 1991, (no 28 of 1991)  
and S.I. N° 316 of 1991  
published by Stationary Office, Dublin 2, PL N° 8520, entry into  
force : 16.12.1991
11. **Spain** Law No. 22/1994 of 6 July 1994 de responsabilidad civil por los  
danos causados por productos defectuosos, published in the  
Boletin Oficial del Estado of 7.7.1994, pg 21757, entry into  
force : 8.7.1994

12. **Austria** Law of 21.1.88, published in Federal Gazette 99,  
entry into force : 1.7.1988,  
amended by Law of 11.2.1993 and Law No. 510/1994

13. **Finland** Product Liability Act of 17.8.1990, n° 694,  
entry into force : 1.9.1991,  
amended by Act n° 99/1993 of 8.1.1993 and  
Act No 879 of 22.10.1993

14. **Sweden** Product Liability Act of 23.1.1992,  
entry into force : 1.1.1993,  
amended by Law n° 1137/1992

**Options :**

**United Kingdom, Italy, Denmark, Netherlands, Belgium,  
Ireland, Austria :**

- Development risks defence included
- Primary agricultural products excluded
- No financial ceiling

**Portugal, Germany, Spain (1) :**

- Development risks defence included
- Primary agricultural products excluded
- Financial ceiling

**Luxembourg, Finland :**

- Development risks defence excluded
- Primary agricultural products included
- No financial ceiling

**Sweden, Greece :**

- Development risks defence included
- Primary agricultural products included
- No financial ceiling

(1) Spain excludes this defence in respect of medicines, food or food products intended for human consumption.

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