

DFH/JPC/nd/22.3/24/1

1 October 1998

Mrs Marie-Noëlle Lienemann,
Member of the Committee on the Environment,
Public Health and Consumer Protection,
European Parliament,
Rue Wiertz,
B-1047 BRUXELLES

Dear Mrs Lienemann,

RE: LIABILITY FOR DEFECTIVE PRODUCTS

UNICE is closely following the discussion taking place on the proposal for a directive amending directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (COM(97)0478-C4-0503/97-97/0244(COD)).

UNICE is greatly concerned that the amendments adopted by the Committee on environment, public health and consumer protection go far beyond the initial aim of the Commission proposal (i.e. to extend the scope of the directive concerning liability for defective products to primary agricultural products), in particular since the European Commission's 1995 first report on application of the directive did not mention any problems with regard to the articles to which amendments are suggested.

Some of the proposed provisions would have the consequence of extending liability of producers to so-called development risks on the one hand, introducing a reversal of the burden of proof on the other hand and deleting the ten-year limitation period thereby introducing unlimited liability on producers.

UNICE has always opposed introduction of liability for development risks. These kinds of risks are *per se* unknown and almost impossible to ensure. The additional costs entailed in covering these unforeseeable risks would act as a major disincentive for firms to innovate.

The proposal to change the regime for the burden of proof is an unacceptable departure from the regime set out in directive 85/374/EEC. This would have the consequence of affecting virtually all Member States' laws when there is no evidence of significant problems with current burden of proof arrangements.

UNICE is even more concerned that deletion of article 11 of the directive 85/374/EEC taken in tandem with deletion of financial thresholds as set out in article 9 and 16 of the directive would introduce an unlimited liability in terms of time and money.

All these changes would have the consequence of:

- substantially increasing costs, particularly insurance costs in certain high-risk sectors;
- inhibiting innovation;
- reducing European competitiveness at a time where European industry is struggling to create jobs and compete in world markets;
- affecting employment;
- putting at stake existence of some companies and in particular SMEs;
- unnecessarily reducing consumer choice.

I understand that the vote in plenary should take place on 20 October 1998. In the light of the above arguments, we would urge you to vote against the amendments tabled by Mrs Roth-Berendt, except for those relating specifically to extension of the above directive to primary agricultural products.

Yours sincerely,

Dirk F. Hudig
Secretary General