

DI/JPC/CA/nd/22.4/8/1

15 March 2001

Dear Member of the European Parliament,

RE: REVISION OF DIRECTIVE 92/59/EEC ON GENERAL PRODUCT SAFETY

I am writing to you in the context of the European Parliament's second reading of the above-mentioned proposal and more specifically in view of the forthcoming exchange of views on the issue that will take place in the Committee on the Environment, Public Health and Consumer Policy, of which you are a member.

UNICE has assessed the Council common position and, while it understands the main purpose of this Directive and acknowledges that some points have been improved, it is still concerned that the text will place unnecessary and significant burdens on the economic actors concerned, without evidence of increased safety for consumers.

A detailed UNICE position paper developing these arguments was sent to you in September 2000, but we would like to highlight again some of European industry's major concerns.

- ? *Article 1, paragraph 2*, sets out to clarify the relationship between the General Product Safety Directive and sectoral Community legislation on product safety. UNICE believes it indispensable to develop practical guidance to clarify interaction between different instruments to avoid duplication of safety requirements. Such guidance should be in place and available before the date for implementation of the Directive in order to achieve harmonised practice and enforcement.
- ? UNICE still thinks that the notion of risk which pervades the Directive (i.e. *article 2*), is very broad and could create adverse effects on consumers, business and public authorities. It could lead to an extremely extensive interpretation of the provisions of the Directive and to a multiplication of obligations for all sectors concerned. UNICE asks for clarification of this concept.
- ? *Article 2 a)*, sets out the definition of "product" and extends it to "any product –including in the context of providing a service". UNICE fully supports the repeated assertion that services should be excluded from the scope of the Directive and urges Members of the Committee that the proposed extension be removed. UNICE believes that the text, as it stands, creates many practical doubts for interpretation and workability. Furthermore, UNICE opposes the inclusion of 'migrated' products within the scope of the Directive.

We think that producers should be discharged from responsibilities if they have clearly specified, before the marketing of the product, that it is only for professional use.

- ? UNICE has serious concerns about the use of the term “could” in *article 8*, and its implications. According to this article, the competent authorities of the Member States would be entitled to take certain measures for products that could pose risks or could be dangerous. UNICE believes that this would confer disproportionate discretionary powers on the competent authorities and might cause great uncertainty and unpredictability for business and society as a whole. If this Directive aims at establishing a clear and consistent legal framework for the safety of products, UNICE urges removal of the said term from the wording of article 8.
- ? *Article 13* empowers the Commission to ban exports of dangerous products. UNICE strongly opposes the ability of the Commission to decide a total ban on export of such products. Prohibiting export of products meeting safety standards of importing countries which are different from those of the EU would unnecessarily restrict EU exports and damage competitiveness within individual Member States and across the EU. Moreover, UNICE believes that there are serious doubts as to whether there is competence under the Treaty and, if so, how this can be reconciled with the relevant WTO provisions.
- ? *Annex 1* of the common position foresees the possibility of European guidelines on notification. UNICE supports the development of these guidelines at European level as soon as possible in order to avoid the risk of having a fragmented approach to notification in the different Member States. We therefore propose addition of the following introductory sentence to Annex 1, par 2: “ 2. *Within 3 months from the date of publication of the Directive in the Official Journal of the European Communities, the Commission, assisted by....*”

We hope that in your deliberations it will be possible to ensure that, in the quest for better consumer protection in the field of product safety, a genuine and fair balance between consumers and business is struck.

Yours sincerely,

*(original signed by)*  
Daniela Israelachwili  
Acting Secretary General