

consists of articles - one in each issue • contributed by Chamber members in accounting, law and consultancy companies on technical subjects of special interest to foreign businessmen active in Greece.

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The first round of the ongoing conflict of consumers versus industry ended with a minor benefit in favor of the former. However, such a conflict is anticipated to have much more rounds with developments that might be of major importance over the following years.

1.

Council Directive 85/374/EEC of 25.7.1985 "on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products" ("the Directive") was the result of the European Community Legislator's choice to weight consumers' interests and the interests of producers of products which, according to the definitions referred to therein, might be defective. The Directive was incorporated within the Greek legal system firstly under joint Ministerial Decision No B.7535/1077/31.3.1988, and then under Law 1961/1991 (Articles 7-17) as it was in force and as it was amended by Law 2000/1991 (Articles 26-29) and, finally, under Law 2251/1994 (Article 6) which is currently in force.

It is true that, despite all efforts pertaining to the weighting of interests, several provisions of the Directive have constituted and still remain the subject matter of a controversy between consumers, on the one part, and industrialists and insurers on the other. However, in its First Report on the implementation of the Directive in 1995, the Commission ended up with the following: "...at present, the Directive seems not to have had as a consequence the increase in the number of claims nor the increase in the amount of the insurance premia... However, the prevailing practice is still limited and will develop slowly... The Commission believes that It is not necessary at this stage to submit any motion whatsoever concerning an amendment to the Directive. Nevertheless, certain subjects of the Directive pertaining to the protection of consumers and the oper-

ation of Internal Market entail continuous follow-up. To give an example, such is the case of exemption by the majority of the Member States of the non-processed agricultural raw materials, whereof the consequence will be examined by the Commission."

## 2. AGRICULTURAL PRODUCTS

In fact, and especially in view of the issue of the "mad cow disease" and the extensive discussions raised with respect to it, the Commission proposed on 1 October 1997 the amendment to the Directive for the purpose of letting the unprocessed primary agricultural products and game be included in the definition of "products" according to it. It is noted that while the above mentioned primary products, as well as game, are not covered by the Directive, they could have been included therein upon its incorporation and at the Member States' discretion, something which has been done by Greece, France, Luxemburg, Sweden and Finland deal with this matter in the same manner as in Greece.

The Commission's above mentioned proposal was the outcome of a findings report drawn up by a committee established for considering the matter of the mad cow disease and of a subsequent decision issued by the European Parliament and dated 19 February 1997. On 17 December 1998 the Council of Ministers approved the Commission's above mentioned proposal and the whole matter was definitively finalized with a positive second voting in the European Parliament on 23 March 1999 and the ensued modificatory Directive No 99/34/EC.





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### 3. Pending Amendments to the Directive

Although the above mentioned amendment to the Directive was the anticipated conclusion of an almost three-year process at a European Community level, it doesn't happen in the same manner with other amendments to the Directive which (a) "are promoted" from the consumers' camp, (b) have been formulated by Mrs. Dagmar Roth-Behrendt, reporter to the Commission of the European Parliament on Environment, Public Health and Consumer Protection, and (c) are summed up as follows:

**3.1 Burden of proof:** According to the Directive, the plaintiff-injured party bears the burden of proving the damage caused, the defect of product and the causal relation existing between the defect and the damage caused. The same applies in Greece according to the principles of procedural law. It is proposed that the procedure of proving the non-existence of a defect and the non-existence of any causal relation between defect and damage caused, should pass on to the defendant-producer in "typical cases" in which the Court may conclude on the existence thereof, so that the plaintiff-injured party would only be required to prove the damage caused to him/her. However, it is not clarified in the proposal which such "typical cases" could be.

**3.2 "Development Risks":** The proposal refers to the abolishment of the ground provided for in the Directive for non-liability on the part of the producer, where by it is proven that when the product was launched, the level of scientific knowledge and technical know-how could not permit the discovery of the existence of the defect. The Directive allows, of course, with respect to this matter, a ruling to the contrary by the Member States, that is, a provision preserving producer's liability even in that case. The above-mentioned deviation, however, was not adopted by the Member States whereof the majority, including Greece, adopted the discharge of the producer in such a case with the excep-

tion of Luxemburg, Finland and Spain, the latter countries focusing, especially, on medicines and foodstuff intended for human consumption.

**3.3 Maximum Limit of Liability:** The Directive permitted Member States to provide, upon incorporation thereof, for a maximum pecuniary limit, as regards producer's liability with respect to compensations by reason of death or bodily injury caused by identical objects bearing the same defect, of not less than 70,000,000 euros. It is proposed that the above mentioned maximum limit should be abolished (on the basis of the assertion that the enactment of a maximum amount of liability may lead to the non-compensation of the total number of injured parties in cases in which their number is large) or that such maximum limit should, alternatively, double. It should be noted that the entirety of Member States, including Greece, but with the exception of Germany, Spain and Portugal, do not provide for such a producer's liability maximum limit.

**3.4 Minimum limits of Damage Caused to an Item of Property:** The Directive exempts from the notion of damage, and therefore, does not provide for any compensation, any amount up to 500 euros in cases of damage caused to or destruction of an item of property owned by the damaged party other than the defective product. It is proposed that such minimum limit of damage should be abolished, in Greece no such limit was provided for upon the latest incorporation of the Directive which is currently in force.

**3.5 Prescription/Peremptory Time Limit:** The proposal refers to the prolongation of prescription from three years, which is what is presently in effect, to five years and to the abolishment of the ten-year peremptory time limit according to the Directive. Law 2251/94 follows the above mentioned European Community provisions under an autonomous manner of dealing with this matter vis-a-vis the provisions on prescription and peremptory time limit found in other laws (law on torts, law on contracts) which may be chosen by the damage party for the compensation of his damage.

3.6 Moral (non-pecuniary) damage: It is proposed that the moral (non-pecuniary) damage should be specifically referred to in the Directive (the Directive refers to the national provisions of Member States). Such non-pecuniary damage is governed in Greece by the provisions on torts.

The above mentioned proposed amendments to the Directive were not finally accepted by the Council of Ministers, which, on 17 December 1998, accepted only the amendments pertaining to the primary agricultural products, nor were they accepted by the European Parliament at the relevant voting procedure of 23 March 1999.

#### 4. Evaluation of the Proposed Hillings

The proposed rulings are based on a line of argumentation, which, like the line of argumentation providing to the contrary, is not the subject matter of this article. The point that may be established here is that today there is no adequate evidence regarding the need of reversal of the weighting of interests done under the Directive of 1985, since no reply is given to the following basic question : how many claims do not currently prosper by reason of "defects" existing in the Directive? The consumer associations will, of course, continue to "press" towards the reform of the existing legal status in their favor while industrialists, intermediate traders (e.g. distributors) and insurers/underwriters will, of course, continue to react.

#### 5. The Green Paper

The exchange of arguments of the parties concerned has recently continued within the framework of the publication on 28 July 1999 by the Commission of the Eu-

ropean Union of the Green Paper on the Directive. Under the Green Paper the Commission recommended to all parties concerned to submit to it their arguments by the end of November 1999 in view of its next following Report on the implementation of the Directive which is expected to be published late in 2000 on basic issues, such as :

- Does the Directive operate correctly in practice?
- Do the legislative differences between the Europe an Union and other States (e.g. U.S.) have any adverse effects on trade among different countries?
- Would it be appropriate for the Member States to be able to establish stricter provisions on liability than the provisions included in the Directive or is the harmonization of their legal systems absolutely necessary?
- Which is the relation/influence between the Directive and the Social Security Systems in the Member States?
- Which is the effect of the Directive on the insurance market and the cost of products?
- Is it necessary for the quantitative liability limits of the Directive to change?
- Is it necessary for the Directive to be extended to real property?

After processing the positions of the parties concerned, the Commission is expected to proceed with proposals on the change of the Community legislative framework which, beyond doubt, will influence a considerable number of "factors in the market."