ANALYSIS OF THE REPLIES TO THE COMMISSION GREEN PAPER ON PRODUCT LIABILITY

WARNING

This document is a first overview of a large number of comments which interested parties sent in reply to the Green Paper.

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Introduction

The aim of this report is to provide an analysis of the replies on the questionnaire included in the Green Paper[1] on Product Liability.

The replies are presented following the scheme of the questions contained in the Green Paper.
You will find the title of the questions and for each of them you will find a list of replies provided by the different organisations. Where possible, for each reply the arguments are grouped in favour and against the amendment envisaged.

The report is composed of a text of 23 pages and two Annexes.
Annex I contains a summary divided by "stakeholder", pointing out the general trend of each stakeholder's reply. The second annex contains the list of acronyms of the different organisations providing information.

1. The Proper Functioning of the Directive in Practice

According to most of the replies, the Directive functions properly and has created an extremely sophisticated and consumer orientated system[2]. Some replies also point out that the implementation of the Directive is still underway, so that a new amendment of the Directive at the present stage would not be appropriate[3].

Moreover there are voices saying the Directive should not be revised to become the common and sole system of liability for defective products; Article 13 of the Directive should not be deleted because it is necessary that the victim can choose between different remedies.[5] The rules governing contractual liability should not be excluded. This would be against the principle of freedom of contract and could have a negative impact on the victim that has suffered damage as a result of a defective product[6].

[1] The replies analysed in the present report are those provided to the consultant by DG Internal Market (see Annex II).
[2] NOVARTIS; EFPIA; Ministry of Justice of Finland; NOKIA; FEB; MEDEF; COPA-COGECA; FIP; GITES; EUROCHAMBRES; AUGUST ET DEBOUZY; INC; ICC; Eurocommerce; EPIA; ELO; ECF; VNO-NCW; CBI; NFUE; CONFINDUSTRIA; BDI; DIHT; BAH; GDV; BMJ; EACEM; EUCOMED; ADAC; AGV.
[3] ORGALIME; FOGF; CELCAA

[5] Government of Germany ; Bavarian State Ministry of Justice ; Ministry of Justice of Finland ; DIHT.
[6] Bavarian State Ministry of Justice

However, at least for certain products, the amendment of the provisions, concerning limitations, the case of damage to property and provisions concerning time limits should be reconsidered[7]. An amendment to the Directive has been proposed based on the experiences with the 3rd Restatement of Torts (1997) in the USA, where it was recognised that a distinction should be drawn between manufacturing defect cases and design defect and failure to warn cases. It is suggested that for manufacturing defect cases a strict liability and expectation test works, whereas for the latter cases it does not. For design defect and failure to warn cases, claims should be based on a reasonable forseeability test as in negligence[8].

Claims in many cases are brought under a Member State's ordinary civil liability law (contractual and tort law). In some countries with a strong social security system (like Sweden), the system offers redress for all damages and no other alternatives exist[9].

In Germany claims are based on national general tort law under which the claimant may be given more compensation than under civil law on product liability. The German law, for instance, provides for compensation for non-material damages, whereas the law on product liability does not[10]. Other reasons for this are that the Directive on Product Liability does not cover:

- Damages that are linked to a breach of the standard of care in relation to product safety
- Damages lower than Euro 500.
- Damages to property intended for professional use.
- Damages to the defective product itself[11].

The Directive has not discouraged the marketing in one Member State of products originating from another Member State. Producers say to be confident in relation to the safety of their products, and, therefore, the risk of claims under whichever product liability regime doesn't seem to influence their decision to place products on the market in other Member States[12].

The replies reveal a large opposition to the minimum clause[13], stating that it would mean reverting back to the situation existing before the introduction of the Directive and this would give rise to a legislative diversity, which could cause obstacles to the free movement of goods[14].

[7] Ministry of Justice of Finland.
[8] CBI
[9] NOVARTIS
[10] AGV.
[11] ADAC.
[12] ORGALIME
[13] BEUC; PEOPIL ; Ministry of Foreign Affairs in Portugal; PEOPIL
[14] CUATRECASAS

Some others, however, support its integration, arguing that it could lead to the dynamic development of consumer protection that is intended to exist by virtue of Article 153 of the EC Treaty. Applying lessons learnt from the international arena could assist in determining new provisions on a national level[15].

The need to amend the Directive is also being put forward by those advocating "a genuine EC product liability regime beneficial to consumers". A greater harmonisation is suggested by removing many of the derogations from the scope of the Directive as well as the removal of financial ceilings and time limits for liability[16].

In the same line of thought it is also being stated that the different national systems of control/supervision also contribute to an inefficient and inadequate application of the Directive[17]. As the Directive leaves certain discretion to Member States, it is said to encourage the creation of diverging legislation (e.g. the very strict German system) in the Member States, which can influence the producer's decision to place products on the market. It also has consequences on the different applicable laws, as international private law must also be adhered to.

2. Position of European Business vis-à-vis their Foreign Competitors

The main trend of the replies is that the Directive does not weaken the position of European business vis-à-vis their foreign competitors.[19] For many different reasons producers claim that the design of their products is intrinsically safe. The legal regime of product liability is of no special concern for producers in the engineering industry. There would be however a negative impact if competitiveness is distorted because of costs of litigation and insurance.[20]

It has been stated that US-product liability is sometimes a strong reason for European producers to refrain from exporting products to the United States.[21] In this context the point has been made that the unpredictability concerning the pressure on producers to settle for unjustifiably higher levels has discouraged European companies to enter the US market[23].

[15] AGV ; BEUC.
[16] CUATRECASAS; Ministry of Foreign Affairs of Portugal ; MM
[17] CUATRECASAS.
[18] CUATRECASAS.
[19] ORGALIME ; AFM ; NOVARTIS ; CUATRECASAS ; Ministry of Justice of Finland ; FEB ; Portuguese Ministry of Foreign Affairs ; VNO-NCW ; ADAC
[20] FIP
[21] ORGALIME
[22] FIP
[23] CBI

In the United States, producer liability is framed by three elements:

- Provision of stricter liability rules;
- The encouragement of court settlements through the legal system; and
- The absence of a uniform federal legislation.

Taking these differences into account, a provision, which covers insurance conventions for the enterprises exporting products in those States could be introduced or an increase of out-of-court dispute resolution to reduce legal costs could be encouraged[24].

In the field of petroleum trading, the position of European competitors rarely differs from that of non-European competitors, since English law is usually chosen by the parties to govern the contract[25].

3. Compensation of Victims

The replies reveal that most of the product liability cases have been compensated on the basis of national liability and only few judgements are based on the Directive[26]. In the vast majority of cases the parties come to an out of court settlement[27]. Insurers[28] in particular, confirm that over 90% of claims concerning a product causing damage are settled out of court. In these cases the victims do not have great difficulties obtaining compensation.

In cases where the Directive has been applied in Italy, it has been stated that compensation was easy to obtain[29].

In Portugal there have only been 200 claims addressed since the date of the implementation of the Directive. These are cases regarding labelling, energy problems and insurance companies. The Directive is rarely applied, and it is said to be very difficult to reach out of court settlements[30].

In Spain there is a rising trend in the award of compensation by courts, most of which has been granted on the basis of Spanish civil liability legislation, namely articles 25 to 28 of the Protection of Consumers and Users Law (Law 26/1984)[31]. As for the speed and effectiveness of the receipt of compensation, there seems to be insufficient experience on the application of the Directive.

Certain features of the Spanish legal framework that should be borne in mind:

[24] ADICONSUM
[25] AFM
[26] NOVARTIS
[27] BEUC ; ORGALIME ; FEB ; AUGUSTE ET DEBOUZY ; CBI ; BMJ.
[28] GDV
[29] CONFINDUSTRIA
[30] Ministry of Foreign Affairs of Portugal
[31] CUATRECASAS

- Spanish tax legislation discourages claims for compensation for damages, since the compensation is partly taxed as if it were income.
- Spanish procedural law is very formal and strict concerning the submission of evidence. Moreover, the said law does not envisage the use of class actions but the so-called litisconsorcio activo, whereby several plaintiffs may jointly bring proceedings.

In Finland, as to the compensation on the basis of the Product Liability Act or the Consumer Protection Act, between 1.1.1993 and 22.11.1999, forty six out of seventy one cases of product liability before the Consumer Complaint Board were decided on the basis of the Product Liability Act, as to twenty five on the basis of the Finnish Consumer Protection Act[32].

4. Impact of the Directive on the Victim's Interests

In general there is adequate protection for victims under the provisions on strict liability regardless of fault. The present balance does not need to be changed since the overall costs of product liability cases are small compared to the enormous cost of social security[33].

There are some countries like Portugal, where the need is felt to reinforce the victim's interests[34]. The situation is estimated to be very different in those countries, where there is a better functioning social security system like Finland and Belgium. [35]

In Spain the change in public opinion and the increase in awareness of issues regarding product liability rules occurred prior to the Directive and is mainly due to certain cases in particular, to the Colza oil case, and to the adoption of Law 26/1984.

There are no clear grounds indicated for amending the Directive in block. However, certain partial amendments could be introduced concerning the following aspects:

- A distinction could be drawn between manufacturing defects on the one hand, and defects of design and defects in instructions and warnings on the other.
- A system of liability closer to the traditional concept of negligence could be established in the case of defects of design and defects in instructions and warnings.
- Removal of the criterion of the consumer' legitimate expectations laid down in Article 6 of the Directive and the introduction instead of a risk-utility criterion[36].

[32] Ministry of Justice of Finland
[33] FEB ; CELCAA; FIP; GITES; EUROCHAMBRES; AUGUST ET DEBOUZY; INC; CBI
[34] Portuguese Ministry of Foreign Affairs.
[35] EPIA.
[36] CUATRECASAS

Some replies advocate to keep the balance (producer-consumer) established in the current Directive, arguing that a greater protection of the victims'/consumers' interests would lead to an increase of costs on the producers' side, which would in turn have knock on effects on consumers by creating an increase in product prices[37].

In Germany, the victim is said to be sufficiently protected by both the provisions of general law of tort and by contract law. In cases where the victim experiences problems with the burden of proof, the court gives him the advantage of a shift of the burden of proof or at least it facilitates the evidential burden[38].

The pharmaceutical industry accords a high importance to maintaining the balance between the interests of consumer protection and the encouragement of industrial innovation, stating that the balance has already progressively altered to favour consumer protection and increase the burden on industry. They argue that the introduction of a strict liability system has led consumers, the media and even some lawyers to have an unjustifiably high expectation that compensation will be available more widely than is legally the case and that the lack of proof from the claimant's side leads industry to incur significant costs (verifying the actual fact and nature of the alleged injury, investigating causation)[39].

Furthermore the Directive would provide 'insufficient guidance as to the rights of the consumer injured as a result of a flaw in the design of a pharmaceutical product'[40]. It believes the defect stems from an inconsistent application of the liability without fault and the fair apportionment of risk concepts and their interaction with the development of risk defence.

To circumvent doubts concerning the interpretation of the Directive, the following reforms have been proposed:

- At Article 6 (1) replace 'person' with 'consumer'
- At Article 6 (1) (d) add to the circumstances to be considered when deciding whether a product is defective 'the fair apportionment of risk between consumer and producer'
- At Article 6 (3) specify that a product that shall not be considered free from defect for the sole reason that marketing 'authorisation' has been granted or that it complies with the standard set by the appropriate, domestic licensing authority'.[41]

[37] Government of Germany
[38] DIHT
[39] EFPIA
[40] MM ; IM ; AGV
[41] IM

In Finland the implementation of the Directive is said to have weakened the victim's position in cases of damage to property, due to the fact that it introduced limitations into the Finnish system. Therefore the Ministry is of the opinion that the Directive should be amended in order to allow full compensation in cases of damage to property[42].

5. Social Security

Most of the replies reveal that the social security system is the principal mechanism of providing security and finance for injured parties.[43]

Where the social security system provides for full compensation of damage caused by death or physical injury in the industrial environment, without turning to the producer, the Directive is only of interest to consumer products. In Finland, for example, the compensation for serious personal injury is mainly acquired through the social security system. The right of reimbursement has been limited in cases where the compensation is based primarily on obligatory insurance[44]. In Austria there is a good relationship between the possibilities of awarding damages to the victim by the Directive and those of the social security scheme. The social security system pays the victim and then takes recourse against the producer[45].

In France compensation provided by a producer of any damage caused to consumers does not rule out social security coverage[46]. Moreover, alternative schemes are often applied, which allow the social security authorities to bring a claim against the liable producer. An ad-hoc compensation fund has been created for the victims having contracted the AIDS virus through blood transfusions.

In Italy the social security authorities have never initiated proceedings against the producer after having covered the victim's expenses. Victims can address a request to the social security system to obtain redress in the case of damage to working capacity[47].

Social security benefits in Spain are compatible with the compensation arising from the exercise of a right of action for civil liability. The Spanish law firm that replied to this question is not aware of a specific case in which the Directive failed in its compensatory function, but they fear that this could occur in the future, if the Directive remains in its current state.[48]. Arguing that the Directive is not intended for mass-scale disasters, it is considered that the increased application of the Directive could render it advisable to change the legal relationship between social security law and civil law. This could be done either by reinforcing the right to contribution of the social security institutions, or by removing or reducing the compatibility of the claims in question.

[42] Ministry of Justice of Finland
[43] ORGALIME ; EFPIA
[44] Ministry of Justice of Finland
[45] BMJ
[46] FIB
[47] ADICONSUM
[48] CUATRECASAS

In Finland, the compensation for serious personal injury is mainly acquired through the social security system. According to the Finnish Product Liability Act, the right of reimbursement has been limited in cases where the compensation is firstly based on obligatory insurance. Recently this provision has been amended concerning insurance in relation to the treatment of injuries with the result that, for example, the manufacturer of defective hospital equipment is required to reimburse a payment which the social security system has made to the patient[49].

In Portugal the effects of the Directive's application are said to be reduced, taking into account not only that social security covers sickness benefits, but also the contribution of the national health system to pay health expenses[51].

6. Defective Products - Actual Application

Most of the replies state that there are only a few cases in which the Directive has been applied[52] In the UK for instance the Directive is used routinely in food poisoning cases and claimants in group actions relating to medical products. The industry is said not to have been influenced.[53]

Some replies indicate that the Directive could affect activities in a way that companies would have to insure higher risks, resulting in additional costs considered negative for the competitiveness of the company[54].

Some others state that in the few cases that arose, companies have acted in accordance with the Directive and improved measures to ensure product safety. However, the introduction of strict liability is not seen to have enhanced any preventive effect, because such a system imposes liability irrespective of whether the producer has taken good care or not. On the contrary, liability based on fault would provide a better incentive to prevent damage since respecting the duty of care can absolve liability[55].

7. Insurance Sector

The implementation of the Directive does not seem to have an impact on the level of insurance premiums, as insurance policies usually provide global cover[56]. In general there has been no significant increase in demand on the insurance market after the application of the Directive. For some countries data have been provided:

[49] Ministry of Justice of Finland.
[50] Ministry of Justice of Finland.
[51] Ministry of Foreign Affairs of Portugal
[52] NOVARTIS; CUATRECASAS ; BDI ; ADICONSUM ; CBI ; Ministry of Justice of Finland; Orgalime
[53] MM
[54] VOI ; GVD.
[55] COLIPA.
[56] FIP ; FEB ; CBI ; CEA.

In Spain there are some judgements of the Court concerning cases decided on the basis of general civil liability rules, in which most defects are manufacturing defects. This is followed by defects in warnings and information regarding risks and finally, very few cases of defects in product design. According to some data provided by the Spanish National Consumer Institute, 3.3 % of the accidents have been attributed to the design or construction of the product and 0.3% to the lack of information provided by the manufacturer[57].

In Finland[58] insurance on product liability covers damage to professional activity, which is outside the scope of the Directive. In fact, most of the compensation on product liability paid by the insurance companies concerns this kind of damage.

British Industry[59] has not seen an increase in the demand for insurance cover relating specifically to the producer's liability under the Directive.

In Italy after the Directive came into force, the insurance market has seen an increase in demand of this type of guarantee[60].

In Germany every producer must have employers' liability insurance. This insurance covers not only claims under German product liability law, but also claims under national general tort law, including claims made to obtain compensation for personal injuries and material damages.

The Insurance sector[61] states that only 1-11% of claims settled, are based on defects in design while 60-70% of them are based on defects in manufacturing.

The Directive is said to have helped to improve the attitude of producers to produce safer products. Producers calculated their risks in a better way[62].

8. Six Principles

Most of the replies agree that the six principles should be retained[63]. The responses are unanimous regarding maintaining the balance, which was introduced by the Directive. Certain guidelines have been suggested[64]:

[57] CUATRECASAS
[58] Ministry of Justice of Finland.
[59] CBI
[60] CONFINDUSTRIA.
[61] CEA.
[62] GDV.
[63] AFM; Greek Ministry of Justice; VNO-NCW; NOVARTIS; EFPIA; ORGALIME; Ministry of Justice of Finland; NOKIA; Government of Germany; Bavarian State Ministry of Justice; BRAK; BDI; DIHT; GDV; BMJ; ADICONSUM; CONFINDUSTRIA; CBI; Presidential Conference of the Chambers of Agriculture in Austria; EACEM; EUCOMED; AK; COLIPA; CEA
[64] CUATRECASAS

- To provide a presumption of causation where the victim shows the damage and the defect, or a presumption of the defect, where the victim shows the existence of damage resulting from a product;
- To establish a sufficient degree or level of proof of the three elements required by Art. 4 of the Directive (damage, defect and casual relationship);
- To impose an obligation on the producer to furnish any kind of useful information so that the victim can benefit from specific items in order to prove his case;
- To require the producer to pay experts' expenses under certain circumstances.

It has been stated[65] that in Article 7(b) latent defects are not covered. The Directive also uses the word "probable", which gives wide scope for a producer to avoid liability. Therefore it is argued that the producer of defective products should not avoid liability because of doubt, whether it existed at the time of its first entry into the market or not.

It is a different case, if the cause of the defect is a novus actus interveniens over which the producer has no control- e.g., the case of Article 7 (f). The fact that a defect is due to compliance with mandatory regulations of authorities appears to fundamentally alter the rationale behind the Directive. The problem of a defective product causing injury is not altered by compliance with an irrational regulation. With production methods and component production becoming more and more difficult to trace, the joint and several liability of producers balances the interest of the consumer to obtain compensation[66].

9. Burden of Proof

The general trend of the replies reveals that most organisations think that the burden of proof provided in the Directive is effective[68]. In support of this thesis it is stated that the producer already provides all useful documentation and information in cases where damage occurs. It has been said that presumption can only be used as an instrument, if several judgements have similar conclusions. In product liability every case is an individual case. Therefore, presumption would not be the right instrument to be used[69].

For instance it has been stated that when a better product enters the market it does not mean that the original product was defective. The claimant, in such circumstances, will find it extremely difficult to obtain proof that, if the production of the product were slightly different, it would have avoided the injuries caused. The use of presumptions is a useful means in law to put the onus on the more

[65] PEOPIL
[66] PEOPIL ; Government of Germany
[67] PEOPIL ; Government of Germany
[68] NOVARTIS ; EFPIA ; NOKIA ; FOGF ; ADICONSUM ; DIHT ; MEDEF; FIP; AUGUST ET DEBOUZY; INC.
[69] DIHT.

informed person with the relevant insight, in order to prove to the Court why the product should not be considered to be defective.

A similar argument can be made for proving causation. In the interests of justice, it is unfair to oblige the victim to cover evidential costs when it is clear that the defective product was the only possible cause of the victim's injury. The reversal of burdens is a highly important issue. Rules on disclosure of documentation and pre-action applications for disclosure would necessarily assist in allowing a full investigation by both sides into the respective strengths of both parties' cases[70].

In particular, under the German jurisdiction, "prima facie proof" ("Beweis des ersten Anscheins") suffices. This means that the victim has the burden of proof for the defective product and the alleged damage, and "general experience" is decisive for the causal relationship between the defective product and the damage suffered. As nearly all cases could be solved by this jurisdiction, there is no need for changing the Directive at this point[71].

In Finland[72]where the courts can freely consider the value of evidence, taking into account, for example, the actual possibilities for providing proof and the problems related to establishing the link between the defect and the damage suffered. According to the Ministry, the discretionary power of the court should not be reduced by the introduction of formal rules on the burden of proof. In any case, the establishment of a percentage of the necessary proof should be avoided.

Regarding the food sector it is particularly difficult identifying the real cause of the damage, as a consumer generally eats several foods during the same period, often at several different places[73]. The burden of proof upon him is therefore particularly heavy, since the victim would never be able to prove whether he or she had actually eaten the defective product. Introducing a presumption of causal link would certainly not be of any help in these cases. The same remark applies also as to a possible presumption of defect. The very delicate balance between a producer's defence and compliance with the burden of proof by both parties, which results from the Directive as it is, must be borne in mind when the question of adopting new presumptions in favour of the plaintiff are discussed. The product liability regime, which is based on the individual responsibility of the producer, is not the right tool for solving large and collective problems. Regarding agricultural products such as genetically modified seeds are certainly not defective as such, even if they may cause damage to neighbouring fields. In this case, a presumption of defect when the damage and a causal link have been established would be inadequate.

[70] PEOPIL
[71] BAH
[72] Ministry of Justice of Finland.
[73] Coutrelis and Associates.

On the other hand there is a minority of parties who believe that it is necessary to amend the Directive in order to make it easier to determine the burden of proof[74]. In these replies it is pointed out that it is difficult for many consumers to obtain compensation because the victim is not able to understand the technical complexity of the process of damage and the producer has useful information.

Therefore these parties propose[75] that the consumer has to prove that damage occurred whilst he was using the defective product, but that the producer should prove that the product was not defective or that there is no causal link between the defect and the damage. On this basis some proposals have been provided[76]:

- The burden of the proof should be simplified,
- The Directive should provide an obligation on the producer to supply all the documentation and useful information to the victim, so that the latter could dispose of all the concrete elements,
- The producer should be responsible for the payment of expert evidence and all costs related to furnishing evidence. However, the victim should be obliged to reimburse the producer in the event the producer has not been proved negligent or liable.

Another argument in support of the amendment of the Directive is that the Directive should be amended in order to make it easier to determine the burden of proof in the sectors of food and medicinal products. For this scope the introduction of "prima facie" proof as it is used in German Civil law has been proposed. According to this principle, the proof is sufficient when a certain degree of certainty is reached by considering the 'practical life', and when doubts are reduced to a minimum even though they are not entirely deleted'[77].

10. Market Share Liability

Regarding the introduction in the Directive of the market share liability, all of the replies are negative[78].

[74] AGV; Ministry of Foreign Affairs of Portugal; ADAC.
[75] AGV.
[76] Ministry of Foreign Affairs of Portugal
[77] ADAC.
[78] NOKIA; CEA ; ADAC ; DRI ; MM ; CBI ; MEDEF ; FIP ; INC.

The introduction of the principle of "market share liability" is said not to adequately apportion liability and therefore it could not be applied fairly in practice[79]. It is being argued that market share liability destroys fundamental rules of causation, it renders manufacturers insurers of their own products and discourages research and development of new products. As a result, it is difficult for manufacturers to identify market share at time of sale. Furthermore, defendants also find it difficult to establish their own market share. The market share theory cannot apply fairly in practice so long as some manufacturers will be disproportionately responsible for each plaintiff's damages. As US courts have rejected such a theory, the European Commission should follow suit[80].

In France[81], in particular the application of the market share liability theory in Europe caused unanimous opposition, referring to its incompatibility with the principles of «European» liability law, its unfairness, its negative impact on the safety of products and the difficulty of insuring such a risk.

In a sector like the car-manufacturing sector[82], the liability regime must impose liability only on parties directly involved with the production or sale of a distinct defective product. Therefore, amendments to the system, which risk imposing liability on an innocent party, such as the concept of market share liability, are not considered to improve the system.

In particular in the Pharmaceutical sector[83], the answer to the feasibility of "market share liability" is very negative, stating that this theory has no place in a system of liability that values balance and fairness.

11. Development risk

Most of the answers[84] are in favour of maintaining the exemption on the basis of development risks because it is crucial to encourage research. In particular, the Government of Germany states that this kind of liability would prevent industry from the development and innovation of new products. The German Government states also that the consumer is sufficiently protected by the insurance provided by the social security schemes.

[79] DRI.
[80] DRI ; MM.
[81] MEDEF ; FIP ; INC ; AUGUST ET DEBOUZY.
[82] ADAC.
[83] EFPIA
[84] FEB ; MEDEF ; COPA-COGECA ; CELCAA ; FIP ; EUROCHAMBERS ; AUGUST ET DEBOUZY ;ORGALIME; NOKIA; CBI; COLIPA; Government of Germany; EFPIA.

In particular it is said that the elimination of the possibility for the manufacturer to be absolved of liability, if he can establish that the risk could not be detected due to development risks, would "create new problems by discouraging manufacturers from developing desirable products and from selling their goods in Europe". Article 7(e) has not resulted in a significant number of consumers left uncompensated[85] therefore the elimination of the development risks defence is not being recommended.

Contrary to this thesis it has been argued that the principle of equitable allocation of risks should apply to both undetectable as well as detectable defects. It is not justified that, due to such relativity of the strict liability principle, the consumer has to bear the full risk and the eventual negative consequences of scientific development and limitations[86].

In fact if the purpose of the Directive is to protect consumers from defective products, it is hard to see why producers should not be liable for development risks[87]. The existence of a development risk defence does not undermine the incentive for manufacturers to place products that are as safe as possible on the market. By definition, the development risk defence will only operate when manufacturers cannot, given the state of scientific and technical knowledge at the time the product was placed on the market, be aware of the defect. Thus, the development risk defence may tend to increase the level of protection provided to consumers by ensuring that manufacturers will tend to be aware of all technological advances[88].

In the UK[89] the development risk puts the consumer in a weak position, as firstly, he must prove that the defect existed, then see the producer provide evidence not that the defect was undiscoverable, but that it was undiscoverable in the light of the knowledge accessible to that producer. There is no political will to remove this defence, although one believes that its application should be applied as narrowly as possible. In order for the fair apportionment of risks to remain, it has been proposed that instead of removing the defence, a balance would be better achieved by making the producer prove that the defect was simply undiscoverable. In this way cases of genuine undiscoverability would be rare, and suggests that the Government or relevant industrial sector compensate claimants.

Regarding the insurance sector[90] it has been stated that difficulties will arise in pricing product liability insurance which covers development risks. As a result, it is possible that insurers would include a corresponding exclusion in their policies, even if the liability regime would not allow the development risk defence. Insurers do not believe that funds contribute to solving the problem.

[85] DRI.
[86] BEUC.
[87] PEOPIL
[88] ACEA.
[89] MM
[90] CEA

12. Financial limit

Most of the replies propose to remove the 500 Euro threshold.[91] The main argument mentioned states that consumers often suffer damage from products that fall below the 500 Euro threshold. Normally, in these cases, because no compensation is available under the general tort system (qualified requirements), the consumer is left without any right to compensation.[92]

As for the limitation of a global liability of the producer to 70 million Euro, it has been considered that it should also be removed in order to respect the fundamental right of redress for damage suffered; only damage should be compensated, but it should be fully compensated.[93]

It has been pointed out that victims in Germany tend to claim under the general provisions of tort law and of contractual law, where a threshold clause does not exist. In case this limit is increased, this increase should be kept reasonable.[94]

Some other replies argue that the 500 Euro threshold is a significant factor in assuring that the system of product liability operates in an efficient, fair, predictable, and timely manner.[95] It was included to prevent some claimants with mala fide claims from recovering damages, and should for that reason not be modified. Allowing small claims in a strict liability system could create an incentive for abuse.

The 70 million Euro financial limit is upheld as being essential because it protects manufacturers against potentially unlimited liability and safeguards insurability. A financial cap also allows manufacturers, to a certain extent, to overcome the problem of not being able to correctly identify and quantify certain risks.[96] Most companies in industries in question would not survive if they had to face such a claim. The premium for an insurance policy which would cover this level of damages, would, if obtainable, be prohibitive. The threshold should therefore be maintained, if not reduced.[97]

13. Limit of ten years

The general trend of the replies is negative.[98] The arguments concern the legal insecurity, financial risk, insurability and the possibility for the victim to invoke the other basis of liability.

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[91] BEUC ; CUATRECASAS ; Ministry of Justice of Finland ; Portuguese Ministry of Foreign Affairs ; IM ; MM ; Bavarian State Ministry of Justice.
[92] BEUC
[93] BEUC ; CUATRECASAS ; Ministry of Justice of Finland ; Portuguese Ministry of Foreign Affairs
[94] Bavarian State Ministry of Justice.
[95] ACEA ; ORGALIME ; ADICONSUM.
[96] ACEA.
[97] ORGALIME.
[98] CBI; EFPIA ; PEOPIL ; Ministry of Justice of Finland ; FEB ; MEDEF ; CELCAA ; FIP ; GITES ; INC ; AUGUST ET DEBOUZY; NCC; DRI;VNO-NCW

It has been said that it does not seem practical to extend the responsibility longer than the current period of limitation as a result of the problems in relation to the causal relationship when a considerable period has passed.[99]

It has been argued that the financial burden on manufacturers in relation to insurance costs, or in the event of litigation regarding events that occurred in the distant past would create a disincentive to produce new goods.[100]

Another argument stated warns against extending the ten-year period, since that would lead to a reduction in innovation or at least a longer time in testing products to insure that they would not be defective beyond ten years. Furthermore the effect of extending the period would be an increase in costs, as insurance premiums would increase as well.

Since it is significantly easier for claimants to win under a strict liability regime than under a negligence regime, it would seem justified to limit strict liability claims to ten years while continuing to allow claimants to pursue their claims under a fault-based system for a longer period.[101]

A proposal coming from the Industry advocates that the current time limits should be shortened to better correspond with today's product life cycles and mass production, or at least that it should be maintained.[102] The Commission should look into the definitions used in the Directive on general product safety, whereby the liability period could be tied to the average foreseeable lifecycle of the product in question. Another option would be to limit both of these periods directly.

Some other replies are against time limits for liability and believe that the 10-year time limit for the producer's liability should be withdrawn (it could easily be meaningless in cases of food products and pharmaceuticals).[103]

Particularly in relation to primary agricultural products, the need is felt to extend the time period for liability.

The proposed solutions are a modification of the time limit of ten years for some products and secondly to include a reference to the foreseeable period of a product's use, as laid down in Directive 92/59/EEC on general product safety.[104]

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[99] AH
[100] DRI
[101] PEOPIL.
[102] NOKIA.
[103] BEUC ; IM ; ADICONSUM ; INC ; MM ; ACEA ; Bavarian State Ministry of Justice.
[104] ADICONSUM.

It has also been proposed that the date of the beginning of the deadline should be that of the discovery of the defect and not the date of circulation of the product[105], and further to extend the period to twenty years or by beginning the ten-year period by the date on which the product was first supplied to the consumer.[106]

At present, the time limit of ten years does not correspond with the general liability rules in German law, stipulating a 30 years time limit (Art. 823 BGB). The Ministry would prefer a provision in the Directive saying that liability cannot be restricted by any rules on time limits or any kind of exclusion clauses in a way that leads to a time limit *shorter* than 10 years after a product is put on the market.[107]

14. Lack of Insurance and Reimbursement for Damages

There is a lot of diversity in the answers received.

A proposal is formulated to have insurance cover risks linked to production for small and medium enterprises. As to the larger enterprises, an encouraging approach to establish voluntary arrangements between producers and the insurance market is proposed.[108]

It has also been put forward[109] that a requirement for mandatory insurance for damages based on product liability should be introduced in the Directive in order to ensure compensation for victims. In particular a recommendation is made to introduce a provision, which provides for security in cases of the insolvency of the producer (similar for example to Article 7 of Directive 90/314, the Package Travel Directive) through a mandatory insurance system.

As far as the insurance market is concerned, it has been stated that adequate insurance cover due to the existing liability legislation and the existing liquidity of the insurance market is provided. A warning is being made for the risk of an extreme allocation of liability to one party that would cause insurers and underwriters to leave that market[110].

In some countries difficulties have been revealed. In Finland it is difficult to undertake obligatory insurance concerning all producers. However, an obligatory insurance cover could be considered in areas where the risk of personal injury is high (such as pharmaceutical industries)[111].

[105] INC.
[106] MM.
[107] Bavarian State Ministry of Justice.
[108] ADICONSUM
[109] BEUC.
[110] NOVARTIS.
[111] Ministry of Justice of Finland.

In Portugal it is difficult to put voluntary arrangements into practice, because nobody can oblige either the producers or insurance companies to sign up to these kind of arrangements. A better scenario would be the establishment of agreements between industry and consumers as well as between the insurance industry and consumers[112].

15. Transparency

Most of the replies are in favour of more readily available information and more transparency concerning cases of product liability.[113] The following suggestions are to be found in the replies.

A proposition has been made to set up a system requiring producers of defective products to immediately provide a central body with all relevant information. Such information could be processed and made public, or at least be accessible to consumer organisations[114]. For defective products that are still on the market, it is possible to apply the Directive 92/59/EEC on general product safety; this Directive establishes a system of notification and exchange of information between the Member States and Commission to deal with the withdrawal of unsafe products from the market[115].

A second option presented is to revise the Directive so as to impose an obligation on manufacturers and producers to notify a Government agency of judgements which are not subject to appeal, or at least, by a judgement at first instance or, at most, when a judge has adopted a decision concerning interlocutory relief relating to the damage caused by the potentially defective product[116].

It has been argued that in case of the need to recall a product, there should be specific guidelines as to how a manufacturer makes that determination, provisions for voluntary recall programmes, freedom to allow the manufacturer to chose the best method for consumer notification, and limitation of the liability after the recall was announced[117].

Finally, a third suggestion for improving transparency involves including a more transparent mechanism in the Directive of the rule's application, namely identifying the defective products on the market and using a method of compulsory notification to the Commission as provided in Directive 92/59/EEC.[118] A compulsory notification addressed to the supervision authorities and also to the entities responsible for the statistics should in this scenario also be adopted at national level.

On the other hand there is one reply arguing that transparency is more important as regards the Directive on Product Safety. Finally a warning is being made against the obligation to inform the

[112] Ministry of Foreign Affairs of Portugal.
[113] CEG ; BEUC ; Cuatrecasas ; NOKIA ; Ministry of Foreign Affairs of Portugal.
[114] BEUC.
[115] CONFINDUSTRIA.
[116] CUATRECASAS.
[117] NOKIA.
[118] Ministry of Foreign Affairs of Portugal.

public on the implementation of the Directive on Product Liability, putting forward that in some cases it could weaken the position of the consumer, when negotiating the amount of compensation.

16. Supplier Liability

The general trend of the replies is in favour of the application of the Directive to every professional in the product supply chain. [119] Most answers favour the idea that consumers could claim directly against every professional in the product supply chain[120].

According to the replies coming from associations of enterprises[121], the Commission should strengthen the obligation of formal notification of the supplier.

It is said[122] that a set time limit could be justified, because "reasonable time" could be interpreted in various ways in the Member States. It could be justified to broaden the scope of the liability system to other professionals in the product supply chain in relation to products such as foodstuffs, where the risk of damage due to transport or storage is high. In particular, the period of three months (as mentioned in the Green Paper) has been considered an acceptable period for the supplier to respond.[123]

It is suggested that further progress could be made by establishing a specified period for the fulfilment of that obligation, instead of the "reasonable period". The producer of a medicine is always identifiable from labelling requirements and elsewhere as the holder of the marketing authorisation. It would duplicate costs unnecessarily for others in the chain to have duplicative primary liability and to have a need for extra insurance[124]. Some others propose that the supplier's liability could be increased within the limits of freedom of contract[125].

17. Real Estate Property

[119] ADICONSUM ; FAI ; BEUC, NOKIA ; Ministry of Foreign Affairs of Portugal ; CBI
[120] ADICONSUM.
[121] FEB ; MEDEF.
[122] Ministry of Justice of Finland.
[123] CBI ; ADICONSUM ; FEB ; MEDEF.
[124] CUATRECASAS.
[125] NOKIA

All the replies are against extending the scope of the Directive to real estate property.[126] It is said that the Directive doesn't need to be extended to cover real estate property, since it is already covered separately by specific legislation in the Member States.[127] Furthermore Directive 85/374/EEC is not considered suitable to be extended to cover real estate property, namely immovable constructions for the following reasons:

- For movable products the production process is exclusively controlled by the producer, who conceives and develops the product before launching it on the market. This is not the case for immovable constructions where the client in some cases initiates the project, chooses the construction site, concept, production method and the professionals involved. In this case it is not so easy to determine which of them is responsible since each of them has to carry specific risks resulting from his choices.
- Directive 85/374/EEC and its "liability without fault" apply to goods, which have been industrially mass-produced, because it is often impossible for the consumer to prove negligence or fault. This situation is not valid for an immovable construction, where the construction enterprise is known and where its performance can be checked at any time[128].

It has also been argued that liability for planned action in the construction sector would interfere with the Commission's "Consumers' Action Plan 1999-2001". In this plan, the Commission is due to check whether there is a need for higher security as concerns the service sector. It is advised to wait for the results of the studies concerning the measures to be taken in the service sector (See OJ S 49/45 of 11 March 1999).

A liability for planned action in the construction sector would also interfere with the Commission's legal plans in the fields of "e-commerce" (See COM (99) 427 final) and of the revision of the Convention on the law of obligation "Rome I".[129]

Taking into account that the Directive already applies to construction material which forms part of the real estate industry, it has been considered that the complex matter of liability related to construction services should not be treated simply by broadening the scope of this Directive. If necessary, these provisions should be prepared separately.[130]

18. Non-Material Damages

Most of the replies state that there is no need to extend compensation to moral injuries.[131] Each contribution supports a particular thesis.

[126] NOVARTIS ; FIEC ; BAK ; CUATRECASAS
[127] NOVARTIS.
[128] FIEC.
[129] BAK.
[130] CUATRECASAS.
[131] CONFINDUSTRIA ; NOVARTIS ; CBI ; NOKIA; ACEA

An idea that has been put forward is that this issue should be tackled by the EU in the context of the general harmonisation of liability laws and not in the context of the revision of the Directive on Product Liability.[132]

It is proposed, should the Commission nevertheless choose to proceed with such an extension, the following points could be taken into account:

- Non-material damage should only be recoverable, if the claimant suffers and proves actual direct damage.
- Moral damage should be governed by heightened burden of proof such as clear and convincing evidence that the manufacturer showed a flagrant disregard for the safety of those who might be harmed by the product.[133]

Some advocate that it would be necessary to extend the Directive to cover other types of damage, notably non-material damage, but also moral damage, mental suffering, and damage to property intended for professional use.[134] The Directive could include both pain and suffering and psychological damage which can be medically assessed. In that respect, a distinction could be drawn between that which can be medically assessed or which has a clear somatic effect, and that which cannot be assessed or has no such effect.

As far as goods intended for professional use are concerned, many are against it, because it is not the aim of the Directive. Furthermore, professionals should be given the possibility to conclude contracts or leave the issue to be regulated by national law.[135]

19. Access to Justice

Some of the replies are in favour of introducing the possibility to go to Court through consumer protection associations.[136]

It has been considered that the above-mentioned model offers one alternative for product liability dispute settlement.[137] For example, if a certain product is suspected to have caused damage, but the existence of a ground for compensation is disputable, the question can be solved in court without inducing costs on the victims. After obtaining damages, it would be possible to reach a settlement for other cases caused by the same product. The development of dispute resolution deserves a more global approach and should not be treated as separate question in relation to separate Directives.

[132] NOVARTIS
[133] NOKIA
[134] ADICONSUM ;CUATRECASAS ; MEDEF.
[135] MEDEF
[136] ADICONSUM; Ministry of Foreign Affairs of Portugal
[137] Ministry of Justice of Finland.

It is said that there is no need for the provision on injunctions by the victim or group actions. The Member States' authorities should act where products present safety risks. Directive 92/59 and the "new approach"-Directives provide for appropriate instruments in this respect.[138]

It is argued that the introduction of a system of injunctions or "class actions" is guaranteed in the EU. The system of injunctions hinders innovation and may lead to a decrease in research investments in Europe.[139]

Regarding the exemption envisaged in Article 7 (d), it has been stated that defences based on compliance with applicable (technical) standards should be monitored to ensure that the compliance of the product with mandatory regulations is not misused or abused to the detriment of consumer.[140]

It has been proposed that alternative dispute resolution mechanisms should be established where small amounts are involved.[141] Article 3 of Directive 98/27/EC regulates the entities entitled to seek an injunction and specifically permits certain public bodies and certain private organisations (mainly consumers' associations) to play a preventive role in the protection of consumers from defective products.

Some support dispute resolution opportunities only as an alternative. [142] The replies also reveal strong objections to injunctions or mechanisms for common representation of individual claims within a compensation liability system.

It has been stated that although there are cases where this type of action may be fair and relevant as regards judicial economy, such instances are too few, and the benefits of such an approach do not outweigh the risk on abuse of the system. The view is illustrated with a list of cases, which have resulted in straining the judicial system in the US, rendering defendants bankrupt and benefiting plaintiffs with claims without merit. Furthermore, plaintiffs with meritorious claims often recover less than if they were suing individually, mass tort litigation being resolved on a business decision, rather than on the merits of the case.[143]

On the basis of the replies provided by France[144], some think that these questions do not fall within the scope on the Directive on Product Liability, but for the Directive on Product Safety. It is worth mentioning that joint actions already exist under French law. The opinions differ on the introduction of injunctions. Only one[145] supports the introduction of class actions, but alternative out-of-court dispute resolution means are preferred, such as conciliation and mediation.

[138] ORGALIME
[139] NOVARTIS
[140] BEUC.
[141] CUATRECASAS
[142] EFPIA
[143] DRI
[144] FIP ; MEDEF
[145] INC

Bruges, 13.09.00

Annex I

Summary of the General Trend of the Replies

National Authorities

1.1. Proper Functioning of the Directive in Practice

According to all National Authorities providing information, the Directive functions properly in practice and there is an adequate protection for victims of liability for defective products. [146] The Directive however should not be revised to become the common and sole system. Art. 13 is extremely important and should not be deleted. It is necessary that the victim can choose between different remedies. It would not be justified to modify its main principles [147].

1.2. Position of the European Business vis-à-vis their Foreign Competitors

According to most of the National Authorities, the Directive does not weaken the position of European business.

1.3. Compensation of Victims

In general the product liability cases are compensated on the basis of national liability rules. In some Member States, where the social security system provides for full compensation, the Directive is only applied to consumer products.[148]

1.4. Impact of the Directive on Victim's Interests

The Administrations state that there is adequate protection for victims. The Government of Germany points out that the balance between producer and consumer interests, established in the present Directive should be kept, as it is considered to operate well. This is not the case for the Finnish Administration, which is of the opinion that in this point the Directive should be considered amended. The implementation of the Directive in Finland has weakened the victim's position in cases of damage to property, due to the fact that it introduced limitations in the Finnish system.[149]

1.5. Social Security

Regarding the social security, the Portuguese Ministry of Foreign Affairs states that the effects of the Directive's application are reduced, taking into account not only that social security covers sickness benefits, but also the contribution of the national health system to pay health expenses. [150]

[146]Ministry of Justice of Finland ; Ministry of Foreign Affairs of Portugal ; Bavarian State Ministry of Justice Government of Germany

[147] Bavarian State Ministry of Justice

[148] Ministry of Justice of Finland.

[149] Ministry of Justice of Finland.

[150] Ministry of Foreign Affairs of Portugal.

1.6. Insurance Sector

As far the insurance sector is concerned, in some countries like Finland, the insurance on product liability covers a broader scope than the Directive.

1.7. Six Principles

Regarding the six principles the German Government is of the opinion that the elements that have to be proved by the victim, should remain in place[151].

1.8. Burden of Proof

According to the Finnish National Authorities the establishment of a percentage of the necessary proof should be avoided. The Portuguese Ministry of Foreign Affairs believes that it is necessary to amend the Directive in order to make it easier to determine the burden of proof.

1.9. Development Risk

Regarding the "development risk", the National Authorities are against liability of the producer. In particular, the German Government states that this kind of liability would prevent industry from developing and making innovations to new products.[152]

1.10. Financial Limit

Regarding the financial limit, the Ministry of Foreign Affairs of Portugal agrees with an optional limit regarding "development risk". The Bavarian State Ministry of Justice believes that the 500 threshold could be deleted.

1.11. Limit of Ten Years

The ten-year limit is sufficient for most products. The Bavarian State Ministry of Justice proposes to widen the clause regulating the time limit. At present, the time limit of ten years does not correspond with the general liability rules in Germany.[153]

1.12. Lack of Insurance and Reimbursement for Damages

Regarding lack of insurance and reimbursement for damages, the Ministry of Foreign Affairs of Portugal suggests to establish an agreement between industry and consumers, as well as between the insurance sector and consumers.[154]

1.13. Transparency

[151] Government of Germany
[152] Government of Germany
[153] Government of Germany
[154] Ministry of Foreign Affairs of Portugal

With regards to transparency, according to the Ministry of Justice in Finland, the obligation to inform could in some cases weaken the position of the consumers.

1.14. Supplier liability

Concerning the supplier liability the Finnish Ministry of Justice states, that it could be justified to broaden the scope of the liability system to other professionals in the product supply chain in relation to products such as foodstuffs, where the risk of damage due to transport or storage is high.

1.15. Real Estate Property

The German Government opposes the extension of the Directive to cover real estate.

1.15. Access to Justice

According to the Ministry of Justice of Finland, the development of dispute resolution deserves a more global approach and should not be treated as a separate question. The same Ministry considers that it is difficult to see how injunctions could provide a solution when the question of liability concerns compensating damage caused to an individual.

Industry

There is no need to change the Directive. The Directive does not weaken the position of European business, as it has created a correct balance. Representatives from the industry consider that the social security system is the main mechanism for providing security and finance for injured citizens in Europe. There is no need to change the burden of proof.

Most of the industry representatives do not support the theory of market share liability. As far as the "development risk" provision is concerned, they believe that it is essential for innovation.

The time limit of ten years is sufficient and should be maintained. They promote transparency. The supplier's liability could be increased within the limits of freedom of contract. They don't believe that the Directive should be extended to real estate property or non-material damage.

As far as access to Justice is concerned they state that there is no need to introduce provisions relevant to group actions.

Consumers

According to most of the replies provided by Consumer Associations to the Green Paper, the Directive functions properly. However the victim still has many problems in relation to the burden of proof. Under the Directive, the victim is not entitled to compensation for non-material damages.

Most consumer representatives support an amendment of the Directive aiming at facilitating the determination of the burden of proof. In particular it has been proposed that the consumer has to prove damage that occurred whilst he was using the defective product, but the producer should prove that the product was not defective or that there is no causal link between the defect and the damage.[155]

The majority of consumer associations believe that the market share liability principle could be useful to improve the situation of the victim who has difficulty in identifying the manufacturer of the defective product.

Regarding the "development risk", the consumer associations believe that the principle of equitable allocation of risk should apply to both detectable as well as undetectable defects. [156] Some believe that the exemption clause is not justified: that due to such relativity of the strict liability principle, the consumer has to bear the full risk and the eventual negative consequences of scientific development and limitations. [157] They defend the application of the provision in the Directive on damage amounting to less than 500 Euro. According to them, the upper limit of 70 million Euro should be removed. Although only damage should be compensated, it should be fully compensated.

Regarding the time limit of ten years, since in some cases personal injury may be latent, consumer representatives believe a requirement for mandatory insurance for damages based on product liability should be introduced to the Directive.

The consumer associations are in favour of more information and increased transparency. They support the liability of all distributors and as well as suppliers.

They agree on the extension of the scope of the Directive to real estate property and to non-material damages. They believe that it would be feasible to introduce the possibility of Court action through consumer protection associations.

Specialised Sectors

- Insurance:

[155] AGV
[156] NCC
[157] BEUC

According to insurers, over 90% of claims concerning a product that has caused damage are settled out of Court. In the insurance sector, there has not been any significant increase of coverage concerning producer liability. The six principles should be retained. They do not support a proposal to adopt market share liability. They do not consider that a universal obligation to insure should be imposed since that would mean treating all manufacturers alike regardless of the risks.

- Legal profession:

They are against the introduction of a "minimum clause". The Directive should be improved to increase the degree of harmonisation of national laws and become the sole and common rule insofar as private law is concerned. They believe that it is desirable to change the Directive to further favour consumers. The time limit should be extended. They state that a system closer to the traditional concept of negligence could be established in the case of defect of design and defect in instructions and warnings. They consider that the Directive could include non-material damages. They also believe that, as it stands, the "development risk" puts the consumer in a weak position. The upper limit of 70 million Euro should be altered.

Annex II

List of the Organisations providing the replies to the Green Paper on Product Liability

A

1. ACEA: Association des Constructeurs Européens d'Automobiles- European Association
2. ADAC: Allgemeiner Deutscher Automobilclub e.V. / (Association representing the interests of German car drivers) - German Association
3. AFM: Außenhandelsverband für Mineralöl und Energie (Association for mineral oil and energy) - German Association
4. AGV: Arbeitsgemeinschaft der Verbraucherverbände (Study team of the consumer associations) - German Association
5. AK: Bundeskammer für Arbeiter und Angestellte (Chamber of Labour of Austria) - Austrian Association
6. ADICONSUM (Association for the defence of Consumers) - Italian Association
7. AUGUST ET DEBOUZY - French Law Firm
8. AH: Advokatfirman Hammarsköld - Swedish Law Firm

B

9. BAH: Bundesfachverband der Arzneimittelhersteller e.V. (Association for Non-prescription Medicine Manufacturers) - German Association
10. BAK: Bundesarchitektenkammer (Federal Council of Architects) - German Association
11. Bayerisches Staatsministerium der Justiz: (Bavarian State Ministry for Justice) - German Administration
12. BDI: Bundesverband der Deutschen Industrie (The Federal Association of German Industries) - German Association
13. BMJ: Bundesministerium für Justiz (The Federal Ministry for Justice)- Austrian Administration
14. BRAK: Bundesrechtsanwaltskammer (The German Federal Bar)- German Association
15. BEUC: Bureau Europeen des Union de Consomateur-European Organisation

C

16. CEA: Comité Européen des assurances-European Organisation
17. CEETB: Comité Européenne des Equipment Techniques du Bâtiment - European Organisation
18. CEFIC- European Chemical Industry Council – European Assocation
19. CEG: Consumers in Europe Group- European Organisation
20. CELCAA: Comité Européen de Liaison des Commerces Agro-Alimentaires - European Association
21. COLIPA: The European Cosmetic Toiletry and Perfumery Association - European Organisation
22. CBI: Confederation of British Industry- UK Association
23. CONFINDUSTRIA: (General Confederation of Italian Industries) - Italian Association
24. COPA-COGECA: Comité des Organisations Professionnelles Agricoles de l'UE – Comité Général de la Coopération Agricole de l'UE - European Association
25. COUTRELIS and Associates - Law Firm with offices in Brussels and Paris
26. CUATRECASAS: Cuatrecasas Abogados- Spanish Law Firm

D

27. Danish Consumer Council - Danish Organisation
28. Danish Government - Danish Administration
29. DIHT: Deutscher Industrie- und Handelstag -German Association of Chambers of Industry and Commerce - German Association
30. DRI (Defense Research Institute - Special Committee on European Product Liability Law) –US institute

E

31. EACEM: European Association of Consumer Electronics Manufacturers- European Organisation
32. ECF: European Construction Forum - European Organisation
33. EFPIA: European Federation of Pharmaceutical Industries and Associations - European Organisation

34. ELO (European Landowners Organisation) - European Association
35. EU Committee of the American Chamber of Commerce - European Organisation
36. EUCOMED: Pan-European trade association representing the interests of the majority of manufacturers and distributors of medical technology products - European Association
37. EUROCHAMBRES (Association des chambres de commerce et d'industrie européennes) - European Association
38. EuroCommerce - European Association
39. EPIA: European Petroleum Industry Association- European Association
40. EWAG: Energie- und Wasserversorgung AG- Provider for energy and water supply – German company

F

41. FAI (Italian Federation of Tranport) - Italian Association
42. FEB : Fédération des Entreprises de Belgique - Belgian Association
43. FENACOOP: Portuguese Federation of the Consumer's Co-operative Societies- Portuguese Association
44. FIEC (European Construction Industry Federation)- European Organisation
45. FIP: Fédération des Industries de la Parfumerie- French Association
46. FOGF (Finnish Oil and Gas Federation) - Finnish Association
47. FSH: Förenigen Svensk Handel - Swedish Trade Association

G

48. GDV: Gesamtverband der Deutschen Versicherungswirtschaft - German Insurance Association
49. GITES: Groupement des Industries Européennes du Tabac- European Association
50. GKN (Organisation representing the interest of the manufacturing industry) - UK Organisation
51. Greek Ministry of Justice - Greek Administration
52. Government of Germany: - German Administration

I

53. ICC (International Chamber of Commerce) - International Association

54. IM: IRWIN MITCHEL Solicitor -UK Law Firm
55. INC : Institut national de la Consommation- French Administration

K

56. KL: Konsortiet för Läkemedelsförsäkring (Consortium for pharmaceutical insurance) - Swedish Company
57. Kongelige justis- og politidepartment - Norvegian Administration

M

58. MM: MARK MILDRED - Law professor in the UK
59. MEDEF: Mouvement des Entreprises de France- French Association
60. Ministry of Justice of Finland - Finnish Administration

N

61. NCC: National Consumer Council - UK Association
62. NFUE: National Farmer's Union of England and Wales - UK Administration
63. NFUS: National Farmers' Union of Scotland - UK Association
64. NOKIA - Finnish Company
65. NOVARTIS: – International Company

O

66. ORGALIME (Liason Group of the European Mechanical, Electrical, Electronic and Metalworking Industries) - European Organisation

P

67. PEOPIL :Pan European Organisation of Personal Injury Lawyers - European Association
68. Portuguese Ministery of Foreign Affairs - Portuguese Administration
69. Presidential Conference of the Chambers of Agriculture of Austria: Präsidentenkonferenz der Landwirtschaftskammern Österreichs - Austrian Association

S

70. Swiss Mission to the European Communities - Swiss Administration

V

71. VOI: Vereinigung der österreichischen Industrie - Association of Austrian Industries- Austrian Association
72. VNO-NCW (Confederation of Netherlands Industry and Employers)- Dutch Organisation

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