



EUROPEAN COMMISSION
Mr Tobias-Sebastian Bohr
DG Internal Market
Unit D.1
Rue de la Loi 200
1049 Bruxelles

Brussels, 15 December 1999

Object: Green Paper on Liability for Defective Products

Dear Mr Bohr,

1. The "Union of the Electricity Industry – EURELECTRIC" has been examining the proposals for a review of the Defective Products Directive 85/374/EEC which are set out in a Green Paper from the Commission published on 28th July 1999. As the Defective Products Directive covers electricity, EURELECTRIC deems it important to express our view on the proposed review. We consider that it is premature to foresee any changes to the existing Directive.
2. We think that the Directive is rather inappropriate to tackle electricity-related issues. The inherent risks of electricity is self-evident and Member States have comprehensive arrangements for regulating electricity policy and safety. No reasons has ever been given why electricity was included in the Directive and why this further layer of unnecessary and inappropriate regulation was imposed. The Electricity Industry was never consulted in the inclusion of the electricity in the Directive. The unique character of electricity (non storability, need for a network) means that it should not be included in a Directive which regulates the safety of tangible products. Indeed, there is an extensive debate over whether electricity should be regarded as a product or a service (e.g. in the United States, electricity is regarded as the supply of a service).

3. For these reasons, it is unclear to EURELECTRIC how the broadly worded 1985 Directive applies to electricity in practical terms since electricity is not an ordinary good and cannot be regarded as a “tangible” product in the meaning of the Directive. These points have been recognised in the Directive on consumer goods and associated guarantees and electricity has been excluded from the scope of the Directive. Furthermore, EURELECTRIC considers that the relationships between the revision of the Defective Product Directive with the proposed legislation on defective services (as mentioned on page 30 of the Green Paper) need further in-depth examination from the angle of the electricity sector.
4. The adoption of the proposals which are in the Green Paper would change the nature of the Directive and move it away from its original objective of providing protection for private consumers from suppliers who produce defective goods. A revised Directive which incorporated the proposals would be a significant step in the expansion of the Community *acquis* governing the relationship between producers and consumers. EURELECTRIC is not aware of any grounds to justify this expansion.
Also, the inter-relationship between such a Directive and other measures which provide for consumer protection would need to be defined carefully in order to prevent overlapping and the duplication of provisions. Further, such a Directive would be interfering with many issues which should be a matter of contractual arrangements between a producer and its customers.
5. EURELECTRIC has not been able to obtain any reliable statistics on the operation of the current Directive. They would be concerned if policy initiatives are proposed in the absence of detailed information on the costs to producers of the current requirements. Further, EURELECTRIC thinks that the costs of any amendments to the Directive and the impact of the costs on producers, and other interested parties in the European Union, must be established before any changes to the Directive can be considered. EURELECTRIC is concerned that no attempt at quantifying the financial impact of the proposals is made in the Green Paper.
6. The members of EURELECTRIC have found little case law relating to the Directive and the provisions of the Directive have not received any significant judicial consideration. There is, therefore, nothing to indicate that there are deficiencies or weaknesses in the Directive which need to be remedied. Accordingly, in the view of EURELECTRIC the onus is on Commission to show where the present Directive is defective.

7. The proposal to reverse the burden of proof by inferring a causal relationship once the injured person has proved the damage or defect would be too stringent on the producer and would be unreasonably changing the risk to producers when defending a claim. The onus should remain on the consumer to prove causation.
8. EURELECTRIC does not support the removal of the development risk defence. If this defence was abolished then development would be hampered and the cost of innovation would be prohibitive; further, the level of insurance premiums would rise. The cost burden to industry would be increased.
9. The present period of liability (ten years from the date the product was put into circulation) should not be increased.
10. There should be no attempt to impose compulsory insurance on producers. The arrangements which producers make to cover their liability under the Directive should be a matter for them. Many producers will have product liability insurance but they must be able to decide whether the risks which they face justify the premium which they would have to pay. There is no evidence from insurers that there are lots of claims under product liability insurance and there is nothing to suggest that any changes are required to the present arrangements
11. The Directive should not be extended to cover land or premises. These are (or will be) covered by other legislation. There would be an overlap here between the product liability directive and the proposed environmental liability legalisation.
12. The Directive should not be extended to cover non-material damage (e.g. consequential losses), psychological trauma (as opposed to physical injuries) or damage to property intended for business use (i.e. “non-consumers”). The Directive should be kept within its current scope.
13. In conclusion, the “Union of the Electricity Industry – EURELECTRIC” considers that it is not appropriate for the Directive to apply to electricity. Furthermore, EURELECTRIC does not support any extension of the Directive and consider that changes would be unacceptable. In its view the Commission should concentrate on better enforcement of existing regulations and the development of appropriate quality standards for products so that they provide the quality and safety which consumers expect.

14. We would be happy to discuss our views further with you if you propose to carry forward the proposals set out in the Green Paper.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Cotterell', written in a cursive style.

John COTTERELL
Chairman,
EURELECTRIC Working Group
"Legal Affairs"

A handwritten signature in black ink, appearing to read 'Paul Bulteel', written in a cursive style.

Paul BULTEEL
Secretary General
EURELECTRIC