

## Draft GCP Directive

### Current status

The Council of the European Union reached political agreement on the common position for the GCP Directive on 25 May 2000<sup>1</sup>. The common position will be placed before Parliament for a second reading once the text has been finalised in all Community languages and adopted by the Council; if adopted, it will be released to industry.

#### References

1. Proceedings of the 2265th Council Meeting, Brussels, Belgium, 25 May 2000.

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(Continued)

*Common position for  
GCP Directive agreed*

## Product Liability Reform

### Current situation

The current issue regarding product liability is whether the European Commission (Directorate-General Market) will propose any change to the Product Liability Directive<sup>1</sup> in its Report, which is due by December 2000. Around 100 responses have been made to the Commission's Green Paper of July 1999<sup>2</sup>, which the Commission is currently considering. The industry arguments have been very strong.

The European Parliament recently passed a resolution on the Commission's Green Paper, in which Parliament took the line suggested by the Rapporteur of the Legal Affairs Committees, Professor Neil MacCormick, MEP, that there should be no change to the Directive unless there is clear evidence that there is an urgent need. Instead, the matter should be studied seriously, with the implication that the study should last some years and should collect more hard data on the safety of products, product recall and liability claims than is currently available. It is true that Professor MacCormick's report had to be modified in order to achieve political unanimity within the Parliament by including the usual consumer list of requests (e.g. reversal of the burden of proof and removal of the development risks defence) within the list of aspects to be studied. However, overall the Parliament's paper is very much less extreme than the position the Parliament was taking a couple of years ago. Furthermore, an opinion by the Economic and Social Committee has taken quite a strong industry line.

As a result of these developments, there is now very much less political pressure on the Commission to propose radical changes to the Directive. However, the position remains unclear and the impact of possible reforms would be damaging to industry.

*The current  
situation regarding  
product liability...*

*...is that  
the Directive should  
remain unchanged*

### Access to Justice issues; Green Paper on Legal Aid

The incidence of product liability claims can, of course, be affected not only by the substantive law but also by a sequence of factors that may generally be described as relating to access to justice issues, notably financial risks and benefits for claimants and their lawyers. On this topic, the Commission has recently issued a Green Paper on legal aid<sup>3</sup>, which is the first attempt at developing a programme to enhance consumers' access to justice by seeking to harmonise (i.e. improve) citizens' cross-border rights to legal aid between different EU Member States. This could be quite a serious issue and may take some time to resolve. Responses to the Green Paper were due by 31 May 2000. The danger lies in any absence of controls designed to prevent public funding of unmeritorious claims, particularly class claims.

*Other factors (e.g.  
rights to legal aid)  
may also affect  
product liability claims*

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#### References

1. Directive 85/374/EEC; *Official Journal of the European Communities*, 1985, **L210**, 29.
2. COM(1999)396 final, 28 July 1999.
3. Green Paper from the Commission on *Legal Aid in Civil Matters: The Problems Confronting the Cross-Border Litigant*, COM(2000)51 final, 9 February 2000.

## General Product Safety Directive

### Current status of the reforms

The European Commission has recently issued its proposals<sup>1</sup> to amend Directive 92/59/EC<sup>2</sup> on general product safety. It has also published a Report on the working of the Directive since it was introduced and results of a study undertaken by the Catholic University of Louvain-la-Neuve's Consumer Law Department.

*Proposals published  
to amend general  
product safety Directive*

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