

**PRODUCT LIABILITY – RESPONSE TO THE PROPOSAL TO AMEND DIRECTIVE
85/374/EEC TO REMOVE THE EXEMPTION FOR PRIMARY
AGRICULTURAL PRODUCTS AND GAME**

INTRODUCTION

The European Landowners' Organisation (ELO) exists to contribute to the policies of the European Union in promoting a prosperous and attractive countryside, and to ensure that private landownership can continue to make a positive contribution to the economy and environmental management of rural areas. The ELO's national constituent organisations in Austria, Belgium, Denmark, England and Wales, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Portugal, Scotland, Spain and Sweden, represent the interests of millions of landowners throughout Europe.

The ELO welcomes the opportunity to comment on the proposed amendment to the Directive.

COMMENTS ON THE PROPOSAL

Protection of the consumer is clearly important. However, it is the ELO's view that the present proposal would not lead to greater consumer protection, but simply greater consumer costs and that the imposition of strict liability for defects in primary agricultural products is unfair and misplaced. The detailed reasoning behind this view is as follows:

The farmer has no control over the content of primary agricultural products

In contrast to a manufacturer of industrial products, a primary agricultural producer has no control over the contents of a natural product. The farmer's control is limited to the rearing methods used in producing the primary agricultural product. Indeed, in the case of wild game, the producer does not even have this control. To impose liability for inherent defects over which the producer has no control is inequitable and cannot provide greater consumer protection.

The use of products in the growing or rearing of primary agricultural products is already heavily regulated

The agricultural sector is already heavily regulated, and many controls exist on the use of agricultural products, such as pesticides, in the rearing or growing of primary agricultural products. As such, deterrents exist against a farmer misusing products which would not be enhanced by the proposed amendment.

Liability for damage to consumers caused by products used in the rearing of primary agricultural products should lie with the manufacturers not with the farmer

The imposition of liability upon the primary agricultural producer for damage to consumers caused by the legal use of products in the rearing process must be inequitable; the farmer is simply not in a position to research the safety of products legally marketed for his use. This should be the responsibility of the producer of those products. To impose primary liability for defects over which the farmer has no control is inequitable and cannot provide greater consumer protection.

The proposed amendment will not result in greater consumer protection, but in increased consumer costs

At present a consumer who purchases a defective primary agricultural product and can prove causation of damage, can sue the supplier (usually a retailer) in contract. The retailer can, in turn, seek redress in contract law against the primary agricultural producer. In effect, protection for the consumer in excess of that offered by the Directive already exists. The proposed amendment would, however, provide a new theoretical cause of action against the farmer and involve an extra insurance burden upon the primary producer, which would inevitably be reflected in higher consumer prices.

SUMMARY

The ELO believes, as highlighted above, that it is difficult to see how consumers would be further protected by the proposed amendment. Further, it is intrinsically unfair to impose strict liability on a group for defects over which it has no means of control. Finally, the additional insurance burden on primary producers would very likely result in increased consumer costs.

ELO POLICY GROUP

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