EUROPEAN PARLIAMENT

1999 *2004*

Session document

FINAL
A5-0309/2000

20 October 2000

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REPORT

on the proposal for a European Parliament and Council directive on general product safety
(COM (2000) 139 – C5-0224/2000 – 2000/0073(COD))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Laura González Álvarez

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 5 May 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal for a European Parliament and Council directive on general product safety (COM (2000) 139 - 2000/0073 (COD)).

At the sitting of 19 May 2000 the President of Parliament announced that she had referred this proposal to the Committee on the Environment, Public Health and Consumer Policy as the committee responsible and the Committee on Budgets, the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0224/2000).

The Committee on the Environment, Public Health and Consumer Policy appointed Laura González Álvarez rapporteur at its meeting of 23 May 2000.

The committee considered the Commission proposal and draft report at its meetings of 12 September, 19 September and 17 October 2000.

At the last meeting it adopted the draft legislative resolution by 48 votes to1, with 1 abstention.

The following were present for the vote: Caroline Jackson, chairman; Alexander De Roo and Ria G.H.C. Oomen-Ruijten, vice-chairmen; Laura González Álvarez, rapporteur, Per-Arne Arvidsson, Hans Blokland, David Robert Bowe, John Bowis, Philip Rodway Bushill-Matthews (for Maria del Pilar Ayuso González), Dorette Corbey, Chris Davies, Avril Doyle, Jillian Evans, Carlo Fatuzzo (for Mariëlle De Sarnez), Jim Fitzsimons, Marialiese Flemming, Karl-Heinz Florenz, Cristina García Orcoyen Tormo, Roger Helmer, Mary Honeyball (for Carlos Lage), Anneli Hulthén, Eija-Riitta Anneli Korhola, Bernd Lange, Paul A.A.J.G. Lannoye, Torben Lund, Minerva Melpomeni Malliori, Patricia McKenna, Erik Meijer (for Jonas Sjöstedt), Pietro-Paolo Mennea (for Jules Maaten) , Emilia Franziska Müller, Rosemarie Müller, Riitta Myller, Giuseppe Nisticò, Mihail Papayannakis, Béatrice Patrie, Marit Paulsen, Frédérique Ries, Dagmar Roth-Behrendt, Guido Sacconi, Amalia Sartori (for Françoise Grossetête), Karin Scheele, Ursula Schleicher (for Robert Goodwill), Horst Schnellhardt, Inger Schörling, María Sornosa Martínez, Dirk Sterckx (for Karl-Erik Olsson), Catherine Stihler, Antonios Trakatellis, Kathleen Van Brempt (for Marie-Noëlle Lienemann) and Phillip Whitehead.

The opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market are attached; the Committee on Budgets decided on 6 June 2000 not to deliver an opinion.

The report was tabled on 20 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive on general product safety (COM (2000) 139 – C5-0224/2000 – 2000/0073(COD))

The proposal is amended as follows:

Text proposed by the Commission [1]	Amendments by Parliament
	(Amendment 1) Recital 7a (new)
	Whilst charity shops and non-profit organisations shall be covered by this Directive, appropriate exemptions shall be made from the obligation to provide information and documentation on product risk and product origin for second hand items donated for sale where such information is not available,
	Justification:
	Without seeking to exempt charity organisations and non-profit organisations from the provisions of the General Product Safety Directive, it may not be possible for them to provide information and documentation on product risks and product origin to the authorities on second-hand donations from the general public.
	(Amendment 2) Recital 14
The provisions of this Directive relating to the other obligations of producers and distributors, the obligations and powers of the Member States, the exchanges of information and rapid intervention situations and ***confidentiality should*** apply in the case of products covered by specific rules of Community law, ***without prejudice to any specific requirements on the same aspects in such rules***.	The provisions of this Directive relating to the other obligations of producers and distributors, the obligations and powers of the Member States, the exchanges of information and rapid intervention situations and ***provision of information*** apply in the case of products covered by specific rules of Community law, ***where that law does not already provide for such obligations***.
	Justification:

[1] Not yet published in OJ.

With a view to safeguarding against dangerous overlaps and clashes with sectoral rules, further clarification of the relationship between horizontal and specific rules is required.

Information concerning products which represent a risk to health and safety should be made public.

(Amendment 3)
Recital 20

Distributors must help in ensuring compliance with the applicable safety requirements. Both producers and distributors must cooperate with the competent authorities in action aimed at preventing risks and informing them when they conclude that certain products supplied are dangerous. The conditions regarding such information should be set in the Directive to facilitate its effective application ***and prevent an excessive burden for the economic operators and the authorities.***	Distributors must help in ensuring compliance with the applicable safety requirements. Both producers and distributors must cooperate with the competent authorities in action aimed at preventing risks and informing them when they conclude that certain products supplied are dangerous. The conditions regarding such information should be set in the Directive to facilitate its effective application.

Justification:

The effective application of the directive should take precedence over any other consideration.

(Amendment 4)
Recital 23

(23) The safety of consumers depends to a great extent on the active enforcement of Community product safety requirements. The Member States should, therefore, establish systematic approaches to ensure the effectiveness of market surveillance and other enforcement activities and should ensure their openness to the public and interested parties.	(23) The safety of consumers depends to a great extent on the active enforcement of Community product safety requirements. The Member States should, therefore, establish systematic approaches to ensure the effectiveness of market surveillance and other enforcement activities and should ensure their openness to the public and interested parties***, and, in addition, draw up factual reports with the cooperation of competent and independent public or private institutions***.

Justification:

Transparency of information is reinforced by the cooperation of institutions of recognised credibility. The quality of the strategies to be implemented depends on the participation of

institutions with competence in each sector of activity concerned.

(Amendment 5)
Recital 38

The Commission should periodically examine how this Directive is applied and the results obtained, in particular in relation to the functioning of market surveillance systems, the rapid exchange of information and measures at Community level, together with other issues relevant for consumer product safety in the Community, and present reports to the European Parliament and the Council on the subject.	The Commission should periodically examine how this Directive is applied and the results obtained, in particular in relation to the functioning of market surveillance systems, the rapid exchange of information and measures at Community level, together with other issues relevant for consumer product safety in the Community, and present ***regular*** reports to the European Parliament and the Council on the subject.

Justification:

Makes the text more precise.

(Amendment 6)
Recital 38a (new)

	The Commission will consider the various possible approaches to Community action on the safety of services with a view to presenting specific proposals.

Justification:

It is essential that a proposal on safety of services be submitted as soon as possible.

(Amendment 7)
Article 1(2), first indent

- ***Articles 2, 3 and 4*** of this Directive shall not apply to those products in so far as concerns the risks or categories of risks regulated by the specific legislation;	- ***The provisions*** of this Directive ***relating to the definition of the terms 'safe product' and 'dangerous product'(Article 2(b) and (c), to the general requirement of safety, the criteria for conformity assessment (Article 3) and to European standards (Article 4)*** shall not apply to those products in so far as concerns the risks or categories of risks regulated by the specific legislation;

Justification:

Clarifies the relationship between horizontal and sectoral legislation.

(Amendment 8)
Article 2(a), third subparagraph

It does not include second-hand products supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier clearly informs the person to whom he supplies the product to that effect;	It does not include second-hand products supplied as antiques or as products to be repaired or reconditioned prior to being used, ***or second hand goods sold in street markets and car boot sales,*** provided that the supplier clearly informs the person to whom he supplies the product to that effect;

Justification:

The provisions on this Directive should not cover street markets and car boot sales where second-hand items are sold.

(Amendment 9)
Article 2(b), introductory clause

"safe product" shall mean any product which, under normal or reasonably foreseeable conditions of use, including duration, does not present any risk or only the minimum risks compatible with the product's use, considered as acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:	"safe product" shall mean any product which, under normal or reasonably foreseeable conditions of use***, installation and maintenance***, including duration, does not present any risk or only the minimum risks compatible with the product's use, considered as acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:

Justification:

Makes clear that the definition also covers services relating to products.

(Amendment 10)
Article 2(b)(i)

the characteristics of the product, including its composition, packaging, instructions for assembly and maintenance,	the characteristics of the product, including its composition, packaging, instructions for assembly***, installation*** and maintenance,

Justification:

Makes clear that the definition also covers services relating to products.

(Amendment 11)
Article 2(b)(v)

the services directly associated with the product supplied, when these services are provided by the ***producer***, in particular the installing and the maintenance of the product.	The services directly associated with the product supplied, when these services are provided by the ***supplier***, in particular the installing and the maintenance of the product.

Justification:

Makes clear that the definition also covers services relating to products.

(Amendment 12)
Article 2(f)

"recall" shall mean any measures aimed at achieving the return of a dangerous product***, for reimbursement or replacement or repair,*** that has already been supplied or made available to consumers by the producer or distributor.	"recall" shall mean any measures aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers by the producer or distributor.

Justification:

The aim is to protect all consumers from dangerous products. What arrangements are made for the recall of a product is not relevant to the achievement of this objective.

(Amendment 13)
Article 3(1)

Producers shall be obliged to place only	Producers shall be obliged to place only

safe products on the market.	safe products on the market ***in accordance with the precautionary principle***.

Justification:

Introduces a reference to the precautionary principle.

(Amendment 14)
Article 4(1), first sentence

For the purposes of this Directive, the Commission shall establish the mandates to the European standardisation bodies and publish in the Official Journal of the European Communities ***the references of European standards***.	For the purposes of this Directive, the Commission shall establish the mandates to the European standardisation bodies and publish ***the European standards*** in the Official Journal of the European Communities.

Justification:

If only the references are published, it will cost money to obtain the text of the standard in question. Consumers wishing to inform themselves about the safety standards applying in the EU should not be expected to bear this cost.

(Amendment 15)
Article 4(1), third subparagraph

The mandates shall define the objectives that the standards must meet to ensure that products conforming to such standards are in compliance with the general safety requirement of this Directive.	The mandates shall define the objectives that the standards must meet to ensure that products conforming to such standards are in compliance with the general safety requirement of this Directive. ***The Commission shall guarantee coordination with the advisory committee on safety of consumer goods referred to in Article 15(1) of this directive***

Justification:

The requirements these standards are expected to fulfil should be decided only after consultation with the Advisory Committee.

(Amendment 16)

Article 4(3)

The Commission, after consulting the Committee established by Article 5 of Directive 98/34/EC, may decide to publish in the Official Journal of the European Communities the ***references o***f European standards relating to products covered by this Directive which were adopted by European Standardisation Bodies before the entry into force of this Directive.	The Commission, after consulting the Committee established by Article 5 of Directive 98/34/EC, may decide to publish in the Official Journal of the European Communities the European standards relating to products covered by this Directive which were adopted by European Standardisation Bodies before the entry into force of this Directive.

Justification:

If only the references are published, it will cost money to obtain the text of the standard in question. Consumers wishing to inform themselves about the safety standards applying in the EU should not be expected to bear this cost.

(Amendment 17)
Article 5(1), fourth indent

The measures shall for example include, whenever appropriate, marking of the products or product batches in such a way that they can be identified, sample testing of marketed products, investigating complaints made and keeping distributors informed of such monitoring.	The measures shall for example include, whenever appropriate, marking of the products or product batches in such a way that they ***and their producers*** can be identified, sample testing of marketed products, investigating complaints made and keeping distributors informed of such monitoring.

Justification:

Makes it easier to trace products.

(Amendment 18)
Article 5(2)(a) (new)

	Charity shops and non-profit organisations shall have appropriate exemptions from the obligation to provide information and documentation on product risk and product origin for second hand items donated for sale where such information is not available. This exemption shall also apply to second-hand goods sold through car-boot and garage

sales, jumble or rummage sales, flea markets and other market stalls.

Justification:

Without seeking to exempt charity organisations and non-profit organisations from the provisions of the General Product Safety Directive, it may not be possible for them to provide information and documentation on product risks and product origin to the authorities on second-hand donations from the general public.

As currently drafted, the directive would effectively rule out the operation of charity shops, car-boot sales and other informal second-hand sales outlets, which would be unable to comply with the traceability requirements. This would cause great damage to charities at least in the UK and Ireland, and the loss of car-boot sales would be deeply resented in the UK, since they provide a popular pastime and a socially and economically useful way of recycling second-hand goods.

(Amendment 19)
Article 6(3a) (new)

The Member States shall harmonise as far as possible their approach to monitoring and their monitoring programmes on the basis of guidelines prepared and updated by the Commission with the assistance of the consultative committee established pursuant to Article 15(1) of this directive.

Justification:

Makes it possible to ensure that a consistent approach is taken in all Member States, and thus to apply the directive more effectively.

(Amendment 20)
Article 8(1)(d)

subjecting product marketing to prior conditions designed to ensure product safety and requiring that suitable warnings be affixed regarding the risks which the product may present;	subjecting product marketing to prior conditions designed to ensure product safety and requiring that suitable ***clearly-worded, easily comprehensible*** warnings, ***in the language of the country in which the products is placed on the market,*** be affixed regarding the risks which the product may present;

Justification:

Introduces more precise requirements.

(Amendment 21)
Article 8(1) h

organising or ordering, the effective and immediate withdrawal of dangerous products already on the market, the warning of consumers on the risks posed by dangerous products, the recalling from consumers of those products already supplied, and the destruction of the products in question under appropriate conditions***, if necessary, in cases where action by producers and distributors to the same aims, in conformity to their obligation under this Directive, is not satisfactory or is insufficient.***	organising or ordering, ***in cooperation with producers and distributors,*** the effective and immediate withdrawal of dangerous products already on the market, the warning of consumers on the risks posed by dangerous products, the recalling from consumers of those products already supplied, and the destruction of the products in question under appropriate conditions.

Justification:

The requirement for Member States to take the measures referred to by this paragraph must not be contingent on measures taken by producers and distributors.

(Amendment 22)
Article 8(3)a (new)

	3a. Producers and distributors shall inform the national authorities of the voluntary additional measures which they intend to take or have already taken.

Justification:

In cases of risk to consumers' health and safety, producers and distributors must have the right to take measures which they consider suitable in order to counter the risks.

If Member State authorities are to be able to rule on the proportionality of such measures, producers and distributors must be obliged to provide the necessary information.

(Amendment 23)
Article 9(3)

3. The Member States shall ensure that consumers and other interested parties may	3. The Member States shall ensure that consumers and other interested parties may

present complaints to the competent authorities on product safety and on surveillance and control activities and that these complaints are considered, followed up as appropriate and answered. The Member States shall actively inform consumers and the other interested parties of the procedures established to that end.	present complaints to the competent authorities on product safety and on surveillance and control activities and that these complaints are considered, followed up as appropriate and answered ***or appropriate compensation is received in respect of the damage caused and the producers' and distributors' responsibilities***. The Member States shall actively inform consumers and the other interested parties of the procedures established to that end.

Justification:

The responsibility which Member States should require on the part of producers and distributors must not be confined to information and recall: they must also be made responsible for compensating any damage caused, in accordance with the regulations and penalties which the Member States consider to be applicable.

(Amendment 24)
Article 10(1)

The Commission shall promote the establishment and operation of a European Product Safety Network between the authorities of the Member States competent for market surveillance of consumer products and involving also the Commission.	***A*** European Product Safety Network between the authorities of the Member States competent for market surveillance of consumer products and involving also the Commission ***shall be established no later than a year from the date referred to in Article 20(1)***.

Justification:

Tightens the obligations on the Commission and the Member States to establish this network.

(Amendment 25)
Article 12(4)

Access to RAPEX ***may*** be open to candidate countries, third countries or international organisations, within the framework of agreements between the Community and those countries or international organisations, according to modalities defined in these agreements. Any such agreements shall be based on reciprocity and include provisions on confidentiality corresponding to those applicable in the Community.	Access to RAPEX ***shall*** be open to candidate countries, third countries or international organisations, within the framework of agreements between the Community and those countries or international organisations, according to modalities defined in these agreements. Any such agreements shall be based on reciprocity and include provisions on confidentiality corresponding to those applicable in the Community.

Justification:

It is desirable that access to the RAPEX system be open as a matter of course to third countries, and in particular candidate countries.

(Amendment 26)
Article 15(3)

The Advisory Committee on Consumer Product Safety shall also assist the Commission in examining any question concerning the application of this Directive, in particular issues related to enforcement and market surveillance activities.	The Advisory Committee on Consumer Product Safety shall also assist the Commission in ***drawing up the standardisation mandates pursuant to Article 4(1) and in*** examining any question concerning the application of this Directive, in particular issues related to enforcement and market surveillance activities.

Justification:

The requirements these standards are expected to fulfil should be decided only after consultation with the Advisory Committee.

(Amendment 27)
Article 16(1)

Information available to the authorities of the Member States or the Commission relating to risks to consumer health and safety posed by products shall ***in general*** be available to the public. In particular the public shall have access to information on product identification, the nature of the risk and the measures taken.	Information available to the authorities of the Member States or the Commission relating to risks - ***duly established in accordance with the provisions of this directive -*** to consumer health and safety posed by products shall be available to the public ***in accordance with the principle of transparency***. In particular the public shall have access to information on product identification, the nature of the risk and the measures taken.
However, the Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Directive which, by its nature, is covered by professional secrecy in duly justified cases, except for information relating to the safety properties of products which must be made	However, the Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Directive which, by its nature, is covered by professional secrecy in duly justified cases, except for information relating to the safety properties of products which must be made

public if circumstances so require, in order to protect the health and safety of consumers.	public if circumstances so require, in order to protect the health and safety of consumers.

Justification:

The general principle of availability of information should be observed.

(Amendment 28)
Article 19(1)

Every ***three*** years following the date referred to in Article 20(1), the Commission shall submit a report on the implementation of this Directive to the European Parliament and the Council.	Every ***two*** years following the date referred to in Article 20(1), the Commission shall submit a report on the implementation of this Directive to the European Parliament and the Council.

Justification:

Reinstates the frequency of reporting laid down in Directive 92/59/EEC.

(Amendment 29)
Article 19(a) (new)

	The Commission shall submit to the European Parliament and the Council proposals concerning safety of services before 1 January 2003.

Justification:

It is essential that a proposal on safety of services be submitted as soon as possible.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on general product safety (COM (2000) 139 – C5-0224/2000 – 2000/0073(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM (2000) 139[1]),

– having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0224/2000),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and the opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market (A5-0309/2000),

1. Approves the Commission proposal as amended;

2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

[1] OJ C .

EXPLANATORY STATEMENT

1. INTRODUCTION

The Commission proposal at issue is a revision of Council Directive 92/59/EEC of 29 June 1992 on general product safety (GPSD) as required by Article 16 of that directive which lays down that, four years from its entry into force, the Council shall decide whether to adjust it, in particular with a view to extending its scope and with regard to emergency situations and action.

The approach followed in drafting the original directive has not been altered by the Commission in its proposed revision, which seeks essentially to clarify and complement specific provisions which have revealed weakness or gaps, to take account of recent crises in the food sector, and to remedy deficiencies which have been observed regarding the safety of certain industrial products.

The proposal is based on the conclusions of the report submitted to the European Parliament and the Council on the experience acquired in the application of Directive 92/59/EEC[1].

2. GENERAL COMMENTS

Your rapporteur welcomes the detailed manner in which the Commission has considered and evaluated the implementation and practical application of Directive 92/59/EEC and the operation of the system for the rapid exchange of information (RAPEX).

The Commission has also consulted consumer organisations, European standards organisations, ANEC (the European Association for the Co-ordination of Consumer Representation in Standardisation), national experts and the European industry and trade federations, and has involved them in the preparation of the proposal.

Thanks to this work of analysis and consultation, the Commission has been able to identify the fields in which Directive 92/59/EEC requires revision. Your rapporteur agrees in general with this analysis and considers particularly important the changes made on the following points:

Clarification of the relationship between horizontal legislation and sectoral legislation

One of the main criticisms of the directive has been the lack of clarity regarding the relationship between the GPSD and sectoral legislation. This has resulted in varying interpretations of this relationship by the Member States, and sometimes within the same Member State, and this has in turn led to instances of legal uncertainty.

Your rapporteur thus fully supports the clarifications made in the new Commission proposal (Article 1), while feeling that an additional effort towards clarity could be made (Amendment 7).

[1] COM(2000) 140 final.

Scope of the directive

The discussion during the preparatory work for the proposal focussed mainly on two aspects:

a. Extension of the directive to cover services, and
b. inclusion within its scope of 'migrated' products, i.e. products initially intended for professional use but which are now used by consumers.

The Commission's solution was to include 'migrated' products within the scope of the directive, but to restrict for the time being its cover of services directly linked to a product (Article 2).

Your rapporteur welcomes the extension of the scope of the directive. However, regarding services, we must stress how important and urgent it is for the Community to take action in this field. It might therefore be desirable, in cooperation with the Commission, to set a tentative date for submission of a proposal regarding safety of services.

Your rapporteur also considers it necessary to make some clarifications concerning the application of the Directive to services relating to products (Amendments 9, 10 and 11).

Empowering Member States to organise product recall

The Commission proposal introduces a new provision to this effect (Article 8 (h)), to deal with the need to prevent or minimise risks to the health and safety of consumers from products which have already been sold to them. Your rapporteur can only welcome this approach.

Banning the export of dangerous products

Directive 92/59/EEC does not ban the export of products which are considered 'dangerous' within the meaning of the directive and which cannot, for that reason, be sold within the European Union. This approach is doubtful, since the conditions under which consumer goods are used do not differ very much from one country to another.

Your rapporteur therefore entirely agrees with the Commission's new approach seeking to ban the export of such products (Article 13(3)).

Stepping up penalties.

The effectiveness of market surveillance activities depends to a great extent on the enforcement of adequate penalties by the Member States. Your rapporteur therefore considers it essential to step up the penalties applicable for breaches of the directive (Article 7).

3. AMENDMENTS

Over and above these general comments, however, a number of the provisions of the proposal for a directive need to be reinforced or clarified. These include in particular the following aspects:

Precautionary principle

Although it is mentioned several times in the preparatory documents, there is no reference to the precautionary principle in the Commission proposal. Your rapporteur therefore considers it necessary to introduce such a reference (Amendment 13) with a view to enabling the competent authorities to take the necessary measures to prevent serious risks, even in the absence of final and complete scientific evidence.

Market surveillance

Your rapporteur suggests a harmonisation of the market surveillance approaches and programmes operating in the Member States, on the basis of guidelines prepared by the Commission (Amendment 20). This would permit a consistent approach and a more effective application of the provisions on market surveillance, while giving the Member States discretion to decide on the measures to be taken to ensure that producers and distributors meet their obligations.

Strengthening the Member States' obligations

Your rapporteur considers that the Member States' obligations regarding the withdrawal or recall or dangerous products, and the issue of warnings to consumers, cannot be made contingent on measures taken by producers and distributors (Amendment 22).

Consumer information on risks

Your rapporteur calls for warnings to consumers to be worded clearly, comprehensibly and in the language of the country in question (Amendment 21).

Strengthening provisions concerning the creation of a European product safety network

Your rapporteur does not consider the Commission proposal on this point to be adequate and calls for this network to be established no later than one year after the transposition of the directive into national legislation (Amendment 25).

Transparency

Finally, your rapporteur considers that the overriding principle in the field of consumer health and safety must be that of transparency (Amendments 28 and 2).

16 October 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on the Environment, Public Health and Consumer Policy

on the proposal for a directive of the European Parliament and of the Council on general product safety
(COM(2000) 139 – C5-0224/2000 – 2000/0073(COD))

Draftsman: Klaus-Heiner Lehne

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Klaus-Heiner Lehne draftsman at its meeting of 21 June 2000.

It considered the draft opinion at its meetings of 13 September, 9 October and 16 October 2000.

At the last meeting it adopted the amendments below by 20 votes to 0, with 4 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley and Ward Beysen, vice-chairmen; Klaus-Heiner Lehne, draftsman; Francesco Fiori, (for Antonio Tajani pursuant to Rule 153(2) of the Rules of Procedure), Luis Berenguer Fuster, Philip Charles Bradbourn, Charlotte Cederschiöld, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Bruno J.-J.M. Gollnisch, Malcolm Harbour, The Lord Inglewood, Donald Neil MacCormick, Toine Manders, Luis Marinho, Véronique Mathieu, Hans-Peter Mayer, Manuel Medina Ortega, Elena Ornella Paciotti, Diana Paulette Wallis, Christos Zacharakis and Stefano Zappalà.

SHORT JUSTIFICATION

I. Introduction

The proposal for a new directive on general product safety is based on the earlier Directive 92/59/EEC[1] which lays down that, four years after the date of entry into force of the Directive and on the basis of a Commission report on the experience acquired, the Council shall decide whether to adjust that Directive.

According to the findings of the relevant study put in hand by the Commission[2], varying transposition systems and varying methods of application have been noted in the Member States following the adoption of Directive 92/59/EEC.

The attainment of a uniform *level* of consumer protection is to be welcomed as a matter of principle. However, because of the legal nature of a directive, totally uniform application is not to be expected.

A reading of the part-studies concerning the four most populous Member States leads us to the following conclusions: the application of the Directive seems generally satisfactory. The evidence submitted does *not* suggest that the Directive is at fault. The general impression is that any problems of application which may occur result primarily from the manner in which the Directive is applied in the individual country (and not from the Directive itself) and may, in particular, result from an indistinct division of powers and responsibilities among authorities.

What is more strikingly apparent in the four part-studies referred to above is the fact that the controversial Article 9 of the Directive, pursuant to which the Commission may impose temporary measures on the Member States, has not been used to date.

Articles 7 and 8 (Exchange of information between Member States via the Commission) appear to have been not always correctly applied. However, there is no reference to any disadvantages for consumers occurring as a result thereof.

The conclusions reached by the Commission on the basis of the studies cannot always be implemented.

II. Scope

1. Inclusion of services related to products

We should recall from the outset that, a few years ago, a proposal for a directive on the **liability** of suppliers of services[3] failed to secure adoption.
Article 2 of the new Directive lays down that the term 'product' shall also include products

[1] OJ L 228, 11.8.1992, p. 24.
[2] Study drawn up by the Centre du Droit de la Consommation (Consumer Law Centre), Louvain-la-Neuve, Belgium, available in English and French under http://europa.eu.int/comm/dgs/health_consumer/library/surveys/sur13_en.html.
[3] OJ C 12, 18.1.1991, p. 12.

'*used to provide a service, in so far as consumer product safety aspects under reasonably foreseeable conditions of use of those products are concerned'*. The term 'reasonably foreseeable conditions' is likely to cause confusion in the mind of the reader.

The same article lays down that a 'safe product' shall mean any product which 'does not present any risk or only the minimum risks compatible with the product's use, considered as acceptable and consistent with a high level of protection for the safety and health of persons, taking into account, inter alia, *'the services directly associated with the product supplied, when these services are supplied by the producer, ...'*. Even when not applied or applied only sparingly, this text leads to comprehension problems directly caused by the wording used.

The Commission maintains – without producing any specific evidence – that there is an 'important and urgent need to consider Community action on service safety'. The Commission continues: '*At this stage*, pending completion of the examination in progress, it is proposed to limit the scope of the GPSD to products related to services'[1].

There are problems in drawing a distinction between services related to products, services and products. There is a serious risk that the extension of the scope of the Directive to include all services will result in a tangible **price rise**, in unnecessary regulation and in the **bureaucratisation** of services.

We must also note that the Directive's system cannot be applied to all services consistently (e.g. recall of a service).

What is rather surprising to note is the lack of interest shown by the United Kingdom – even by consumer associations there – in the idea of extending the General Product Safety Directive to services[2].

2. Coordination with other sectoral legislation

The Commission sees a need to legislate on the relationship between the General Product Safety Directive and other sectoral legislation (Article 1(2)).

3. Implications of the indirectly extended concept of 'producer'

The proposal for a directive uses the same definitions of 'producer' and 'distributor' as those laid down in Directive 92/59/EEC. However, the definition of 'product' is new. The scope of the definition of 'producer', which includes the word 'product' as a defining element, is therefore different. Whether or not these definitions properly assign responsibilities among several producers or distributors in a supply chain is debatable.

[1] Section 2.2. of the Explanatory Memorandum.
[2] Chapter IV, Section C. 1. of the study concerning the UK referred to above.

The concept of 'producer' is already quite broad. A 'producer' is the manufacturer of a product who affixes to the product his name or trademark or the importer of the product where neither the manufacturer nor his representative is established in the Community. Likewise, all professionals in the supply chain are included, in so far as their activities may affect the safety properties of a product placed on the market (Article 2(d)).

Since, according to the new wording of Article 2(a), a 'product' is defined as being 'any product which is intended for consumers, or ***likely***, under reasonably foreseeable conditions, *to be used by consumers even if not intended for them,*' we must conclude that the concept of 'producer' must include not only the manufacturer of the end product but also the manufacturer of a *raw material* or a *component*. Accordingly, certain industrial branches, such as the chemical industry, would be permanently affected by unforeseeable and, hence, incalculable potential obligations, e.g. product recall obligations.

4. New definition of safety requirements and conformity criteria

The Commission sees a need to redefine general safety requirements, conformity assessment criteria and the role of European standardisation bodies (Articles 3 and 4).

III. Information obligations and obligations to recall or withdraw products

The existing **obligation to inform** consumers is now to be extended to include the competent national authorities (Article 5).

From the producer's point of view, it is, however, difficult to determine the degree of danger which triggers the obligation. Business secrets may become public knowledge, while the line between self-incrimination and the protection of fundamental rights becomes very blurred.

Obligations concerning exchange of information entail significant costs which constitute a major burden for small and medium-sized undertakings.

The producer's **obligation to *recall* products** refers to products *already supplied to consumers* (Article 5(1)) and involves reimbursement or replacement or repair (Article 2(f)). The producer may also be expressly obliged by the competent authorities to recall unsafe products (Article 8(1)(h)).

Directive 92/59/EEC already provides for *withdrawal from the market* by the producer of the relevant product (Article 3(2)). The possibility also exists for Member States to *'organise* the *withdrawal* from the market of products already on the market' (Article 6(1)(h)). How they are to do so is left to their discretion.

What is not clear is how the new Directive will change the situation in practice.

IV. Obligations and powers of the Member States

1. Market surveillance and enforcement powers

Market surveillance means that the authorities will not only take action where there is actual evidence of risk but also investigate the possibility of dangerous goods being placed on the market, for example by carrying out random checks. In some Member States, the product safety authorities do not have the requisite powers. There are no reports of any negative consequences.

Now, all the Member States are to be obliged to **introduce market surveillance powers**. Furthermore, a European Product Safety Network is to be operated (Articles 9 and 10).

The obligations of the Member States also include the establishment of **penalties** applicable to infringements of the national provisions adopted pursuant to the Directive (Article 7).

Pursuant to Article 8(1), the competent authorities of the Member States must have powers to prohibit the placing of dangerous products on the market.

2. Exchange of information

Pursuant to Article 11, the Member States are obliged to inform the Commission of any measures which *restrict the placing of products on the market*. The Commission will forward the information to the other Member States only where that measure is not obviously protectionist.

Should *rapid intervention* be required, information between the Commission and the other Member States is to be exchanged through the RAPEX system (Article 12).

V. Rapid action at Community level

1. Imposition of obligations by the Commission

Article 13 develops the system laid down in Directive 92/59/EEC. Where a serious risk exists to consumer health and safety, the Commission may adopt a decision requiring Member States to take one or more of the measures listed in Article 8.

The admissibility of this procedure was tested in Case C-359/92, *Germany v Council*, with respect to Article 9 of Directive 92/59/EEC. The Court of Justice ruled that Article 95(1) of the EC Treaty (formerly Article 100a) constituted an adequate legal basis for a decision relating to a specific product whereby the Member States might be required to take measures designed to restrict the placing of the product on the market or order its withdrawal from the market.

2. Automatic export bans

Pursuant to Article 13(3), the export from the Community of products in respect of which the Commission has required the Member States to carry out safety checks, has prohibited the placing on the market or has ordered the recall, is automatically prohibited.

The ban on the export of dangerous products to third countries should be regulated in a different manner. In particular, the proposal that a simple requirement to carry out safety checks should result in an automatic export ban is difficult to justify. Within the Community, the EU strives for a high level of protection and, in so doing, sets itself the objective of maintaining stringent safety standards. However, the task is to differentiate between a 'product deemed to be safe' within the meaning of the Directive and a genuinely dangerous product. What is more, other countries are perfectly entitled to apply less stringent safety standards. A general export ban that was too easy to impose would imply the application of European safety standards outside the EU and result in the loss of markets.

VI. Flow of information versus professional secrecy

According to the Commission proposal, the information circuit would consist of the following: Manufacturers would be obliged to inform the authorities about all product risks; the authorities would inform the Commission through RAPEX; the Commission would forward the information to all the other Member States (and, where appropriate, to applicant countries and third countries), and the general public would have access to all information (Article 16(1), first subparagraph). At the same time, however, professional secrecy is to be protected (Article 16(1), second subparagraph).

The problem of how to square this particular circle remains unresolved.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on the Environment, Public Health and Consumer Policy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
(Amendment 1) Article 2(a)	
For the purposes of this Directive: (a) "product" shall mean any product which is intended for consumers, or likely***, under reasonably foreseeable conditions,*** to be used by consumers ***even if not intended for them***, and is supplied or made available, whether for consideration or not, in the course of a commercial activity and whether new, used or reconditioned.	For the purposes of this Directive: (a) "product" shall mean any product which is intended for consumers, or likely to be used by consumers, and is supplied or made available, whether for consideration or not, in the course of a commercial activity and whether new, used or reconditioned.
This definition includes products used to provide a service, in so far as consumer product safety aspects under reasonably foreseeable conditions of use of those products are concerned.	
It does not include second-hand products supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier clearly informs the person to whom he supplies the product to that effect.	It does not include second-hand products supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier clearly informs the person to whom he supplies the product to that effect.

Justification:

The phrase used by the Commission – 'under reasonably foreseeable conditions' - may well cause confusion in the mind of the reader. It is proposed that the tried-and-tested wording of Directive 92/59/EEC be retained and the sections deleted where the meaning is unclear.

[1] Not yet published in OJ.

(Amendment 2)
Article 2(b), introductory clause

(b) "safe product" shall mean any product which, under normal or reasonably foreseeable conditions of use, including duration, does not present any ***risk*** or only ***the minimum*** risks ***compatible with the product's use, considered as acceptable and*** consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:	(b) "safe product" shall mean any product which, under normal or reasonably foreseeable conditions of use, ***installation and maintenance,*** including duration, does not present any ***unacceptable risks*** or only risks consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:

(Amendment 3)
Article 2(b) (v)

(v) the services directly associated with the product supplied, when these services are provided by the producer, in particular the installing and the maintenance of the product.	***deleted.***

Justification:

A few years ago, a proposal for a directive on the liability of suppliers of services failed to secure adoption. The Commission is now trying to extend the scope of the General Product Safety Directive to cover service safety.

That attempt must be rejected because:

1. *there is no proven need for legislation,*
2. *services do not fit into the pattern of a general product safety directive,*
3. *it is difficult to differentiate between 'products, 'services related to products' and 'services',*
4. *the proposed legislation would result in price rises and in the bureaucratisation of services.*

(Amendment 4)
Article 5(3)

3. Producers and distributors shall immediately inform the competent authorities of the Member States if they conclude that a product that they have placed on the market is dangerous. They shall in particular inform the authorities of the action taken to prevent risks to consumers. Specific requirements for this information are set out in Annex I. They shall be adapted by the Commission acting in accordance with the procedure referred to in Article 15(2).	***Delete***

Justification:

It is difficult for the producer to determine the degree of danger which should trigger the obligation to provide information. At all events, objectively established actual risks will trigger the Directive's normal, tried-and-tested mechanisms. Article 5(3) therefore applies only to a suspicion. However, it is doubtful whether a producer may be obliged, on the basis of no more than a suspicion, to pursue a course of action which, in terms of the protection of fundamental freedoms, might amount to self-incrimination. What is more, account must be taken of the protection of professional secrecy. Article 5(3) should therefore be deleted.

(Amendment 5)
Article 13(3)

3. Export from the Community of products for which Member States have been required to take measures among those listed in Article 8(1)(***f***), (g) and (h) shall be prohibited.	3. Export from the Community of products for which Member States have been required to take measures among those listed in Article 8(1)(g) and (h) shall be prohibited.

Justification:

Article 13(3) triggers an automatic ban on the exports from the Community of products in respect of which the Commission has called on a Member State to carry out safety checks, to ban the placing of it on the market or to withdraw it from the market. The proposal that a mere call for a safety check should trigger an automatic export ban is difficult to justify. Within the Community, the EU strives for a high level of protection and, in so doing, sets itself the objective of maintaining stringent safety standards. However, it is difficult to differentiate between a product 'deemed to be safe' within the meaning of the Directive and a genuinely dangerous product. What is more, other countries are perfectly entitled to apply less stringent safety standards. It is therefore proposed that Article 13(3) be amended so that the automatic export ban applies solely to products in respect of which the Commission has called on a Member State to ban the placing of it on the market or to withdraw it from the market.

(Amendment 6)
Article 16

1. Information available to the authorities of the Member States or the Commission relating to risks to consumer health and safety posed by products shall ***in general*** be available to the public. In particular the public shall have access to information on product identification, the nature of the risk and the measures taken.	1. Information available to ***all*** the authorities of the Member States or the Commission relating to risks to consumer health and safety posed by products shall be available to the public ***as soon as the Member State authorities or the Commission issue a ban on the placing of a product on the market or require the withdrawal of a product from the market***. In particular the public shall have access to information on product identification, the nature of the risk and the measures taken.
However, the Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Directive which, by its nature, is covered by professional secrecy in duly justified cases, except for information relating to the safety properties of products which must be made public if circumstances so require, in order to protect the health and safety of consumers.	However, the Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Directive which, by its nature, is covered by professional secrecy in duly justified cases, except for information relating to the safety properties of products which must be made public if circumstances so require, in order to protect the health and safety of consumers.
2. Protection of professional secrecy shall not prevent the dissemination to the competent authorities of information relevant for ensuring the effectiveness of market surveillance and enforcement activities. The authorities receiving information covered by professional secrecy shall ensure its protection.	

Justification:

1. Information to be made available to the public: Information to be made available to the public must cover all available information. The exact moment when such information is to be made available needs to be established, firstly, in order to ensure uniform application of the provision and, secondly, in order to prevent defamation of character and unfair competitive practices.

2. Protection of business secrecy: Article 16, taken in conjunction with the proposed Articles 5(3), 10, 11 and 12 will seriously encroach on business secrecy. Such encroachment

contradicts not only the fundamental right of ownership and freedom of occupation but also Article 287 of the EC Treaty (protection of business secrecy). It is therefore proposed that the relevant provisions of Directive 92/59/EEC be retained and the newly-inserted paragraph 2 deleted.

13 October 2000

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on the Environment, Public Health and Consumer Policy

on the proposal for a directive of the European Parliament and of the Council on general product safety
(COM(2000) 139 – C5-0224/2000 – 2000/0073(COD))

Draftsman: Paul Rübig

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Paul Rübig draftsman at its meeting of 6 June 2000.

It considered the draft opinion at its meetings of 14 September and 12 October 2000.

At the latter meeting it adopted the amendments below by 38 votes to 8.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Nuala Ahern, vice-chairman; Paul Rübig, draftsman; Konstantinos Alyssandrakis, Ward Beysen (for Willy C.E.H. De Clercq), Guido Bodrato, David Robert Bowe (for Glyn Ford), Yves Butel, Massimo Carraro, Gérard Caudron, Giles Bryan Chichester, Elisa Maria Damião (for Myrsini Zorba), Jonathan Evans (for Jaime Valdivielso de Cué), Francesco Fiori (for Renato Brunetta), Colette Flesch, Christos Folias, Norbert Glante, Alfred Gomolka (for Peter Michael Mombaur), Lisbeth Grönfeldt Bergman (for Anders Wijkman), Michel Hansenne, Malcolm Harbour, Philippe A.R. Herzog, Hans Karlsson, Wolfgang Kreissl-Dörfler (for Nelly Maes), Werner Langen, Peter Liese (for Concepció Ferrer), Caroline Lucas, Eryl Margaret McNally, Erika Mann, Marjo Tuulevi Matikainen-Kallström, Hans-Peter Mayer (for Alejo Vidal-Quadras Roca), Angelika Niebler, Giuseppe Nisticò (for Umberto Scapagnini), Hervé Novelli (for Dominique Vlasto), Reino Kalervo Paasilinna, Yves Piétrasanta, Samuli Pohjamo (for Astrid Thors), John Purvis, Imelda Mary Read, Mechtild Rothe, Christian Foldberg Rovsing, Jacques Santer (for Godelieve Quisthoudt-Rowohl), Konrad K. Schwaiger, Esko Olavi Seppänen, Anna Terrón i Cusí (for Elena Valenciano Martínez-Orozco), Claude Turmes (for Ilka Schröder) and W.G. van Velzen.

SHORT JUSTIFICATION

The new version of Directive 92/59/EEC is proposed on the grounds that the Commission does not consider the directive efficient because so few cases arise. This view cannot be endorsed: the contrary position is far more plausible, namely that the law as it stands appears to be perfectly adequate. As the Commission has to admit in its explanatory memorandum, no need for action is apparent from the accident statistics of the Member States. These do not include any data on the extent to which dangerous products played a role in accidents. The problems which arose during the BSE crisis and the dioxin scandal are not by themselves sufficient to justify such far-reaching action as the Commission proposes, bearing in mind the subsidiarity principle, especially as these particular problems relating to food are to be dealt with by separate legislation (white paper on food safety).

The following criticisms may be made of points of detail in the Commission proposal:

In the definition of the term 'product', it ought to be made clear that at all events real estate is not included. The extension of the definition to include products used to provide a service is expressly rejected. The draftsman considers that the problematic cases with which this is intended to deal are already covered by product safety law provided that the existing definition is interpreted correctly.

Likewise expressly rejected is inclusion of installation and maintenance work in the definition of 'safe product'. It is true that the formulation proposed for the directive is restricted to services provided by the producer. However, it must be read in conjunction with the definition of 'producer', under which all professionals in the supply chain whose activities may affect the safety properties of a product are also defined as producers. This means practically all commercial operators. In particular, it means that all distributors who perform installation work are no longer covered by the definition in Article 2(e) of the proposal for a directive but are regarded as producers. In many fields (toys, sports articles and vehicles), products are no longer assembled by the producer but supplied to the distributor in the form of separate components. In these cases, the distributor should not have to bear the burden of producer's liability under the law on product safety. Adequate consumer protection is provided by civil-law remedies (compensation for damages under the law of contractual liability).

As regards recall of products, the inclusion of a definition of 'recall' is certainly to be welcomed. However, the definition given alters the interpretation which has prevailed hitherto. Whereas, previously, 'recall' mainly referred to withdrawal from the market, the Commission now proposes that it should mean exclusively recovery from the consumer. As a requirement for producers to recover products from the consumer is a major and costly imposition, it is necessary to distinguish, both in the definitions and in the measures, between withdrawal from the market and the expensive measure of recovery.

It is very much to be welcomed that the directive assumes a product to conform to general safety requirements if a producer complies with voluntary standards. This provision rewards producers who are already trying to secure compliance with voluntary standards and provides a positive incentive for others to follow their example.

The obligations of producers and distributors ought to be defined more clearly. As the obligations referred to apply throughout the lifetime of the product, which means for a long

time, the situations and levels of measure referred to in Article 5 should be defined very precisely, particularly as already indicated with regard to the ultimate measure, recall from the customer. The obligations to report, cooperate and provide documentation and particularly the requirements concerning recall will involve considerable bureaucracy and expense, particularly for small and medium-sized businesses. The Commission's view that 'The proposal will not significantly modify the implications for business compared with the present Directive' cannot be endorsed. It is not particularly clear why two reporting systems are provided for here, the only criterion for their demarcation being whether a Member State considers rapid intervention to be required, and such a dual system is hardly likely to improve the exchange of information.

The Commission's measures and the prohibition of exports to third countries require special attention for several reasons. As it is intended to create a rapid, simplified procedure in conjunction with a weakening of national monitoring, it is all the more necessary that decisions taken under this procedure should only apply temporarily. As in particular different approaches to danger by different Member States are the premise for such decisions by the Commission, the issue will clearly not be manifest and unambiguous violations and serious hazards to consumers but contentious cases. Accordingly, only temporary protection of consumers should be permissible. The proposal to extend the period of validity of Community measures to one year or even an unlimited period must therefore vehemently be rejected.

A ban on exports imposed in the proposed manner should likewise be rejected in general, as it would impose massive competitive disadvantages on exporting companies in comparison with companies outside the EU, given that the former would have to comply with EU standards while the latter would only have to comply with the safety standards of the receiving states. A product intended for export should be assessed solely in the light of the legal requirements of the receiving state.

Despite the reference to secrecy, the publication requirement provided for in the directive gives rise to a fear that in certain cases professional secrets may be publicised unacceptably. Moreover, any unnecessary exposure and criminalisation of businesses beyond identifiability of the product concerned through publication of such data must absolutely be avoided.

AMENDMENTS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on the Environment, Public Health and Consumer Policy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
(Amendment 1) Recital 14	
(14) The provisions of this Directive relating to the other obligations of producers and distributors, the obligations and powers of the Member States, the exchanges of information and rapid intervention situations and confidentiality ***should apply in the case of products covered by specific rules of Community law, without prejudice to any specific requirements on the same aspects in such rules***.	The provisions of this Directive relating to the other obligations of producers and distributors, the obligations and powers of the Member States, the exchanges of information and rapid intervention situations and confidentiality ***shall not apply to products covered by specific provisions of Community law***.
Justification: *The proposal for a directive, even if its scope is restricted to cases where specific product safety rules do not exist (Article 1(2)), in practice reintroduces certain disturbing elements of legislative uncertainty, in particular with reference to Article 1(2) (second part) and the definition of 'product'.*	
(Amendment 2) Recital 23	
(23) The safety of consumers depends to a great extent on the active enforcement of Community product safety requirements. The Member States should, therefore, establish systematic approaches to ensure the effectiveness of market surveillance and other enforcement activities and should ensure their openness to the public and interested parties.	(23) The safety of consumers depends to a great extent on the active enforcement of Community product safety requirements. The Member States should, therefore, establish systematic approaches to ensure the effectiveness of market surveillance and other enforcement activities and should ensure their openness to the public and interested parties***, and, in addition, draw up factual reports with the cooperation of competent and independent public or private institutions***.

[1] COM(2000) 139/2, 29.3.2000

Justification:

Transparency of information is reinforced by the cooperation of institutions of recognised credibility. The quality of the strategies to be implemented depends on the participation of institutions with competence in each sector of activity concerned.

(Amendment 3)
Article 1(2)

2. This Directive shall apply only in so far as ***there are no*** specific ***provisions in rules of Community law governing the safety of the products concerned.*** ***In particular, where products are subject to safety requirements imposed by Community legislation specific to those products:*** ***- Articles 2, 3 and 4 of this Directive shall not apply to those products in so far as concerns the risks or categories of risks regulated by the specific legislation;*** ***- the other Articles of this Directive shall apply in so far as there are no specific provisions in that legislation governing the aspects covered by the said Articles of this Directive***.	2. This Directive shall apply only in so far as specific ***product safety provisions do not already exist in Community law***.

Justification:

The proposal for a directive, even if its scope is restricted to cases where specific product safety rules do not exist (Article 1(2)), in practice reintroduces certain disturbing elements of legislative uncertainty, in particular with reference to Article 1(2) (second part) and the definition of 'product'.

(Amendment 4)
Article 2(a)

(a) "product" shall mean any ***product*** which is intended for consumers, or likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them, and is supplied or made available, whether for consideration or not, in the course of a commercial activity and whether new, used or reconditioned.	(a) "product" shall mean any ***movable asset, including energy and even if it is part of another movable asset or has been associated with an immovable asset,*** which is intended for consumers, or likely, under reasonably foreseeable conditions, to be used by consumers even if not ***formally*** intended for them, and is supplied or made available,

	whether for consideration or not, in the course of a commercial activity and whether new, used or reconditioned.
This definition includes products used to provide a service, in so far as consumer product safety aspects under reasonably foreseeable conditions of use of those products are concerned.	
It does not include second-hand products supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier clearly informs the ***person to whom he supplies the product to that effect***;	***This definition*** does not include second-hand products supplied as antiques or as products to be ***restored,*** repaired or reconditioned prior to being used, provided that the supplier clearly informs the ***recipient***;

Justification:

The definition of 'product' should be improved by specifying that a product may be used by consumers even if that is not its primary and inherent function; similarly, a 'product' may be supplied or made available outside the professional context as part of everyday relations between private individuals.

(Amendment 5)
Article 2(b)(iv)

(iv) the categories of consumers at risk when using the product, in particular children and the elderly,	(iv) the categories of consumers at risk when using the product, in particular children and the elderly***: labelling, advertising and distribution services should warn consumers of the risks arising from use, taking account of age and of possible pathologies common to the specific types of consumer in question.***

Justification:

Certain types of equipment, product or service are not accompanied by warnings targeted on these specific consumer groups to the effect that their particular pathologies and/or characteristics could make the products potentially dangerous to them.

(Amendment 6)

Article 2(b)(v)

(v) ***the services directly associated with the product supplied, when these services are provided by the producer, in particular*** the installing and the maintenance of the product.	(v) the installing and the maintenance of the product ***by the original producer***.

Justification:

Installation and maintenance work ought not to be included without limitation in the definition of 'safe product'. It is true that the proposed formulation is restricted to services provided by the producer. However, it must be read in conjunction with the definition of 'producer' in Article 2(d)(iii), under which all professionals in the supply chain whose activities may affect the safety properties of a product are also defined as producers. This means practically all commercial operators. In particular, it means that all distributors who perform installation work are no longer covered by the definition in Article 2(e) but regarded as producers. In many fields, products are no longer assembled by the producer but supplied to distributors in the form of separate components. In these cases, the distributor should not have to bear the burden of producer's liability under the law on product safety. Adequate consumer protection is provided by civil-law remedies (compensation for damages under the law of contractual liability).

(Amendment 7)
Article 2(f)

	f) ***"recall from the market" shall mean any measures whereby the producer withdraws a product from the market for reasons of product safety and consumer protection; "withdrawal"*** shall mean any measures aimed at achieving the return of a dangerous product, for reimbursement or replacement or repair, that has already been supplied or made available to consumers by the producer or distributor.
(f) ***"recall"*** shall mean any measures aimed at achieving the return of a dangerous product, for reimbursement or replacement or repair, that has already been supplied or made available to consumers by the producer or distributor.	

Justification:

The definition of 'recall from the market' should include the purpose of such action, so as to avoid any risk of departing from the original intention, while providing a definition as full as that of 'withdrawal'.

(Amendment 8)
Article 3(3)a (new)

	3a. A producer may demonstrate the conformity of a product with paragraph 2 or 3 by obtaining external certification.

(Amendment 9)
Article 5(4)

4. Producers and distributors, within the limits of their respective activities, shall collaborate with the competent authorities, at the request of the latter, on action taken to avoid the risks posed by products which they supply or have supplied. ***The competent*** authorities shall define the procedures for ***such collaboration, including procedures for dialogue with the producers and distributors concerned on issues related to consumer product safety enforcement.***	4. Producers and distributors, within the limits of their respective activities, shall collaborate with the competent authorities, at the request of the latter, on action taken to avoid the risks posed by products which they supply or have supplied***. Having heard the views of the consumers' representative organisations, public institutions and competent bodies, the*** authorities shall define the procedures for ***collaboration and dialogue on matters related to consumer product safety***.

Justification:

The dialogue on consumer safety must involve a wider range of parties than producers and consumers alone.

(Amendment 10)
Article 8(1)

1. In order to achieve the objectives of this Directive and in particular for the purposes of Article 6, the competent authorities of the Member States shall have the necessary powers, and take the necessary action in accordance with the ***degree of risk*** and in conformity with the Treaty, and in particular Articles 28 and 30 thereof, to adopt appropriate measures with a view to: (a) organising appropriate checks on the safety properties of products, even after their being placed on the market as being safe, on an adequate scale, up to the final stage of use or consumption; (b) requiring all necessary information from the parties concerned; (c) taking samples of products and subjecting them to safety checks; (d) subjecting product marketing to prior conditions designed to ensure product	1. In order to achieve the objectives of this Directive and in particular for the purposes of Article 6, the competent authorities of the Member States shall have the necessary powers, and take the necessary action in accordance with the ***principle of proportionality*** and in conformity with the Treaty, and in particular Articles 28 and 30 thereof, to adopt appropriate measures with a view to: (a) organising appropriate checks on the safety properties of products, even after their being placed on the market as being safe, on an adequate scale, up to the final stage of use or consumption; (b) requiring all necessary information from the parties concerned; (c) taking samples of products and subjecting them to safety checks; (d) subjecting product marketing to prior

safety and requiring that suitable warnings be affixed regarding the risks which the product may present; (e) making arrangements to ensure that persons who might be exposed to a risk from certain products are informed in good time and in a suitable manner of the said risk by, inter alia, the publication of special warnings; (f) temporarily prohibiting, for the period required to carry out the various checks, verifications or safety assessments, anyone from supplying, offering to supply or exhibiting, certain products whenever there are precise and consistent indications that they could be dangerous; (g) prohibiting the placing on the market of dangerous products and establishing the accompanying measures needed to ensure that the ban is complied with; (h) organising or ordering, the effective and immediate withdrawal of dangerous products already on the market, the warning of consumers on the risks posed by dangerous products, the recalling from consumers of those products already supplied, and the destruction of the products in question under appropriate conditions, if necessary, in cases where action by producers and distributors to the same aims, in conformity to their obligation under this Directive, is not satisfactory or is insufficient.	conditions designed to ensure product safety and requiring that suitable warnings be affixed regarding the risks which the product may present; (e) making arrangements to ensure that persons who might be exposed to a risk from certain products are informed in good time and in a suitable manner of the said risk by, inter alia, the publication of special warnings; (f) temporarily prohibiting, for the period required to carry out the various checks, verifications or safety assessments, anyone from supplying, offering to supply or exhibiting, certain products whenever there are precise and consistent indications that they could be dangerous; (g) prohibiting the placing on the market of dangerous products and establishing the accompanying measures needed to ensure that the ban is complied with; (h) organising or ordering, the effective and immediate withdrawal of dangerous products already on the market, the warning of consumers on the risks posed by dangerous products, the recalling from consumers of those products already supplied, and the destruction of the products in question under appropriate conditions, if necessary, in cases where action by producers and distributors to the same aims, in conformity to their obligation under this Directive, is not satisfactory or is insufficient.

Justification:

Although an order of priority for the individual measures may be seen as implied by the order in which they are listed and by the principle of proportionality referred to in Article 7, it ought to be made clear that the authorities are always to utilise the least far-reaching means which can attain the objective. The measures taken pursuant to paragraph 2 should be temporary, and provision should be made for judicial review of the decisions of the authorities. The order of priority among the parties responsible, as laid down in paragraph 3, should be clearer; in particular, any third party who is affected should receive compensation.

(Amendment 11)
Article 8(2)

2. In particular, the competent authorities	2. In particular, the competent authorities

shall have the necessary powers and take the necessary action, to apply with due rapidity appropriate measures among those mentioned in paragraph 1(d) to (h), in the case of products posing a serious risk which requires rapid intervention.	shall have the necessary powers and take the necessary action, to apply with due rapidity appropriate ***provisional*** measures among those mentioned in paragraph 1(d) to (h), in the case of products posing a serious risk which requires rapid intervention***. Producers and distributors shall have the option of requesting legal verification of such provisional measures***.

Justification:

In cases of risk to consumers' health and safety, producers and distributors must have the right to take measures which they consider suitable in order to counter the risks.

If Member State authorities are to be able to rule on the proportionality of such measures, producers and distributors must be obliged to provide the necessary information.

(Amendment 12)
Article 8(3)

3. The measures to be taken by the competent authorities under paragraphs 1 and 2 shall be addressed, ***as appropriate***, to: (a) the producer; (b) ***within the limits of their respective activities, distributors and in particular*** the party responsible for the first stage of distribution on the national market; (c) any other person, where necessary, with regard to cooperation in action taken to avoid risks arising from a product.	3. The measures to be taken by the competent authorities under paragraphs 1 and 2 shall be addressed, ***in the following order of priority***, to: (a) the producer; (b) the party responsible for the first stage of distribution on the national market; ***(ba) distributors within the limits of their respective activities;*** (c) any other person, where necessary, with regard to cooperation in action taken to avoid risks arising from a product***; such persons shall receive compensation for costs incurred as a result***.

Justification:

Although an order of priority for the individual measures may be seen as implied by the order in which they are listed and by the principle of proportionality referred to in Article 7, it ought to be made clear that the authorities are always to utilise the least far-reaching means which can attain the objective. The measures taken pursuant to paragraph 2 should be temporary, and provision should be made for judicial review of the decisions of the authorities. The order of priority among the parties responsible, as laid down in paragraph 3, should be clearer; in particular, any third party who is affected should receive compensation.

(Amendment 13)
Article 8(3)a (new)

	3a. Producers and distributors shall inform the national authorities of the voluntary additional measures which they intend to take or have already taken.

Justification:

In cases of risk to consumers' health and safety, producers and distributors must have the right to take measures which they consider suitable in order to counter the risks.

If Member State authorities are to be able to rule on the proportionality of such measures, producers and distributors must be obliged to provide the necessary information.

(Amendment 14)
Article 9(3)

3. The Member States shall ensure that consumers and other interested parties may present complaints to the competent authorities on product safety and on surveillance and control activities and that these complaints are considered, followed up as appropriate and answered. The Member States shall actively inform consumers and the other interested parties of the procedures established to that end.	3. The Member States shall ensure that consumers and other interested parties may present complaints to the competent authorities on product safety and on surveillance and control activities and that these complaints are considered, followed up as appropriate and answered ***or appropriate compensation is received in respect of the damage caused and the producers' and distributors' responsibilities***. The Member States shall actively inform consumers and the other interested parties of the procedures established to that end.

Justification:

The responsibility which Member States should require on the part of producers and distributors must not be confined to information and recall: they must also be made responsible for compensating any damage caused, in accordance with the regulations and penalties which the Member States consider to be applicable.

(Amendment 15)
Article 13 (2), (3) and (5)

2. Decisions referred to in paragraph 1 shall be valid for a period not exceeding ***one year*** and may be confirmed, under the same procedure, for additional ***periods of one year***. ***However, decisions concerning specific, individually identified products or batches of products, shall be valid without a time-limit.***	2. Decisions referred to in paragraph 1 shall be valid for a period not exceeding ***six months*** and may be confirmed, under the same procedure, for ***an*** additional ***period of six months***.
3. Export from the Community of products for which Member States have been required to take measures among those listed in Article 8(1)(f), (g) and (h) shall be prohibited.	3. Export from the Community of products for which Member States have been required to take measures among those listed in Article 8(1)(f), (g) and (h) shall be prohibited ***unless the producer shows that they comply with the safety requirements of the receiving state***.
5. The competent authorities responsible for carrying out the measures referred to in paragraph 1 shall, within one month, give the parties concerned an opportunity to submit their views and shall inform the Commission accordingly.	5. The competent authorities responsible for carrying out the measures referred to in paragraph 1 shall, within one month, give the parties concerned an opportunity to submit their views and shall inform the Commission accordingly. ***This shall be without prejudice to domestic legal remedies.***

Justification:

The very fact that it is intended to create a rapid, simplified procedure without national monitoring, or with a milder form of such monitoring, makes it all the more necessary that such decisions, which are taken without a proper, extensive procedure, should only apply temporarily. As in particular different approaches to danger by different Member States are the premise for such decisions by the Commission, the issue will clearly not be manifest violations and serious hazards to consumers. The period of validity of Community measures should therefore not be extended to one year or even an unlimited period.

A ban on exports should be rejected in general, as it would impose massive competitive disadvantages on exporting companies in comparison with companies outside the EU, given that the former would have to comply with EU standards while the latter would only have to comply with the safety standards of the receiving states. Producers ought at least to be given the opportunity to show that their products comply with the safety requirements of the receiving state.

(Amendment 16)
Article 16 (1) and (2)

1. Information available to the authorities of the Member States or the Commission relating to risks to consumer health and safety posed by products shall ***in general*** be available to the public. In particular the public shall have access to information on product identification, the nature of the risk and the measures taken. However, the Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Directive which, by its nature, is covered by professional secrecy in duly justified cases, except for information relating to the safety properties of products which must be made public if circumstances so require, in order to protect the health and safety of consumers.	1. Information available to the authorities of the Member States or the Commission relating to risks to consumer health and safety posed by products shall be available to the public ***in the case of the measures pursuant to Article 8(2)***. In particular the public shall have access to information on product identification, the nature of the risk and the measures taken. However, the Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Directive which, by its nature, is covered by professional secrecy in duly justified cases, except for information relating to the safety properties of products which must be made public if circumstances so require, in order to protect the health and safety of consumers.
2. Protection of professional secrecy shall not prevent the dissemination to the competent authorities of information relevant for ensuring the effectiveness of market surveillance and enforcement activities. The authorities receiving information covered by professional secrecy shall ensure its protection.	

Justification:

Despite the reference to secrecy, the publication requirement in this article gives rise to a fear that in certain cases professional secrets may be publicised unacceptably. Moreover, any unnecessary exposure and criminalisation of businesses as such (particularly on account of the broad definition of 'producer' in Article 2(d)) beyond identifiability of the product concerned through publication of such data must absolutely be avoided. Publication of internal business data is justified only in the case of measures as referred to in Article 8(2). Paragraph 2 is already implicit in paragraph 1, so that repetition is superfluous.