

---

## Editorial

---

### EC Proposed Directive on Liability for Services

The Commission has made a proposal for a Council Directive on the liability of suppliers of services (COM (90)482 of 20 December 1990). In the words of the Commission Background Report of 24 March, the Commission "has proposed clear, standard principles at European level".

The burden of proof will be in favour of the consumer if he can prove: (a) that the injury was a result of the provision of the service; and (b) the causal relationship between the damage and the fault. The supplier of the service will then be liable for damage caused to the consumer's person or private property. Evidence must show that the fault relates to the legitimate expectation of the consumer in relation to the safety of the service.

An important point to note is that the victims of defective services will be able

to invoke national law if it is more favourable in a particular case.

Studies show that, at present, there are numerous variations of the level of protection for consumers of services within the Member States. The differences relate primarily to the burden of proof. In the UK, for instance, the consumer must prove breach of contract or negligence by the supplier of the service. In Spain, Denmark, Greece, Belgium and Germany the burden of proof is reversed in favour of the consumer. French and Belgian law makes a distinction between an obligation regarding the means and an obligation regarding the end.

In the UK, the Department of Trade and Industry has issued a consultation paper on the draft directive, to which the Law Society of England and Wales has responded criticising the proposal in two respects:

(1) the draft does not distinguish sufficiently clearly between the types of damage to which it will apply and

those to which it will not. The Directive does not deal adequately with the question of economic or consequential loss (Article 4); (2) The draft does not extend liability to franchisors for services provided in their names. The Society thinks that if franchisors profit from the use of their names, they should be responsible for the quality of services provided in those names.

One can only hope that in the pursuit of protecting the consumer and making the supply of services more competitive, the cost of Liability insurance does not cripple the providers of services.

For further proposed protection for consumers, see the News item below on unfair contract terms.

*Susan Nicholas*