

# **Directive 85/374/EEC: liability for defective products**

## **General principles**

**Screening Chapter 28 – Preparatory meeting**

# liability for defective products

## **Council Directive 85/374/EEC**

on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products

*as amended by*

## **Directive 1999/34/EC**

of the European Parliament and of the Council of 10 May 1999 (OJ L 141, 4.6.1999, p. 20)

*and corrected by*

Corrigendum, OJ L 283, 6.11.1999, p. 20 (1999/34)

# liability for defective products

The advantages of the Single market in facilitating the availability in all member States of a wide range of products from all corners of the Union must be made available within a framework which assures citizens of the safety of those products and the possibility to claim compensation in case of damages caused by defective products.

Since 1985, the EU Internal Market counts on a framework of product liability set up to satisfy both concerns. Since 1985, the Directive 85/374/EEC on liability for defective products introduced in the Community the principle of **objective liability** or **liability without fault**.

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According to it, any producer of a defective movable must compensate any damage caused to the physical well-being or property of individuals, independently whether or not there is negligence on the part of the producer.

Directive 99/34/EC extended the scope of strict product liability to unprocessed primary agricultural products.

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This legislation applies to any product marketed in the European Economic area and is of direct concern for both citizens and producers.

By striking a **fair balance of risk among citizens and producers**, this legislation aims to join consumers' interests with Single Market policies (namely free exchange of goods and elimination of competition distortions).

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## Main features:

### Principle of liability without fault (Art. 1):

The Directive establishes the principle of objective liability or liability without fault of the producer in cases of damage caused by a defective product.

If more than one person is liable for the same damage, it is joint liability.

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## Main features:

**Producer (Art. 3)** has a wide meaning including:

- Any participant in the production process;
- the importer of the defective product;
- any person putting their name, trade mark or other distinguishing feature on the product;
- any person supplying a product whose producer cannot be identified.

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## Main features:

**Burden of proof (Art. 4):** The injured person must prove:

- the actual damage;
- the defect in the product;
- the causal relationship between damage and defect.

As the Directive provides for liability without fault, it is **not** necessary to prove the negligence or fault of the producer or importer.



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## Main features:

**Lack of the safety (Art. 6)**, which the general public is entitled to expect, determines the defectiveness of a product. Factors to be taken into account include:

- Presentation of the product;
- use to which it could reasonably be put;
- time when the product was put into circulation.

The fact that a better product is subsequently put into circulation cannot be taken into consideration in determining the defectiveness of the product in question.

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## Main features:

### Exemption of producers from liability (Art. 7):

The producer is freed from all liability if he proves:

- that he did not put the product into circulation;
- that the defect causing the damage came into being after the product was put into circulation by him;

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- that the product was not manufactured for profit-making sale;
- that the product was neither manufactured nor distributed in the course of his business;
- that the defect is due to compliance of the product with mandatory regulations issued by the public authorities;

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- that the state of scientific and technical knowledge at the time when the product was put into circulation was not such as to enable the defect to be discovered. **On this point, the Member States are permitted to take measures by way of derogation;**

- in the case of a manufacturer of a component of the final product, that the defect is attributable to the design of the product or to the instructions given by the product manufacturer.

**Art. 8:** The producer's liability is not altered when the damage is caused both by a defect in the product and by the act or omission of a third party. However, when the injured person is at fault, the producer's liability may be reduced.

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## Main features:

**Damage covered (Art. 9):** For the purposes of the Directive, "damage" means:

- Damage caused by death or by personal injuries;
- Damage to an item of property intended for private use or consumption other than the defective product, with a lower threshold of €500.

The Directive does not in any way restrict compensation for non-material damage under national legislation.

The Directive does not apply to injury or damage arising from nuclear accidents covered by international conventions ratified by the Member States.

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## Main features:

**Expiration of liability (Art. 10):** The injured person has **three years** within which to seek compensation. This period runs from the date on which the plaintiff became aware of the damage, the defect and the identity of the producer.

**Art. 11:** The producer's liability expires at the end of a period of **ten years** from the date on which the producer put the product into circulation.

**Art. 12:** No contractual clause may allow the producer to limit his liability in relation to the injured person.

**Art. 13:** National provisions governing contractual or non-contractual liability are not affected by the Directive. Injured persons may therefore assert their rights accordingly.

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## Main features:

### Derogation clauses (Art. 15):

The Directive allows each Member State to set a limit for a producer's total liability for damage resulting from death or personal injury caused by identical items with the same defect. This limit may not be lower than € 70 million.

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## Reports:

The Directive provides for the Commission to report every five years (**Art. 21**) to the European Institutions on its application of the Directive and, where applicable, on any proposed changes.

The first report (COM(1995)617) was presented in 1995. The second review exercise was launched with a Green Paper on Product Liability adopted in July 1999, COM(1999) 396 final, leading to the second report published on 31 January 2001, COM(2000) 893 final.

The third report is taking due account of the results of the last two studies carried out for the European Commission, the outcome of meetings with interested parties and their responses to a questionnaire sent at the end of 2005.



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In a nutshell:

In the the Judgment of the CJ in case C-154/00 (Commission of the European Communities v Hellenic Republic) of 25/04/2002, paragraph 29, the Court of Justice underlined the fact that:

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*“...the limits set by the Community legislature to the scope of the Directive are the result of a complex balancing of different interests. As is apparent from the first and ninth recitals in the preamble to the Directive, those interests include guaranteeing that competition will not be distorted, facilitating trade within the common market, consumer protection and ensuring the sound administration of justice.”*