

EU legislation: Liability for defective products

Introduction

If you are an exporter of (consumer) products, you have to take into account that you can be held responsible for injuries caused by defects to your products. This is called product liability. EU consumers may require financial compensation for injuries caused by defective products. Injuries caused by defects to your products can damage your name and corporate image.

The EU legislation on product liability holds your EU client responsible for injuries caused by imported defective products. However, your EU client may pass on a claim filed by an injured EU consumer to you. More information on the concept of product liability is provided in the sections below (through several questions and answers). This document intends to help you to avoid the risks of product liability.

Outline of the legislation



Directive 85/374/EC lays down the principles of product liability in the EU. Injuries for which you can be (indirectly) held responsible include a wide range of products. For example:

- consumer products (ranging from cars to cots, from tyres to toys, including products that achieved CE marking);
- primary agricultural products (food in its raw state, e.g. meat, cereals, fruit and vegetables); and
- pharmaceuticals.

What is a defective product?

Your product will be considered defective when it is not as safe as EU consumers might expect. This means that a product will not be considered defective solely on the basis of poor quality or because a safer version is on the market. When deciding whether a product is defective, all circumstances are taken into account, including:

- the manner in which a product is marketed;
- any instructions or warnings that are given with it;
- what might reasonably be expected to be done with it;
- the time the producer supplied the product.

Injuries for which compensation can be claimed include death, personal injury and damage to private property other than the defective product itself (provided that the amount of loss or damage is 500 euro or more). EU Member States can individually set limits for the total liability for damage resulting from death or personal injury. This limit may not be less than 70 million Euros. Furthermore, EU Member States may govern compensation for non-pecuniary loss (e.g. pain and suffering).

➔ [For more information](#) on the national legislation of the EU Member States, refer to the overview in the related documents section.

When is your EU client liable?

An EU client can be held responsible if the product was defective and the defect caused the injury. Fault or negligence of your EU client is not of importance. The relationship between the defect in the product and the injury is called the causal relationship. The EU consumer has to prove this causal relationship. If he can not prove it, your EU client can not be held responsible. If a causal relationship can be proved, your EU client's liability may be reduced when the injured consumer was at fault.

In which cases will a claim be passed on to you?

Your EU client will pass on a claim to you if he expected a certain level of product safety (often established in agreed contracts) and this expectation was infringed. For example, if you declare in written that your products are produced conform EU safety requirements and they do not contain certain dangerous substances, your EU client may expect this is true. Furthermore,

your EU client can expect a certain quality level that is guaranteed by a certificate. If it appears that you provided your EU client with a false or incorrect certificate, you infringed your EU client's expectations. Another example of infringement is to not deliver a constant quality.

Example: DMF in leather products

As of 1 May 2009 it is not longer allowed to bring leather products that contain Dimethyl Fumarate (DMF) on the EU market. DMF can cause severe skin allergies to consumers who comes into physical contact with those products. EU clients that bring leather DMF-containing products on the EU market can be held responsible for damage (skin allergy) caused by the DMF. To make sure that no DMF is present in the products they bring on the EU market, your EU client will, amongst other, require a written statement of conformity. If in a later stadium a consumer will get a skin disease caused by DMF present in the products you supplied, your EU client will pass on any claim to you.

➔ [For more information](#) on DMF in leather products, refer to the related document.

In which cases can liability claims not be passed on to you?

- You did not supply the product (e.g. the product was stolen or is a false copy of your product);
- The defect causing the injury came into being after the product was supplied by you (e.g. the product became defective because somebody further on in the supply chain handled it carelessly);
- The product was not supplied in the course of a business/for profit making (e.g. the product was donated);
- The defect was the inevitable result of compliance with law, e.g. EU safety regulations.
- The state of scientific and technical knowledge at the time when you supplied the product was not as such that can be expected from you to have discovered the defect if it existed in your products while they were under your control.
- In the case you exported a component, you may be successful in defending yourself if you are able to show that the defect was due to the design of the finished product or to defective specifications given to you by the producer of the finished product.

What to do to reduce the occurrence of liability claims?

- You as a producer or exporter must give high priority to quality and product safety. Make sure your products comply with the safety requirements as laid down in EU legislation. For example general product safety legislation, general food safety legislation or standards that specifically apply to your product sector (e.g. toys, chemicals, cosmetics and machinery)
- Review your quality control, quality assurance and testing procedures. Check if all stages of production (design, manufacture, presentation and marketing) help to ensure that only safe products reach the EU market. Perhaps the implementation of an accredited quality management system (e.g. ISO 9001) will help you to perform better in this area;
- Carefully formulate labels, instructions for use and disclaimers (e.g. CE marking);
- Review your contractual arrangements with your EU client and others with whom you have relevant contracts (e.g. suppliers of components) to seek indemnity from other in the event of liability (e.g. delivery agreements that unmistakably regulate where your responsibility ends and where the EU client's (or other party's) responsibility begins);
- Assess whether an insurance cover, including product liability, may be an appropriate tool for your business.

➔ [For more information](#) on general safety requirements, CE marking or ISO 9001, refer to the related documents.

Effects of defective products on the EU market: The Chinese milk scandal

The Chinese milk contamination case provides a good illustration of the effects of 'defects' to imported products on EU market behaviour. In 2008 it was found that many Chinese babies had fallen ill as a result of the contamination of Chinese milk products with melamine.

The scandal quickly spread to milk-based products manufactured by international companies worldwide (e.g. chocolate products, dairy products, baby formula, milk based confectionary production, biscuits, candies and beverages). EU governments had Chinese milk-derived ingredients and finished products containing milk recalled from supermarket shelves. The breach of safety standards in China attracted liability and reputational risk of companies in the EU. The costs for these companies were significant.

A year later, Chinese produced milk and dairy products are still banned from EU markets. Furthermore, the safety of processed products such as chocolate, sweets, and biscuits is still doubted by EU importers. Moreover, the scandal raised (again) the attention to the quality of Chinese manufactured products generally (resulting in increased controls).

The Chinese milk contamination shows that EU clients will try to avoid the risks of product liability as much as possible. To become or stay an attractive trading partner, make sure you do the same and take as much as possible quality management measures throughout all stages of production.

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