

# Producers' liability for damages caused by defective products



**Odette Vella**

Director Information, Education and  
Research

Office for Consumer Affairs

MCCAA

15 March 2017

# Liability for defective products - current legislation

## **What is considered a product? What makes it defective?**

A 'product' includes:

- all movables, even if incorporated into another movable or into immovable property;
- primary agricultural products and electricity.

Does not include services but legislation applies to products used while providing a service.

# What makes a product 'defective'?

A defective product fails to provide the safety consumers are entitled to expect taking into account the following factors:

- marketing (presentation) of product
- directions and warnings
- reasonable use
- time when product was put on the market



A product is also deemed defective if it does not provide the safety usually provided by models of the same type.

Product not considered defective only because a better product is subsequently put into circulation.

# Who is liable?

## Producer/manufacturer

Definition of producer/manufacturer includes:

- Manufacturer of finished product or of a component part;
- Producer of any raw materials or any primary agricultural products
- Person who puts his name/trader mark on product;
- Importer of product if manufactured outside a Member State.



# Unknown or unreachable manufacturer

## Consumers responsibilities:

Request supplier to provide information on producer.

Request must be made in writing and sent by registered mail or made through an official letter.

Letter should include information on product that caused damage and details of when and where product was purchased.



# Liability of the supplier

Producer cannot be identified.

Supplier fails to meet consumer's request to provide info on producer or the importer who supplied the seller with the product.



# When is the producer not liable?

- Producer did not put product in circulation.
- Defect that caused damage did not exist when product was first put in circulation.
- Product not manufactured for sale or for any other form of distribution.
- Defect due to compliance with a mandatory requirement imposed by law or a public authority.



# When is the producer not liable

- Defect could not be discovered due to the scientific and technical knowledge at the time the product was produced.
- In case of a producer of a component part, defect due to the design/instructions given by the manufacturer of the finished product.





# Consumers' claim for damages

- Consumers who suffer damages may seek compensation from producer.
- Consumers may seek compensation for:
  - Death or personal injuries including any disease and any mental or physical impairment
  - Loss, damage or destruction of any item of property, other than the defective product itself, having a value of at least €500



# Consumers' claim for damages

Claims for damaged property may only be made provided that item of property was used by injured party for his own private use or consumption.

Damage to an item of property intended for professional use is not covered by this legislation.

To claim compensation, the injured consumer must prove the damage, the defect and the causal relationship between the defect and the damage but does not need to prove fault or negligence on the part of the producer.

## Limitation of action

Action for damages is limited to 3 years from the time of injuries sustained or from when consumers could reasonably have known of the damage, the defect and the identity of the producer.

In any case action is limited to 10 years from when the product is first put in circulation.

Liability to provide compensation cannot be limited or excluded by a contract term or notice.

# European Commission launches public consultation

## Why need to re-assess Directive's applicability?

No formal evaluation of Directive since 1985.

Through evaluation the Commission will:

- assess the applicability of the legislation within the framework of the Digital Single Market Strategy (DSM)
- assess if legislation is still fulfilling its objectives when taking into consideration new technological developments as for instance software, Cloud, Internet of Things, advanced robots and automated systems.



# European Commission launches public consultation

## Questions asked in evaluation

Is the current legislation still adequate to cover cases of damages caused by malfunctioning apps and non-embedded software?

What if damage is caused by a defect in connected objects relying on each other?

How liability for damages could be allocated between different participants in the Internet of Things in case of connected objects relying on each other.

# European Commission launches public consultation

## Consultation Objective:

Assess how Directive is implemented by Member States

Collect stakeholders' feedback on application and performance of Directive:

- Is it still meeting its' objective? Fit for purpose?
- Are the concepts of “product”, “producer”, “defective”, “damage” still fit for purpose?
- Does it still correspond to stakeholders' needs

Examine how Member States are using Directive when damages are caused by advanced robots, autonomous systems, complex Internet of Things products, defective apps, or other non-embedded software.

# European Commission launches public consultation

## Online Survey

Who can participate?

- Public Authorities
- Industry and Consumer Associations
- Academia
- Law firms and consulting
- Insurers and federation of insurers

Where to find survey? Website 'Your Voice in Europe'

[http://ec.europa.eu/yourvoice/consultations/index\\_en.htm](http://ec.europa.eu/yourvoice/consultations/index_en.htm)

Deadline: 26 April 2017

# Thank You!



**Odette Vella**  
Office for Consumer Affairs  
MCCAA  
[odette.vella@mccaa.org.mt](mailto:odette.vella@mccaa.org.mt)