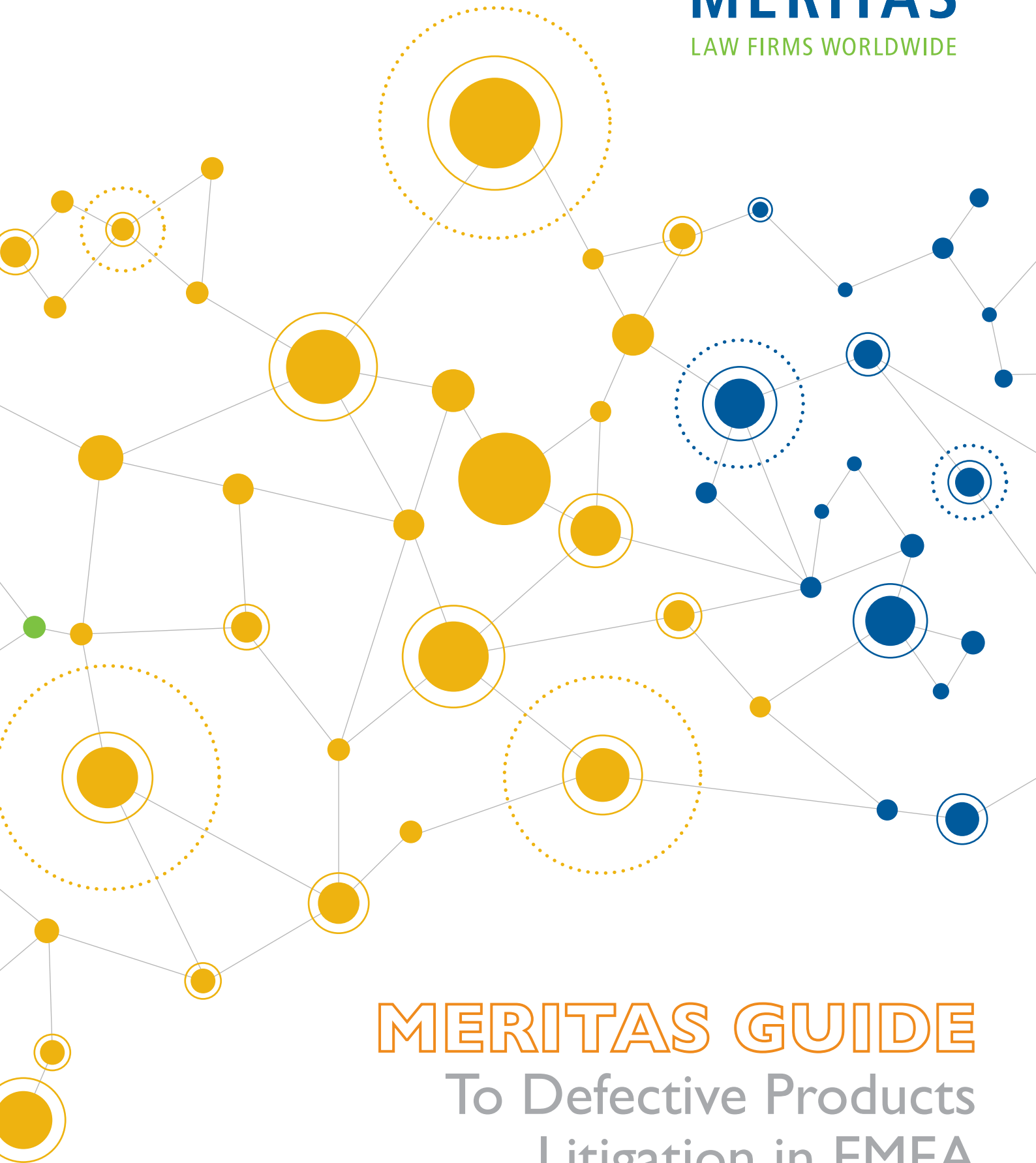




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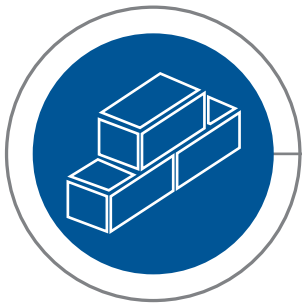
MERITAS GUIDE

To Defective Products
Litigation in EMEA

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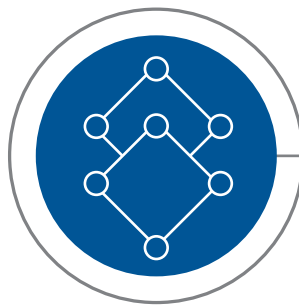
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INTRODUCTION

Key Issues



What claims may be brought for liability for defective products?



Who is liable to compensate a claimant for a claim?

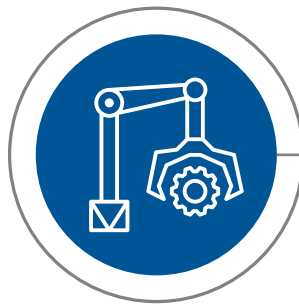
If you manufacture, produce, distribute or sell products **you are responsible** for ensuring they are safe and free from defects that may cause damage or injury. Failure to meet your responsibilities, resulting in damage, injury or death caused by a defect in your product, could have serious consequences including heavy fines and imprisonment, not to mention the loss of business revenue.

Understanding the laws and regulations that concern defective products and the liabilities that may result is therefore vital for any company doing business across Europe, Middle East and Africa.

The trend in many countries has been to **strengthen consumers' levels of protection** in respect of defective products, particularly within the EU.



Is there a difference if you are a consumer or professional buyer of the product?



Can a manufacturer of a defective product limit their liability?

Whilst a consumer may recover damages for losses caused by negligent acts or omissions, there are **important differences** between jurisdictions as to how principles of fault liability are applied. For example, in civil law jurisdictions, the burden of proof is often reversed once a defect and damage is proved and a defendant must prove that it was not negligent. In contrast, in common law jurisdictions, the burden generally rests on the claimant to prove all aspects of the claim.


The following Meritas guide asks these are other **key questions** related to defective products litigation and provides answers as they relate to **30 countries across EMEA**.

Please note: this guide is for general information purposes only and is not intended to provide comprehensive legal advice. For more information, or for detailed legal advice, please contact any of the lawyers listed at the end of each chapter.

The information contained in this guide is accurate as at 1 August 2018. Any legal, regulatory or tax changes made after this date are not included.



BULGARIA



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

There are two main claims in Bulgarian law whereby victims of defective products can seek compensation for the damage suffered.

A consumer may file a lawsuit based on Art. 133 of the Consumer Protection Act (CPA). The liability for damages due to defective products under CPA is an alternative to the general civil liability. Only consumers are entitled to initiate proceedings based on this order.

The injured person may also seek compensation under the provisions of Art. 45 and following of the Obligations and Contracts Act (tort liability).

The liability for damages caused by defective products is strict. The producer is liable for damage caused by a defect in the product, regardless of whether the defect is caused by the fault of the producer or not. The producer is liable for damage even when the product was produced in compliance with existing standards and good practices or it was put into circulation by permission of an administrative authority.

The CPA provides for a special order for liability, as the manufacturer is responsible, regardless of the presence or absence of fault, while the general procedure (Art. 45 CPA and the following) requires the presence of negligence.

It should also be noted that the liability of the manufacturer, respectively the trader or the distributor under CPA is limited only to the material damage suffered by the consumer. Liability for non-material damage shall be borne only by the order of the Obligations and Contracts Act.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the CPA, the producer is liable for damage caused by a defect in the product. The term “producer” is of a particular significance in the liability arising from the defect of a product. According to CPA: Producer means “any person who or which manufactures, in the course of the business, a finished product, raw materials or component parts used in manufacturing of other products or any person who or which, by putting the name, trade mark or other distinguishing feature on the product, presents himself, herself or itself as its producer. Any person, who or which imports into the territory of the European Union a product for sale, hire, leasing or uses any form of distribution in the course of the business within the territory of the Union, is also deemed to be a producer”.

Subsidiary liability for damages is incurred by the distributor or the trader where the producer of the product or the person who or which imported the product into the territory of the European Union cannot be identified. The distributor or the trader are not liable if they furnish information within 14 days of the name and address of the producer, importer or the person who or which supplied the product. The address must be on the territory of the Republic of Bulgaria.

Under the general rules of tort liability the owner of the product or the person who is supposed to take care for the safety of the product could be held responsible for the damage.

3. Are there differences if the buyer is a consumer or a professional buyer?

Only consumers are entitled to compensation for damages caused by defective goods. As stated in the legal definitions of the Act, “a consumer is any natural person who acquires products or uses services for purposes that do not fall within the sphere of his or her commercial or professional activity, and any natural person who, as a party to a contract under this Act, acts outside his or her commercial or professional capacity”. Therefore, professional buyers are not entitled to seek compensation under CPA, but this does not deprive them of the opportunity to seek compensation under the general rules of tort liability.

4. Can the seller or other potentially liable party exclude or limit its liability?

Strict liability cannot be excluded under the Act. Any clause in a contract that provides for disallowance or reduction of the liability of the producer in respect to the injured person for any damage caused by defective products is null and void.

The liability of the producer may be excluded or reduced when the damage is caused both by a defective product and by the fault of the injured person. However, the liability of the producer may not be reduced when the damage is caused both by a defective product and by the act or omission of a third party.

Moreover, the producer is not liable in some special occasions, such as when the producer did not put the product into circulation, or it is probable that the defect which caused the damage did not exist at the time the product was put into circulation by the producer or that this defect became apparent afterwards, or the defect is



due to compliance of the product with mandatory requirements issued by the public authorities.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Any person, who or which imports into the territory of the European Union a product for sale, hire, leasing or uses any form of distribution in the course of the business within the territory of the Union, is also deemed to be a producer. Therefore, the consumer may seek to defend his rights against that person.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Where a control authority establishes that a product poses or may pose a risk to the health and safety of consumers, the authority has the obligation to order the products recall from consumers and products destruction. Anyone who fails to execute an order or a mandatory prescription by a control authority for taking measures to ensure the safety of products and services is liable to a fine or a pecuniary penalty of BGN 3,000 or exceeding this amount but not exceeding BGN 15,000.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal court procedures and rules apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

The consumer is entitled to request an injunction from the competent court before the action is brought. The injunction securing the action is granted when it will be impossible or difficult for the claimant to realise the rights under the judgment and if the action is supported by convincing written evidence, or a monetary guarantee is furnished. Pre-action measures may include freezing bank accounts, imposing interdiction on an immovable property or any other appropriate measures, determined by the court.

Addressing a complaint to the trader is not a prerequisite for instituting a lawsuit.

Amendments to CPA adopted in 2015 regulate out-of-court settlement of consumer disputes by providing that all disputes between consumers and traders regarding the sale of goods or the provision of services may be referred to an alternative consumer dispute resolution entity (ADR entity). The ADR entity must respect the principle of freedom and not deprive the consumer of the possibility of judicial protection.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Upon addressing a complaint in respect of goods, the consumer may claim reimbursement of the sum paid, replacement of the goods by other

goods conforming with what has been agreed, a reduction of the price, or repairing of the goods free of charge.

In any case, the injured person may institute a court proceeding as compensation is awarded where damage is caused by:

- death or personal injury of a natural person;
- damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of BGN 1,000, provided that the item of property is ordinarily intended for private use and was used by the injured person as intended.

Compensation for non-material damages caused by a defective product can be sought according to the standard procedure under Art. 45 and following of the Obligations and Contracts Act.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

In Bulgarian procedural law the principle is that the proceeding costs and the fees for a lawyer, if any, are paid by the losing party.

In the event of a brought action for compensation for damages caused by defective products, the claimant will have to pay a 4% state fee of the amount of the claim. Additional costs may also arise for the claimant in connection with the gathering of evidence, including for experts.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The injured person is required to prove the defect of the product, the damage and the causal relationship between defect and damage.

12. Is the state of the art defence available?

In addition to other available defences stated in item 4 above, the state of the art defence is available. The producer is not liable if proven 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 existence of the defect to be discovered.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Any proceedings for the recovery of damages caused by a defective product, are subject to a limitation period of three years, which starts from the day on which the plaintiff became aware, or should have become aware, of the damage, the defect and the identity of the producer.

The rights conferred upon the injured person are extinguished upon the expiry of a period of ten years from the date on which the producer put into circulation the product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer.

Limitation periods could not be frozen or extended. The action must be brought before the expiration of the deadline.

14. What are the rules for bringing a claim in a class/collective action?

A class/collective action lawsuit may be brought on behalf of persons injured by a single offense where, according to the nature of the offense, their circle cannot be precisely defined but is determinable.

Compensation under collective action lawsuits is not a compensation for

the individually suffered damages by the members of the collective but is a compensation for the damaged collective interest.

Consumer protection associations may bring an action for cessation or for prohibition of any acts or commercial practices which infringe on the collective interests of consumers. The Consumer Protection Commission is also entitled to bring collective consumer protection actions.

15. What is the average duration of defective products litigation?

The average duration of defective products litigation is from 15 to 30 months.