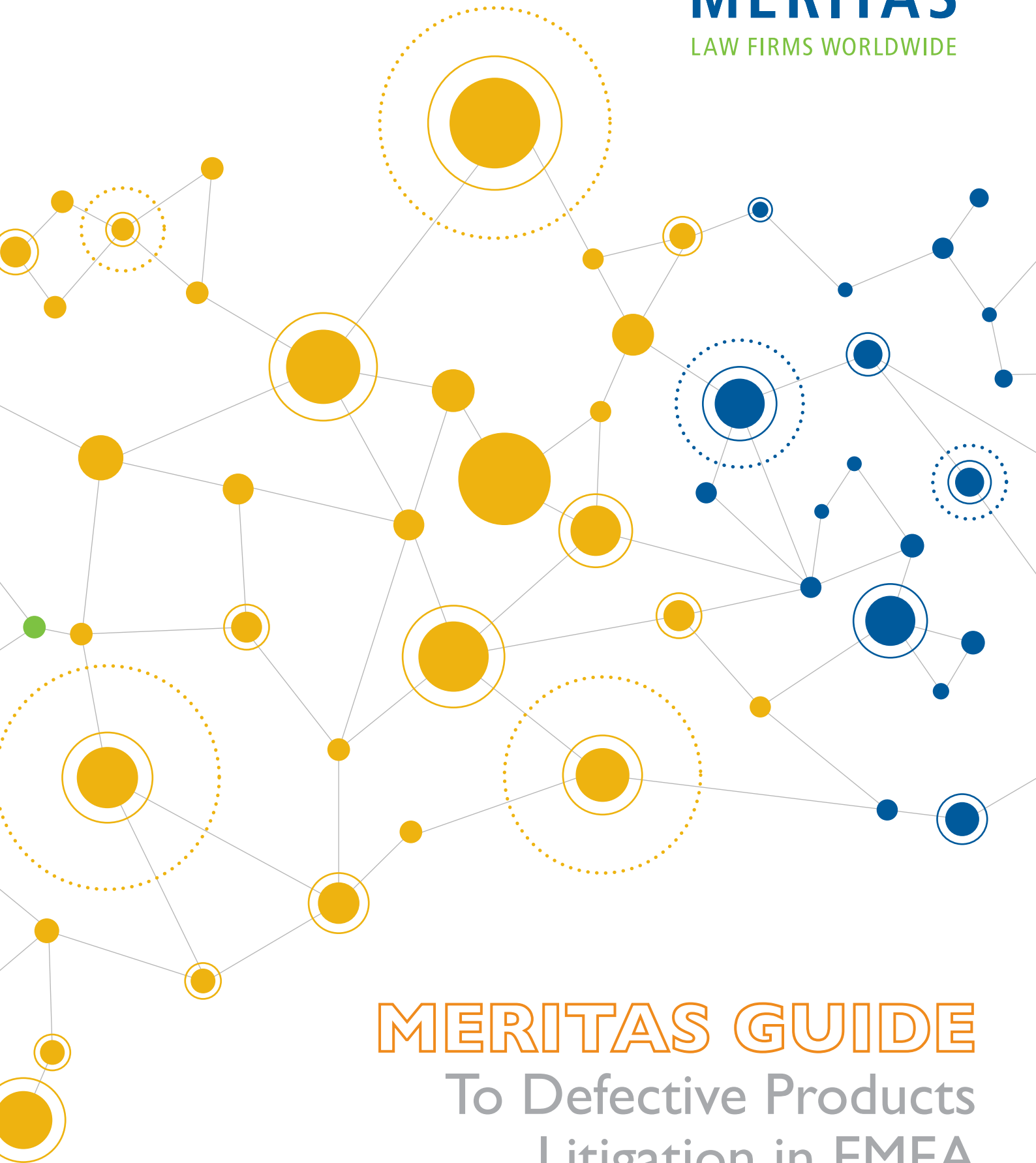




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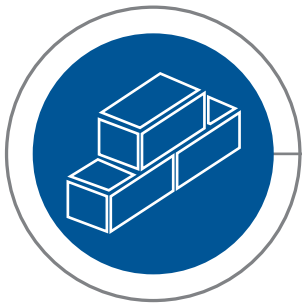
MERITAS GUIDE

To Defective Products
Litigation in EMEA

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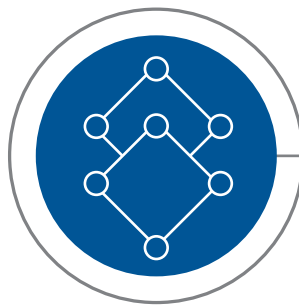
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INTRODUCTION

Key Issues



What claims may be brought for liability for defective products?

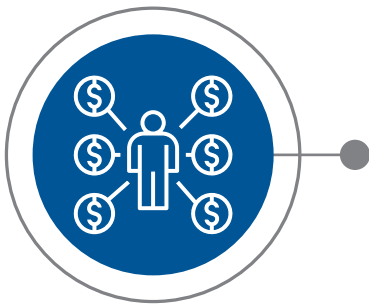


Who is liable to compensate a claimant for a claim?

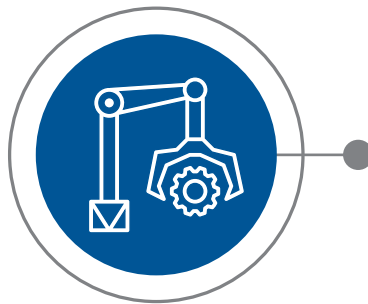
If you manufacture, produce, distribute or sell products **you are responsible** for ensuring they are safe and free from defects that may cause damage or injury. Failure to meet your responsibilities, resulting in damage, injury or death caused by a defect in your product, could have serious consequences 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.



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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?

Product liability can appear in various forms, and defective product claims can be brought under the Product Liability Act (694/1990), the Sale of Goods Act (355/1987), the Consumer Protection Act (38/1978), and in non-contractual circumstances, the Tort Liability Act (412/1974).

When it comes to injury or damage caused by a product to a person or property meant for private use or consumption according to the Product Liability Act, and the product is primarily used for such purposes by the injured party, the liability is strict.

Liability based on fault/negligence is applied under the Sale of Goods Act when the parties have not agreed otherwise, and the Consumer Protection Act (38/1978). Liability under the said acts related to defective products only cover damage to property.

Under the Tort Liability Act, liability is based on negligence. In this case, claims can be brought for such damages as personal injury or damage to property as well as economic loss which is not connected to these damages (if certain preconditions are met).

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 Product Liability Act the manufacturer, the importer and the marketer (the party under whose trade mark or other commercial identifier the product has been marketed) are liable in such a claim. In case the manufacturer is not indicated on the product, other suppliers are liable as a manufacturer in case one is not able to identify the manufacturer from whom they acquired the product.

According to the Consumer Protection Act, the consumer is entitled to direct his or her claims also at a business who at an earlier level of the supply chain has supplied the goods for resale (with some exceptions).

Under the Sale of Goods Act, it is mainly the seller who is liable to compensate a claimant because of a faulty product. The seller can, however escape liability, if he/she is able to prove the existence of an impediment against delivery of conforming goods.

A claim based on the Tort Liability Act is directed at the person responsible for the default.

Contractual claims are generally brought against the party who breaches the contract.

In general, a claim based on negligence can be brought against anyone who shows neglect against someone's property and this results in its damage to the said property.

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

According to the Product Liability Act, the Act applies only to damages caused by a product to a person or property meant for private use or consumption and primarily used for such purposes by the injured party. Professional buyers may therefore claim for personal injury, while claims for damage to property may only be brought by consumers

Additionally, in case the buyer is a consumer, not only the Product Liability Act is applicable, but also the Consumer Protection Act.

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

Contractual terms limiting a party's right to compensation agreed on before the injury or damage occurred are deemed null and void under the Product Liability Act. However, companies can agree on the division of the liability for damages between the companies at the different stages of distribution. Suppliers can also limit

their liability through product liability insurance. In business-to-business relationships, limitation of liability clauses can be agreed upon.

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

The Product Liability Act states that for damages caused by a product manufactured outside the European Economic Area, the party which had imported the product into the European Economic Area with the intention of putting it into circulation there, is liable. Also liable is the party which has imported the product from a Member State of the European Free Trade Association (EFTA country) into the European Community, from the European Community into an EFTA country or from an EFTA country into another EFTA country with the intention of putting it in circulation.

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

Manufacturers must recall products when they become aware that they are defective, if the defects cannot be eliminated in other ways. Breach of the duty to recall products does not itself establish grounds for civil claims, but is treated as negligent conduct.

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 procedures and rules of evidence 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 surveillance authority can, under the Consumer Safety Act (920/2011), impose a provisional prohibition that will apply until a final decision is issued, in case it is obvious that a consumer product involves a health risk and the danger cannot be eliminated in any other way. The prohibition may relate to the manufacturing, importing, supplying, marketing, selling or otherwise providing the good or service. The surveillance authority may also impose a conditional fine. Similar interim injunctions are available under the Consumer Protection Act.

The claimant starts the proceeding by an application for a summons in which the claimant sets out what is sought and on what grounds. The district court reviews the application and issues a summons to the defendant. Before initiating court proceedings, it is recommendable that a warning letter is sent first.

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)?

According to the Sale of Goods Act (355/1987), if the product is defective due to a reason which is not attributable to the buyer, he or she may require the seller to remedy the defect or to replace the product, require a reduction in the contract price or – if the breach of contract is of substantial importance to him or her, and the seller was or should have been aware of this – to declare the contract terminated and to claim damages. The buyer may also withhold payment.

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

If the claim is brought in as a class action based on The Act on Class Actions (444/2007), the group members are not responsible for the litigation costs.

According to Finnish law, the losing party generally pays the court and reasonable legal costs of both parties. In some cases, the court orders each party to bear its own costs.

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

The person who suffers damage because of a defective product has the burden to prove that damage has occurred, that the product was faulty and that there is a causal connection between the damage and the product. When the liability is strict, the injured party does not have the aforementioned burden of proof, except for the causal connection of the damage and the product. If the claim is brought under the Tort Liability Act, the claimant has to prove that the defendant has acted with intent or neglect.

12. Is the state of the art defence available?

Yes – According to the Product Liability Act, liability for damages shall be exempted if the party from which compensation is claimed proves that the defect in the product which caused the injury or damage is attributable to compliance of the product with mandatory regulations issued by a public authority.

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

Under the Consumer Protection Act, the buyer has the right to require that the seller rectifies the defect or deliver non-defective goods. Such a rectification has to be made within reasonable time and in a way that the buyer does not incur costs or significant inconvenience.

An action under the Product Liability Act has to be instituted within three years from the date on which the claimant became or should have become aware of the damage, the product's defect and the identity of the liable party. However, the action has to be instituted not later than ten years from the date on which the liable party put the product that caused the damage in circulation.

According to the Sale of Goods Act, the buyer loses the right to rely on a defect if a notice to the seller is not given within a reasonable time after the buyer discovered or should have discovered the defect. The latter does not according to the aforesaid act apply if the seller is guilty of gross negligence or conduct which is incompatible with honour and good faith.

Contractual and tort claims must be initiated within three years from the date when the claimant became aware of the damage and the liable party's identity. The final statute of limitation, however, is ten years from the time of the act or event that was the cause of the damage. Personal injury claims form an exception to the latter.

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

Class actions are regulated in the Act on Class Actions. The act sets forth a number of preconditions for a class action. Firstly, there must be several claims against the same defendant, and they must be based on circumstances that are identical or similar. For the case to be heard, the case must be expedient in light of its size, the subject-matter of the claims that are presented in it as well as the proof offered. The class must also be defined with adequate precision.

The Consumer Ombudsman has an exclusive right to file actions, and he solely exercises the right of a party to be heard in court. The actions are, however, filed on the basis of consumer complaints.

Although class actions are possible, not a single one has been brought to this day.

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

The average duration of defective products litigation depends of the scope of the case.