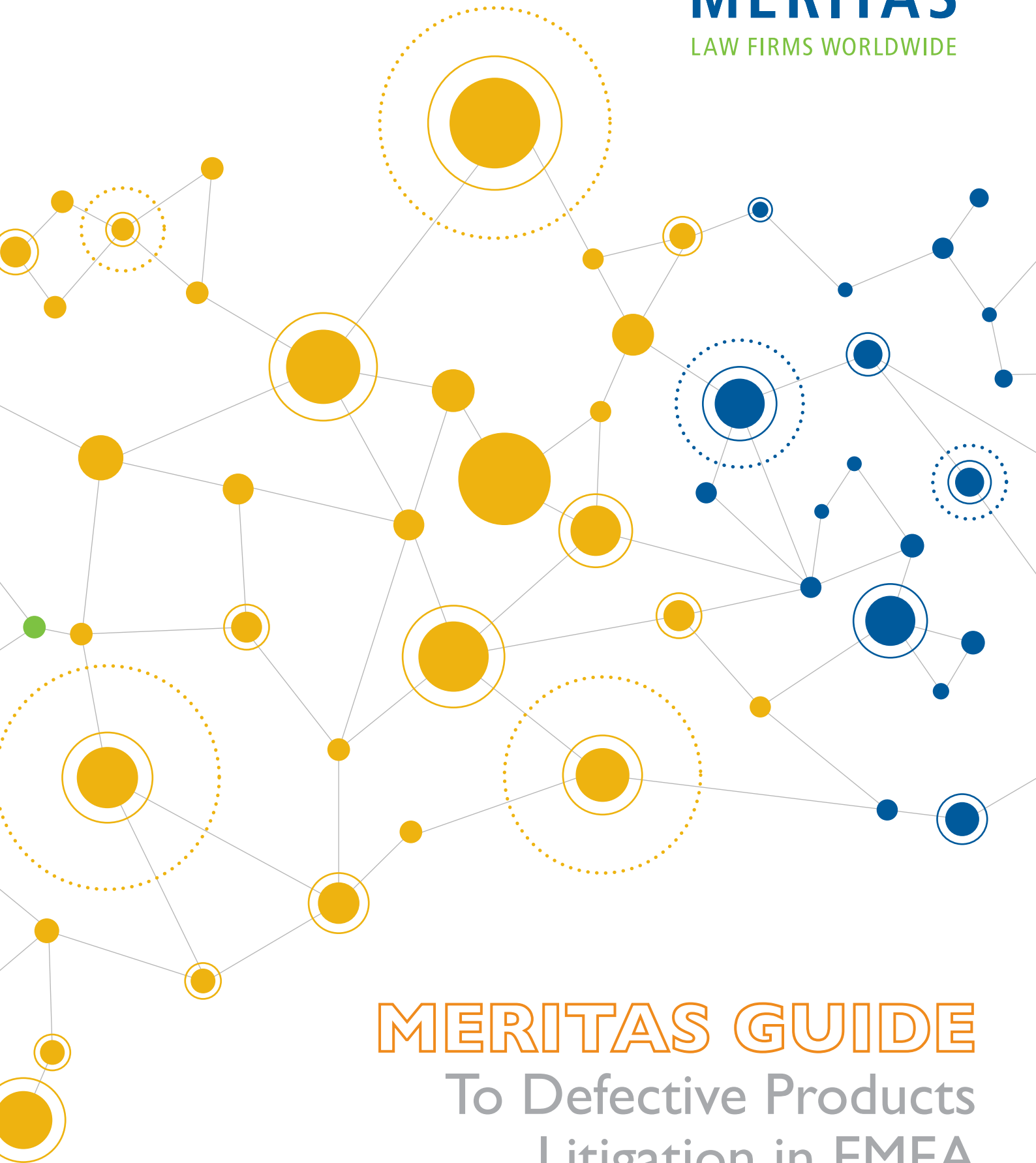




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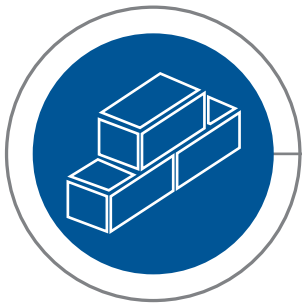
MERITAS GUIDE

To Defective Products
Litigation in EMEA

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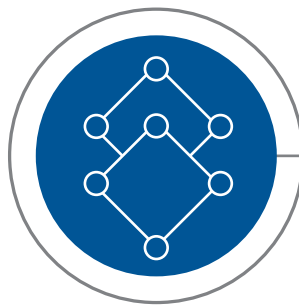
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INTRODUCTION

Key Issues



What claims may be brought for liability for defective products?



Who is liable to compensate a claimant for a claim?

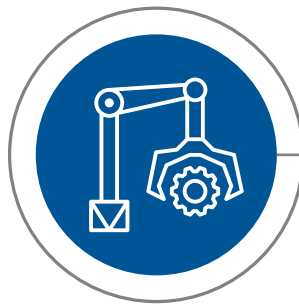
If you manufacture, produce, distribute or sell products **you are responsible** for ensuring they are safe and free from defects that may cause damage or injury. Failure to meet your responsibilities, resulting in damage, injury or death caused by a defect in your product, could have serious consequences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



HUNGARY



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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?

Liability for defective products is regulated in the Hungarian Civil Code in line with Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. The product liability regulations are based on strict liability, but this does not prevent the consumer to base its claims on fault or negligence if so practical.

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

As a general rule, for claims based on product liability the manufacturer is held liable. However, the Hungarian Civil Code contains a very wide definition as to who is to be regarded as manufacturer: Manufacturer means a producer of a finished or semi-finished product, or raw material, furthermore the person who depicts himself as the manufacturer of the product by the indication of his name, trademark or some other distinguishing mark on the product.

In terms of imported goods, the company, first importing the goods to the territory of the European Economic Area is also to be construed a manufacturer.

In addition, if the manufacturer of a product cannot be identified, all distributors of such product are to be regarded as manufacturers until such distributors reveal to the injured party the identity of the manufacturer or the distributor from whom the product was obtained.

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

Yes. In respect of liability for defective products, damages are defined as follows:

- f. any damage incurred by the death, bodily injury or any impairment in the health of a person caused by a defective product; and
- g. any damage caused by a defective product to property for private use valued in excess of EUR 500.

It follows from the above definition that professional buyers cannot put forward a claim for damages caused by a defective product to property items.

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

No. Such exclusion or limitation of liability is null and void.

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

As explained in section 2 above, in such event, the company first importing the products to the territory of the EU will be held liable.

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

The manufacturer's liability is irrespective of the fact whether there is a mandatory or voluntary recall campaign in place. However, the manufacturer will be exempt from criminal prosecution if he makes every effort, upon gaining knowledge of the substandard quality of the product, to regain possession of the substandard products in question.

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?

There are no specific procedural rules, i.e. the general rules apply in terms of jurisdiction as well as with regard to rules of evidence. The burden of proof of defect lies with the claimant.

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

Provisional and protective measures as well as preliminary evidentiary proceedings are available in accordance with the general procedural rules.

Although it is not compulsory to send a warning letter before filing a claim with the court, such practice is very advisable given that in lieu of a warning letter if the defendant acknowledges the claim right away at court, the court will oblige the claimant to bear all costs of the proceedings (even though the judgment is in favour of the claimant).

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)?

Under product liability, the injured party may claim compensation for its losses (see also section 3 above). Obviously, the injured party may suffer losses other than what is included in the definition of losses from the perspective of product liability. Liability and remedy for such losses are regulated under the regime of warranty claims.



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

The costs of defective products litigation include court duty, attorneys' fees, experts' costs, translation fees etc. The value of the court duty generally depends on the value of damages claimed by the injured party. The costs of evidentiary proceedings (including experts' fees) are to be advanced by the party who wants to prove such fact. Once the judgment is rendered, the court will allocate the costs among the parties – generally proportionate to how successful they were. Attorneys' fees are, however, recoverable only up to a certain extent deemed reasonable by the courts.

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

As opposed to warranty claims (where a statutory presumption prevails in B2C relations that a defect detected by the consumer within six months of the date of performance is to be presumed to have existed at the time of delivery), under the product liability regime it is always the buyer who is required to prove that the product is defective.

12. Is the state of the art defence available?

Yes. The Civil Code defines the eligible grounds for the manufacturer to get relieved of its liability. Such grounds include, inter alia, if the product was in perfect condition at the time when it was placed on the market, and

the cause of the defect developed subsequently as well as if at the time the product was placed on the market the defect could not have been discovered according to the current state of scientific and technological achievements.

For completeness we add that in addition to the above, the manufacturer will only be relieved of liability if able to prove that:

- a. they did not place the product on the market;
- b. the product was not produced for retail purposes, or it was not produced or distributed within the framework of regular business activities;
- c. the defect in the product was caused by the application of a statutory or regulatory provision.

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

The injured party may claim his right to compensation within a three-year limitation period.

This term commences when the injured party became, or could be expected to have become, aware of the damage, the defect in the product as well as of the identity of the manufacturer.

This deadline can be frozen or extended (subject to the conditions regulated under the Civil Code) but there is a deadline of 10 years effective from the date of placing the given product on the market, the expiration of which results in forfeiture, i.e. beyond this deadline such claims cannot be enforced.

I4. What are the rules for bringing a claim in a class/ collective action?

Class actions are not that popular in Hungary as in Anglo-Saxon jurisdictions. Theoretically, consumer contracts based on product liability can be brought in a class action, too. The most important conditions precedent are that

- i. only consumer contracts may be brought as class action;
- ii. there are at least ten plaintiffs;
- iii. both the facts and legal grounds are substantially identical with respect to all plaintiffs.

It is to be noted that even if all conditions precedent are met, the courts may elect to deny a class action if they rule that class action appears to be impractical or unreasonable.

I5. What is the average duration of defective products litigation?

Like any other lawsuits, defective products litigation can easily get protracted— it usually takes 18-24 months to get a judgment of first instance, which is then subject to appeal.