

6 January 2006

EUROPEAN COMMISSION QUESTIONNAIRE ON LIABILITY FOR DEFECTIVE PRODUCTS (November 2005)

GENERAL QUESTIONS ON THE IMPLEMENTATION OF THE DIRECTIVE

Question 1: In your experience, what is the real impact of the Directive?

- **Is the Directive an instrument which effectively makes a wide range of products available in all Member States?**

Yes, to a certain extent.

Why? To the extent that it strikes a fair balance between industry and consumer interests and harmonises product liability laws ensuring a level playing field across Member States, the Directive has facilitated removal of divergences in legal systems across the EU which may have had the effect of distorting competition and raising barriers to trade within the internal market. Decisions such as that of the European Court of Justice in *Gonzalez Sanchez v Medicina Asturiana SA*,¹ in which the Court confirmed that the Directive is a maximum harmonisation measure intended to prevent Member States from imposing higher obligations on producers or providing higher levels of protection for consumers, reinforce the harmonising effect of the Directive.²

- **Is the Directive an instrument which effectively assures citizens of the safety of those products?**

Yes, as a complementary measure to the regulatory regimes governing product safety in the EU.

Why? Although it is difficult to provide empirical evidence of such an effect, the Directive is certainly perceived to have contributed to increasing the level of safety of products marketed in the EU.

¹ C-183/00, 25 April 2002.

² See also *Commission v France*, C-52/00, 25 April 2002.

It establishes a common standard of responsibility in the area of product liability which guarantees that, throughout the EU, producers do face effective liability rules and thus are encouraged to produce and sell only safe products which are not expected to cause damage. For example, the wide definition of the producer on behalf of the directive enlarges the responsibility and liability of those persons in favour of the victims. The present directive fulfils the idea of better consumer protection, for example as to the description of defects with respect to consumer expectations.

(See also our response to Question 5 below, which is directly relevant to this issue.)

- **Is the Directive an instrument which effectively provides the possibility to claim compensation in case of damage caused by defective products?**

Yes.

Why? Several provisions of the Directive envisage the possibility of claiming compensation, for instance Article 4 (claimant does not have to prove negligence on the part of the producer), Article 5 or Article 12. Strict liability system of the directive increases the chances of success of more dubious claims being upheld and helps the claimant successfully recover damages in circumstances where the claim would have failed if it had been brought under a system of tort liability (based on negligence).

Lovells has conducted a review of court cases reported as having been decided under provisions implementing the Directive. A copy of a summary of that review is attached for information. This suggests that, in cases across the EU decided under laws implementing the Directive since the Directive was adopted, claimants have been successful in around 60% of cases (based on an analysis of the case reports whose result is known). It should also be recognised that this statistic reflects only those cases that have gone to trial and the judgment subsequently reported, and does not take into account claims under the Directive that were settled out of court by the defendant.

- **As regards "direct" liability for defective products, do you think there has been any significant change between 2001 (when the second report was published) and the present?**

No, no significant change.

Why? The Directive is being relied upon more frequently by claimants in product liability claims in the EU. This has added to the experience of the use of the Directive, but has not given rise to any fundamental changes that would warrant reconsideration of any of the main provisions of the Directive.

Question 2: Do you have any new information on rulings of your national courts on the subject of "direct liability for defective products"?

Yes.

See the attached summary of the review of court cases undertaken by Lovells, referred to above.

Question 3: Are you aware of any differences in the success rate of product liability claims in different Member States?

No.

- **Have you experienced variations in court decisions in different Member States on broadly similar cases? If this is the case, can you point to any factor which in your view influenced the outcome of the proceedings?**

Care must be taken in drawing any conclusions based on "success rates" of claims. For example, if measures of success rates are based on reports of court decisions, they may be distorted by the fact that strong cases are normally settled by defendants, so that only the more speculative or spurious claims are taken to trial and subsequently reported. These effects may not operate evenly across Member States, particularly if the costs or risks of defending cases are greater in some countries than in others. Also, differences in levels of access to justice, and differing cultural or social factors may mean that spurious or speculative claims are more likely to be brought in some countries than in others.

Nevertheless, as remarked above, the analysis of cases undertaken by Lovells suggests that, in cases across the EU decided under laws implementing the Directive, claimants are successful in around 60% of cases.

QUESTIONS ON CONCRETE ARTICLES OF THE DIRECTIVE

Question 4: Have you experienced any difficulties, or are you aware of any existing complications (claims being dismissed or otherwise) due to the present formulation of Article 7 (exemption of responsibility) of Directive 85/374?

No.

There are few reported cases in which defendants have sought to rely on the exemptions set out in Article 7 of the Directive, and even fewer in which they have successfully been relied upon.

On that basis there is no reason to conclude that any significant problems have been created by claims being dismissed pursuant to one of the Article 7 defences.

Question 5: Are you in favour of wide interpretation of Article 7(d) in the sense of a defence of regulatory compliance, which would apply to products subject to tight safety regulation (f.i.: pharmaceuticals)?

Yes.

There is certainly a case for a defence of regulatory compliance for products which are subject to stringent EU safety regulations, so as to ensure that the Directive complements, rather than undermines, the objectives of the regulatory measures.

Recognising that an important objective of the Directive is to help ensure the safety of products, it should demand of producers a standard of safety that is consistent with the standards demanded by any sector regulations relevant to the product.

Thus, it is important that the "general" measure to assure safety which lies within the Directive be consistent with any specific measures implemented by regulators to deal with particular risks.

Question 6: Do you share the view, expressed in the report by Fondazione Rosselli, that keeping the development risks clause provided for in Article 7(e) does not compromise product innovation?

Yes.

Although it has rarely been invoked and has even more rarely been successfully relied upon, the liability defence for development risks is necessary to balance out the different interests to promote, create innovative products and control insurance costs on the one hand and those to protect the consumer on the other hand. To implement a new liability for those development risks would hinder research and the development of new innovations massively and would lead to a worse competitive climate. This would burden new production lines with capricious risks. Such an innovation obstacle would disadvantage the consumer who is interested in having new and innovative products. Furthermore, an enlargement of the product liability to those development risks would raise the premiums paid by the industrial companies for their insurance coverage. This premium rise would have to be paid by the consumers in the end.

Ultimately, society benefits from innovation. The defence was included in the Directive as an important means for achieving the desired balance between the interests of consumers and those of producers. Given the importance of the perceived benefits, and the absence of any evidence that consumers are being unduly prejudiced by it, there is no justification for removing it.

Question 7: Have you experienced any difficulties, or are you aware of any existing complications (claims being dismissed or otherwise) due to the present formulation of Article 9 (definition of "damage") of Directive 85/374?

No.

The formulation of Article 9 itself does not appear to have caused significant complications to date in claims under the Directive. It may be that, as experience with the use and application of the Directive continues to grow, issues will emerge with respect to the formulation of some of the provisions of Article 9, or the way in which they are interpreted.

It is important to recognise that the question of what damages are recoverable in claims brought under the Directive is in general left to individual Member States, and the result in a given case will depend on local policies and practices as well as the prevailing socioeconomic conditions. There are, in fact, significant differences in the approach to damages taken by courts in the various Member States, not only under the

heading of damages which are available (for example, in some States such as Greece and the Netherlands, non-material damages are not recoverable under the Directive but are recoverable under national systems of law), but also in the way in which damages under those headings are assessed (for example, in some States such as Finland and the Netherlands, damages may be reduced to account for the relative financial circumstances of the parties). The Directive does not, and is not intended to, harmonise the assessment of damages across the EU.

Question 8: Could you provide information on the impact of the 500 EUR threshold provided for in Article 9(b) in relation to the need to strike a balance between the interests of the various stakeholders?

Yes.

As was highlighted in the survey conducted by Lovells on behalf of the European Commission in 2002, and which is the subject of the report "MARKT/2001/11/D, 2003 (the "Lovells Report"), Article 9(b) has been interpreted differently in different Member States. In some the threshold is treated as a minimum amount such that, provided the claim exceeds that minimum, the full amount of damages is recoverable. In others, however, the threshold is treated as a deductible in that the amount of damages awarded to a successful claimant is reduced by that amount.

The threshold serves an important function in providing a safeguard against frivolous claims brought under the strict liability provisions of the Directive, and Article 9(b) contributes to achieving and maintaining the balance between consumers and producers.

MISCELLANEOUS QUESTIONS

Question 9: Would you endorse the establishment of an EU-wide compensation fund?

No.

Such a fund is unlikely to be workable in practice. Compensation funds successfully operate in a number of EU countries and elsewhere in the world in relation to damage occasioned by a particular accident, or damage caused by a specific type of product.

It would be practically impossible to devise a workable contribution scheme to finance such a fund on a broad-based level across the EU, and so unless the fund were financed solely out of public taxes (in which case it would simply be a de facto social security system at EU level), this proposition is not viable.

Moreover, the Commission would have to find answer to difficult practical questions, i.e. who might be obliged to pay into such a fund? How much money would companies have to pay? Would they be differentiated with regard to their dimension or turnover? Which calculation base would be made for payments? Would the different product risks be taken into account when determining the contributions? How to assess uncertain catastrophes?

- **Could such a fund co-exist with existing national funds?**

No.

It is difficult to envisage how the scope of those parallel funds could be described in a way that the distinction of the applicability would be clear. There is no need for such a fund / further funds.

Question 10: Would you consider it useful to create an EU-wide database of national rulings in the area of "direct" liability for defective products?

Yes, to some extent.

To the extent such a database would contribute to ensuring consistency in approach to the Directive in the EU, more certainty for producers, and a "level playing field" between the Member States, this would be a useful initiative. All the same, we see the danger of this database becoming a source of misunderstandings due to comparison of cases which are dissimilar and that are dealt with by national legal systems with important differences and peculiarities.

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EUROPEAN CASES CONCERNING DIRECTIVE 85/374/EEC ON LIABILITY FOR DEFECTIVE PRODUCTS

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EUROPEAN CASES CONCERNING DIRECTIVE 85/374/EEC

ON LIABILITY FOR DEFECTIVE PRODUCTS¹

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
1.	EU	European Court of Justice	European Commission v United Kingdom C-300/95	29 May 1997	None	-National implementation of the PLD. -Whether the United Kingdom had broadened the development risks defence for producers under the PLD by opting for a subjective rather than an objective slant. -Whether domestic implementation is to be analysed in its general legal context.	Articles 7 and 13	- The development risks defence cannot be relied upon simply because the standard precautions in the interested industrial sector have been complied with. Rather, Article 7(e) is directed at the state of scientific and technical knowledge, including the most advanced level of such knowledge, at the time when the product in question was put into circulation. - Article 7(e) is concerned with the objective state of scientific and technical knowledge of which the producer is presumed to have been informed, not subjective or actual knowledge.

¹ Council Directive of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (85/374/EEC) (the 'PLD')

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
2.	EU	European Court of Justice	Henning Veedfald v Artus Amtskommune C-203/99	10 May 2001	Perfusion liquid designed for kidney transplantation	-Interpretation of "put into circulation" in Article 7(a). -Whether liability extends to non-commercial medical service providers such as nationally funded hospitals. -The meaning of "economic purpose" in Article 7(c). -Whether Member States are free to decide the meaning of "damage caused by death or by personal injuries" and "damage to, or destruction of, any item of property" in Article 9. -The meaning of damage.	Articles 1, 7 and 9	- Defendant unable to rely on defences: product had been put in circulation; and the fact that product manufactured for medical services did not enable reliance on defence Art 7(c). - Member States free to decide the content of damages referred to in Article 9.
3.	EU	European Court of Justice	Commission v France C-52-00	25 April 2002	None	-National implementation of Articles 3(3), 9 and 7. -Whether Member States can set more onerous obligations under national law than are contained in the PLD.	Articles 3, 7, 9 and 13	- ECJ made it clear that no provision in the PLD allows Member States to depart from it and improve consumers' protection.
4.	EU	European Court of Justice	Commission of the European Communities v Hellenic Republic C-154/00	25 April 2002	None	-National implementation of the PLD. -Whether a failure by Greece to transpose the €500 threshold set out in Article 9(b) was an incorrect implementation of the PLD.	Article 9	- ECJ condemned Greece's failure to introduce the 500 euros compulsory threshold.
5.	EU	European Court of Justice	Gonzalez Sanchez v Medicina Asturiana SA C-183/00	25 April 2002	Blood product	-Whether a claimant was entitled to the benefit of a Spanish statute, which conferred wider rights on consumers than the PLD. -The principle of 'maximal harmonisation' of product liability systems across the EU.		- ECJ confirmed that claimant not entitled to the benefit of Spanish statute giving consumers wider rights than the PLD.

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6.	EU	European Court of Justice	Skov AEG v Bilka Lavprisvarehus A/S and Bilka Lavprisvarehus A/S v Jette Mikkelsen and Michael Due Nielsen C-402/03	Advocate General Geeloed's Opinion dated 20 January 2005. Date of ECJ judgement not yet known.	Eggs	-Denmark's implementation of the PLD. -Whether the PLD is a directive of approximation of producers' liability or approximation of product liability.		- The Advocate General opined that Denmark had incorrectly implemented the PLD by providing in its implementing legislation that the supplier is liable to the claimant and/or other suppliers lower down the chain of distribution.
7.	EU	European Court of Justice	O'Byrne v Aventis Pasteur C-127/04	Advocate General's opinion of June 2005	HiB vaccine	-When a product is "put into circulation" for the purposes of the commencement of the 10 year "long stop" period -Whether national courts are entitled to allow the substitution of a defendant, or the commencement of fresh proceedings against an existing defendant, after the long stop period has expired	Article 11	-A product is "put into circulation" when the producer relinquishes control of the product by transferring it for commercial reasons to someone unrelated to the producer's corporate group -National court is entitled to deem original proceedings to be proceedings against the producer in circumstances where the original defendant may be treated as the producer under the PLD because it has failed to identify the true producer.

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8.	Austria	Supreme Court	Coke bottle case 7 Ob 581/92 in ecolex 1992, 843	1992	Coke bottle	-The secondary liability of the dealer. -Meaning of "where the producer of the product cannot be identified" in Article 3(3). -Whether the claimant is required to take specific steps in order to attempt to identify the producer of the defective product. -When claims against the dealer are excluded.	Article 3	- The court confirmed that no strict requirements apply to the meaning of "where the producer of the product cannot be identified". - If a dealer has released himself from liability by identifying his first-tier supplier, his liability is not resumed when the identified first-tier supplier does not meet his identification obligation. (Ultimate outcome unknown.)
9.	Austria	Supreme Court	Slaked Lime case 1 Ob 644/92 in ecolex 1993, 237	1993	Slaked Lime	-The supplier's obligation to warn against consequences.	Article 6	- The supplier must warn the user even against use contrary to purpose where necessary. (Ultimate outcome unknown.)
10.	Austria	Supreme Court	Coffins case 6 Ob 535/94 in ecolex 1994, 674	1994	Water hose and valve	-The supplier's obligation to warn against consequences.	Article 6	- The instruction obligation implied an instruction for a necessary installation or putting into operation. The scope of the instruction must depend on the awareness of danger of the ideal types of average persons. (Ultimate outcome unknown.)

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11.	Austria	Supreme Court	Water hose case 8 Ob 536/93 in ecolex 1994, 384	1994	Cracked Hose	-Whether the producer of a component part of a product is liable for the damage to the final product.	Article 1, 3, 6 and 7	- Whether or not a producer of a component part is liable for damage to the final product depends on whether or not the defective component was acquired as an independent item. (Ultimate outcome unknown.)
12.	Austria	Supreme Court	Hungarian linkage ladder 6 Ob 636/94	1994	Ladder	-The meaning of putting into circulation	Article 1	- The granting of a power of disposal amounts to "putting into circulation". (Ultimate outcome unknown.)
13.	Austria		4 Ob 1571/94 in RIS-Justiz E36099	1994		- The meaning of product	Article 2	- A movable object does not lose its product status by incorporation into an immovable item. The damage caused to a building through defective building material is recoverable. (This is obiter, ultimate outcome unknown.)
14.	Austria	Supreme Court	Water Damage case 1 Ob 555/95 in ecolex 1996, 356	1995		-The identification obligation of the dealer.	Article 3	- The identification obligation of the dealer does not require any special request. It is sufficient that the claimant claims replacement from the producer and that the claim is explicitly based on the legislation implementing the PLD. (Ultimate outcome unknown.)

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
15.	Austria	Supreme Court	Burning fax machine case 4 Ob 503/95 in SZ 68/33	1995	Fax machine	-The identification obligation of the dealer.	Article 3	- The identification obligation of the dealer does not require any special request. It is sufficient that the claimant claims replacement from the producer and that the claim is explicitly based on the legislation implementing the PLD. (Ultimate outcome unknown.)
16.	Austria		Water vessel insulation coating 7 Ob 1721/95 in HS 26.869	1995	Water vessel insulation coating	- The meaning of product	Article 2	- The application of defective insulation coating to a finished water vessel does not exclude the liability of the producer of the coating for the damage done to the water vessel. (Ultimate outcome unknown.)
17.	Austria	Vienna Court of Appeal	Austrian hooks case	1996	Hooks	-The inadequacy of instructions supplied with a product. -Extent of the supplier's obligation to warn: whether there is an obligation to inform consumers of generally known risks associated with a product.	Article 6	
18.	Austria	Supreme Court	Exploding bottle 1 - 4 Ob 87/97s in ecolex 1997, 749	8 April 1997	Water Bottle	-The meaning of defect. -Whether the claimant need only prove that the product failed or whether the claimant must demonstrate why the product failed as it did.	Articles 6 and 7	- The claim succeeded.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
19.	Austria	Supreme Court	Tuberculosis case 2 Ob 198/97b in RdM 1998/18	1998	Vaccine	- The meaning of defect	Article 6	- A vaccine can constitute a defective product due to its dangerousness, if those dangers are not sufficiently warned against when it is offered. (Ultimate outcome unknown.)
20.	Austria	Supreme Court	2 Ob 345/97d in OJZ-LSK 1998/77	1998		-The identification obligation of the dealer. -A different result to cases 4 Ob 503/95 and 1 Ob 555/95.	Article 3	- The court stated that a special request from the consumer is needed to trigger the identification obligation of the dealer. (Ultimate outcome unknown.)
21.	Austria	Supreme Court	Handlebars case 10 Ob 399/97t in ecolex 1998/834	1998	Bicycle Handlebars	-Distinction between defects in construction, production and instruction. -Whether a producer must indicate the restricted suitability of a product and list necessary precautionary measures to be taken by consumers.	Article 6	- If a party produces handlebars unsuitable for racing, he has to indicate the restricted suitability, listing the necessary precautionary measures. (Ultimate outcome unknown.)
22.	Austria	Supreme Court	Concrete case 1 1 Ob 323/98a in Ris-Justiz E54172	1998	Concrete	-The supplier's obligation to warn against consequences.	Article 6	- The claim failed.
23.	Austria	Supreme Court	Varnished Interior Furnishings case 1 Ob 184/98K in ecolex 1999/119	1999	Wood Varnish	-Whether a contractor can recover the financial damage due to a price reduction caused by a defective product.	Article 9	- The claim failed.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
24.	Austria	Supreme Court	Swimming Pool case 2 Ob 162/97 in ecolex 1999/338	1999	Swimming Pool	-Whether a contractor can claim compensation for the costs of improvement incurred as a result of a defective product.	Article 9	- The claim failed.
25.	Austria	Supreme Court	Defective cans case 2 Ob 188/97d in ecolex 1999/239	1999	Cans	-The liability of an apparent producer and whether he can release himself from his liability by identifying the actual producer of the defective product.	Article 3	- Where a party affixes his name or mark to a product, such apparent producer is, in contrast to a dealer, primarily liable and cannot release himself from liability by identifying the actual producer. (Ultimate outcome unknown.)
26.	Austria	Supreme Court	Tea case 1 Ob 53/98w in ecolex 1999/120	1999	Tea	-Distinction between defects in construction, production and instruction. -Whether the producer has to take into account any misuse that suggests itself when offering a product.	Article 6	- Any misuse of a product that suggests itself has to be taken into account as long as such use is not simply theoretically imaginable. (Ultimate outcome unknown.)
27.	Austria	Supreme Court	Broken Skiboot case 2 Ob 240/99d in ecolex 2000/12	2000	Ski Boot	-The identification obligation of the dealer. -Considers and disagrees with the case 2 Ob 240/99d.	Article 3	- The court stated that the identification obligation of the dealer does not require any special request. (Ultimate outcome unknown.)
28.	Austria	Supreme Court	Ear Plugs case 2 Ob 207/99a in ecolex 2000/9	2000	Ear Plugs	-Whether the fact that damage has never occurred previously is a sufficient defence for the supplier.	Article 6	- The producer of ear plugs has to warn against the fact that they are not suitable for people whose eardrum has been removed, even where a case of such damage has not occurred before. (Ultimate outcome unknown.)

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
29.	Austria	Supreme Court	Excavator case 2 Ob 112/98d in ZVR 2000/58	2000	Excavator	-Whether the absence of a warning can lead to the liability of the importer.	Article 6	
30.	Austria	Supreme Court	Chaff-Cutter case 8 Ob 192/99i in RdW 2000/644	2000	Chaff-Cutter	-Whether an extensive warning can exclude the supplier's liability.	Article 6	- A producer cannot discharge its obligation of using the least dangerous construction if a safe construction is possible and acceptable. In particular, this can be assumed when the damage results from an expected kind of use of the product. (Ultimate outcome unknown.)
31.	Austria	Supreme Court	Exploding bottle 2 10 Ob 19/01v	30 October 2001	Fruit Juice Bottle	-The meaning of defect. -Whether the claimant need only prove that the product failed or whether claimant must demonstrate why the product failed as it did.	Article 6	- The claim succeeded. The claimant was not required to prove the precise cause of the blast.
32.	Austria	Supreme Court	7 Ob 49/01h in RIS- Justiz E61270	2001		-The meaning of producer.	Article 3	
33.	Austria	Supreme Court	Concrete case 2 1 Ob 62/00z in ecolex 2001/2	2001	Concrete	-Whether a warning against obvious risks is required vis-à-vis the typical consumer group.	Article 6	- Further product warnings needed if it becomes clear that the user did not possess the knowledge that could legitimately be expected. (Ultimate outcome unknown.)

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
34.	Austria	Austrian Supreme Court	Spray can 2 Ob 253/01x	9 July 2002	Spray can	-The meaning of defect. -Whether the claimant need only prove that the product failed or whether the claimant must demonstrate why the product failed as it did. -Determining the applicable safety standard to be expected of a product.	Articles 4 and 6	- The claim failed. - The claimant had failed to prove that there was a lack of the safety that a <i>typical consumer</i> could expect, because the can may have exploded because it had endured high temperatures.
35.	Austria	Austrian Supreme Court	10 Ob 98/02p	22 October 2002	Coffee Machine	-Issues surrounding proof of a defect. -Whether it is sufficient to establish that some part of the product was defective and caused the accident, or whether the claimant must establish which part of the product was defective. -Development risks defence: whether it is a relevant factor that there had been no previous report of similar damage. - Defendant argued that machines could not have been defective at the time of circulation.	Articles 4, 6 and 7	- The claim succeeded. - The claimant did not need to establish exactly which part of the machine was defective or the precise cause of the defect. - Defences rejected.
36.	Austria	Court of Appeal	Ladder case 2 Ob 249/02k	5 December 2002	Folding step ladder	-The meaning of defective design: whether the fact that there are safer products on the market renders a product defective per se. -Whether a court should take into account the price of a product in assessing the defectiveness of the product. -The supplier's obligation to warn against consequences: the required level of detail of the supplier's instructions. -Contributory act of consumer.	Article 6	- The claim succeeded.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
37.	Austria	Supreme Court	Exploding bottle case 7 Ob 125/03p	1 October 2003	Bottle	-The meaning of defect. -Scope of claimant's burden of proof. -Whether it is necessary to establish the exact cause of the defect. -Whether it is necessary to show that the product failed in circumstances in which one would not expect it to fail.	Article 6	- The claim failed. - The bottle only cracked when it bumped into a solid object in the claimant's car. This was not a type of behaviour for which the manufacturer was responsible, and did not prove the evidence of a defect.
38.	Austria	Supreme Court	OGH-Urteil: 406 94/04h	2004	Fireworks	-The meaning of defect. -Scope of claimant's burden of proof. -Whether it is necessary to establish the exact cause of the defect or whether it is sufficient to demonstrate that the product did not perform its intended function.	Article 6	- The claim succeeded. - The firework did not provide the safety a person is entitled to expect.
39.	Belgium	Civil Court of Namur	Exploding Bottle JLMB, 1997, p104	21 November 1996	Glass Bottle	-Whether proof of a defect can be deduced from the abnormal performance of a product.	Article 4	- The court considered that proof of a defect can be deduced from abnormal performance. (Ultimate outcome unknown.)
40.	Belgium	Commercial Court of Verviers	Steam case JLMB, 1997, p1430	17 June 1997	Steam wallpaper stripper	-The different legal basis of the manufacturer's liability. -Scope of claimant's burden of proof. -Whether the consumer's clumsy use of a product absolves the producer. -The issue of foreseeability of damages.	Articles 5 and 6	- The claim failed.
41.	Belgium	J.P. Gand (I)	A.J.T., 1999-2000, p 461	5 September 1997		-The meaning of product and producer.	Articles 2 and 3	

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
42.	Belgium	Civil Court of Namur	Baker's fingers case JLMB, p 644	14 November 1997	Baking Machine	-The meaning of producer.	Article 3	- The claim failed.
43.	Belgium	Commercial Court of Hasselt	Rechtbank van Koophandel te Hassel	8 November 1999	Electrical water boiler	-Whether both the supplier and the importer can be held liable for a defective product.	Articles 3 and 5	- The claim failed.
44.	Belgium	Civil Court of Liege	RG 98/1781	8 March 2000		-The meaning of producer.	Article 2	
45.	Belgium	Civil Court of Brussels	Warning leaflet case RG 97/10865/A	23 January 2001	Basketball net	-The supplier's obligation to warn against consequences. -Whether the absence of either advertising or instruction leaflets, or the failure to supply an accessory, are relevant factors in assessing the defectiveness of a product. -Whether the language in which a warning is set out is a relevant factor in assessing the defectiveness of a product.	Article 6	
46.	Belgium	Court of Appeal of Liege	Brace case RG 1999/42	4 April 2001	Brace	-The meaning of producer.	Article 3	- A dental technician who merely adapts a brace to its wearer is not a producer. (Ultimate outcome unknown.)
47.	Belgium	Supreme Court (1st Civil Division)	Etablissement Leone vs R. J., C. P. and R. J1	26 September 2003	Children's dental facemask	-The meaning of defect. -Whether the manufacturer of a component is liable for the entire damage caused by the defective product. -Contributory act of the consumer.	Articles 3, 5, 6 and 8	- The claim succeeded, despite court accepting that mask recommended by University of Liege; complied with Directive on Medical Devices; and proper instructions as to use had been given.

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48.	Denmark	Eastern High Court	Wood case FED 1994.604 O	7 April 1994	Wood preservation product	-The meaning of defect.	Articles 1 and 6	- The claim succeeded.
49.	Denmark	Eastern High Court	Odin-Express case	12 October 1995	Amusement park train	-Circumstances in which a party can be vicariously liable for a defective product.	Article 3	- The claim failed.
50.	Denmark	Western High Court	Glue case FED 1996.1396 V	14 November 1996	Glue product	-The development risks defence: whether the defence can be pleaded if a producer had knowledge that the product could cause damage under certain circumstances, but neglected to inform his sales channels about this risk and further neglected to give proper information of this risk in the instruction manual.	Article 7	- The claim succeeded.
51.	Denmark	Western High Court	UfR 1999.343 O	26 November 1998	Marine engines	-The meaning of damage.	Article 9	- The claim failed.
52.	Denmark	Western High Court	Ladder case FED 1999.655 V	23 April 1999	Ladder	-The meaning of defect. -Whether a product is defective if the defect is not present at the time when the product is put into circulation.	Article 7	- The claim failed.
53.	Denmark	Eastern High Court	Ice scraper case FED 2000.2750 O	17 November 2000	Ice scraper	-The meaning of defect.	Articles 1 and 6	-The claim succeeded.
54.	Denmark	Eastern High Court	Safety pants case FED 2000.2856 O	6 December 2000	Safety pants	-The meaning of defect.	Articles 1 and 6	- The claim succeeded.
55.	Denmark	Supreme Court	UfR 2001.2338H	21 August 2001	Kidney	-The meaning of product. - The scope of defence: "put into circulation" - The meaning of damage.	Articles 2, 7 and 9	- Referred to ECJ - see entry 2 above.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
56.	Denmark	City Court of Hvidovre	Flemming Jay v Hoffman-La-Roche	9 February 2004	Malaria tablets	-Whether a product is defective when a manufacturer has not provided consumer information detailing possible side-effects on the product package.	Article 6	- The claim succeeded. Product defective since package inserts not supplied. The defendant should have warned consumers about well-known risk on the package leaflet.
57.	Finland	Consumer Complaints Board	92/36/1379	1992	Aluminium dish	-The meaning of adequate warning on a product.	Article 6	- The claim succeeded.
58.	Finland	Consumer Complaints Board	92/31/1264	1992	Leather boots	-The meaning of design defect.	Article 6	- The claim succeeded.
59.	Finland	Consumer Complaints Board	93/36/321	1993	Fireworks	-Whether the seller of a product is liable for property damage if, after receiving the demand for compensation from the consumer, the seller notifies the consumer of the identity of the party who is liable for the damage.	Article 3	- The claim failed. - The seller of the product was not liable for property damage because after receiving the demand for compensation, the seller notified the injured party of the identity of the importer (who had been declared bankrupt).
60.	Finland	Consumer Complaints Board	94/36/1804	1994	Muesli	-Whether the burden of proof is on the supplier to prove that it is probable that the product was not defective.	Articles 6 and 7	- The claim succeeded.
61.	Finland	Consumer Complaints Board	95/33/920	1995	Spark plug	-The meaning of the condition that the defect must have existed at "the time when the product was put into circulation" in Article 6. -Situation where the value of damages is below the required threshold.	Articles 7 and 9	- The claim failed.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
62.	Finland	Consumer Complaints Board	97/33/800	1997	Gasoline	-The meaning of defect.	Articles 1 and 6	- The claim failed.
63.	Finland	Consumer Complaints Board	98/38/1274	1998	Plum kernel	-The meaning of adequate warning on product.	Article 6	- The claim succeeded.
64.	Finland	Consumer Complaints Board	99/33/2283	1999	Motor oil	-The meaning of adequate warning on a product. -Effect of adequate warning on producer's liability.	Article 6	- The claim succeeded, although defendant liable to pay only half of compensation because claimant negligent.
65.	France	Supreme Court	Kaléorid drug case	3 March 1998	Drug	-Not a case under the PLD but French law interpreted in light of the PLD. -The meaning of defect.	Article 6	
66.	France	Toulouse Court of Appeal	Horsemeat litigation	22 February 2000	Horsemeat	-Whether the seller is a producer for the purposes of the PLD. -Conflict between French law and the PLD. -Development risks defence: the scope of the defence, and notably whether the fact that a laboratory test fails to identify a defect is sufficient for the defence to be made out. -Whether it is a defence for the seller to prove that a third party was a causal contributor. -Redress for consequential damage.	Articles 3, 7 and 9 (especially Article 3(3))	- The claim succeeded.
67.	France	Court of Appeal of Toulouse	Tyre case	7 November 2000	Tyre	-The meaning of defect.	Article 6	- The claim succeeded.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
68.	France	Court of Appeal of Paris (2e. Civ)	Impressions Steve v Ivain Co	14 September 2001	Printer	-Recoverable damages.	Article 9	- The claim failed. - Article 9 provides for recovery of loss to, or destruction of, any item of property other than the defective product itself.
69.	France	Tribunal de Grande Instance of Aix-en-Provence	Exploding window case D. 2001. IR. 3092	2 October 2001	Glass window in a fireplace	-The meaning of defect (as opposed to the concept of "hidden defect" under the law applicable to the sale of goods). -What the claimant must prove on the issue of causation.	Article 4	- Claim succeeded.
70.	France	Tribunal de Grande Instance of Montpellier	CJD case G 2002.II.10158	9 July 2002	Growth hormones (HGH)	-Not a case under the PLD but French law interpreted in light of the PLD. -Basis of action: contractual duty to deliver a safe product. -Product safety obligations based on precedent. -'Interpretation principle' and development risks defence. -'Interpretation principle' and limitation period. -Respective parties' burden of proof: the extent to which burden shifted from the claimant to the defendant if the claimant fulfils certain pre-requisites. -Damages for psychological trauma.	Articles 1, 4, 6, 7, 17 and 19	- The claim succeeded. - Development risks defence deemed inapplicable because Member States have an option whether or not to introduce the development risks defence.
71.	France	Court of Appeal of Toulouse	Exploding tyre care	7 November 2002	Car Tyre	- The meaning of defect. - The claimant's burden of proof.	Articles 4 and 6	- The claim succeeded. - The court ruled that not necessary to prove the exact origin of the defect, nor prove that no other external cause played a role in the product's defectiveness.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
72.	France	Court of Appeal of Aix-en-Provence	Kyocera Electronics France v Mme Videau Gilli and Mr Duval	10 April 2003	Photocopier	-The meaning of manufacturer. -The meaning of defect. -Recoverable damages.	Articles 3, 6 and 9	- The claim succeeded.
73.	France	Supreme Court	Hepatitis B case	23 September 2003	Hepatitis B vaccine	-Not a case under the PLD but French law interpreted in light of the PLD. -Causation: whether the causal link between the defect and the damage has to be certain or whether it can be inferred from a mere possibility.	Article 4	- The claim failed. - A producer's liability is subject to the condition that the claimant proves, apart from damage, the defect of the product and the causal link between the damage and the defect.
74.	France	Court of Appeal of Paris	Pentasar case	23 September 2004	Pentasar (medicine)	-Development risks defence -Extent of duty to provide complete information on product leaflets	Articles 6 and 7	-The claim failed. - Development risks defence successfully invoked. -Manufacturer must provide exhaustive information on the existence of all known undesirable effects, regardless of the level of significance or likelihood of manifestation of the risk.
75.	France	Court of Appeal of Paris	Oasis des Serres de Bon Pain v Algavi	10 October 2003	Product used to purify and treat ponds and lakes	-The meaning of defect. -Supplier's obligation to warn against consequences. -The meaning of adequate warning. -Interaction with liability under parallel national contract/sales law.	Article 6	- The claim succeeded: instructions inadequate.
76.	Germany	Bundesgerichtshof of BGHZ	Fireball case BGHZ 139, 79-88					

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
77.	Germany	Federal Supreme Court	Pferdebox case VI ZR 258/88, NJW 1990, 906	17 October 1989	Horse Box			
78.	Germany	OLG Frankfurt	NJW-RR 1994,800	1994		-The burden of proving the defect, damage and causal connection.	Article 4	
79.	Germany	OLG Frankfurt	Hepatitis virus case NJW-RR 1995, 2498	16 February 1995	Food	-Whether the claimant must prove the actual defect in the product. -Development risks defence: whether the defence can ever apply to manufacturing defects, that is, in circumstances where the manufacturing defect was not discoverable with proper testing.	Articles 6 and 7	- The claim succeeded.
80.	Germany	Federal Supreme Court	Water Bottle case BGH NJW 1995, 2162	9 May 1995	Sparkling Water Bottle	-The meaning of defect. -Development risks defence: whether the odd defective products that slip through the best quality control test are covered by the defence. -Whether the development risks defence applies to both design and manufacturing defects. -Refusal to refer case to ECJ for preliminary reference.	Articles 6 and 7	- The claim succeeded.
81.	Germany	OLG Dresden	VersR 1998,51	1998		-Defences.	Article 7	

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
82.	Germany	Koblenz Court of Appeal	5 U 166/98	24 June 1999	Washing machine	-Whether the fact that a defect is likely to be the cause of damage is sufficient to establish liability. -Whether the court must take into account the period of prior use of the product in assessing the defectiveness of the product. -Whether the court must take into account the fact that the producer exercised quality controls in assessing the defectiveness of the product.	Articles 5 and 6.	- The claim succeeded.
83.	Germany	OLG Dusseldorf	NJW-RR 1999,907	1999		-The meaning of producer.	Article 3	- No-fault liability under the PLD does not apply to the seller, but only to the importer. (Ultimate outcome unknown.)
84.	Germany	Federal Supreme Court	Kindertee case ZIP 2000, 372, BGH	12 December 2000	Infants' tea	-Limitation of actions against producers, their directors, representatives and employees.	Articles 5, 8 and 12	
85.	Germany	OLG Dusseldorf	Rope case NJW-RR 2001, 458	2001	Polypropylene rope	-The meaning of producer.	Article 3	- The claim succeeded. - The court ruled that production means to affect a product in a way which changes qualities concerning the safety of the product.
86.	Germany	Court of Appeal of Hamm	"Log Flume" case 3 U 116/00	27 January 2002	Log flume - roller coaster ride	-The meaning of defect: design defect and compliance with standards and regulations. -Supplier's obligation to warn against consequences. -Proof of causation when supplier did not adequately warn against consequences. -Link between the product liability regime and the general law of negligence.	Articles 5 and 6	- The claim failed. - The flume complied with all relevant safety standards, indicative of the fact that the product was as safe as could reasonably be expected.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
87.	Germany	Higher Regional Court of Dusseldorf	Az 9 W 23/00	14 February 2002	Beer	-Whether the manufacturer has a duty to warn consumers of the dangers of excessive consumption.	Article 6	- The claim failed. - Defendant brewery had no obligation to warn consumers of the dangers of excessive alcohol consumption.
88.	Germany	Munich Court of Appeal	OLG Muchen	21 June 2002	Tumble Dryer	-Is the fact that a product catches fire 7 years after it had been purchased indicative of the fact that the defect came into existence post-marketing. -Whether the fact that it is 'probable' that a defect did not exist when producer put product into circulation is a sufficient defence. -Different outcome to the case of Koblenz Court of Appeal dated 24 June 1999.	Articles 6 and 7(b)	- The claim failed. - The defendant successfully relied on defence - "high probability" that the defect had come into existence after the product had been put into circulation. (NB. court had earlier stated that defendant need only show that "plausible" that defect existed after circulation).
89.	Germany	Higher Regional Court of Cologne	OLG Köln	24 July 2002	Metal bolt nut in sandwich	-Whether the wholesaler of a product is liable under the PLD for a defect in a product.	Articles 1, 3 and 6	- The Higher Court confirmed that a wholesaler is not liable under the PLD. (Ultimate outcome unknown: fact finding referred to Regional Court.)
90.	Germany	Cologne Court of Appeal	Broken suspension fork case 3 U 116/00	27 August 2002	Suspension fork	-The meaning of defect: design defect and non-compliance with industry standards. -Development risks defence and industry standards. -Link between the product liability regime and the general law of negligence.	Articles 6 and 7	- The claim succeeded. - Testing typically carried out in the industry would have revealed that metal coating unsuitable. - The development risks defence failed.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
91.	Germany	Higher Regional Court of Dusseldorf	Brinkmann v Masterfood 14 U 99/02	20 December 2002	Confectionery	-Claimant's burden of proof of defect in product. -Whether chocolate bars contain "design" defect or "instruction" defect. -Relevance of compliance with product safety legislation and standards in assessing design defectiveness of a product. -Whether chocolate bars should include warning notices on the product packaging. -No issue of causation as product held not to be defective.	Articles 4 and 6	- The claim failed.
92.	Germany		NJW-RR 2003, 1382	18 June 2003	Vaccine	- Whether or not a vaccine contained a design defect.	Article 6	- The claim failed. - The court referred to expert reports and the fact that the Commission for Vaccination at the Robert-Koch-Institute had recommended the vaccine's use.
93.	Germany	Regional Court of Bonn	Haribo 9 O 603/03	19 April 2004	Liquorice	-The meaning of defect: labelling requirements. -Whether the size of a product package renders a product defective. -Whether there is a claim for damages or compensation for pain and suffering in the case of excessive consumption of a product. -Contributory act of the consumer.	Articles 6 and 9	- The claim failed.
94.	Germany	Higher Regional Court of Munich	Car centralised door locking case 17 U 2297/02	5 August 2005	Car	- Whether or not the fact that the rear doors of a car were not controlled by an automatic central locking system constituted a defect. The car had been the subject of a theft. - Whether legitimate expectations of safety should be assessed with sole regard to the country of usage, or measured against the best products available in the world.	Article 6	- The claim failed.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
95.	Greece	Court of Appeal of Thessaloniki	136. Bottle case 2052/1991	1991	Glass Bottle	-The meaning of "the safety which a person is entitled to expect" in Article 6.	Article 6	
96.	Greece	Court of Appeal of Athens	Soft drinks case 6704/1996	1996	Soft Drinks	-The producer's liability.	Article 1	- The claim succeeded.
97.	Greece	County Court of Amarousion	Washing machine case 512/1997	1997	Washing machine	-The meaning of producer.	Article 3	- The court stated that every consumer group can ask for the right of its members' legitimate protection. - "Producer" also means the importer-representative (agent) of the foreign producer. (Ultimate outcome unknown.)
98.	Greece	Court of First Instance	3717/1997	1997		- Moral damages	Article 9	
99.	Greece	Court of First Instance	2438/1997	1997		- Moral damages	Article 9	
100.	Greece	Court of Appeal of Athens	Decision 3811/1998	1998		- Moral damages	Article 9	
101.	Greece	Court of First Instance of Larissa	Gas cylinder case 151/2000	2000	Gas cylinders	-The meaning of producer. -Circumstances in which the supplier is considered to be a producer. -What the claimant must prove: application of the "theory of the influence spheres".	Articles 3 and 4	- The supplier is not considered as a producer unless the producer cannot be identified. - The meaning of producer is wide, not only including the producer, but also other persons, such as the importer and the supplier. (Ultimate outcome unknown.)

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
102.	Greece	Court of Appeal of Piraeus	Chocolate case 301/2002	2002	Chocolate	- What the claimant must prove: application of the "theory of the influence spheres" (Confirming Court of First Instance of Larissa 151/2000).	Articles 4	- The claim succeeded. - Able to recover moral damages.
103.	Ireland	High Court	Duffy v Rooney and Dunnes Stores Ltd	23 June 1997	Raincoat	-Not a case under the PLD but Irish law interpreted in the light of the PLD. -The meaning of defect. -The supplier's obligation to warn against consequences.	Articles 6 and 7 (Matter arising prior to the entry into force of national legislation implementing the PLD. Case decided on basis of negligence but uses similar terminology to that in PLD)	- The claim failed.
104.	Ireland	High Court (Discovery order)	Pierce v Aghadoe Developments and Ballgowan Limited	29 January 2002	Glass Bottle	-The meaning of defect. -Determining the extent of the supplier's knowledge and its impact on liability.	Article 6	- Parties implicitly accepted that a glass bottle which had shattered constituted a "product". - This case concerned an application for discovery and so outcome not relevant for our purposes.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
105.	Ireland	Supreme Court	Cassells v Marks and Spencer Plc	30 July 2002	Cotton dress	-The meaning of adequate warning.	Article 6	- The claim failed: "keep away from fire" warning label on child's daywear considered adequate.
106.	Italy	Supreme Court of Cassation	Blood case	27 July 1991	Blood Product	-Recoverable damages.	Articles 1, 4 and 9	
107.	Italy	Court of Monza	Italian Bike case	20 July 1993	Bike	-Recoverable damages. -Advertisements as instruments that make explicit the parties' expectations and their role in assessing whether a product is defective.	Articles 1, 4 and 9	- The claim succeeded.
108.	Italy	Court of Milan		13 April 1995		-Recoverable damages.	Articles 1, 4 and 9	
109.	Italy	Court of Monza	Industrial machine case	11 September 1995	Industrial machine	-The meaning of "safety which a person is entitled to expect" in Article 6. -Whether there is joint and several liability between the employer of the consumer and the manufacturer of the defective product. -Legal basis of the liability of the employer and of the manufacturer. -Whether moral damages are recoverable. -Recoverable damages.	Articles 1, 4 and 9	- The claim succeeded.
110.	Italy	Supreme Court	Italian Swing Case	29 September 1995	Chain of a swing	-Not a case under PLD but Italian law interpreted in light of the PLD. -Whether the conduct of the consumer was reasonably foreseeable by the manufacturer. -Recoverable damages.	Articles 1, 4 and 9	- The claim failed.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
111.	Italy	Court of Milan	Bunk bed case	23 March 1996	Bunk bed	-Whether there is joint and several liability between the manufacturer and the installer of the defective product. -Whether the installer can join the manufacturer in the legal action commenced by the consumer. -Legal basis of liability of the installer and the manufacturer.	Article 5	- The claim succeeded.
112.	Italy	Court of Rome	Exploding water bottle case	17 March 1998	Water bottle	-Whether the claimant needs to prove that the damage was due to the defect and not to the claimant's improper use of the product. -Recoverable damages. -Whether non-material damages recoverable.	Articles 1, 4 and 9	- The claim succeeded.
113.	Italy	Court of Florence	Italian Bike case II	5 April 2000	Bike	-Recoverable damages. -Whether non-material damages recoverable. -Opposite result to decision of Court of Rome of 17 March 1998.	Articles 1, 4 and 9	- The claim succeeded.
114.	Italy	Court of Appeal of Rome	Italian blood cases	23 October 2000	HIV, HBV and HCV infections	-Supplier's liability for undiscoverable defects.	Article 7	
115.	Italy	Court of Rome	"Hidden needle case" Giur. Romana, 2002, p. 137	22 November 2001	Needle	-The impact of an adequate warning in protecting the supplier's liability. -Claim limited to damages relating to psychological stress.	Article 6	- The claim failed.
116.	Italy	Court of Naples	Italian lighting case	28 February 2002	Lighting system	-The meaning of producer. -Recoverable damages.	Articles 3 and 9	- The claim succeeded.
117.	Italy	Court of Rome	Annibali v Servier Italia	20 April 2002	Slimming product	-The meaning of manufacturer or supplier. -The need to follow procedure set out in Article 4 and consequences of non-compliance. -Relationship between the provisions of the PLD and existing Italian legislation.	Articles 3, 4, 7 and 13	- The claim succeeded. - The defendant was unable to rely on the developments risks defence.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
118.	Italy	Court of Milan		31 January 2003	Ladder	-Claimant's burden of proof. -Whether proof of the producer's negligent conduct is required. -Relationship between national law and the PLD provisions. -Whether moral damages are recoverable.	Articles 5, 6 and 9	- The claim succeeded. - The court ruled that normally the legislation implementing the PLD would be subordinate to general principles of tort liability.
119.	Italy	Court of Vercelli		7 April 2003	Coffee machine	-Supplier's obligation to provide adequate warning against consequences: information as to the appropriate maintenance of product. -Recoverability of non-material damages.	Articles 6 and 9	- The claim succeeded. - The warnings had not been explicit. - Non-material damages also awarded.
120.	Italy	Supreme Court		31 May 2003		-Recoverability of non-material damages.	Article 9	- The claim succeeded. - Non-material damages could be awarded where negligence could be presumed (even if not proven).
121.	Italy	Civil Court of Rome	G v. Nissan Italia	14 November 2003	Car	-Whether moral damages are recoverable. -Whether negligence must be presumed prior to moral damages being recoverable.	Article 9	- The claim succeeded. - Moral damages were awarded.
122.	Italy	Civil Court of Rome	Ricchini v Aprilia	4 December 2003	Motorcycle	-Whether moral damages are recoverable. -Whether negligence must be presumed prior to moral damages being recoverable.	Article 9	- The claim succeeded and moral damages were awarded.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
123.	Netherlands	Supreme Court	Halcion Case NJ 1990/652	30 June 1989	Halcion (a drug)	- The meaning of defect.	Article 6	- This case arose prior to the implementation of the PLD, but the PLD taken into account. In addition to the factors set out in the PLD, the court took into account the utility of the product balanced against the seriousness of the risk. (Ultimate outcome unknown.)
124.	Netherlands	District Court of Haarlem	"Consumenten Contact/Forbo" case	18 February 1992	Asbestos-containing carpet	-Not a case under PLD but reference to the PLD. -The meaning of defect.	Article 6	
125.	Netherlands	Supreme Court	DES Case	9 October 1992	Pharmaceutical product	-Not a case under PLD but reference to the PLD. -Application of the principle of joint and several liability of the producer even in the absence of proof that a supplier's product caused the injury. -Dismissal of the concept of assigning liability on the basis of market share.	Article 5	- The claim succeeded.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
126.	Netherlands	HR	Broken bottle NJ 1994, 214	24 December 1993	Top of bottle	<ul style="list-style-type: none"> -Not a case under PLD but reference to the PLD. -The meaning of defect. -Claimant's burden of proof. -Whether the consumer must prove that the product was defective when the producer put it on the market. -Whether the consumer must prove that the risk could not be detected earlier. -Whether the consumer must prove that he used the product as it was intended. -Whether the national court is obliged to interpret national law in accordance with the PLD for products that were put into circulation after 30 July 1988 but before the national implementation Act entered into force. 	Articles 4 and 6	- Court decided that if the defendant could prove that he opened the bottle in the normal way, then it could be implied that the damage was caused by a defect. (Ultimate outcome unknown.)
127.	Netherlands	District Court of Amsterdam	Sanquin Foundation case NJ 1999, 621	3 February 1999	Blood products	<ul style="list-style-type: none"> -Whether the expectations of safety relevant to the issue of whether a product can be said to be defective should be those of the general public (the ultimate users of the product) or those of the direct (professional) purchasers of the product. -Whether the test of defectiveness should be based on what persons generally actually expect or what they are entitled to expect. -Development risks defence: whether it applies to knowledge, as well as avoidability, of the risk. 	Article 6 and 7	<ul style="list-style-type: none"> - The claim failed. - The development risks defence successfully relied upon.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
128.	Netherlands	Supreme Court	Koolhaas - Rockwool case	22 October 1999	Rock Wool	-The meaning of defect. -Determining the normal use for which a product was intended and the reasonable use to be expected of the product. -The standard of due care owed by the producer of semi-manufactured products.	Articles 6 and 7	- The court was of the opinion that it was unlawful to put a product into circulation which caused damage when used for the purpose for which it was intended. Steps must be taken to prevent products being put in circulation from causing damage. (Ultimate outcome unknown.)
129.	Netherlands	Court of Breda	KG 2001, 28	8 December 2000	Electric cooker	-Whether the insolvency of the importer of the defective product is a legitimate ground to hold the seller of the product liable, where the identity of the producer and of the EU-importer are known.	Articles 3 and 5	- The claim failed.
130.	Netherlands	District Court of Zwolle	Johnson & Johnson litigation	24 April 2002	Tampons	-The adequacy of the supplier's warning and its impact on strict liability. -Measures that may be expected of a careful manufacturer. -The way in which a producer can reasonably expect a product to be used. -Whether the court should take into account the fact that there had been no previous report of the product being misused in the manner that led to the injury.	Articles 4, 6 and 7	- The claim failed. The tampon had been used in a way that was not foreseeable by the producer.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
131.	Portugal	High Court of Lisbon	Portuguese car case	23 May 1995	Car's electrical system	<ul style="list-style-type: none"> -Whether the PLD is only applicable to damages resulting from a defective product put in to circulation after its entry into force. -Whether damages to the product itself are covered by the PLD. -How the PLD interrelates with existing national laws. -What the claimant must prove in the case of a defect in a delivered product. -The bearer of the risk of a defect in a product in the case of alienation with reserve of property. 	Articles 3, 4 and 6	- Damage to product itself not covered by PLD. (Ultimate outcome unknown.)
132.	Portugal	Supreme Court	Decision of Supreme Court	26 October 1995	Car	<ul style="list-style-type: none"> -Liability of the manufacturer for the manufacturing defect in a car. -Whether the car dealer is the appropriate person to sue in substitution, repair and compensation claims. 	Article 3	- Risk for the defect of manufacture should fall upon the manufacturer, and not upon the distribution channels which only serve as warehouses. (Ultimate outcome unknown.)
133.	Portugal	High Court of Coimbra	Portuguese car case II	8 April 1997	Car's electrical system	<ul style="list-style-type: none"> -The meaning of defect. -Whether liability of the producer is "objective" and the parties' burden of proof. -Example where the burden of proof was not satisfied. 	Articles 4, 6 and 7	- The claim failed.
134.	Portugal	High Court of Porto	Portuguese car case III	4 November 1999	Car's alarm system	<ul style="list-style-type: none"> -The meaning of defect. -Whether the importer is liable when the defective product was imported from an EU country. 	Articles 3 and 6	- The claim failed against the importer because the product imported from EU country.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
135.	Portugal	High Court of Porto	Decision of High Court of Porto	13 July 2000		-Applicability of the PLD to relations between producers and third party end users, and between contractually bound sellers and buyers.	Article 3	- Where there are contractual relations between seller and buyer, the applicable rules are those of the general law, i.e. liability based on fault. (Ultimate outcome unknown.)
136.	Portugal	High Court of Porto	Portuguese thermostat case	6 March 2001	Hot Water Cylinder Thermostat	-The meaning of defect in national implementing legislation. -Types of damages covered by the PLD. -What the claimant must prove.	Articles 4, 6 and 9	- Consumer required to prove that a product does not offer the safety which a person is entitled to expect. (Ultimate outcome unknown.)
137.	Portugal	High Court of Coimbra		6 March 2001		-Types of damages covered by the PLD. -What the claimant must prove.	Articles 4, 6 and 9	- The defective product must cause damage to some person or thing other than itself. - The injured person should be required to prove the nexus of causality between the defect of the product and the damage that occurred. (Ultimate outcome unknown.)
138.	Portugal	Supreme Court	Col. Jur. 2001, 1, 196	29 March 2001		-The meaning of defect. -Circumstances where the liability of the distributor/dealer of the defective product arises.	Articles 3 and 6	- A distributor/dealer is liable for damages caused by defective products when he acts with fault. He is only liable under the PLD when he appears to be the producer or is the supplier of an anonymous product. (Ultimate outcome unknown.)

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
139.	Portugal	High Court of Porto	Portugese tile case	7 May 2001	Tiles	-The meaning of defect. -Whether the claimant can require repair and substitution of the defective product.	Articles 1 and 6	- The claim succeeded: the buyer was able to claim for repair or substitution.
140.	Portugal	High Court of Coimbra	Decision of High Court of Coimbra	2 October 2001	Boiler incorporated into a stove	-The meaning of defect. -How the PLD interrelates with existing national laws. -The "objective" nature of the producer's liability.	Articles 6	- The claim succeeded.
141.	Portugal		Case 205/01	16 October 2003		- The presumption of the existence of a product defect when it is put in circulation. - The liability of the producer when there is fault on the part of the injured person.	Articles 7 and 8	- The effect of Article 7(b) is that there is a rebuttable presumption that a defect exists when it is put into circulation. (Ultimate outcome unknown.)
142.	Spain	JPAC Burgos	Spanish Ladder case	9 February 1999	Ladder	-Whether the claim for a manufacturing defect in a product can be directed exclusively against a retail outlet.	Article 3	- The claim succeeded.
143.	Spain	JPAC Barcelona	Spanish Garden Chair case	23 April 1999	Garden Chair	-The meaning of defect. -Situation where a defect is evident on the facts.	Article 6	- The claim succeeded.
144.	Spain	JPAC Albacete	Spanish Gas case	9 March 2000	Gas canister	-The meaning of defect. -Scope of the claimant's burden of proof. -Whether "gas" is a product covered by the PLD. -Contributory act of the consumer.	Articles 5, 6 and 8	- The claim succeeded.
145.	Spain	JPAC Balearics	Folding Chair case	28 March 2000	Folding Chair	-The meaning of "put into circulation" in Article 6.	Article 6	- The claim succeeded.
146.	Spain	JPAC Jaen	Coal case	30 March 2000	Coal	-Scope of the claimant's burden of proof of the defect.	Articles 5 and 6	- The claim failed.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
147.	Spain	JPAC Huesca	Spanish Medical Products case	18 April 2000	Medical Products	-Scope of the claimant's burden of proof of the causal link between the defect and the damage.	Articles 5 and 6	- The claim failed.
148.	Spain	JPAC Balearics	Spanish Gas case II	2 May 2000	Gas	-Scope of the claimant's burden of proof of the defect.	Articles 5 and 6	- The claim failed.
149.	Spain	JPAC Orense	Spanish Car Alarm case	11 May 2000	Car Alarm	-Whether proof that damage occurred inside a car was proof of the car's defect when there is no definite proof as to the origin of the car damage.	Articles 5 and 6	- The claim succeeded.
150.	Spain	JPAC Santa Cruz	Spanish Ladder case II	23 September 2000	Ladder	-Whether the seller can be held liable when a manufacturing defect is proved under national implementing legislation.	Article 3	- The claim failed. The liability is of the manufacturer, not of seller.
151.	Spain	JPAC Cantabria	Spanish Bottle case	7 November 2000	Beer bottle	-Joint and several liability of defendants. -Contributory act of the claimant.	Articles 5 and 8	- The claim succeeded.
152.	Spain	JPAC Jaen	Spanish Firecracker case	20 November 2000	Firework	-Scope of the claimant's burden of proof. -Whether the analysis of the process of manufacture in the case of a destroyed product is admissible proof as to the existence of the defect.	Articles 4 and 6	- The claim failed.
153.	Spain	Asturias Audiencia Provincial	Vehicle jack case	21 March 2001	Vehicle jack	-The meaning of producer.	Article 3	- The claim succeeded against the manufacture of the vehicle because it had failed to notify the injured party of the name of the manufacturer of the vehicle jack within three months.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
154.	Spain	Murcia Audiencia Provincial	Airbag case	2 April 2001	Air bag	-The meaning of defect.	Articles 6 and 9	- The claim succeeded. The injuries sustained were different from what one might have expected from an airbag defect, and therefore 40% of the liability was imputed to the manufacturer inasmuch as it was proved that the resulting injury would have been less severe if the airbag had functioned correctly.
155.	Spain	Zamora Audiencia Provincial	Air bag case	7 May 2001	Air bag	-Proof of defect: whether the claimant's proof that a product failed to do what it was intended to do is enough to prove the product's defectiveness.	Article 6	- The claim succeeded. The airbag had failed to operate in a case of frontal collision, which was sufficient evidence of defect.
156.	Spain	Vizcaya Audiencia Provincial	Electrical power supply case	20 November 2001	Electrical power supply	-Defences.	Article 7	- The claim succeeded. The defendant could not rely on Article 7(b) when a third party had illegally tampered with supply.
157.	Spain	Court of Appeal of Barcelona	JUR 2002\184459	19 April 2002	Industrial machine	-Liability of the supplier under a specific provision added to the PLD rules by Spain. -The provision states that the supplier is liable when he has supplied the product in the knowledge that it had a defect.	Specific national provision	- The claim succeeded. - The sole additional provision of the national legislation implementing the PLD holds the supplier liable when he has supplied a product knowing that it has a defect.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
158.	Spain	Court of Cáceres	JUR 2002\226019	21 June 2002	Toy in sealed box	-Liability of the supplier under a specific provision added to the PLD rules by Spain. -The provision states that the supplier is liable when he has supplied the product in the knowledge that it had a defect.	Specific national provision	- The claim failed. - The supplier could not have known of the defect when he received the product.
159.	Spain	Court of Appeal of La Coruña	AC 2002\1348	21 June 2002	Biscuit	-The meaning of manufacturing defect. -Similarity between the rules of proof of causation pursuant to PLD, and the classical national requirements of tort liability for fault.	Articles 4 and 6	- The claim succeeded. - There exists a rebuttable presumption of a defect when the specific item causing damage offers a level of safety which is lower than the level offered by the rest of the items of the same series.
160.	Spain	Supreme Court of Barcelona	Bottle case	21 February 2003	Bottle	-The meaning of defect. -The respective parties' burden of proof.	Articles 5 and 6	- The claim succeeded. - The bottle was defective.
161.	United Kingdom	High Court of Justice - Queens Bench Division	Relph v Yamaha Motor Company Limited	24 July 1996	All Terrain Vehicles (ATVs)	-The meaning of producer -Interpretation of the meaning of producer in the case of multinational companies which undertake different parts of an overall manufacturing or production process in different countries and through different subsidiaries.	Article 3	- The claim failed.
162.	United Kingdom	High Court of Justice - Queens Bench Division	Alison Marianne Worsley v Tambrands Limited [2000] P.I.Q.R. P95	3 December 1999	Tampons	-The meaning of adequate warning.	Articles 1 and 6	- The claim failed.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
163.	United Kingdom	High Court of Justice - Queen's Bench Division	Richardson v LRC Product Limited [2000] P.I.Q.R. P164	2 February 2000	Condom	-The meaning of defect. -Precautions which one could reasonably expect a producer to take. -Claimant's burden of proof as to the cause of the defect: whether the fact of fracture of a condom, in itself, provides evidence of a defect. -What are consumers naturally "entitled to expect" within the meaning of Article 6. -Whether there is an obligation to mitigate loss/damage for the sake of recovering damages.	Articles 1, 4, 6 and 9	- The claim failed.
164.	United Kingdom	Central London County Court	Foster v Biosil (2001) 59 B.L.M.R. 178	18 April 2000	Breast implants	-The meaning of defect.	Article 6	- The claim failed.
165.	United Kingdom	Court of Appeal (Civil Division)	Abouzaid v Mothercare (UK) Limited [2000] All ER (D) 2436	21 December 2000	Straps of pram liner	-The meaning of the safety which the public at large are "entitled to expect" in Article 6. -Whether a supplier can be liable despite lack of negligence. -Development risks defence: whether the defence arises where the manufacturer of the product did not recognise the product could pose a hazard, as the potential risk had not at the time been recognised by experts in the safety of such products.	Articles 1, 6 and 7 (e)	- The claim succeeded.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
166.	United Kingdom	High Court of Justice - Queen's Bench Division	A and Others v National Blood Authority and Others [2001] All ER (D)	26 March 2001	Blood and blood products	<ul style="list-style-type: none"> -The meaning of defect in the case of blood products. -Whether an alleged defect in blood products is a manufacturing or design defect. -The true construction of the expression 'all circumstances' in Article 6. -In determining defectiveness, whether the test is what people actually expect or what they are entitled to expect. -What are the public's legitimate expectations as to the safety of blood products. -Relevance of defendant's conduct. -Relevance of the avoidability of the risk. -Applicability of development risks defence. -The quantum of damages in respect of infection. 	Articles 6 and 7	<ul style="list-style-type: none"> - The claim succeeded. - The defendant was unable to rely on Article 7(e) because the problem was known. The court considered it inconsistent with the purpose of the PLD for a producer to continue to supply a product with a known risk simply because he was unable to identify in which, if any, of his products that defect might occur or recur. - The court ruled that the question was one of legitimate expectation: the public at large expected blood transfused to be free from infection. The avoidability of the harmful characteristic, the impracticality of taking precautions, the benefit to society or the utility of the product and the knowledge of the medical profession were considered irrelevant because they were inconsistent with the purpose of the PLD.

No	Country	Court	Case name	Date of judgment	Product	Main issues	Relevant articles of the PLD	Outcome (if known)
167.	United Kingdom	Court of Appeal (Civil Division), affirming High Court - Queen's Bench Division	Horne-Roberts v SmithKline Beecham plc and Another [2001] EWCA Civ 2006	18 December 2001	MMR vaccine	-The case was not decided on the basis of the PLD and deals with preliminary limitation period issues. -Whether the claimant who had wrongly named defendant in proceedings could substitute another party, outside the long-stop 10 year limitation period provided by national legislation implementing the PLD. -Whether the court could use its discretion to allow the substitution.	Articles 10 and 11	- The claim to substitute another defendant succeeded.
168.	United Kingdom	High Court of Justice - Queen's Bench Division	Bogle and Ors v McDonalds Restaurant Ltd [2002] EWHC 490	25 March 2002	Hot Drinks	-Assessment of whether product is defective: whether assessment should be conducted on an "objective basis" or with reference to the defendant's conduct. -Nature and extent of supplier's obligation to warn against consequences. -The balancing exercise carried out by the courts when considering the extent to which consumers should be "protected" from risks.	Articles 1 and 6	- The claim failed.
169.	United Kingdom	High Court of Justice - Queen's Bench Division	XYZ & Ors v Schering Health Care Limited & Ors [2002] EWHC 1420	29 July 2002	"Third generation" oral contraceptive pill	-The case was not decided on the basis of the PLD because the claimants failed on a preliminary issue. -On the evidence, it was not proven as a matter of probability that there was any increased risk of venous-thromboembolism carried by the product put on the market as compared with previous products. -The court therefore did not go on to consider the following issues which had been raised: whether the product was defective; the supplier's obligation to warn against consequences; and whether the supplier should warn of an "increased risk".	Articles 6	- The claim failed on a preliminary issue because the claimants could not establish that the relative risk of VTE when using third generation oral contraceptives was twice the risk inherent in second generation oral contraceptives.