OVERVIEW SPAIN

I. INTRODUCTION
The regulation of liability for damage caused by products in Spain is not included in a single Act but in a diversity of provisions which refer to liability in contract and to liability in tort and which establish different liability regimes.

In this area, the traditional provisions regarding liability in contract included in the Spanish Civil Code of 1889 must be taken into account together with the Ley 23/2003, de 10 de Julio, de Garantías en la Venta de Bienes de Consumo (Act of guarantees in the sale of consumer goods),1 implementing the Directive 1999/44/EC, of 25 May 1999, on certain aspects of the sale of consumer goods and associated guarantees. With regard to liability in tort, the rules of Civil Code may also apply together with the provisions of Ley 26/1984, de 19 de Julio, General para la Defensa de los Consumidores y Usuarios (General Act General Act for the Protection of Consumers and Users [hereafter, Consumer Protection Act or LGDCU])3. Finally, from 1994 the provisions of the Ley 22/1994, de 6 de Julio, de responsabilidad civil por los daños causados por productos defectuosos (the Products Liability Act 1994 [hereafter LRPD]) implementing the European Directive 85/274/CEE are also applicable.

II. LIABILITY IN CONTRACT

A. The traditional regime provided in the Civil Code

The Spanish Civil Code (hereafter CC) and, to a lesser extent, the Spanish Commercial Code (hereafter CCom) establish a special set of rules about liability for latent defects in sales which are similar to those of the other civil law systems. The latent defect as conceived by these rules is a defect of quality that impairs the utility of the subject-matter, either by making it useless or by diminishing its utility. Thus, the seller is liable to the buyer for the latent defects if the subject-matter is not fit for its intended use (provided that this use was obvious or clearly stated by the buyer) or if the defects diminish it to such an extent that if the buyer would have known of them, he would not have acquired the subject-matter at all or would have paid less for it. Nevertheless, the seller is liable neither for defects that are disclosed, nor for those that the buyer could have or should have discovered upon inspection when the buyer is an expert in the field (Cf. Arts. 1484 CC and 336 CCom).

The basic principles that govern recovery for latent defects are the protection of the buyer’s restitution interest, and that beyond this interest damages are only recoverable if the seller knew of the defect. The mere presence of a latent defect in the subject-matter of a sale does not constitute a breach; but it does give the buyer a choice of remedies: he can either claim “redhibition” or price reduction.

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2 OJEC num. L 171/12, of 7.7.1999.
(1) “Redhibition”, which amounts to rescission, involves restoration of the subject-matter of the sale on one hand, and of the price, on the other. In other words, it protects the buyers’ restitution interest. As a matter of principle it cannot be combined with damages, since the seller is not considered to have undertaken that the defects do not exist but only to have assumed certain guarantee liabilities in case the defects do exist. However, the buyer is not always limited to recovery of his own performance in the redhibitory action. If the seller knew of the defect he must not only restore the price but is in addition liable (under art. 1486 II CC) for the damage suffered by the buyer. The reference to “damage” in this article is broad enough to include the loss for not receiving the subject-matter defect-free (economic loss) as well as all consequential losses derived from it (i.e., economic loss for not being able to put it to some particular use, or even physical harm, because the subject matter injures the buyer or destroys his property).

If the seller did not know of the defect he is only liable (in addition to refunding the cost) to reimburse the buyer for the expenses that he incurred (art. 1486 I CC). According to the interpretation of the Spanish courts, these expenses do not include consequential loss caused by the latent defect in the subject-matter of the sale (i.e., personal injury or property damage).

(2) Price reduction is the other action generally available to a buyer who suffers latent defects. Liability to price reduction is thought neither as liability for contractual fault (the liability does not depend on “fault”) nor it is assessed on the basis of protection of the expectation interests. The buyer is not entitled to the cost of having the defect cured, nor is he entitled—as in common law countries— to the difference between the value of the thing as it is and as it should have been. The buyers’ claim in principle is merely one to have the price reduced in the proportion which, according to expert judgement, the actual value which it would have had if it had not been defective (art. 1486 I CC).

The buyer can either claim redhibition, i.e. to rescind the contract, or price reduction. But if he chooses price reduction this is all that he will get. Therefore, in the very few cases where recovery for consequential loss is allowed, he will have to choose redhibition if he wants to recover this type of loss (Cf. Art. 1486 II in fine CC).

Both actions have a time limit of six months starting from the date of delivery (art. 1490 CC). If the sale is governed by the Commercial Code—that is, if the parties are traders acting in the course of their business—the actions for latent defects have a time limit of 30 days (art. 342 CCom) and of only 4 days if the defective goods have been provided in packages (art. 336 CCom).

B. The regulation provided in Act of guarantees in the sale of consumer goods (2003)

Since the 11th September, 2003 the Act on guarantees in the sale of consumer goods (2003), implementing the Directive 1999/44/EC, of 25 May 1999, on certain aspects of the sale of consumer goods and associated guarantees is in force. This Act displaces to a certain extent the application of Arts. 1484 et seq. CC without repealing them. These provisions of the Civil Code will be still applicable to those sales which are not within the scope of the new Act (i.e. those sales of goods which are not aimed at private consumption, in the sense of Art. 1 II of the Act). Moreover, the new Act will not be applicable either to those sales of consumer goods in the sense of Art. 1 II of the Act which had been put into circulation before the new Act came into force since, according to the Additional Provision of the Act 23/2003, these sales of goods will still be governed by the provisions that were in force when they were put into circulation, i.e. by Arts. 1484 et seq. CC.

Along the lines of what the Directive provides, the Act 23/2003 places upon the seller of consumer goods the obligation to deliver goods which are in conformity with the contract of sale (cf. Art. 1 Act 23/2003 and 2 Directive). In the sense of the Act, consumer goods are those
tangible movable items aiming to the private consumption (Art. 1 II Act 23/2003), being considered consumers those who acquire, use or enjoy said goods “as finally targeted persons”, that is, without aiming at “incorporating them into processes of production, transformation, commercialisation or provision to third parties” (Art. 1 III Act 23/2003, and Art. 1.2 and 3 LGDCU). Following the Directive, the Spanish Act excludes from its field of application water and gas, where they are not put up for sale in a limited volume or set quantity, electricity, and also goods sold by way of execution or otherwise by authority of law (Art. 2 Act 23/2003).

According to Art. 2 of the Act 23/2003, unless a contrary proof is given, the consumer goods are presumed to be in conformity with the contract if they: (1) comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model; (2) are fit for the purposes for which goods of the same type are normally used; (3) are fit for any particular purpose for which the consumer requires them which he made known to the seller at the time of conclusion of the contract and which the seller has accepted; (4) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling. Finally, Art. 3.3 Act 23/2003 declares that the seller will not be held liable for lack of conformity that the consumer knew or could not reasonably be unaware of at the time the contract was concluded, or if the lack of conformity has its origin in materials supplied by the consumer.

The seller shall be liable to the consumer for any lack of conformity existing at the time the goods were delivered (Art. 4 Act 23/2003). Being this the case, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, or to have an appropriate reduction made in the price, or to rescind (resolución) the contract (Art. 4.1 Act 23/2003). These rights cannot be previously renounced by the consumer (Art. 4.II Act 23/2003).

(1) Right to repair or replacement. Firstly, the consumer may require the seller to repair the goods or to replace them, unless any of these options is impossible or disproportionate. A remedy shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable, taking into account the value the good would have if there were no lack of conformity, the significance of the lack of conformity and whether the alternative remedy could be completed without significant inconvenience to the consumer (art. 5 Act 23/2003). The repair or replacement will be performed free of charge to the consumer, and they shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required them.

(2) Right to a reduction of the price or to have the contract rescinded. The consumer may choose between an appropriate reduction of the price or to have the contract rescinded, if he is entitled to neither repair nor replacement, or if the seller has not completed them within a reasonable time or without any significant inconveniences to the consumer. Even in that case, the consumer is not entitled to have the contract rescinded if the lack of conformity is of little significance (Art. 7 Act 23/2003). Finally, the reduction of the price shall be proportional to the difference existing between the value which the good would have had at the time of the delivery, if the good would have been in conformity with the contract, and the value which the good actually delivered had at the time of such delivery (Art. 8 Act 23/2003).

The seller shall be held liable for the lack of conformity becoming apparent within two years as from delivery of the goods. In the case of second hand goods, this time may be reduced by means of an agreement between the seller and the consumer, although it cannot be lower to a year from the delivery. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity (Art. 9 Act 23/2003).
Finally, it must be borne in mind that, pursuant to Art. 9.3 Act 23/2003, the action to claim the performance of the remedies provided in the Act has a time limit of three years starting from the time the good was delivered.

II. LIABILITY IN TORT

A. The General Rule of Liability in Tort (Art. 1902 Spanish Civil Code)

According to Art. 1902 CC “[T]he person who by action or omission causes damage to another by fault or negligence is obliged to repair the damage caused”. This general clause of liability in tort, that appears in other Civil codes such as the French (art. 1382) or the Italian (art. 2042), is based on the traditional idea that liability arises from the fault or negligence of the person who causes the harm. So has been recognized by Spanish Courts’ decisions, which have repeatedly declared that fault liability, as established by art. 1902 CC, is still one of the basic principles in tort liability.5

In spite of the general terms in which this provision is drafted, the Spanish Supreme Court has constantly pointed out that it is “the unanimous opinion of legal doctrine and of the courts that in order to be able to establish tortious liability four requirements must be met: (1) a wrongful action or omission of the actor, (2) his or her intent or fault, (3) damage, and (4) a causation link between the action or omission and the damage” (among many other decisions, see STS 29.12.1997 [RJ 1997/9602] and STS 30.6.1998 [RJ 1998/5286]).6

Regarding the burden of proof of fault, Art. 1902 CC does not contain any rule and, for many decades, it has been understood that the proof of fault lies on the claimant. However, since the beginning of 40’s the Spanish Supreme Court has evolved towards a system of fault liability with a reversal of the burden of proof (see, for the first decision, STS 10.7.1943 [RJ 1943/856]). Originally, this evolution seemed to be limited to activities or conducts specifically dangerous, but over the years it has been enlarged to other areas, up to the point that it can be currently stated that the reversal of the burden of proof is the general rule,7 with very few exceptions. So, once the claimant has established the action or omission of the defendant, the damage sustained and the causal link between them, the fault of the defendant is rebuttably presumed and the burden of proof is reversed, corresponding to the defendant to overturn this presumption in order to avoid liability.8

The area of products liability has not been indifferent to this so-called “process of objectifying” fault liability, as the judgments deciding these sorts of cases by applying the general rule of fault liability in tort (Art. 1902 CC) show (Cf. STS 24.7.2001 [RJ 2001/8420]). STS 19.9.1996 [RJ 1996/6719], for instance, emphasizes when dealing with the liability of the manufacturer of an allegedly defective vehicle that it is applicable to the case “the same case law established with regard to the application of Art. 1902 CC, which indispensably requires a reproach of blameworthiness to the person causing the harm since, although it is true that this Chamber has

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7 One of these exceptions can be found in the field of medical malpractice, where the burden of the proof of fault still lies on the plaintiff (among others, see, SSTS 10.11.1997 [RJ 1997/7868]; 20.3.2001 [RJ 2001/4744]; 23.3.2001 [RJ 2001/3984] and 16.10.2001 [RJ 2001/8635]).
8 Santiago CAVANILLAS MÚGICA, La transformación de la responsabilidad civil en la jurisprudencia, Pamplona, Aranzadi, 1987, pp. 66 et seq; DE ÁNGEL YAGÜEZ, Tratado de responsabilidad civil, op. cit., pp. 127-159.
evolved in the direction of objectifying tort liability, it is no less true that this change has been performed moderately by recommending a reversal of the burden of proof of fault and stressing the rigour of the required standard of care, according to the circumstances of the case; this way, a special care in order to prevent the damage from happening is required but without raising risk, however, as the sole grounds for the obligation to compensate for damage (…)” (see also, among may others SSAP Toledo, de 2.3.1998 [AC 1998\697]; Granada 20.12.2004 [AC 2004\142]).

According to Art. 1968.2 CC, the limitation period for bringing an action on the grounds of Art. 1902 CC is one year, counting from the date on which the injured party knew of it. Although the wording of Article 1968.2 CC only mentions Art. 1902 CC, Spanish courts and legal scholarship agree that the same time limit applies to all actions in tort for which the law does not provide for a specific limitation period.10

B. Tort Liability under the General Act for the Defence of Consumer and Users

When the Products Liability Act 1994 (LRPD) implementing the Directive came into force, another specific Act, the General Act General Act for the Protection of Consumers and Users 1984 (LGDCU), partially regulating the same topic, was already applicable.11

This Act had been poorly drafted in the wake of the colza or rape oil case, which caused the intoxication of over 15,000 persons, leaving behind 300 deaths and several thousands victims severely impaired.12 This Act referred both to defective products and to services and provided for two liability regimes: 1) a fault regime, with a rebuttable presumption of fault (Art. 26 LGDCU) and 2) a strict liability regime for products and services that meet certain general conditions (of purity, efficiency or security, undergoing technical, professional or systematic control, etc), or that had been enumerated in the Act (for instance, food products, cleaning products, medicines, healthcare services, gas and electricity services, electrical appliances, means of transport, motor vehicles, toys and other products targeting at children) (Art. 28 LGDCU).

These provisions apply both to liability in contract and liability in tort, without any distinction (see in this sense, SSTS 22.7.1994 [RJ 1994\4581]; 14.7.2003 [RJ 2003\5837]). They refer to all sorts of moveables and immovables, to products and also to services, and all subjects in the distribution chain are held jointly and severally liable. But these provisions protect consumers and users only, not bystanders, and then only for damage caused by products intended for private use or consumption and not, as in the Directive, for damage caused to items of property ordinarily intended for private use or consumption and used mainly by the injured person in such a way.13

With regard to product liability, the LGDCU has today a very limited of application, since the LRPD stated in its First Final Provision that Articles 25 to 28 LGDCU do not apply to liability

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9 Miquel MARTÍN CASALS / Josep SOLÉ FELIU, La responsabilidad civil por los daños causados por bienes y servicios: Introducción, in Mª José REYES LÓPEZ (COORD.), Derecho Privado del Consumo, Valencia, Tirant lo Blanch, 2005, p. 145.

10 However, without solid foundations and against the prevailing opinion in legal scholarship, courts tend to apply the time limitation of 15 years—which is the general one for obligations—to tort actions resulting from a crime or a misdemeanour, even if they are brought in the Civil courts (among many others, see Mariano YZQUIERDO TOLSADA, Sistema de responsabilidad civil, contractual y extracontractual, Madrid, Dykinson, 2001, pp. 452-453).

11 The case has been dealt with in the decisions SAN 20.5.1989, STS 23.4.1992 [RJ 1992\6783] and STS 2ª 26.9.1997 [RJ 1997\6366] and has given rise to a damages award over 500 billion PTA (approx € 3 billion).


13 MARTÍN CASALS, The Likely Impact, op. cit., p. 43.
for the damage caused by defective products included in Art. 2 of the LRPD. Accordingly, Articles 25 to 28 LGDCU will still be applicable to services and to those products which, for one reason or another, are excluded from the LRPD: i.e., to immovables and to those movables, considered products in the sense of Art. 2 LRPD, which were put into circulation before the date in which the LRPD came into force [what occurred the 8th July 1994] (Cf. Final Disposition 1st. and Final Disposition 4th. LRPD).14

After the implementation of the Directive by means of the LRPD, some legal scholars considered that the Directive was a minimum Directive and that Art. 13 Directive and Art. 15 LRPD permitted the preservation of the Spanish product liability regulation in force, since it was deemed to be more protective and was “pre-existent” to the notification of the Directive. The prevailing Spanish legal scholarship rejected this approach15, a rejection which was later on confirmed by the European Court of Justice in the decision issued on 25 April 2002 (María Victoria González Sánchez v. Medicina Austuriana) (Case C-183/00),


In 1994 the Spanish legislature passed the LRPD, which implemented the Directive 85/374/EEC.16 Along the lines of what the Directive provides, the LPRD establishes a strict liability regime for the damage caused by defective products. In this sense, case law points out – as in SAP Tarragona 18.7.1998 [AC 1998/1546]— that the LPRD “provides for a strict liability regime” and “the defendant cannot be exonerated from liability by proving that he acted with due care, since he can only avail himself of the defences laid down in Arts. 6, 8 and 9”.

Since LRPD follows closely the provisions of the Directive, we are going to mention here only those aspects where the Spanish legislature has used the room of manoeuvre conferred by the Directive on the Member States (as, for instance, in Art. 15 Directive) or where it has implemented the Directive by using of a rather lax interpretation of its provisions.

A. The notions of “product” and “defect” in the LRPD

The notion of product does not pose any particular problems. Pursuant to Art. 2.1 LRPD, product is every movable “even though incorporated into …an immovable”. Initially the Spanish legislature had used the option provided by Art. 15.1(a) Directive and, accordingly, had excluded form the notion of product all those “…primary agricultural products and stock-farming and the products of the game and fishery which have not undergone initial processing”. However, after the implementation of the Directive 1999/34/CEE, of the European Parliament and the Counsel, of 10th of May, 1999 by the Act 14/2000, de 29 de diciembre, de medidas fiscales administrativas y del orden social, these sorts of goods all also included within the scope of the LRPD.

However, the LRPD goes further than the European Directive and besides gas, also considers electricity as a product. This extension has given rise to some misunderstandings of the Spanish courts regarding to whether damage caused by a power surge must be considered as damage caused by a product and, accordingly, subject to the provisions of the LRPD, or damage caused by services and, therefore, governed by the provisions of the LGDCU. In this sense, see for

14 MARTÍN CASALS / SOLÉ FELIU, La responsabilidad civil por los daños causados por bienes y servicios: Introducción, in REYES LÓPEZ (COORD.), Derecho Privado del Consumo, op. cit., pp. 152-153.
16 A general view of the Spanish Product Liability Act, with many references to the decisions of Spanish courts applying it, can be found in Miquel MARTÍN-CASALS, Spanish Product Liability Today — Adapting to the “New” Rules, in Duncan Fairgrieve (Ed.), Products Liability in Europe, Cambridge, Cambridge University Press (forthcoming).
instance, wrongly, SAP Tarragona 30.4.2002 [JUR 2002:185670], where the court holds that the damage caused by a power surge is damage caused by a service and that LDGCU applies.

With regard to the meaning of “defect”, the first and third paragraphs of article 2 LRDP follow almost word for word the two paragraphs of Article 7 Directive. However, Art. 3.2 LRDP contains an specific provision which, deviating from the Directive, applies to manufacturing defects only and states that “[I]n any case, a product is defective if it does not offer the safety regularly offered by the rest of the issues of the same series”. This provision was introduced in order to facilitate proof of the manufacturing defect and establishes a presumption of the defect from the mere fact that the product offers a lower level of safety than other units of the same series. This rule has been used often in the cases of bottles that explode. So, for instance, it is applied by SAP Granada 12.2.2000 [AC 2000:851], in a case where a cap of a Coca-cola bottle seriously injured the eye of a little girl while she was opening it. Nevertheless, the courts are very well aware that this presumption of the defect is exceptional, that the very notion of the defect is a key element in the whole system and that, pursuant to Art. 5, the defect must be proven by the plaintiff (SSAP Tarragona 18.7.1998 [AC 1998:1546]; Zaragoza 27.9.1999 [AC 1999:1661]; Córdoba 30.10.2000 [AC 2000:2097]; Albacete 9.3.2000 [AC 2000:1145], among many others).

B. The supplier

When dealing with the supplier as a potential liable person according to the provisions of the Directive, the LRDP incorporates the same rule set out in Art. 3.3 Directive, but it replaces the “reasonable delay”, as the time in which the supplier has to identify the producer in order to escape liability, for the much more specific period of three months (Art. 4.3 LRDP). Moreover, the Spanish Act contains a provision (the Sole Additional Provision of the Act) which can give rise to liability for supplier well beyond the provisions of the Directive. This provision sets forth that “[T]he supplier of a defective product shall be responsible, as if he were the manufacturer, when he has supplied the product with knowledge of the existence of the defect. In this case, the supplier may bring a claim for recovery against the manufacturer or importer.” Although is very likely that this provision was meant to hold those suppliers who had supplied defective products with intent liable, in some occasions case law seems to have turned the liability of the supplier into liability for fault. So, for instance, in SAP Barcelona 19.4.2002 [JUR 2002:184459], where the victim suffered a personal injury as the result of being knocked by the hydraulic tube of an industrial machine, the court held the supplier liable, according to the Sole Additional Provision of the LRDP, arguing that, since he was an expert in that sort of product, he should have detected the defect.

C. The development risk defence

Art. 6.1. e) LRDP provides that “[T]he manufacturer or the importer shall not be liable if they prove: e) That the scientific and technical knowledge existing at the time the product was put into circulation did not allow for appraisal of the defect”. However, Art. 6.3 LRDP provides that this defence cannot be invoked “[I]n the case of medicines, foods or food products for human consumption…” (emphasis added).18 According to the Spanish provisions, “medicines” includes

18 Spanish bibliography on this topic is very ample. Among many others see Pablo SALVADOR CORDERCH / Josep SOLÉ FELIU, Brujos y aprendices. Los riesgos de desarrollo en la responsabilidad de producto, Madrid, Marcial Pons, 1999; María Paz GARCÍA RUBIO, Los riesgos de desarrollo en la responsabilidad por daños causados por productos defectuosos. Su impacto en el Derecho español, Actualidad Civil, núm. 35, 1998, pp. 853-870; José Luis INGLÉS BUCETA, Riesgos del desarrollo y accesibilidad: la Sentencia del Tribunal de Justicia de las Comunidades Europeas de 29 de mayo de 1997, con un apóstrefo sobre el nuevo artículo 141.1 de la LRJAP-PAC, Derecho de los Negocios, octubre de 1999, pp. 15-28; Javier LETE ACHIRICA, Los riesgos de desarrollo en materia de responsabilidad por los daños causados por los productos defectuosos. Comentario a la Sentencia del Tribunal de Justicia de las Comunidades Europeas de 29 de mayo de 1997, Actualidad Civil, núm. 28.
both prescription and over-the-counter medicines. The reference “for human consumption” applies to medicines, in order to exclude medicines for animals, since according to the Spanish law “medicines” are both for human consumption and for animals. Foods and food products also exclude animal food, which is in accord with the Spanish regulation on food and food products.

D. The “damage”, the “threshold” and the limitation period

Art. 10.1 LRPD provides that “[T]he civil liability regime provided by this Act includes death and personal injury” and Art. 10.2 LRPD adds that “…non-pecuniary losses may be compensated pursuant to the general civil legislation”.

In order to recover for non-pecuniary losses resulting from death ad personally injury it seems, according to the wording of the Act, that the claimant must prove not only the conditions for the application of the LRPD, but also the conditions by the general domestic legislation on liability on tort.

In the practice, however, courts usually understand that the heading “compensation for death and personal injury” of the LRPD includes not only pecuniary loss (medical expenses, loss of earnings, etc.) but also the so-called daño corporal, which in a similar way to the Italian danno biologico, includes the “impairment in the health or in the bodily or mental integrity of a human being, which is certain and real and independent of the pecuniary and non-pecuniary results that it produces”. So, for instance, in SAP Granada 12.2.2000 [AC 2000/851], a case where a cap of a Coca-cola bottle seriously injured the eye of a little girl while she was opening it, applies the Product Liability Act and, according to this Act, awards damages both for pecuniary and non-pecuniary loss, the latter including, among other, daño corporal.

With regard to the 500 ECU threshold, whereas the English wording of Art. 9.b) Directive speaks about a “lower threshold of 500 ECU”, the Spanish translation turns “threshold” into “deduction” (deducción). Art. 10.1 LRPD follows the same translation of the Directive and seems to lead to the interpretation that this amount does not only operate as a threshold for filing a claim but also to the conclusion that this amount will have to be deducted, i.e. discounted or subtracted, from the final damages award (previa deducción de una franquicia de 65.000 pesetas). Spanish legal writing contended initially that this amount was meant as a threshold only and that, once the claimant could file a suit because the property damage ensued was above that amount, no deduction whatsoever had to be made and the claimant could recover in full. Nowadays, however, the deduction theory prevails and, accordingly, legal writing considers that this amount is always to be deducted from the award for damages.

1998, pp. 685-693 and Elena VICENTE DOMINGO, Responsabilidad por producto defectuoso, responsabilidad objetiva, riesgos del desarrollo y valoración de los daños, La Ley, núm. 5034, 13 de abril de 2000.
20 See Art. 1.02.01 Código alimentario español (Decreto 2484/1967, de 21 de setiembre (BOE n° 248 to 253, of 17 to 23.10.1967, amended by RD 1353/1983, de 27 de abril, BOE nº 126 27.05.1983).
22 Rodrigo BERCOTTZ RODRÍGUEZ-CANO, La adaptación del Derecho español a la Directiva comunitaria sobre responsabilidad por los daños causados por productos defectuosos, EC, nº 12, pp. 83-130, p. 113; María Ángeles PARRA LUCÁN, Daños por productos y protección del consumidor, Barcelona, J. M. Bosch, 1990, p. 584.
23 Instead of many see JIMÉNEZ LIÉBANA, Responsabilidad civil: Daños causados por productos defectuosos, op. cit., p. 402 and, changing her original opinion, PARRA LUCÁN, La responsabilidad civil por productos y servicios defectuosos. Responsabilidad civil del fabricante, in L. F. REGLERO CAMPOS (COORD.), Tratado de responsabilidad civil, 2nd., Cizur Menor, Aranzadi—Thomson, cit., p. 1337.
What is, however, this amount or, in other words, at which rate are these 65,000 PTA to be converted into euros? Since the Spanish legislator has been silent on this point, two possible interpretations arise. According to the general rules that govern the introduction of the euro in Spain, it can be argued that this amount must be converted into the amount of euros resulting form the conversion rate established between the euro and the peseta (1 euro = 166,386 PTA), which gives a result of €398,658.24. A second possible interpretation might contend that the amount of 65,000 PTA is just the conversion of the amount of 500 ECUS set out in the Directive, and therefore that rule provided by Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro\(^2\) applies. According to Art. 2 of this Regulation “[E]very reference in a legal instrument to the ECU, as referred to in Article 109g of the Treaty and as defined in Regulation (EC) No 3320/94, shall be replaced by a reference to the euro at a rate of one euro to one ECU”, a rule which gives rise to the amount of €500, and a result which we consider preferable, since it is more in line with the original uniformity.

A further question to be considered is the limitation period that Art. 12.1 LRPD, following the Directive, sets in three years running from the time when the plaintiff suffered the loss. The manufacturer or any other person who pays the whole amount of the damages to the victim can claim against the other persons held also liable according to the Act. However, this action must be brought within the period of one year running from the date of the payment of damages (Art. 12.1. in fine LRPD). Finally, according to the Directive, a mandatory bar against the commencement of claims more than ten years after the producer put the product in circulation is also included in Article 13 LRPD.

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\(^2\) Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJEC L 162/1, 19.6.97).