BICL Product Liability and Product Safety Database – Austria

I. Introduction

When dealing with products liability, it is necessary to distinguish between liability for damage caused by a defective product and liability for the product’s defect as such. The latter is a matter of contract law, based primarily on contractual warranty. The former, focusing on consequential damages, falls mostly within the scope of the law of torts and specifically of products liability as to be dealt with in the following.¹

The term “products liability” generally refers to liability for damages caused by death, personal injuries or property damage inflicted by a defective product, as supplied or otherwise put into circulation. Products liability can be based on tort or contract, applying §§ 1293 of the Allgemeines Bürgerliches Gesetzbuch (Austrian Civil Code, ABGB) and the Produkthaftungsgesetz (Code on Products Liability, PHG).

Therefore a claim for compensation based on products liability can be based either on the ABGB (and therefore on a tort of negligence or on contract) or on the PHG (and herewith on strict liability) by choice of the plaintiff. Before the PHG came into force in 1988, products liability was based exclusively on the ABGB. Even though nowadays the PHG - basing on the respective EC Directive, EG 85/374 EWG, - is, as to be explained below, the preferable rule to be applied, the ABGB continues to be used in a variety of special cases.²

II. The Traditional Product Liability Regime

A. Tort

According to the ABGB, products liability - applying tort law principles based on §§ 1295 ABGB - can be established only if the plaintiff (who suffered the damage) is able to prove all of the following: the existence of harm, a product defect, a causal link between the two as well as unlawfulness and fault on the producer’s part or on the part of his employees. Claims based on tort law have a smaller chance of succeeding in court as compared to the alternative options provided by law, since fault will typically be hard to establish, in particular in light of rather restrictive rules on vicarious liability in mere tort settings.

B. Contract

A claim against the seller or other supplier can be based on contract given that there usually is a contractual relation between him and the damaged person. Compensation claims based on contract follow the same provisions as compensation claims based on tort (§§ 1295 ABGB). Nevertheless some differences are to be mentioned: Most importantly, according to § 1298 ABGB the burden of proving fault (at least in slight negligence cases) is shifted to the tortfeasor, who is additionally liable for his employees’ fault (§ 1313a ABGB).³

C. Special Contractual Relationship - Contract with Protection of Third Parties

Given that claims out of contract and tort provided limited possibilities of compensation in products liability cases before the PHG came into force, Austrian scholars⁴ introduced the idea that the contract between the producer and the first buyer comprehends protective duties (Schutzpflichten) towards the ultimate buyer, meaning that the special provisions of contract law of the ABGB (§§ 1298, 1313a ABGB), which as stated above are favourable to the buyer,

¹ Leading literature on the topic: Posch in Schwimann [Hg], ABGB Praxiskommentar VII² (2005); Fitz/Grau/Reindl, Produkthaftung² (2004); Welser/Rabl, Produkthaftungsgesetz² (2004).
² See further 0.
³ Loss of profit can be compensated in cases of slight negligence also.
are applicable also to a subsequent buyer in the distribution chain. Therefore, contrary to a claim based on negligence in tort, the person suffering the damage - the ultimate buyer - does not have to prove fault on the tortfeasor's part but it is up to the latter to prove that he had acted without fault. Therefore the focus is not on establishing fault of the party the actual sales contract was concluded with, but instead on the producer of the product and his employees.

Though this special contractual relation is highly favourable to the consumer, it cannot protect the consumer altogether. Furthermore, if an “innocent bystander” (a person not having bought the product himself) sustains damage; he cannot base his claim on contract, and therefore neither on a special contractual relationship. Furthermore the damaged person cannot be granted compensation if the product happens to be defective without anybody’s fault. In those particular cases the PHG is of special importance.

III. Liability according to the PHG

The PHG, applicable to cases in which the product has been brought into circulation after the PHG itself came into force in 1988, imposes liability without fault on the producer of a defective product which has been put into circulation and which has caused damages to person or property. A product according to the PHG means all movables; it is a movable and tangible object. A product is stated to be defective if it fails to provide the safety one is entitled to expect taking all the circumstances into account. This safety refers to the general presentation of the product, to the use to which it could reasonably be expected that the product would be put and to the point in time the product was put into circulation.

Liability without fault is imposed for damages by death or by personal injuries (compensation according to the respectable rules of the ABGB of §§ 1325 ABGB) and damage to property, but not including damage to the defective product itself. Compensation for property losses according to the PHG can be claimed for damages over a threshold of Euro 500 only, which is the only such lower threshold in Austrian tort law. It is furthermore excluded if it was sustained by an entrepreneur who has used the product mainly within his own enterprise.

A product liability claim can be brought against the producer who put the product into circulation and against the importer, who is defined as an entrepreneur who imported the product into the European Economic Area and put it into circulation. The producer has either manufactured the finished product, the raw material, a component part or any person who, by putting his name, trademark or other distinguishing feature on the product presents himself as the producer. If the producer or the importer cannot be identified the entrepreneur that put the product into circulation can be held liable if he does not, within reasonable time, name the producer or importer or the person who supplied him with the product. The

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5 Note that an expert commission recently presented a proposal for a reform of the law of compensations in the ABGB, integrating the PHG into the ABGB. For further details see Griss/Kathein/Kozial [Hg], Entwurf eines neuen österreichischen Schadensersatzrechts (2006); Griss, Der Entwurf eines neuen österreichischen Schadensersatzrechts, JBl 2005, 273.
6 § 18 PHG.
7 Explicitly § 8 PHG.
8 § 6 PHG defines putting into circulation as giving the legal power of disposition or usage to another person.
9 § 4 PHG. Even if connected to another movable or unmovable object. The definition includes energy.
10 § 5 PHG.
11 § 1 PHG.
12 § 2 PHG.
13 § 1 Abs 1 PHG. The importer is defined more explicitly in § 17 PHG.
14 § 3 PHG.
15 § 1 Abs 2 PHG.
producers and importers are required to maintain appropriate funds for potential compensation payments e.g. through insurance. In order to avoid liability, the producer or importer has to prove that he has not put the product into circulation or has not acted as an entrepreneur. It is also a defence if, having regard to all the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation.

Liability can be reduced or disallowed, if the claimant herself (or someone within her sphere within the meaning of vicarious liability) was at fault. If more people are liable, they are held jointly and severally liable. Liability according to the PHG is excluded if the state of technical and scientific knowledge at the time the product was put into circulation was not such as to enable the existence of a defect as defined within the PHG. Furthermore it is excluded in cases in which the defect is due to compliance of the product with mandatory regulations issued by public authorities. Last but not least it is excluded if – the accused party having produced raw material or component part of a product only - the defect of the product was caused by the design of the product (into which the ground material or part of the product were fitted in to) or by the instructions provided by the producer. The liability to indemnify cannot be excluded or reduced preliminarily. A claim under the PHG is subject to a limitation period of three years and expires 10 years after the product has been put into circulation.

Austria therefore excluded liability for development risks – a possibility provided by the Directive – and meaning that liability is excluded if the product cannot be considered to be defective according to the PHG considering the state of the technical and scientific knowledge at the time the product was put into circulation. Furthermore, as left open to the member states by the Directive, the PHG is not applicable to agricultural products. Furthermore the threshold of liability proposed in Art. 16 of the Directive was not adopted.

If a claim for compensation is brought, it is useful to base it on both the PHG as well as on the ABGB, since the latter was not derogated by the former. This is especially relevant for damages below the threshold of Euro 500 as well as for property losses caused by products used within the enterprise of the producer and concerning liability of the intermediate salesman who renders a perfectly fine product defective by providing false information and furthermore concerning the compensation of lost profit. The advantages of the PHG are mainly that it provides for liability for property damages to privately used objects, liability for damages caused by an “anonymous” product (producer or importer cannot be established) and liability for damage to an innocent bystander.

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16 § 16 PHG.
17 § 7 Abs 1 PHG.
18 § 7 Abs 2 PHG.
19 § 11 PHG. According to § 1304 ABGB.
20 § 8 Z 2 PHG.
21 § 8 Z 1 PHG.
22 § 8 Z 3 PHG.
23 § 9 PHG.
24 § 13 PHG.
26 EB 272 BlgNR 17. GP 4.
27 EG 85/374 EWG. „Any Member State may provide that a producer's total liability for damage resulting from a death or personal injury and caused by identical items with the same defect shall be limited to an amount which may not be less than 70 million ECU”.
28 § 15 Abs 1 PHG.
IV. State Compensation Scheme

The Impfschadengesetz²⁹ (Code on Damages caused by Vaccination, ImpfschadenG) provides that the Austrian state can be held liable for certain damages³⁰ caused by vaccination proscribed by law. This state compensation is therefore granted for damage through vaccination that is caused by a product defect. In addition the damaged person can claim compensation for damages exceeding the amount of compensation provided by the state form the manufacturer. If the state has compensated the damages, claims which can be brought by the damaged person, basing for instance on the PHG, are transmitted to the state which can then bring a claim on its account.

V. Potential State Liability

See case VI.I.

VI. Cases

A.

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<thead>
<tr>
<th>Country</th>
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<tbody>
<tr>
<td>Topics:</td>
<td>damage</td>
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<tr>
<td>Articles:</td>
<td>§ 1 PHG</td>
</tr>
<tr>
<td>Facts:</td>
<td>The defendant had given samples of lacquer to the plaintiff for an interior decoration made of wood. With this lacquer the plaintiff furnished his own samples which he showed to and were accepted by a buyer. Thereafter the plaintiff, to fulfil his buyer’s order, bought the whole package of lacquers including the respectable lacquer and started working pieces of wood with it. When top coat was put on the wood, dull strains were noticeable and the pieces were not glossy as the samples and the wood changed its form. The plaintiff claimed compensation because the paint had been of flaw (condition and caused damage to the pieces of wood. The plaintiff stated that he had to come up for costs of repair. Additionally the buyer had reduced the price agreed on because even after the plaintiff’s repair the wood’s surface was still imperfect.</td>
</tr>
<tr>
<td>Legal Question:</td>
<td>Contractual warranty for the damage to the product itself versus products liability for consequential damages.</td>
</tr>
</tbody>
</table>

Decision:

There was no liability according to the PHG. Compensation can be imposed for damages caused by death or personal injuries and damage to property not including damage to the defective product itself. In the case at hand the plaintiff had claimed compensation for the defective product itself. Furthermore pure economical damages and loss profit were not to be compensated according to the PHG. Also, one cannot speak of property damage if the product

²⁹ BGBl 1973/371 idgF.
³⁰ Explicitly see § 2 ImpfschadenG.
was not finished yet but a new product was still to be fabricated (here in a defective way). Damage to property and product defect exclude one other.

**B.**

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<tr>
<th>Country</th>
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<tbody>
<tr>
<td>Topics:</td>
<td>duty to name the producer or importer or the salesperson that has supplied with the product</td>
</tr>
<tr>
<td>Articles:</td>
<td>§ 1 Abs 2 PHG</td>
</tr>
<tr>
<td>Facts:</td>
<td>The plaintiff asserted that a Coca-Cola bottle had burst in his hands when taking it out of the shelf in defendants’ shop. He claimed compensation for pain and suffering resulting from injury to his left hand. The Coca-Cola bottle was usually bottled and delivered to the defendant by E company. E company notified the defendant though that they had stopped bottling Coca-Cola before the damage had occurred and had instead bought the bottles form G Company and then delivered it to the defendant.</td>
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<tr>
<td>Legal Question:</td>
<td>The entrepreneur’s duty to name the person that supplied him with the product: how far does it go?</td>
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</table>

**Decision:**

If the producer or importer cannot be identified, the entrepreneur that put the product into circulation can be held liable if he does not name the producer, importer or the salesperson that has supplied him with the product. This regulation is supposed to protect the consumer from failing with his claim in cases in which he is dealing with an anonymous product - a product of which the producer or importer cannot be established. The salesperson, putting the product into circulation, can be exempt from liability if he names the salesperson having sold the product to him, who is then to be held liable if he cannot clarify the situation. Still, liability can be imposed on a salesperson only if the producer cannot be identified. This requirement should not be interpreted stringently, importance lies on making compensation for damage easier for the damaged person. He shall be eligible for compensation even though he may not be able to establish the producer. Nevertheless the damaged person cannot bring a claim against the salesperson if the original producer or importer is known to him out of advertising or imprints on the product.

E company had explicitly named G company as the pre-salesperson (having bottled and sold the product to E) and therefore E was exempt from liability according to § 1 Abs 2 PHG. The salesperson’s duty to name comprehends giving information several times (name and address and additional details needed for the defendants’ prosecution). Nevertheless this duty to inform the damaged person does not comprise any further action supporting the plaintiff in bringing his claim. If the pre-salesman, as named by the ultimate salesman, does not properly inform the damaged person in regard to the actual producer the ultimate salesperson has no duty to inquire the actual producer and inform the damaged person about it. Furthermore liability cannot be re-shifted to the ultimate salesperson if the pre-salesperson does not inform adequately.

**C.**
Decision:

The plaintiff stated that the component part (water tube) was defective and caused damage to property but not to the product (water tube) itself. Instead, the damage was inflicted on the finished product (entire car). He claimed that the importer of the component part was liable according to the § 1 Abs 1 PHG and consequently the importer of the component part and the importer of the finished product were held to be solidary liable.

There are different legal opinions regarding the problem of whether the producer of a component part can be held liable for damages caused by this part itself. One legal opinion holds that the finished product has to be considered as a product that is different from the defective component part and therefore the producer of the component part can be held liable according to the PHG. Following this opinion, it has to be distinguished between cases in which the claim is brought against the producer of the finished product and cases in which it is brought against the producer of the component part. The producer of the finished product cannot be held liable according to the PHG for damages to the finished product. The producer of the component part on the other hand can be held liable for damages to the finished product if his component part caused the damage. According to another legal opinion this way of distinguishing between whom the claim is brought against leads to objectively unfounded inequality. As an example for the unjustifiable inequality resulting from that opinion the following example is given: A consumer buys two cars form the same producer. The producer has produced all parts of the first car himself and bought all the component parts for manufacturing the second car. Liability without fault should not depend upon who manufactured the product but on the defect of the product itself. The producer of the component part is held liable according to the PHG only for damage to property caused by the finished product which was rendered defective by a defective component part.

Compensation for the defective product itself can be granted only if the product was acquired as an independent product. In the case at hand the tube was not acquired as an independent product and therefore liability of the producer of the defective tube was excluded. Furthermore the importer of the component part of the product cannot be held liable for damage caused by his product to the car.

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31 The OGH refers mainly to Sack (WBl 1989, 8 and JBl 1989, 695, 697f).
32 The OGH refers to Kresbach (ecolex 1990, 469ff).
D.

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<td>Topics:</td>
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<tr>
<td>Articles:</td>
<td>§ 5 PHG; § 11 PHG</td>
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**Facts:**
The plaintiff claimed compensation for pain and suffering after a garden chopper had cut off 4 fingers of his right hand. Several safety warnings were to be found on the chopper, such as to be aware of disposed tools, not to grab into the emission part of the machine and that all service, maintenance and cleaning should be undertaken only when the machine is shut off. The operating manual said that if certain programs were used, the bars securing the emission part of the machine may leave a gap one can reach through. Furthermore the respectable regulation on machine protection devices (Maschinenschutzvorrichtungsverordnung 1998) was applicable to the chopper in the case at hand. In § 2 of the regulation it is stated that if dangerous areas of the machine are not secured by special security measures they have to be covered up by a security device which is to avert unwanted approach or contact.

Especially wet grass is prone to accumulate in the emission area and has to be removed. The warning given did not refer to cleaning out the part in front of the emission part. The plaintiff, a mechanic, had been using the chopper’s “wet material function”, and had reached to the axes of the emission part to remove accumulated material.

**Legal Question:** Can the manufacturer avoid liability providing sufficient warning instead of taking reasonable and feasible action?

**Decision:**
According to § 11 PHG, § 1304 ABGB is to be applied to contributory negligence cases, meaning that the producer’s liability for his defective product is confronted with the consumers own negligence. The product in the case at hand was defective because there was no security device preventing the consumer from reaching into the emission part of the machine though garden material, if not totally dry, was prone to remain there. Even though the warning on the product stated that it was not to be reached in the emission part, the plaintiff - because of the gap left between the bars of the emission part - was easily able to do so when necessarily cleaning out the accumulated wet material. The emission part of the chopper had not been constructed according to the applicable regulations, which state that dangerous parts have to be secured in a way that averts unwanted contact. When using the chopper the emission part is pointed downwards. This made it impossible to notice the small space to the inner bars. A security device preventing reaching to and into the emission part could be easily installed, which is shown also by the fact that the follow-up model of the same product contained a metal funnel for that purpose. The operating manual itself, stating that the gap between the bars varied according to the program used, reflected the necessity for such a device.

The producer’s product has to be constructed as safe as possible. This duty cannot be circumvented by providing warnings instead of taking feasible and reasonable action. Therefore the producer had to provide a reasonable safety device preventing injury when
working with the emission part of the machine. Furthermore getting rid of accumulated material in the emission part is to be considered as an automatic action which one undertakes without further reasoning. The producer has to be aware of that common way of usage. That the plaintiff was a mechanic did not justify imposing aggravated liability because the dangers of reaching into a running machine are known to an average person especially if warning was provided.

E.

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<tr>
<td>Topics:</td>
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<tr>
<td>Articles:</td>
<td>§ 5 PHG</td>
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**Facts:**
The plaintiff, travelling by car, had put a bottle of mineral water into a cooler, which he had stored at the back of his car before leaving for holiday. The cooler had remained connected to the battery for some time, but was not connected after the plaintiff’s arrival at his holiday destination. The day after - the bottle having remained uncooled during a 24 hours period - the plaintiff opened his trunk and tried opening the bottle by twisting the cap. The cap, similar to opening a champagne bottle, banged open and hit the plaintiff’s right eye. No mineral water splashed out of the bottle though. Terms and conditions of the production of the defendant met the current technical and scientific standards. There was no evidence that the overpressure, which led the bottle to bang open like a champagne bottle, was caused by a defect in design (Produktionsfehler). Damages for pain and suffering and expenses for medical treatment were claimed.

**Legal Question:**
Is the manufacturer liable for design defects of singular products or can his liability be excluded if he proves that the state of technical and scientific knowledge at the time the product was put into circulation was not such as to enable the existence of a defect as defined within the PHG?

**Decision:**
A product is defective if it fails to provide the safety one in entitled to expect taking all the circumstances into account. This refers to the presentation of the product, to the use to which it could reasonably be expected that the product would be put and the point in time the product was put into circulation. In the case at hand the defect of the product was of central meaning. There are three categories of products defects: manufacturing defect, design defect and warning defect. In cases of manufacturing defects, the product fails to meet the consumers’ expectations of safety referring to the technical concept, the construction of the product. A product is defective in design if it is not defective in manufacture, that it to say that the technical concept of the product line in general matches the consumer’s security expectation, but singular products do not meet the required standard. In warning defect cases the product’s presentation is deficient. In the case at hand the product was not defective in manufacture but in its design, since the cap bangin form the bottle is to be considered as a defect occurring in a singular case. This defect may be due to foreign substances, uncleanliness, or bumpiness (so small that they are not noticeable to the eye) which interfered with the equilibrium of the dilution in the singular bottle. This reasoning bases on the fact that
those kinds of incidents involving mineral water bottles are rare, especially the one presented by the plaintiff.

It is further to be questioned whether the plaintiff’s way of acting is foreseeable for the producer. If that is not the case or the plaintiff has used the product in an almost absurd way the producer cannot be held liable. An ordinary person does not know that caps of mineral water can resemble corks of champagne bottles and therefore nobody behaves especially cautiously when opening a mineral water bottle. For that reason the defendant had no reason to believe that a consumer would treat a bottle of mineral water with special caution when having stored it in an uncooled environment on a hot day. The plaintiff, by doing so, had not violated the standard of reasonable care. Therefore he was not to be held contributory negligent. The defendant, on the other hand, was aware of the risks of bottles of mineral water, and the fact that flaws can occur even if production and control of the product were conducted with all due care. In combination with additional factors these flaws are able to cause a considerable amount of damages. Therefore the defendant should have explicitly pointed out that flaw to warn the consumer.

Liability according to the PHG is excluded if the characteristics of the product, according to the current technical and scientific standards cannot be characterized as a defect as defined within the PHG. In the case at hand the defendant is liable without fault according to the PHG. It does not matter if the producer could have prevented the damage or if the flaw was noticeable in time. The purpose of the PHG is to impose liability for singular products defective in design on the producer since he can bear the economic consequences more easily.

F.

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<td>Court:</td>
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<tr>
<td>Topics:</td>
<td>defect, the technical and scientific standard</td>
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<td>Articles:</td>
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</tr>
<tr>
<td>Facts:</td>
<td>A coffee machine on standby caught fire and caused a domestic fire.</td>
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<tr>
<td>Legal Question:</td>
<td>Design defects and liability for outlier damages versus exemption for liability if proven that either state of technical and scientific knowledge at the time the product was put into circulation was not such as to enable the existence of a defect as defined within the PHG or that the product was without defect when put into circulation.</td>
</tr>
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</table>

**Decision:**

A product is defective according to § 5 PHG if it fails to provide the safety one in entitled to expect taking all the circumstances into account. This refers to the presentation of the product, to the use to which it could reasonably be expected that the product would be put and the point in time the product was put into circulation. There are three categories of defect: manufacturing, design and warning defect. A coffee machine on standby causing a domestic fire because of a technical defect is clearly defective in design. This because this rarely happens to coffee machines in general and also rarely happened to coffee machines of the respectable producer. The coffee machine did not live up to the reasonable safety expectations.

The plaintiff did not have to prove which part of the machine was defective. A presumption to a near certainty is sufficient to bring the burden of proof. The defendant claimed that,
according to § 7 Abs 2 PHG, the machine had been without defect when put into circulation. However an accreditation of a certain type of coffee machines cannot prove that the machine was without defect when put into circulation.

The defendant furthermore claimed that liability according to the PHG was excluded since at the time the product was sold the characteristics of the product, according to the current technical and scientific standards could not be characterized as a defect as defined within the PHG. The exclusion of liability according to § 8 Abs 2 PHG refers to typical risks of product development, meaning that the danger of the product was not detectable at the time it was put into circulation. The plaintiff stated furthermore that the machine is not defective according to the current technical and scientific standard because up to today 60,000 (each year 10,000) machines of the same type had been sold and none had shown the particular defect. Nevertheless, since the PHG imposes liability without fault, the entrepreneur’s fault (his ability to avoid the risk of development or to detect it in time) is not of importance when establishing liability according to the PHG. § 8 Abs 2 PHG refers to the impossibility of qualifying a known product condition as defect, but does not refer to the impossibility to qualify the defect of a single product (outlier damage). The defendant did not claim that there was a risk of development regarding the coffee machines put into circulation.

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<tr>
<td>Facts:</td>
<td>The plaintiff had bought two 50 liter bags of lime and stored it under the porch of his cabin which he used to disinfect and improve the water quality of his fish pond. Until 1989 the defendant had filled lime into paper bags and after that time into plastic bags. Due to wind and rain 30 liter lime remaining in one of the bags became humid which caused a fire. The bags (paper and plastic) contained using instructions stating also that the lime was to be stored dryly and contact to eyes and mouth were to be avoided. There was no warning concerning the fact that the product was prone to start a fire.</td>
</tr>
<tr>
<td>Legal Question:</td>
<td>What is the standard of reference for the manufacturer’s duty to warn.</td>
</tr>
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Decision:

In the case at hand the court stated that the product was defective according to § 5 Abs 1 Z 1 PHG because of its general presentation. The general presentation of the product according to the PHG refers to the way of presenting the product to the public. The producer’s duty to warn comprises the duty to inform the consumer of dangerous features of the product and in some circumstances furthermore the duty to warn of proper use. Those warnings have to be formulated clearly and commonly understandable. A special risk is to be presented impressively and with all its consequences.

The warning that the product had to be stored dryly is not sufficient since it is not only the product that can be damaged but there is an additional danger that a fire could be caused. The duty to warn depends upon the consumer’s need of protection. The consumer is to be protected if the producer has to anticipate that the product might be used by a person not
knowing about the dangers of the product. Therefore a warning does not have to be given for dangers which are of public knowledge to the potential consumer. The safety expectations of the potential user are therefore decisive to whether or not a warning has to be issued. The standard of reference is the ideal type of user of the product. In the case at hand expert testimony was needed to concretise the legitimate safety expectations. The court stated that it could be important whether lime was stored in waterproof plastic bags or paper bags which pass humidity on to the bags’ interior.

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<td>Topics:</td>
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<tr>
<td>Facts:</td>
<td>The defendant municipality had allowed the local culture and tourist club (of which the mayor was president) to use their festival room. The plaintiff, having a management contract with the club, was doing prearrangement work for a concert. As several times before, he used a partition - a room separation device. When he started moving the partition it tipped and fell on him. He suffered from an open femoral-fracture. The partition had been fashioned by employees of the defendant municipality and used for events in the festival room.</td>
</tr>
<tr>
<td>Legal Question:</td>
<td>How is “to put into circulation” to be understood?</td>
</tr>
</tbody>
</table>

Decision:

According to § 6 PGH a product is considered as put into circulation if the entrepreneur gives the legal power of disposition or usage to another person. That is to say that a product is put into circulation if it is put out of the manufacturing area with the purpose of selling it and therefore is available in another level of the stream of commerce. In the case at hand the product was to be considered out into circulation since the festival room had been rented to the club which gave the club the right to use the partition.

If the presentation of the product is inadequate the product can be held to be defective in warning. The duty to warn means that the producer has to warn the potential user about the features of the product (in some circumstances furthermore it is also the duty to warn of proper use). The duty to warn depends upon the need of protection of the consumer. The consumer is to be protected if the producer has to anticipate that the product might be used by a person not knowing about its dangers. The standard of reference is the ideal type of user of the product. The safety expectations of the potential user are therefore decisive to whether or not a warning has to be issued. Therefore a warning does not have to be given for dangers which are of public knowledge to the potential consumer. Nevertheless the risk of product abuse is not to be shifted to the producer. He is not liable for unpredictable and absurd use but has to be aware of the possibility of unusual usage as long it is not totally abusive.

In the case at hand the defendant should have been aware that the partition was going to be used and moved and therefore they should have warned of the possibility of its tripping. The defendant should have put signs on the product saying “attention, prone to trip” or “ask municipality for help if you move this product”. A potential user was not aware of the fact that a partition (3, 5 m high and 1, 5 m wide metal frame) is top-heavy and prone to trip. The
defendant’s statement that warning signs were not possible out of optical reasons was turned
down, since according to the law the duty of warning cannot be ruled out by esthetical
sentiments regarding the presentation of the product.

§ 11 PHG states that § 1304 ABGB is to be applied to contributory negligence cases. In the
case at hand the plaintiff was contributory negligent because he did not respect the clear
technical features of a product he had been using several times before. He negligently ignored
that the object was top-heavy.

I.

<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td>OGH 10. 7. 1997 2 Ob 197/97b RdM 1998/18</td>
</tr>
<tr>
<td>Topics</td>
<td>state liability, defect</td>
</tr>
<tr>
<td>Articles</td>
<td>§ 5 PHG</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>Facts:</th>
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<tr>
<td>In 1989 the Österreichischer Sanitätsrat (Austrian Sanitary Council) issued a recommendation to cease broadly providing infants with BCG tuberculosis vaccination and to vaccinate only infants endangered to be infected with the disease. This recommendation was passed on to all respectable authorities under other the Tyrolean regional government. Nevertheless, on recommendation of regional specialists of the sanitary commission, that regional government decided to keep vaccinating BCG on a broad basis. The WHO had issued warnings concerning vaccinating infants with BCG. Lymphadenitis had been frequently caused by negligently doubling the doses, negligent techniques of vaccination, negligent condition of the vaccine and switching from the BCS standard microbiological strain to the so called Pasteur microbiological strain. Therefore the WHO recommended that only countries that had been successfully using Pasteur kept using it. In no case should it be used in countries where other products had been successfully applied.</td>
</tr>
</tbody>
</table>

In Austria a substance called “BCS-Sec Berna” had been used. When this substance was not available the third defendant had provided the Austrian government with BCS of the same microbiological strain, BCS-Copenhagen. In July 1990 there was no BCG regular strain available and therefore applications were made for BCG of the Pasteur microbiological strain (Intradermal P) out of an UNICEF contingent. The third defendant was asked to bring expert testimony from the Bundesstaatliche Serumsprüfungsinstitut (federal institute specialized on control of serum examination, BSPI) on the BCG before the product could be used. Nevertheless officers of the federal chancellors department did not wait for this expert testimony to be issued, and orally, without issuing a written notice of release, authorized the use of BCS Pasteur. In the end of September 1990 the third defendant was informed by the BSPI that the respectable vaccine was not apt to usage according Austrian law and in November 1990 the BSPI issued an expert opinion informing the Austrian government of the obvious frequency of Lymphadenitis due to applying
BCS Pasteur as warned from by the WHO and advised the government to
discontinue the use of this substance. The Bundeskanzleramt (federal
chancellors department) advised various authorities not to use BSC Pasteur
any longer.

In the beginning of September 1990 the plaintiff, an infant at that time, was
vaccinated with BSC Pasteur and consequently suffered from inflamed
lymph nodes. His mother had given her consent without being informed
about the potential risks. In the plaintiff’s case there was no special danger
of him being infected with tuberculosis. He claimed damages for pain and
suffering, disfigurement and determination of future damages.

**Legal Question:** Do side effects automatically render a product defective?

**Decision:**
The first defendant (the Austrian state) was held liable for negligently and with fault
eral authorizing the use of BSC Pasteur. The second defendant (Krankenanstaltenträger -
responsible body for hospital institutions) was liable because the doctor treating the infant did
not inform the plaintiff’s mother of the risks of the procedure. The pros and cons of the
particular vaccination were controversial within expert opinion; the vaccination was neither
harmless nor of special need. Side effects and disadvantages of a product, as accepted by the
general public, do not automatically render a product defective according to § 5 PHG. If these
dangers are not known to those generally using these products, the entrepreneur has to present
the product in a way that makes consumers aware of those dangers.

**VII. Legislation**

A. **Bundesgesetz vom 21. Jänner 1988 über die Haftung für ein fehlerhaftes
Produkt (Produkthaftungsgesetz), BGBl 1988/99, idF BGBl 1993/95,
zuletzt geändert durch BGBl II 2001/98**

**Haftung**

§ 1. (1) Wird durch den Fehler eines Produkts ein Mensch getötet, am Körper verletzt oder an
der Gesundheit geschädigt oder eine von dem Produkt verschiedene körperliche Sache
beschädigt, so haftet für den Ersatz des Schadens
1. der Unternehmer, der es hergestellt und in den Verkehr gebracht hat,
2. der Unternehmer, der es zum Vertrieb in den Europäischen Wirtschaftsraum eingeführt und
   hier in den Verkehr gebracht hat (Importeur).

(2) Kann der Hersteller oder - bei eingeführten Produkten – der Importeur (Abs. 1 Z 2) nicht
festgestellt werden, so haftet jeder Unternehmer, der das Produkt in den Verkehr gebracht hat,
nach Abs. 1, wenn er nicht dem Geschädigten in angemessener Frist den Hersteller
beziehungsweise - bei eingeführten Produkten – den Importeur oder denjenigen nennt, der
ihm das Produkt geliefert hat.

§ 2. Der Schaden durch die Beschädigung einer Sache ist nur zu ersetzen,
1. wenn ihn nicht ein Unternehmer erlitten hat, der die Sache überwiegend in seinem
   Unternehmen verwendet hat, und
2. überdies nur mit dem 500 Euro übersteigenden Teil.
Hersteller

§ 3. Hersteller (§ 1 Abs. 1 Z 1) ist derjenige, der das Endprodukt, einen Grundstoff oder ein Teilprodukt erzeugt hat, sowie jeder, der als Hersteller auftritt, indem er seinen Namen, seine Marke oder ein anderes Erkennungszeichen auf dem Produkt anbringt.

Produkt

§ 4. Produkt ist jede bewegliche körperliche Sache, auch wenn sie ein Teil einer anderen beweglichen Sache oder mit einer unbeweglichen Sache verbunden worden ist, einschließlich Energie.

Fehler

§ 5. (1) Ein Produkt ist fehlerhaft, wenn es nicht die Sicherheit bietet, die man unter Berücksichtigung aller Umstände zu erwarten berechtigt ist, besonders a) der Darbietung des Produkts, b) des Gebrauchs des Produkts, mit dem billigerweise gerechnet werden kann, c) des Zeitpunkts, zu dem das Produkt in den Verkehr gebracht worden ist.

(2) Ein Produkt kann nicht allein deshalb als fehlerhaft angesehen werden, weil später ein verbessertes Produkt in den Verkehr gebracht worden ist.

In-Verkehr-bringen


Beweislastumkehr

§ 7. (1) Behauptet ein Hersteller oder ein Importeur, die Sache nicht in den Verkehr gebracht oder nicht als Unternehmer gehandelt zu haben, so obliegt ihm der Beweis.

(2) Behauptet ein in Anspruch Genommener, dass das Produkt den Fehler, der den Schaden verursacht hat, noch nicht hatte, als er es in den Verkehr gebracht hat, so hat er dies als unter Berücksichtigung der Umstände wahrscheinlich darzutun.

Haftungsausschlüsse


Solidarhaftung

§ 10. Trifft die Haftpflicht mehrere, so haften sie zur ungeteilten Hand. Ihre Haftung wird nicht dadurch gemindert, dass auch andere nach anderen Bestimmungen für den Ersatz desselben Schadens haften.

Mitverschulden des Geschädigten

§ 11. Trifft den Geschädigten oder jemanden, dessen Verhalten er zu vertreten hat, ein Verschulden, so ist § 1304 ABGB sinngemäß anzuwenden.

Rückgriff

§ 12. (1) Hat ein Ersatzpflichtiger Schadenersatz geleistet und ist der Fehler des Produkts weder von ihm noch von einem seiner Leute verursacht worden, so kann er vom Hersteller des fehlerhaften Endprodukts, Grundstoffs oder Teilprodukts Rückerstattung verlangen. Sind mehrere rückersatzpflichtig, so haften sie zur ungeteilten Hand.

(2) Haben mehrere Haftende den Fehler mitverursacht, so richtet sich das Ausmaß des Anspruchs desjenigen, der den Schaden ersetzt hat, auf Rückersatz gegen die übrigen nach den Umständen, besonders danach, wie weit der Schaden von dem einen oder dem anderen Beteiligten verschuldet oder durch die Herbeiführung eines Fehlers des Produkts verursacht worden ist.

(3) Kann ein nach Abs. 1 oder 2 Rückerstattspflichtiger nicht festgestellt werden, so ist jeder Unternehmer rückersatzpflichtig, der das Produkt vor dem Rückersatzberechtigten in den Verkehr gebracht hat, wenn er nicht diesem in angemessener Frist den Hersteller oder denjenigen nennt, der ihm das Produkt geliefert hat.

Erlöschung


Anwendung des ABGB

§ 14. Soweit in diesem Bundesgesetz nicht anderes bestimmt ist, ist auf die darin vorgesehenen Ersatzansprüche das Allgemeine bürgerliche Gesetzbuch anzuwenden.

Sonstige Ersatzansprüche

§ 15. (1) Bestimmungen des Allgemeinen bürgerlichen Gesetzesbuchs und anderer Vorschriften, nach denen Schäden in weiterem Umfang oder von anderen Personen als nach diesem Bundesgesetz zu ersetzen sind, bleiben unberührt.
(2) Dieses Bundesgesetz gilt nicht für Schäden durch ein nukleares Ereignis, die in einem von EFTA-Staaten und EG-Mitgliedstaaten ratifizierten internationalen Übereinkommen erfasst sind.

Deckungsvorsorge


Zuschläge


Übergangsbestimmung, Vollziehung


§ 19. Dieses Bundesgesetz ist auf Schäden durch Produkte, die vor seinem Inkrafttreten in den Verkehr gebracht worden sind, nicht anzuwenden.

§ 19a. (1) § 1 Abs. 1 Z 2, § 2, § 9, § 13, § 15 Abs. 2 und § 17 in der Fassung des Bundesgesetzes BGBl. Nr. 95/1993 treten zu demselben Zeitpunkt in Kraft wie das Abkommen über den Europäischen Wirtschaftsraums.

(2) Die Neufassung dieser Bestimmungen ist auf Schäden durch Produkte, die vor dem im Abs. 1 genannten Zeitpunkt in Verkehr gebracht worden sind, nicht anzuwenden.


§ 20. Mit der Vollziehung dieses Bundesgesetzes ist der Bundesminister für Justiz betraut.

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 COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,
Having regard to the proposal from the Commission (1),
Having regard to the opinion of the European Parliament (2),
Having regard to the opinion of the Economic and Social Committee (3),

Whereas approximation of the laws of the Member States concerning the liability of the producer for damage caused by the defectiveness of his products is necessary because the existing divergences may distort competition and affect the movement of goods within the common market and entail a differing degree of protection of the consumer against damage caused by a defective product to his health or property;

Whereas liability without fault on the part of the producer is the sole means of adequately solving the problem, peculiar to our age of increasing technicality, of a fair apportionment of the risks inherent in modern technological production;

Whereas liability without fault should apply only to movables which have been industrially produced; whereas, as a result, it is appropriate to exclude liability for agricultural products and game, except where they have undergone a processing of an industrial nature which could cause a defect in these products; whereas the liability provided for in this Directive should also apply to movables which are used in the construction of immovables or are installed in immovables;

Whereas protection of the consumer requires that all producers involved in the production process should be made liable, in so far as their finished product, component part or any raw material supplied by them was defective; whereas, for the same reason, liability should extend to importers of products into the Community and to persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature or who supply a product the producer of which cannot be identified;

Whereas, in situations where several persons are liable for the same damage, the protection of the consumer requires that the injured person should be able to claim full compensation for the damage from any one of them;

whereas, to protect the physical well-being and property of the consumer, the defectiveness of the product should be determined by reference not to its fitness for use but to the lack of the safety which the public at large is entitled to expect; whereas the safety is assessed by excluding any misuse of the product not reasonable under the circumstances;
Whereas a fair apportionment of risk between the injured person and the producer implies that the producer should be able to free himself from liability if he furnishes proof as to the existence of certain exonerating circumstances;

Whereas the protection of the consumer requires that the liability of the producer remains unaffected by acts or omissions of other persons having contributed to cause the damage; whereas, however, the contributory negligence of the injured person may be taken into account to reduce or disallow such liability;

Whereas the protection of the consumer requires compensation for death and personal injury as well as compensation for damage to property; whereas the latter should nevertheless be limited to goods for private use or consumption and be subject to a deduction of a lower threshold of a fixed amount in order to avoid litigation in an excessive number of cases; whereas this Directive should not prejudice compensation for pain and suffering and other non-material damages payable, where appropriate, under the law applicable to the case;

Whereas a uniform period of limitation for the bringing of action for compensation is in the interests both of the injured person and of the producer;

Whereas products age in the course of time, higher safety standards are developed and the state of science and technology progresses; whereas, therefore, it would not be reasonable to make the producer liable for an unlimited period for the defectiveness of his product; whereas, therefore, liability should expire after a reasonable length of time, without prejudice to claims pending at law;

Whereas, to achieve effective protection of consumers, no contractual derogation should be permitted as regards the liability of the producer in relation to the injured person;

Whereas under the legal systems of the Member States an injured party may have a claim for damages based on grounds of contractual liability or on grounds of non-contractual liability other than that provided for in this Directive; in so far as these provisions also serve to attain the objective of effective protection of consumers, they should remain unaffected by this Directive; whereas, in so far as effective protection of consumers in the sector of pharmaceutical products is already also attained in a Member State under a special liability system, claims based on this system should similarly remain possible;

Whereas, to the extent that liability for nuclear injury or damage is already covered in all Member States by adequate special rules, it has been possible to exclude damage of this type from the scope of this Directive;

Whereas, since the exclusion of primary agricultural products and game from the scope of this Directive may be felt, in certain Member States, in view of what is expected for the protection of consumers, to restrict unduly such protection, it should be possible for a Member State to extend liability to such products;

Whereas, for similar reasons, the possibility offered to a producer to free himself from liability if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered may be felt in certain Member States to restrict unduly the protection of the consumer; whereas it should therefore be possible for a Member State to maintain in its legislation or to provide by new legislation that this exonerating circumstance is not admitted; whereas, in the case of new legislation, making use of this derogation should, however, be subject to a Community stand-still procedure, in order to raise, if possible, the level of protection in a uniform manner throughout the Community;

Whereas, taking into account the legal traditions in most of the Member States, it is inappropriate to set any financial ceiling on the producer's liability without fault; whereas, in so far as there are, however, differing traditions, it seems possible to admit
that a Member State may derogate from the principle of unlimited liability by providing a limit for the total liability of the producer for damage resulting from a death or personal injury and caused by identical items with the same defect, provided that this limit is established at a level sufficiently high to guarantee adequate protection of the consumer and the correct functioning of the common market;  

Whereas the harmonization resulting from this cannot be total at the present stage, but opens the way towards greater harmonization; whereas it is therefore necessary that the Council receive at regular intervals, reports from the Commission on the application of this Directive, accompanied, as the case may be, by appropriate proposals;  

Whereas it is particularly important in this respect that a re-examination be carried out of those parts of the Directive relating to the derogations open to the Member States, at the expiry of a period of sufficient length to gather practical experience on the effects of these derogations on the protection of consumers and on the functioning of the common market,

HAS ADOPTED THIS DIRECTIVE:

Article 1
The producer shall be liable for damage caused by a defect in his product.

Article 2
For the purpose of this Directive 'product' means all moveables, with the exception of primary agricultural products and game, even though incorporated into another movable or into an immovable. 'Primary agricultural products' means the products of the soil, of stock-farming and of fisheries, excluding products which have undergone initial processing. 'Product' includes electricity.

Article 3
1. 'Producer' means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer. 2. Without prejudice to the liability of the producer, any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a producer within the meaning of this Directive and shall be responsible as a producer.

3. Where the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product. The same shall apply, in the case of an imported product, if this product does not indicate the identity of the importer referred to in paragraph 2, even if the name of the producer is indicated.

Article 4
The injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage.

Article 5
Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.

Article 6
1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:
(a) the presentation of the product;
(b) the use to which it could reasonably be expected that the product would be put;
(c) the time when the product was put into circulation.

2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

Article 7
The producer shall not be liable as a result of this Directive if he proves:
(a) that he did not put the product into circulation; or
(b) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards; or
(c) that the product was neither manufactured by him for sale or any form of distribution for economic purpose nor manufactured or distributed by him in the course of his business; or
(d) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities; or
(e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered; or
(f) in the case of a manufacturer of a component, that the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product.

Article 8
1. Without prejudice to the provisions of national law concerning the right of contribution or recourse, the liability of the producer shall not be reduced when the damage is caused both by a defect in product and by the act or omission of a third party.
2. The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or any person for whom the injured person is responsible.

Article 9
For the purpose of Article 1, 'damage' means:
(a) damage caused by death or by personal injuries;
(b) damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of 500 ECU, provided that the item of property:
(i) is of a type ordinarily intended for private use or consumption, and
(ii) was used by the injured person mainly for his own private use or consumption.
This Article shall be without prejudice to national provisions relating to non-material damage.

Article 10
1. Member States shall provide in their legislation that a limitation period of three years shall apply to proceedings for the recovery of damages as provided for in this Directive. The limitation period shall begin to run from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.
2. The laws of Member States regulating suspension or interruption of the limitation period shall not be affected by this Directive. Article 11

Member States shall provide in their legislation that the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a period of 10 years from the date on which the producer put into circulation the actual product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer.

Article 12

The liability of the producer arising from this Directive may not, in relation to the injured person, be limited or excluded by a provision limiting his liability or exempting him from liability.

Article 13

This Directive shall not affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability or a special liability system existing at the moment when this Directive is notified.

Article 14

This Directive shall not apply to injury or damage arising from nuclear accidents and covered by international conventions ratified by the Member States.

Article 15

1. Each Member State may:

(a) by way of derogation from Article 2, provide in its legislation that within the meaning of Article 1 of this Directive 'product' also means primary agricultural products and game;

(b) by way of derogation from Article 7 (c), maintain or, subject to the procedure set out in paragraph 2 of this Article, provide in this legislation that the producer shall be liable even if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered.

2. A Member State wishing to introduce the measure specified in paragraph 1 (b) shall communicate the text of the proposed measure to the Commission. The Commission shall inform the other Member States thereof.

The Member State concerned shall hold the proposed measure in abeyance for nine months after the Commission is informed and provided that in the meantime the Commission has not submitted to the Council a proposal amending this Directive on the relevant matter. However, if within three months of receiving the said information, the Commission does not advise the Member State concerned that it intends submitting such a proposal to the Council, the Member State may take the proposed measure immediately.

If the Commission does submit to the Council such a proposal amending this Directive within the aforementioned nine months, the Member State concerned shall hold the proposed measure in abeyance for a further period of 18 months from the date on which the proposal is submitted.

3. Ten years after the date of notification of this Directive, the Commission shall submit to the Council a report on the effect that rulings by the courts as to the application of Article 7 (e) and of paragraph 1 (b) of this Article have on consumer protection and the functioning of the common market. In the light of this report the Council, acting on a
Article 16
1. Any Member State may provide that a producer's total liability for damage resulting from a death or personal injury and caused by identical items with the same defect shall be limited to an amount which may not be less than 70 million ECU.
2. Ten years after the date of notification of this Directive, the Commission shall submit to the Council a report on the effect on consumer protection and the functioning of the common market of the implementation of the financial limit on liability by those Member States which have used the option provided for in paragraph 1. In the light of this report the Council, acting on a proposal from the Commission and pursuant to the terms of Article 100 of the Treaty, shall decide whether to repeal paragraph 1.

Article 17
This Directive shall not apply to products put into circulation before the date on which the provisions referred to in Article 19 enter into force.

Article 18
1. For the purposes of this Directive, the ECU shall be that defined by Regulation (EEC) No 3180/78 (1), as amended by Regulation (EEC) No 2626/84 (2). The equivalent in national currency shall initially be calculated at the rate obtaining on the date of adoption of this Directive.
2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts in this Directive, in the light of economic and monetary trends in the Community.

Article 19
1. Member States shall bring into force, not later than three years from the date of notification of this Directive, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof (1).
2. The procedure set out in Article 15 (2) shall apply from the date of notification of this Directive.

Article 20
Member States shall communicate to the Commission the texts of the main provisions of national law which they subsequently adopt in the field governed by this Directive.

Article 21
Every five years the Commission shall present a report to the Council on the application of this Directive and, if necessary, shall submit appropriate proposals to it.

Article 22
This Directive is addressed to the Member States.


For the Council
The President
J. POOS

(2) OJ No C 127, 21. 5. 1979, p. 61.
(3) OJ No C 114, 7. 5. 1979, p. 15.
(1) This Directive was notified to the Member States on 30 July 1985.