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LIABILITY FOR DAMAGE CAUSED BY A DEFECTIVE PRODUCT

The liability for damage caused by a defective product is regulated by Act No. 294/1999 Coll. on Liability for Damage Caused by Defective Products (hereinafter the “Act”). This Act implements the Council Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (85/374/EHS) (hereinafter “Directive”).

1. Liability of Producer

Under the Act, a producer is liable for damage caused by a defective product, to life or health incurred by the injured party or any object other than the defective product itself¹, if the injured party evidences that:

- a) the product is defective, and
- b) the damage was suffered, and
- c) the causal relationship between the defect of the product and the damage exists.

As ensuing from the above, the liability of a producer under the Act is based on the principle of the producer's objective liability (so called strict liability). The principle of objective liability means that the injured party is not required to evidence the producer's negligence or intention in court proceedings, if any. This principle significantly facilitates the position of consumers. However, we would like to note that under the European legislation the principle of objective liability is not applied absolutely. Under the specifically enumerated reasons, the producer can exclude itself from or limit the scope of its liability if he is able to prove that any of the events as specified in Article 5 of Act has occurred.

The producer is released from its liability for damage caused by a defective product if the producer evidences that:

- a) the producer did not put the product into circulation, or
- b) while taking into account the circumstances which preceded the origin of the damage it can be understood that the product was not defective at the moment when it was put into circulation or that the defect of the product occurred afterwards, or
- c) the product was not manufactured by the producer for sale or any other form of use for business purposes, nor was it distributed in the course of the producer's business, or
- d) the defect of the product results from the producer's compliance with an obligation stipulated by a generally binding regulation, or

¹ Furthermore, the Act defines that the object other than the defective product must be ordinarily designed for personal use or consumption and serves the injured party for this purpose.

- e) the state of scientific and technical knowledge at the time when the product was put into circulation does not allow the existence of a defect to be discovered.

Ad a)

Neither the Act nor the Directive defines the term “putting products into circulation”. The justification report to the Act states that putting into circulation means the moment when the producer makes available the utility features of a product as part of its ordinary business.

Ad b)

In our opinion, the purpose of this provision is to protect the producer in cases when a defect did not arise in the process of its manufacturing but rather as a result of third party actions, for example by incompetent transport of the product or its storage or by inexperienced interference of the injured party itself with the product (e.g. removal of a safety cover).

Ad c)

This provision includes cases when the product was not used, nor was designed for use, for business purposes.

Ad d)

Under this provision, the satisfaction of an obligation under a mandatory legal regulation is a reason for exclusion of the producer's liability for damage; however, subject to the condition that the satisfaction of a mandatory obligation is the only and sole reason for an origin of damage.

Ad e)

The producer shall not be liable should he be able to prove that the state of scientific and technical knowledge at the time when the product was put into circulation did not allow the existence of a defect to be discovered.

The Act states that a producer of a product component shall be excluded from liability for damage caused by a defective product if he is able to prove that:

- a) the defect of the product is attributable to the design of the whole product, or
- b) the component producer manufactured the product component in accordance with the requirements of the producer of the whole product, or
- c) the damage was due to the user's manual for the whole product.

However, there are legal opinions which state that despite the lack of explicit legal regulation it is necessary to take into account the fact to what extent the component producer participated in the construction, assembly or production of the whole product, for example, by providing technical support or advice for processing of the product. Therefore, the decision which party is the subject of liability (as to whether solely the producer of the whole product or the producer of the whole product jointly with the component producer) should depend on the finding as to whether the degree of the component producer's participation in construction of the whole product is substantial or negligible.

2. Defective Product²

The Act defines a defective product as a product which does not guarantee safety of use, which can be reasonably expected from the product, mainly with regard to:

- a) presentation of the product and information on the product which the producer provided or should have provided,
- b) the use to which the product could reasonably be expected and the purpose that the product could serve,
- c) time when the product was put into circulation.

However, the Act explicitly states that the product cannot be deemed defective solely for the reason that a more sophisticated product has been put on the market.

Product defects are not expressly defined in the Act or the Directive. In general, it can be stated that defects which result in damage suffered by a consumer can arise in products in the process of their manufacturing (a manufacturing defect) or as a result of a certain product design (a design defect) and, finally, as a result of the producer's insufficient instructions for product use (a warning defect). Therefore, for the purposes of the Act and the Directive, product defects are defined solely through their harmful consequences on life, health or property of consumers. Under the Act and the Directive, a defective product is only the product which caused damage to a consumer.

However, it is necessary to consider that regardless of the manner how a product defect occurred, the safety of use which can be reasonably expected from the product shall be decisive. Assessment of the safety of use which can be reasonably expected shall always depend on the specific circumstances of the case³.

3. Producer

The Act defines the producer as a party:

- a) which produced, extracted or otherwise acquired the product, or
- b) which presents itself as the producer by putting its name, trade mark or any other distinguishing feature on the product which allows its identification as the producer or which distinguishes the producer from another producer⁴.

For the purposes of the Act, a party importing a product from abroad for the purpose of sale, hire or any other form of use as part of its business is also deemed to be a producer (an

² Under the Act, a product is any movable item which was manufactured, extracted or otherwise acquired, regardless of the degree of its processing, which is intended to be put into circulation. Under the Act, a product is also a movable item which is a part or accessory of another movable or immovable item. Electricity and gas designed for consumption shall also be deemed a "product".

³ In 1998, Belgian court dealt with a dispute in which the defendant requested damages with respect to damage which he/she suffered by collision with automatic door. According to the court, the fact that the door system is equipped with automatic opening does not mean that the consumer can "blindly" expect that the door will always open under any circumstances. According to the reasoning, in this dispute, definition of the defect as an unusual defect which leads to the origin of damage was not satisfied as the door usually serves to prevent entrance into a building.

⁴ According to a decision made by an Australian court, the fact that a product includes information on its packaging that it is packaged by Firm X may lead the injured party to believe that the product is manufactured by Firm X. The court dismissed the arguments of Firm X that it did not produce the product but only packaged it into consumer packaging and marketed for further sale.

importer)⁵. Where the producer cannot be identified under the definition stated in the Act, the producer shall be deemed to be any party which supplies the product, provided that the party does not inform the injured person of the identity of the producer or the party which supplied the product to him within one month of submitting the claim for damages. The same also applies on the imported product if the importer of the product cannot be identified even if the producer is known.

The definition of a producer under the Act includes a wider group of parties and a producer does not mean only the party which is engaged in production – a manufacturer. The purpose of defining a wider group of potentially liable parties is to provide maximum protection to the injured parties. We would like to emphasise that under the Act the producer's liability for damage caused by a defective product cannot be contractually excluded or contractually limited in advance. Therefore, legislation expanded the scope of liable parties to all parties which represent the commercial chain of producers and suppliers of products, strictly for the purposes of protecting the injured parties.

4. Settlement of Damages

Subject to the terms as defined in the Act, the producer is liable for damage to health or life of the injured party or on an item other than the defective product⁶.

If identical defective products with the identical defect caused damage to health or life of several injured parties, the producer is liable to the injured parties for the suffered damage up to SKK 3,500,000,000. As ensuing from the above, the Act as well as the Directive determines the maximum amount of damages only with respect to damage caused by death or to health of a consumer. With regard to the overall liability of the producer for other damage (damage to property), neither the Directive nor the Act determines any limits for settled damages.

We would like to note that with respect to the maximum amount of damages the Act copies the Directive which also states the maximum amount of damages with respect to damage caused to health or life of several injured parties, in the amount of ECU 70,000,000.⁷

In the Anglo-American legal system the so-called punitive damage is applied, in addition to the settlement of damages, in decisions concerning claims for damage caused by a defective product. Their purpose is to punish wrongdoers, to have a preventative influence on their behaviour and to discourage others from similar behaviour. It often happens that the amount

⁵ Expansion of the definition of a producer facilitates the situation of the injured party as in the case when the injured party suffers damage as a result of a defective product produced in China and imported into the EU by a Slovak importer, the consumer can claim damages directly from the Slovak importer and does not need to investigate who produced the respective product.

⁶ The Act states that the amount of damages with respect to damage caused by a defective product shall be reduced if the producer evidences that damage was caused by the defective product as well as by a fault of the injured party or a person for which the injured party is liable.

⁷ For example, the Czech Republic declined the principle of the maximum amount of damages introduced by the Directive; as a result, the amount of damages with respect to damage caused by a defective product is not limited in the Czech law.

of punitive damage significantly exceeds the amount adjudicated as part of compensation for damage⁸.

5. Insurance against Liability for Damage Caused by Defective Products

At present, insurance companies in the Slovak Republic offer insurance against liability for damage caused by a defective product. Two principles are applied with respect to liability for a defective product in Slovak Republic:

- a) loss occurrence,
- b) claims made.

Ad a)

Should this be the case, the settlement of the insured's claims is guaranteed regardless of the fact when the agreement between the injured party and the producer on settlement of damages is made; however, damage must be suffered by the injured party during the term of insurance coverage.

Ad b)

Insurance against liability for damage caused by a defective product also includes damage which occurred in the past if a claim for their settlement is made during the insurance term of a valid insurance policy. The date when the injured party lodged in writing its claim for settlement of damages with the insured shall be decisive.

Conclusion

The subject of this memorandum is providing overview on legislature in Slovak Republic concerning the liability for damage caused by a defective product.

⁸ In the dispute BMW vs. Ira Gore, the court awarded the damages of USD 4,000 and bound BMW to pay punitive damage of USD 4,000,000.