Product Recall

Contributing editors

Jason Harmon, Alison Newstead and Devin Ross

2019

GETTING THE DEAL THROUGH

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Shook, Hardy & Bacon LLP

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Product Recall 2019

Tenth edition

Getting the Deal Through is delighted to publish the tenth edition of *Product Recall*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Colombia and Mexico.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Jason Harmon, Alison Newstead and Devin Ross of Shook Hardy & Bacon LLP, for their continued assistance with this volume.

GETTING THE DEAL THROUGH

London
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Greece

Dimitris Emvalomenos
Bahas, Gramatidis & Partners

General product obligations

1 What are the basic laws governing the safety requirements that products must meet?

The basic legislative documents that set out the Greek legal framework on product safety are Ministerial Decision Z3/2810/14 of December 2004 (MD), which implemented EU Directive 2001/95/EC on General Product Safety (GPSD) and Law 2251/1994 on Consumers' Protection (usually referred to as the Consumers' Law, as amended many times and in force today after being codified in 2018 – Law No. 2251), which, inter alia, implemented EU Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the member states concerning liability for defective products (as amended by EU Directive 99/34/EC, the PL Directive). The above legal framework is supplemented by Regulation (EC) No. 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, in force as of 1 January 2010.

The General Secretariat of Trade and Consumer Protection of the Ministry of Economy and Development is the central competent authority regarding producers' compliance with the product safety rules (the General Secretariat).

The above-mentioned basic legislative documents supplement the provisions of the legislation on various specific product categories, where the latter does not cover certain matters, such as the description of the powers of the competent authorities on safety issues.

A product is safe if, under normal or foreseeable conditions of use, including its expected lifespan, it does not present any risk, or it presents only a minimum risk that is considered acceptable and compatible with a high level of protection for consumer safety and health (article 2b of the GPSD and the MD and article 7, paragraph 3, Law No. 2251).

There are various provisions for specific product categories, including the following.

Toys
Common Ministerial Decision 3669/194/2011 (Government Gazette Bulletin (GGB) 549/B/2011), implemented EU Directive 2009/48/EC on the Safety of Toys. The competent authority is the First Directorate of Industrial Policy, of the General Secretariat of Industry, of the Ministry of Economy and Development (the Industry Secretariat).

Childcare products
Ministerial Decision Z3-818 (GGB 1395/B/2009). Competent authorities are the General Secretariat and the local prefectures.

Low-voltage products
Common Ministerial Decision 51157/2016 (GGB 1425/B/2016), implemented EU Directive 2014/35/EU on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits. The competent authority is the Fourth Directorate of the Industry Secretariat.

Power sockets and plugs
Ministerial Decision 529/28-1-2000 (GGB 67/B/2000), as amended by Ministerial Decisions 4822/17.3.2000 (GGB 352/B/17-3-2000) and 8991/14-5-2003 (GGB 643/B/2003). The competent authority is the Fourth Directorate of the Industry Secretariat.

Pressure products and systems
Ministerial Decisions B10451/929/88 (GGB 370/B/1988), 12479/F17/414/91 (GGB 431/B/1991), 14165/F17.4/373/93 (GGB 673/B/1993), 20769/6285/94 (GGB 977/B/1994), 14132/618/01 (GGB 1626/B/2001), 16289/330/99 (GGB 987/B/1999) and 12436/706/2011 (GGB 2039/B/2011). The competent authority is the Third Directorate of the Industry Secretariat.

Boilers
Presidential Decree 335/93 (GGB 143/A/1993) as amended by Presidential Decree 56/95 (GGB 46/A/1995) and Royal Decree 277/63 (GGB 65/A/1963). The competent authority is the Third Directorate of the Industry Secretariat.

Machines
Presidential Decree 57/2010 (GGB 97/A/2010), as amended by Presidential Decree 81/2011 (GGB 197/A/2011), which implemented EU Directive 2006/42/EC. The competent authority is the Third Directorate of the Industry Secretariat in collaboration with various other directorates.

Means of personal protection
Ministerial Decisions 4373/1205/93 (GGB 187/B/1993), 8881/94 (GGB 450/B/1994) and B.5261/190/97 (GGB 113/B/1997). The competent authority is the First Directorate of the Industry Secretariat.

Equipment for explosive works
Ministerial Decision B17081/2964/96 (GGB 157/B/1996). The competent authority is the Fourth Directorate of the Industry Secretariat.

Plastic tubes
Ministerial Decisions 14013/32/327/83 (GGB 597/B/1993) and 10347/32/176/93 (GGB 432/B/1993). The competent authority is the Second Directorate of the Industry Secretariat.

Structural construction products
Presidential Decree 334/94 (GGB 176/A/1994) and various Ministerial Decisions specifying the provisions of such PD. The competent authority is the Second Directorate of the Industry Secretariat.

Pleasure yachts
Ministerial Decision 4841/F7B/52/97 (GGB 111/B/1997). Competent authorities are the Third Directorate of the Industry Secretariat and the Ministry of Economy and Development.

Elevators
Ministerial Decisions 9.2/32803/1308/97 (GGB 815/B/1997) and 15085/593/03 (GGB 1186/B/03). Competent authorities are the following Directorates of the Industry Secretariat, namely, the Third Directorate and the Supporting Directorate for Industry.

Bio-extinguishers
Presidential Decree 205/01 (GGB 160/A/2001). The competent authority is the National Organisation for Medicines (EOF).

Air fresheners
Ministerial Decision Y1/1880/01 (GGB 1018/B/2001). The competent authority is EOF.

Anti-smoking products
Ministerial Decision Y3d/515/94 (GGB 137/B/1994). The competent authority is EOF.

Cosmetics
Ministerial Decision 3a/132979 (GGB 352/B/2005), which implemented Cosmetics EU Directive 76/768/EEC, and various other Ministerial Decisions issued subsequently to specify its provisions. The competent authority is EOF.

Chemicals (including industrial raw materials, industrial products and candles)
Ministerial Decisions Y1b/7723/94 (GGB 961/B/1994), 378/94 (GGB 705/B/1994), which implemented EU Directive 67/548/EEC, and 265/02 (GGB 1214/B/2002), which implemented EU Directives 1999/45/EC and 2001/60/EC. Competent authorities are EOF and the State's General Chemical Laboratory of the Ministry of Economy and Development, depending on the specific product.

Vehicles and parts for vehicles
Various legislative documents. The competent authority is the Ministry of Economy and Development.

2 What requirements exist for the traceability of products to facilitate recalls?

There is no specific regulation for traceability purposes. Only general provisions exist, giving the authorities broad discretion to ensure that traceability is guaranteed.

In general, each product has to be duly labelled and identified and must, therefore, include information about its producer, namely, the name of an individual or the business name of a legal enterprise, and the address of the registered office. Accordingly, each product has to bear the specification of the product type or category, and, if applicable, its series or batch number. The product must further be labelled, which means that it must bear the information enabling the evaluation of risks connected with its use, or any other information relating to product safety. Such data must be stated directly on the product, on an attached leaflet or even on the packaging, in a visible and legible manner. The information must be stated at least in Greek. This enables a consumer to duly identify the product, its series and its producer.

Distributors must participate in the procedure of monitoring the safety of products they put in the market and to this end cooperate with the producers and the competent authorities, mostly conveying information regarding the dangers of the products and providing the necessary documents that can establish the products' origin.

The producers of certain categories of products must be able to identify the products' distributors if it is necessary to determine a group of consumers who might have obtained the defective product.

As far as food and medical products are concerned, lot numbers, manufacturer's serial number and respective date of production must be included on packaging.

3 What penalties may be imposed for non-compliance with these laws?

According to article 13a of Law No. 2251 (as amended by Law No. 4512/2018), subject to the stipulations of the Criminal Code and the Rules Regulating the Market of Products and the Provision of Services (Law No. 4177/2013), the following civil and administrative sanctions may be imposed by a decision of the competent minister, acting either ex officio or after a complaint filed, namely:

- recommendation for compliance within a specified deadline as well as an order to stop the infringement and refrain from it in the future;
- a fine of between €1,500 and €1 million. The maximum amount of the fine may be doubled if more than three fines are imposed on a distributor; or
- if more than three fines are imposed on a infringer, the minister may order the temporary closure of his or her business for a period ranging from three months to one year.

Imposed sanctions may be generally readjusted by a joint ministerial decision.

A special set of sanctions may be imposed on the infringers that do not respond to consumers' complaints per the provided proceedings.

Further, the competent minister has the authority, considering the nature and graveness of the violation, as well as its general repercussions on the consumer public, to publicise, through the press or any other means available, the sanctions imposed and the restraining measures taken with regard to the circulation of a product in the market.

Reporting requirements for defective products

4 What requirements are there to notify government authorities (or other bodies) of defects discovered in products, or known incidents of personal injury or property damage?

If producers or distributors become aware that any of their products present dangers to consumers, they must notify the General Secretariat immediately, without delay, and any other competent authority depending on the type of the product at issue, for the prevention of any danger and hazard to consumers.

The notification is made in a form provided by the competent authority and has to include information to identify the product, a complete description of the defect or the risk involved with the usage of the product, information to locate the product in the market, a description of the actions taken by the producer or distributor and actions that should be taken by consumers to prevent any further risk.

If the product has been marketed outside Greece as well, the procedure under the RAPEX notification system may be followed. The system allows the almost simultaneous transfer of information on dangerous products within the EU. Respective procedures apply especially to food and medicines.

The notified authorities may request additional information, the submission of relative documents or measures to be taken by the producer or distributor.

5 What criteria apply for determining when a matter requires notification and what are the time limits for notification?

The safety of the product in question determines any notification needed (see question 1).

The following criteria are monitored from the point of view of risks to consumers' safety and health protection (article 7, paragraph 3, Law No. 2251 implementing the GPSD), namely:

- the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;
- the effect on other products, where it is reasonably foreseeable that it will be used with other products;
- the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product; and
- the categories of consumers at risk when using the product, in particular children and the elderly.

The producer may be informed about the danger of a product by any appropriate means. The producer may find out that the product is not safe because of his or her own inspections and tests or on the basis of initiatives from consumers, insurance companies, distributors or governmental bodies. In any case, it is necessary to notify the competent authority as soon as the producer establishes such risk.

EC Decision 2004/905/EC sets out guidelines for the notification by producers and distributors of dangerous consumer products to the competent authorities of the member states (the Guidelines) in accordance with article 5, paragraph 3 of the GPSD.

The Guidelines (Annex, section 3) set out the notification criteria, which are as follows:

- the product is understood to be intended for, or likely to be used by, consumers (article 2a of the GPSD);
- article 5 of the GPSD applies (unless there are specific provisions established by other EU legislation);
- the product is on the market;
- the professional has evidence that the product is dangerous according to the GPSD, or that it does not satisfy the safety requirements of the relevant community sectoral legislation applicable to the product considered; and
- the risks are such that the product may not remain on the market.

The Guidelines provide that the notification shall be made without delay and specify the deadline for making notifications in terms of days. Accordingly, in cases of serious risk, companies are required to inform the authorities without delay, in no case later than three days after obtaining information and in any other case within 10 days.

There are only minimal differences in the preconditions and time framework for notification for various specific product categories.

6 To which authority should notification be sent? Does this vary according to the product in question?

In general, notifications must be made to the competent authority as is stipulated in question 1. The authorities to which the notification should be made vary according to the product.

Further to the authorities mentioned in question 1, we examine below two important categories of products.

Food

For food products, the competent authority is the Hellenic Food Authority (HFA), established in 1999. The HFA is supervised by the Ministry of Rural Development and Food.

The HFA's principal aims are to take all the necessary actions to ensure that food produced, distributed or marketed in Greece meets the standards of food safety and hygiene as described by the national and European legislation. The HFA also acts as the national contact point of the European Union regarding the management of the Rapid Alert System for Food and Feed (RASFF) and for the Codex Alimentarius Commission (of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO)) and it is the local point of the European Food Safety Authority (EFSA).

Medicines

For medicines and sanitary products and equipment, EOF (see question 1) is the competent authority. EOF was established in 1983 and is supervised by the Ministry of Health. EOF's mission is to ensure public health and safety with regard to the following products, marketed in Greece:

- medicinal products for human and veterinary use;
- medicated animal foods and food additives;
- foodstuffs intended for particular nutritional uses and food supplements;
- biocides;
- medical devices; and
- cosmetics.

Within the framework of its mission, EOF, in cooperation with the European Union, performs the following tasks:

- evaluates and authorises new, safe and efficient health-related products;
- monitors the post-marketing product's quality, safety and efficiency;
- monitors product manufacturing procedures, clinical studies and the marketing of products in order to ensure compliance with good manufacturing, laboratory and clinical practice, as well as with the existing legislation regarding the marketing, distribution, commercialisation and advertising of the products;
- develops and promotes medical and pharmaceutical research; and
- provides health scientists, competent authorities, and the general public with objective and useful information regarding medicines (for human or veterinary use) and other relevant products, in order to ensure their rational use and assess their cost-effectiveness.

7 What product information and other data should be provided in the notification to the competent authority?

In accordance with the provisions of the Guidelines (Annex, section 5), the notification must include at least the following:

- details of the authorities and resellers or distributors notified;
- details of the producer and distributors;
- details of the contact person regarding the notification;
- details of the product, including the category of the product, product's brand or trade name, product's model, barcode or CN tariff, product's country of origin and a photograph or description of the product;
- description of the hazard and of the possible health or safety damages and conclusions of the risk estimation and evaluation carried out;
- a record of accidents; and
- details of corrective actions taken, including the type, the scope and the duration of actions and precautions taken and the identification of the responsible company.

8 What obligations are there to provide authorities with updated information about risks, or respond to their enquiries?

Greek legislation does not expressly regulate the obligation to provide authorities with updated information on risks. However, the obligation falls within the general scope of safety regulations that stipulate that all products on the market must be safe and if a product becomes unsafe, the producer or distributor has to take all appropriate measures to meet all possible risks.

Taking into consideration that a notification to the authorities is made according to an initial assessment of the product's hazard, the authorities will have to be kept informed of the results of any ongoing research in order to be updated and monitor the case.

Moreover, according to the provisions of Law No. 2251, the competent authority may request information from the producer or the distributor and can set a deadline, within which the information must be given to it.

9 What are the penalties for failure to comply with reporting obligations?

See question 3.

10 Is commercially sensitive information that has been notified to the authorities protected from public disclosure?

In general, information containing commercial or industrial secrets should not be disclosed to the public by the notified authorities.

The competent authorities should make available to the public information in relation to the notified product and the risk from its usage but they should prevent the disclosure of information containing commercial or industrial secrets, unless such disclosure is necessary to protect the public.

Moreover, any third party may request the issue of an order granting access to the files of the case kept by the competent authorities, including commercial or industrial secrets, from the public prosecutor. Such a request may be granted if the applicant proves a lawful interest for this.

Thus, notified commercially sensitive information is not always protected against public disclosure.

11 May information notified to the authorities be used in a criminal prosecution?

There is no specific provision in Greek legislation. In general, information obtained by the authorities may be used in criminal proceedings.

Product recall requirements

12 What criteria apply for determining when a matter requires a product recall or other corrective actions?

There are no specific provisions regarding the criteria according to which a product recall or other corrective actions are determined. The producer or distributor of a defective product must take any measure to eliminate possible hazard from that product's use, as soon as any defect comes to his or her attention. These measures may vary and can

Update and trends

Greek authorities have been quite active in using the RAPEX procedure. Based on official data from the past years, the General Secretariat made the following notifications: 2017: 18; 2016: 50; 2015: 14; 2014: 63; 2013: 70; 2012: 82; 2011: 69; 2010: 159; 2009: 153; and 2008: 129.

Consumer awareness appears to be low. Very few consumer organisations are actively focusing on challenging abusive general terms and conditions.

Consumer reports and complaints are filed with the General Secretariat. There is no official data available for 2017. A total of 6,370 complaints were filed in 2016. Since October 2013, complaints may be filed at any time through the new General Secretariat's webpage, at www.1520.gov.gr. Besides the online filing, the General Secretariat operates a call centre.

Further, during recent years, competent authorities have intensified market controls regarding unsafe products. Specifically, the fines imposed by the General Secretariat in the past years amounted as following: in 2017: €1.016 million; in 2016: €1.943 million; in 2015: €2.2314 million approximately; in 2014: €1.485 million approximately; and in 2013: €4.875 million approximately.

Law No. 2251 has been amended several times. The most significant changes introduced in the past regarding product liability and safety and product recall issues were enacted by Law No. 3587/2007 and Law No. 4177/2013. In 2018, Law No. 2251 was extensively amended by Law No. 4512/2018 (articles 100 to 111 and 126) and by virtue of the same, ministerial decision No. 5338 of 17 January 2018 was issued, codifying Law No. 2251 with effect as of 18 March 2018. Topics related to product recall affected by the latest revision of Law No. 2251 are:

- a narrrower definition of 'consumer' (see below);
- the regulatory authorities and their enforcement duties;
- the funding of consumers' associations; and
- the administrative proceedings and sanctions that may be imposed (articles 1a.1, 7, 10, 13a and 13b, Law No. 2251).

The definition of 'consumer', before the above 2018 revision of Law No. 2251, was extremely broad and included any natural or legal person or entity without legal personality that was the end recipient and user of products or services, as well as any guarantor in favour of a 'consumer' (but not for a business activity) (previous article 1, paragraph 4a, Law No. 2251); moreover, the definition had been further expanded by case law to cover persons that used the products or services not only for private use but also for business use. As of 18 March 2018, this extended definition was narrowed and 'consumer' is now only considered a natural person acting for purposes not falling within a commercial, business, handcraft or freelance activity (new article 1a, paragraph 1, Law No. 2251).

include warning notifications, retrospective instructions to consumers, invitations for servicing or updating of the product in order to become safe or notifications recalling the product.

A product recall is an action taken in the event that no other measure would eliminate the danger. The recall may be either initiated by the producer or distributor of the product or ordered by the competent authority.

A guide containing information on determining when a recall or another corrective action is required, according to the Guidelines, is provided by the EU at http://ec.europa.eu/consumers/cons_safe/action_guide_en.pdf.

13 What are the legal requirements to publish warnings or other information to product users or to suppliers regarding product defects and associated hazards, or to recall defective products from the market?

Producers and distributors are obliged to market only safe products. If they fail to do so, they are obliged to take any appropriate measure without delay and as soon as possible in order to prevent any hazard to consumers. Both the producer and the distributor have this obligation.

It is the producer and the distributor of a product who must determine whether it is defective and, accordingly, whether the authorities need to be notified thereon. The above persons must define the measures to be taken.

The competent authorities retain their powers to impose additional measures ensuring the safety of users.

14 Are there requirements or guidelines for the content of recall notices?

See question 7.

15 What media must be used to publish or otherwise communicate warnings or recalls to users or suppliers?

Greek legislation does not provide for specific media to be used for the warnings or recalls. Any type of publicity that can accomplish the scope for the elimination of the danger may be used. The competent authority may request more extensive publication than the publication used by the producer or distributor, depending on each case.

16 Do laws, regulation or guidelines specify targets or a period after which a recall is deemed to be satisfactory?

Greek legislation does not provide for such targets or periods.

17 Must a producer or other supplier repair or replace recalled products, or offer other compensation?

Article 6, paragraphs 2 to 4 of Law No. 2251 provide (in conformity with the PL Directive) that a producer responsible for the defect is regarded the manufacturer of a finished product or of any raw material or of any component, as is any other person who presents him or herself as a producer by putting his or her name, trademark or other distinguishing feature on the product. Moreover, any person who imports a product within the EU for sale, leasing or hire or any form of distribution will be responsible as a producer. Where the producer of the product may not be identified, each supplier of the product will be treated as its producer unless he or she provides the injured person with information on the identity of the producer or of the person who supplied him or her with the product. The same applies to the supplier of imported products when the importer's identity is unknown, even if the producer's identity is known.

According to Law No. 2251 (article 6, paragraphs 1, 6 and 7), the producer must compensate the consumer for any damage incurred to the latter because of defects of his or her product. Damage includes the following:

- damage owing to death or physical injury; and
- damage or destruction, because of the defective product, of every asset of the consumer, apart from the defective product itself, including the right to use environmental goods, on condition that the loss from such damage or destruction exceeds €500, and on the condition that by nature they were destined to be and were actually used by the injured person for his or her personal use or consumption.

Damages for moral harm or mental distress may also be due based on the above regulation.

Further, and by virtue of article 540 of the Greek Civil Code, the buyer (in general and not only a consumer) is entitled either to demand the repair of the defective goods he or she purchased or their substitution (on the condition that such substitution or repair does not imply excessive and unreasonable cost for the seller), or to require a price reduction or to rescind the contract for sale of goods, unless the defect or the lack of conformity of the goods sold with any agreed qualities is minor. Additionally, according to the general provision of article 914 of the Greek Civil Code, whoever acts unlawfully and by default causes damages to another party is obliged to compensate the injured party.

Moreover, both Law No. 2251 and the Greek Civil Code regulate the provision by the seller of a product guarantee. In short, where such a guarantee was provided and the defect is detected and noticed within the guaranteed period, the producer or distributor is obliged either to repair or replace the product at issue. By the recent revision of 2018, Law No. 2251 was redrafted as to the applicable guarantees in

the sale of consumer goods (new articles 5 and 5a, Law No. 2251). In short, Law No. 2251 categorises the guarantee to:

- a mandatory, two-year free, statutory one (which may be reduced up to one year for used products); and
- an additional, optional, commercial one provided against payment or, exceptionally, or for free under detailed regulation.

Regarding prescription, Law No. 2251 provides that claims against the producer or the other persons liable for defective products are prescribed three years after the consumer became aware of the damage or should have been informed about the damage, the defect and the identity of the producer. Ten years after the product is put onto the market, the rights of the consumer are time-barred (article 6, paragraph 13, Law No. 2251).

The general limitation period within which a buyer, being a consumer or not, must exercise his or her rights from a contract for the sale of goods is two years. Tort claims are subject to a five-year limitation period starting from the day the victim became aware of the damage and the person liable to compensate him or her. The same action or omission may constitute breach of a contract and tort under requirements. Lastly, the general limitation period applying to claims is 20 years. Claims for unjust enrichment fall within this period.

18 What are the penalties for failure to undertake a recall or other corrective actions?

See question 3.

Authorities' powers

19 What powers do the authorities have to compel manufacturers or others in the supply chain to undertake a recall or to take other corrective actions?

Authorities may request the producer, the distributor or any supplier to take specific preventive or corrective actions. To that extent, they may also define the time frame within which the scope of such actions should have been accomplished. If the obliged party fails to comply with and satisfy such requests, the competent authority may impose fines (see question 3).

Products that present or may present serious dangers to the safety and health of consumers when used in conditions that are normal or predictable may be revoked or withdrawn, as a precaution, by the competent authority. The procedure, the terms and conditions for the revocation, withdrawal or disposal under terms, destruction and any other relevant topic, are regulated by a decision of the Minister of Development or by a joint decision of him or her and by any other competent minister.

20 Can the government authorities publish warnings or other information to users or suppliers?

Government authorities may publish warnings or other information to users or suppliers where a producer or other responsible party has not already done so. See question 19. There are no rules whereby the same authorities may issue informal information or notices outside the above-mentioned established regulatory scheme. Further, Greek authorities' websites do not provide a facility for the public to post remarks or reports of incidents. However, since May 2009, the website of the European Commission (https://webgate.ec.europa.eu/gpsd-ba/) provides for the GPSD Business Application, which is an online application that businesses can use instead of traditional methods, such as email or fax, to submit their notifications on dangerous products to national authorities; using this application, businesses can also notify all member states at the same time.

21 Can the government authorities organise a product recall where a producer or other responsible party has not already done so?

Yes. Government authorities may organise a product recall where a producer or other responsible party has not already done so. See question 19.

22 Are any costs incurred by the government authorities in relation to product safety issues or product recalls recoverable from the producer or other responsible party?

Yes. If it is the authority that carries out the required product recall, it will be entitled to claim the relevant costs incurred by the responsible party that did not comply with its obligations. Apart from the product recall costs, other administrative costs are not recoverable.

23 How may decisions of the authorities be challenged?

The ministerial decisions mentioned in question 19 must be served on the interested party. A quasi-judicial proceeding before the minister against those decisions is provided for, within an exclusive period of 30 days as of the above service. The minister has to issue his or her decision within an additional exclusive period of 60 days and the minister's decision may be challenged within a further period of 60 days of his or her decision being served on the interested party.

Implications for product liability claims

24 Is the publication of a safety warning or a product recall likely to be viewed by the civil courts as an admission of liability for defective products?

Without prejudice to all necessary proceedings, including evidence production, which must take place before a court, the publication of a safety warning or a product recall is likely to be viewed by the civil courts as an admission of liability for defective products, or at least as an indication that the product is defective.

It is useful to note that, before a civil court, the consumer (claimant) has only to prove the defect of the product, the damage caused by it and the causal link, whereas proof of the absence of fault lies on the producer (defendant) under an adverse burden of proof rule established by case law to facilitate claimants.

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25 Can communications, internal reports, investigations into defects or planned corrective actions be disclosed through court discovery processes to claimants in product liability actions?

A product liability action, being a private law dispute, is tried exclusively by civil courts. There is a general duty of truth but each litigant may only submit to the court the evidence being favourable to support his or her case.

The Greek Code of Civil Procedure does not provide for discovery within the meaning of the common law concept. However, a consumer (claimant) may request from the court – upon certain conditions – an order that the defendant (producer or distributor) files and discloses documents in his or her possession relevant to support the claim, which, however, must be clearly specified by the claimant. Thus, communications, internal reports and the like may be – at least in theory – disclosed in product liability actions. In practice, however, owing to the very strict prerequisites imposed by case law on the claimant regarding the specification by him or her of the requested documents, the success of such disclosure petition must be regarded as an exception.

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