Product Liability and Safety in Belgium: Overview

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A Q&A guide to product liability and safety in Belgium.

The Q&A gives a high-level overview of the sources of product liability law, establishing liability, liable persons, defences, excluding/limiting liability, court proceedings, evidence, class actions, litigation funding, remedies, product safety, product recall, and reporting requirements.

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Sources of Law

1. What are the main areas of law and regulation relating to product liability?

The *General Product Safety Directive (2001/95/EC)* is implemented in Book IX of the Economic Code. Under Article IX.2, Book IX of the Economic Code, producers and manufacturers must only place safe products on the market.

The *Product Liability Directive (85/374/EEC)* is implemented in the Product Liability Act 1991. This supplements Belgian national law.

Product liability can also be incurred under Article 1382 of the Old Civil Code as tort liability.

The seller/producer can also be liable for hidden defects based on Articles 1641 to 1648 of the Old Civil Code, if the product had these defects at the time of purchase. The buyer must claim within a short period after discovery of the defect.

Under Article 1649*bis* of the Old Civil Code and other provisions on the sale of goods to consumers, the seller is responsible for defects existing at the time of delivery of the goods that become visible within two years after the date of delivery (Article 1649quater, Old Civil Code). A consumer is defined as a natural person who acts for purposes that do not relate to their professional or commercial activities (Article 1649*bis*, section 2, Old Civil Code and Article I.1, 2°, Economic Code).

In the case of injury or death caused by a defective product, there is also a risk of criminal prosecution. Under Article 418 of the Criminal Code a person who causes harm by negligence, without intent to harm the person, can be guilty of involuntary manslaughter or injury

Anyone who involuntarily causes the death of a person can be punished with imprisonment of three months to two years and a fine of EUR400 to EUR8,000 (Articles 419 and 420, Criminal Code).

The UN Convention on Contracts for the International Sale of Goods 1980 (CISG) applies in Belgium to international sales contract of movable goods where the contracting parties have not explicitly excluded the application of the CISG. The CISG requires products to be free from defects. Therefore, it can also be used as a basis for claims against defective products in a sale relationship.

Causes of Action

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2. What are the most common causes of action and what is required to establish liability under them? When is a product defective?

Under the Product Liability Act, for a producer to be liable a claimant must show that a product is defective and has a causal link with the damage. A defect is defined as not meeting the safety that a party is entitled to reasonably expect, taking into account all the circumstances. The behaviour of the user plays an important role in assessing whether a product is defective under the Product Liability Act.

The Product Liability Act does not require fault of the producer and imposes strict liability. Every affected person, contractual or a third party, can bring a claim based on the Product Liability Act.

A claim for damages is also commonly based on Article 1641 and following of the Old Civil Code. Under these provisions, a product is deemed defective when it does not meet the characteristics that a party can expect. A product can also be deemed defective when it does not meet the functional requirements. Although there is no strict liability under these provisions, a commercial seller cannot exclude its liability for hidden defects in the product. To establish a hidden effect, the delivered product will be compared with the type model of the product.

A specialised seller or manufacturer is deemed to have known the defect. An exception is when the defect could not be discovered, given the state of scientific knowledge at the time of the sale. However, this is rarely accepted. Further, the buyer must establish that the defect was present at the time of delivery and could not have been discovered on delivery.

The concept of hidden defects (see *Question 1*) also applies to business-to-consumer sales but is regulated explicitly in Article 1649*bis-quater* of the Old Civil Code. In these sales, the seller must deliver a product that complies with the expected use of the product, public announcements (such as advertising), and the labelling. In contrast to business-to-business sales, there is a presumption (which can be rebutted by the seller) that non-compliance existed at the time of delivery (Article 1649*ter*, Old Civil Code). This presumption is only valid for six months from the date of delivery. The consumer has the right for a replacement product or repair of the product. If repair or replacement is not appropriate or not provided for, the consumer can claim rescission of the agreement or an appropriate price reduction. The seller or any previous seller cannot exclude its liability to consumers under the Old Civil Code.

Liable Parties

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3. Who is potentially liable for a defective product? What obligations or duties do they owe and to whom?

The producer, the supplier, and any person who imports the product into the EU can be liable for a defective product.

The Product Liability Act extends liability to the supplier and an EU importer, under the same conditions as in the Product Liability Directive. The liable person is liable to compensate the injured party for the following damage:

- Personal injury or death.
- Property damage.
- Loss of income.
- Funeral costs.
- Treatment costs.

The Product Liability Directive leaves the compensation of moral damage to national law. The Product Liability Act explicitly provides that moral damage can be compensated (Article 11, Product Liability Act).

Compensation for personal injury or death is unlimited. There is no maximum amount determined in Belgian law.

Property damage to another good can be recovered if the other good was made for private use and has only been used for private purposes. However, the Product Liability Act provides that the damaged party must bear the first EUR500 of the damages, which therefore is deducted from the claim.

The seller is also liable to the buyer for defective products under the Civil Code. The seller can claim against their previous seller in the supply chain. The buyer also has a direct claim against any previous sellers, as the right to claim damages for defective products is considered accessory to the title to the product. The seller is liable to compensate the buyer for reduced use or, at their option, rescission of the sale agreement with damages. For business-to-consumer sales, the Civil Code expressly provides for the consumer's right to claim remedies from the seller and parties up to the producer.

In the event of a merger of the producer, supplier, or EU importer, the successor corporation will in principle inherit all assets and liabilities of the predecessor company. The successor corporation is therefore the only company that could be held liable, even if the claim originated before the succession.

In the event of an acquisition, a distinction should be made between a share deal and an asset deal. In a share deal, a party can still hold its contracting party liable for a defective product. In an asset deal where the predecessor corporation transfers an entire branch of the corporation in

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accordance with the Code of Companies and Associations, the deed of transfer must be published in the *Belgian Official Gazette* for the acquisition to be enforceable against third parties. If this specific procedure is not followed, consent of the contracting parties is required for the acquisition to be enforceable against them. In principle, contracts concluded *intuitu personae* (that is, when the identity of the parties is an essential term of the contract) cannot be transferred to another corporation.

Defences

4. What are the defences to a product liability claim?

The producer can be discharged from liability on any of the following grounds:

- The user has used the product in a way that was unreasonable and unforeseeable for the producer (this results from the definition of defective product under the Product Liability Act).
- The producer did not put the product into circulation.
- In the circumstances, it is probable that the defect that caused the damage did not exist at the time when the product was put into circulation by them, or that the defect occurred afterwards.
- The product was not manufactured by them for sale or any form of distribution for economic purposes, nor manufactured or distributed by them in the course of their business.
- The defect is due to compliance of the product with mandatory regulations issued by the public authorities.
- The state of scientific and technical knowledge at the time when they put the product into circulation was not such as to enable the existence of the defect to be discovered.
- In the case of a manufacturer of a component, 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 5 and 8, Product Liability Act.)

In addition to challenging the timing of the claim (see *Question 5*), the main defence under the Civil Code is that the defect was not inherent to the product (that is, it was caused by another element separate from the product or misuse of the product). The next most common defence under the Civil Code is to challenge the defect.

Time Limits for Bringing Proceedings

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5. Is there a time limit in which proceedings can be brought?

Under the Product Liability Act:

- The time limit for claims is three years, starting from the day on which the claimant became aware or should have reasonably become aware of the damage, the defect, and the identity of the producer.
- The right to bring a claim expires ten years from the date on which the producer put the product into circulation.

Under the Civil Code, a business-to-business buyer must make a formal claim (by starting litigation) within a short period of discovering the defect. Failure to do so makes the claim inadmissible. The Civil Code does not specifically define this short period, which is determined based on the factual circumstances, particularly the length of time required by the seller to inspect the products and discover any defects. The legal reason for the short term is to avoid problems of evidence, because an investigation into the origin of a defect and the condition of a sold good may become impossible after an excessively long lapse of time. Belgian judges construe the requirement of the short term flexibly, and always assess it in light of whether it is still possible to provide evidence of the defect. It is generally accepted that the short period is suspended if the parties or the court appoint an expert or the parties start conduction serious. In these circumstances it is not uncommon for a buyer to seek the appointment of a court expert, to determine the defect and the related damages.

There is almost unanimity in case law and legal doctrine that the short term starts running as soon as the buyer is aware, or can reasonably be expected to be aware, of the existence of a hidden defect. Similarly, it is generally accepted that the short term only starts running after sufficiently serious negotiations have taken place, during which the parties established that they cannot reach an amicable settlement.

Under the business-to-consumer regime, a consumer must bring a claim within one year after discovery of the non-compliance and two years after delivery. Following the two years after delivery, the business-to-business provisions outlined above apply.

For contractual claims, the general limitation period of ten years applies. This limitation period starts running from the date of the sale.

Excluding/Limiting Liability

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6. Can a supplier limit its liability for defective products and are there statutory restrictions on a supplier doing this? Do consumer protection laws apply? Are guarantees or warranties as to quality implied by law? Is there a mandatory or minimum warranty period for consumer products?

Liability of a producer under the Product Liability Act cannot be excluded or limited by contract (Article 10, Product Liability Act).

The liability of the supplier for hidden defects under Articles 1641 to 1648 of the Old Civil Code can be limited by contract if the supplier acted in good faith. However, manufacturers and specialised suppliers are presumed to know about the defect, so they cannot limit their liability in this way. This presumption of bad faith only applies to specialised suppliers and not to every professional supplier. A professional supplier who can prove that they are not a specialised supplier can limit their liability.

A time bar for warranty claims is only accepted if it is not deemed to exclude the seller's liability, that is, the period conforms with reasonable expectations for well-functioning of the product. Generally, the "short period" referred to in Articles 1641 to 1648 of the Old Civil Code (see *Question 5*) is specifically defined by including a deadline for submitting a claim and by setting a warranty period. These periods can be helpful in defending a claim, but will only be accepted by a court if it deems it reasonable, that is, not excluding the seller's liability.

The Civil Code also stipulates a statutory warranty of two years after the date of delivery for consumer products (Article 1649*quater*, Old Civil Code).

The Civil Code provides that consumer goods must meet the quality that a consumer may reasonably expect of goods of the same type. What can reasonably be expected should be assessed taking into account the type of goods, the information given by the seller or the producer in adverts, and so on.

The provisions of the Civil Code are implied into all sales contract under Belgian law.

Product Liability Litigation

Courts

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7. In which courts are product liability cases brought? Are product liability disputes generally decided by a judge or a panel of judges? Are juries used in certain circumstances?

Product liability cases are brought in the court of first instance (*Rechtbank van eerste aanleg*) or the commercial court (*Ondernemingsrechtbank*). A trader can be sued in the commercial court, even if the claimant is not a trader. A consumer can choose to sue the producer/supplier in the court of first instance or the commercial court.

There are no jury trials under the Belgian court system. The courts are normally presided over by a professional judge (the president) assisted by two assessors.

Proceedings

8. How does a party initiate proceedings?

Proceedings are started by serving a writ of summons. Alternatively, they can be started by written pleadings as part of related litigation. This may occur in a counterclaim, for example in litigation where the seller seeks payment of a sales invoice.

9. Who has the burden of proof and to what standard?

The claimant has the burden of proof (Article 8.1, Civil Code). This is mitigated by a general rule that parties must co-operate in presenting evidence, but the burden remains on the claimant. The claimant generally has no access to documents or information held by the other party (see *Question 12*). In very exceptional circumstances and through a reasoned judgment, the judge can decide that a party other than the claimant has the burden of proof, if application of the general principle would be manifestly unreasonable (Article 8.4, section 5, Civil Code).

The standard of proof is that of reasonable degree of certainty (Article 8.5, Civil Code). The judge must be convinced of the truthfulness of a party's position. An exception applies for proof of a negative fact, for which probability of the fact is sufficient (Article 8.6, Civil Code).

Evidence

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10. How is evidence given in proceedings and are witnesses cross-examined?

Typically, written evidence is submitted. In business-to-business sales, all types of evidence are allowed, including emails and text messages. All documents submitted and related assumptions can be the basis for a court ruling. The court is not bound by a hierarchy of types of evidence.

There are five regulated forms of evidence under Belgian law:

- Written evidence.
- Witness testimony.
- Presumptions.
- Confessions.
- Oaths.

A hierarchy of evidence applies in favour of consumers (for example, written evidence ranks higher than witness testimony and presumptions). In claims against businesses, any type of evidence can be used. When a business is litigating against a party that is not a business, stricter rules of evidence apply on the type of evidence that can be used. For example, any legal act whose sum or value equals or exceeds EUR3,500 must be proven by written evidence (Article 8.9, Civil Code).

If the court allows the submission of witness statements, witnesses are not cross-examined, as the parties cannot address or interrupt the witness directly but must always address the judge. The judge can, on their own initiative or at the request of a party, question the witness. The use of written witness statements is provided for by law, but the court can freely assess the importance that it will give to such statements. However, witness statements are rarely used as evidence in Belgian commercial litigation.

A technical debate is often conducted in the context of court-expert proceedings (see *Question 11*). Alternatively, the parties include in their written evidence reports from experts that they appoint.

11. Are parties able to rely on expert opinion evidence and are there special rules or procedures for it?

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Typically, a court expert is appointed, either in summary proceedings or before the case is heard on the merits, for a specific task such as assessing the damage caused by a defective product or assessing a defect in a product. The expert is appointed by the judge on their own initiative or at the request of a party. The court expert usually assesses the alleged defect from a technical point of view and determine the damages. Court expert proceedings are in principle only allowed if the claimant already supports their claim with their own evidence. However, if the dispute touches on a technical aspect, the Belgian courts are very inclined to appoint a court expert even if the claimant does not yet provide (the beginning of) evidence of liability.

Court expert proceedings are conducted in an adversarial way and include all relevant parties. It is not uncommon for the defendant to call the producer or its seller to the proceedings by a writ of summons.

Judges can, on their own initiative or at the request of a party, appoint an expert for a specific case. In addition, parties can appoint their own expert.

The court-appointed expert must follow the procedural rules. These aim to ensure the adversarial nature of the technical debate. In addition, the court expert must file a preliminary report and request the parties' comments on it, before drafting and filing their final report. The court expert proceedings are conducted by the expert in the judge's absence, with the judge supervising the overall proceedings. The judge will set the deadline for filing the expert's report (which can be extended at the expert's request) and also hear any dispute in the proceedings.

12. Is pre-trial disclosure/discovery required and which rules apply? If not, are there other ways to obtain evidence from a party or a third party?

Pre-trial disclosure/discovery is not recognised in Belgium. Each party must provide the evidence to prove its case and rebut any claims of the opposing party. In civil and commercial matters, a party must only deliver the evidence that it wishes to submit to the court to the opposing party on filing of a claim. In general, a party cannot be forced to deliver evidence to the opposing party. However, if there are serious suspicions that a party has evidence relevant to the proceedings that it does not submit, the judge can order the party to submit the evidence. This order can only be made in the proceedings on the merits.

13. Is there liability for spoliation of evidence/a remedy for destruction of or failure to preserve evidence (in particular, the product)?

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There is no liability for spoliation of evidence/a remedy for destruction of or failure to preserve evidence. However, if there are serious suspicions that a party has evidence relevant to the proceedings which it does not deliver to the court and the opposing party, a judge can order the party to submit the evidence (see *Question 12*).

In summary proceedings, a party can ask the president of the court to order certain items, documents, or products to be handed over to a third party for evidence purposes. Generally, this is done at the same time as the appointment of a court expert.

If a party spoils evidence and a claim has already been made, the court can take this into account in assessing the merits of the case. The court can deduce that the spoliation of evidence supports an assumption of liability.

Interim Relief

14. What types of interim relief are available before a full trial and in what circumstances?

There are several types of interim relief, and one of the most important in product liability cases is the appointment of a court expert (see *Question 11*). The court expert will, among other things, make sure that the product or goods to be investigated is not altered during the expert proceedings.

A party who has serious reasons to fear asset dissipation can ask the court to appoint a sequester as an interim relief. A sequester is a third party that is responsible for the safe-keeping of assets is during the proceedings.

A party can also ask the court to authorise a conservatory attachment, which is a Belgian form of freezing order. A conservatory attachment will only be granted if the claimant has a monetary claim that is sufficiently certain, of a fixed amount, and due. After the attachment, the owner of the good must keep the good with them and is not allowed to sell it or give it away.

Costs

15. Can the successful party recover its costs associated with the litigation, such as legal fees and experts costs and to what extent?

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The Belgian legal system distinguishes between administrative costs (for example, court filing costs) and legal costs (such as attorneys' fees). Legal costs are not usually fully reimbursed to the successful party.

Lump sum compensation (procedural indemnity) is paid to the successful party. The amount is set by law (and varies from time to time) and depends on the nature and value of the claim. The final value as claimed in the final written pleadings will determine the amount of the procedural indemnity. There is a base, reduced, and maximum rate. Unless specific factors apply (for example, the claim's complexity or other specific uncommon circumstances), the court will grant the base rate. For example, for claims of at least EUR1 million, the base rate is EUR21,000 and the maximum rate is EUR42,000. For the appointment of a court expert in summary proceedings, the base rate is EUR1,680.

Appeals

16. What types of appeal are available?

There are five courts of appeal in Belgium. The courts of appeal hear appeals against decisions of the courts of first instance and the commercial courts in their jurisdiction.

Although recent changes aim to limit appeal proceedings, almost all judgments in commercial matters can be appealed to the court of appeal (most intermediary judgments cannot be appealed). Appeal proceedings are a rehearing of the matter.

The Court of Cassation is the highest court of appeal in Belgium. However, it only reviews whether the law was correctly applied. It does not review the facts of a case as determined by the lower courts.

Length of Proceedings

17. How long does it typically take to litigate a product liability action from start to finish?

Depending on the backlog of the competent court and the time taken to try to reach a settlement, litigation can take between one and half and three years. When court expert proceedings take place

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(at the request of the parties or at the court's initiative), an additional one to one and half years should be added.

Settlements

18. Is it common for product liability actions to settle? Are there any rules or procedures that govern settlements (for example, for minors or class actions)?

The parties generally aim to settle at an early stage to avoid costly litigation. Filing a court expert report to determine the defect and damages is usually an opportunity for the parties to reach an out-of-court settlement.

Settlements are governed by Articles 2044 to 2058 of the Old Civil Code and result in the termination of any past or future dispute.

There is a specific procedure for the settlement of class actions (see *Question 19*), which is governed by Articles XVII.45 to XVII.62 of the Economic Code. Class action proceedings generally involve four stages (that is, admissibility stage, mandatory negotiation stage, examination of the merits, and implementation stage). During the second stage, the parties must negotiate with a view to settle the dispute. The court can appoint a recognised mediator to facilitate the negotiation process.

If the parties reach a collective recovery agreement, they can request the court to ratify the agreement. The parties can also request ratification of a settlement agreement reached before the admissibility stage. To ratify an agreement, the court must assess whether the agreement meets a number of legal requirements. If these requirements are not met, the court sends the agreement back to the parties and invites them to amend it within a specified timeline.

If the parties do not reach a collective recovery agreement, the court will issue a decision on the merits. A claims representative must be appointed for the implementation of the agreement or decision on the merits.

Class Actions/Representative Proceedings

19. Are class actions, representative proceedings or co-ordinated proceedings available? If so, what are the basic requirements? Are they commonly used?

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The Act on Claims for Collective Redress of 28 March 2014 introduced the possibility for consumers to bring collective redress actions, and is included in Book XVII of the Economic Code. A collective redress action can only be commenced for alleged violations by an enterprise of its contractual obligations, or for alleged violations of Belgian and EU rules that are exhaustively listed in the Economic Code (for example, violations of rules on product liability, competition law, energy law, and banking and finance).

A class of consumers must be represented by a group representative. The Economic Code identifies bodies that can act as group representatives and bring actions on behalf of a class of consumers. Natural persons and law firms are not allowed to act as group representatives.

A collective redress action can only be brought on behalf of a group of consumers who have been personally harmed by an alleged violation by an enterprise. It is only admissible if the action appears more effective than an individual action by each of the consumers.

Since the scope of the Act is rather limited, only a very few collective redress actions have been introduced since the adoption of the Act.

Litigation Funding

20. Is litigation funding by third parties allowed? Is it common? Are contingency fee or no win no fee arrangements allowed?

Belgian law does not regulate third-party funding. Third-party litigation funding is not common in Belgium.

Under professional ethical rules, Belgian lawyers are not allowed to accept work on a no win, no fee basis, or to accept a contingency fee. However, arrangements providing for payment of an additional fee the event of a positive outcome (success fee) are permitted.

Remedies

21. What remedies are available to a successful party in a product liability claim?

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Under the Product Liability Act, compensation can be awarded for personal injury or death (including moral damages for pain and suffering) and, subject to certain restrictions, property damage (see *Question 3*). The Product Liability Act does not provide compensation for damage to the defective product itself.

In business-to-business and business-to-consumer claims, the buyer can claim rescission of the agreement (if the defect or non-compliance is sufficiently serious) or a price reduction, along with a claim for all damages that result from the defect. In business-to-consumer sales, a consumer can also claim repair or replacement of the product.

22. How are damages calculated and are there limitations on them? Are punitive or exemplary damages available and in what circumstances?

Under Belgian law, compensation can only be awarded for actual damage. Parties can in principle determine the amount of damages in a contract (capped or otherwise), but this must not be deemed to exclude the seller's liability (see *Question 6*). Lump sum payments are also allowed.

An injured party is only entitled to full compensation of their damages if the damages were foreseeable at the time the contract was concluded. According to case law of the Supreme Court, the requirement of foreseeability only relates to occurrence of the damage and not to the amount of the damage.

Belgian law does not provide for punitive damages or exemplary damages.

In relation to personal injury, including moral damage, household damage, and loss of income, insurance companies and most courts refer to compensation guidelines (the indicative table). This table summarises the indemnification rules based on Belgian case law. A court can diverge from the table and award more or less to the injured party, but courts do generally follow it. The indicative table of 2020 currently applies.

In breach of contract cases, the aim of damages is to put the injured party in the position it would have been in had the contract been performed. The courts assess the actual losses of the injured party. The general principle of Belgian case law is that an injured party is entitled to full compensation for actual damage resulting the breach of contract. There is no limit on the amount of damages courts can award to an aggrieved party.

23. Is liability joint and several/how is liability apportioned, including where a partially responsible entity is not a party to the proceedings?

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The judge decides on a case-by-case basis how liability is apportioned. If more than one party is responsible for the damage, each party is jointly and severally liable to the injured person.

If it becomes apparent during the proceedings that an entity that is not party to the proceedings is partly responsible, the entity must be joined to the proceedings for the judgment to be enforceable against that entity.

Product Safety

24. What are the main laws and regulations for product safety?

The General Product Safety Directive is transposed in Belgium in Book IX of the Economic Code.

There are also specific regulations for certain product groups, for example gas and electrical devices, elevators, fireworks, and attractions in amusement parks and playgrounds. Products can also be subject to norms that are set by the Bureau of Normalisation (BNB).

25. Are there general regulators of product safety issues? Are there specific regulators for particular goods or services? Briefly outline their role and powers.

The Federal Government Service Economy (FPS Economy) monitors the Belgian market and ensures that products and services on the market meet safety requirements.

If a product (except food) does not meet the safety requirements and is a risk to consumers, the producers and distributors must inform the Central Contact Point of the FPS Economy (*Centraal Meldpunt voor Producten*).

Consumers and other parties can also file a claim at the Central Contact Point.

The Central Contact Point co-ordinates information flow on product safety and is the Belgian contact for the *RAPEX system* (the European exchange system for information on dangerous products).

Information on rules for the safety of specific types of goods (for example, elevators, machines, solariums, and fireworks) is available on the FPS Economy's website (see *FPS Economy: Quality and Safety*).

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In addition, a special advisory commission (called Consumption) was set up in 2018 and replaced the Commission for Consumer Safety and the Consumption Council. The is regulated by Book IX of the Economic Code.

The Commission's mission is to, among others:

- Issue opinions on problems affecting the consumption of products and the use of services, and on problems affecting consumers.
- Provide a place for dialogue and consultation where consumer representatives and professional representatives can exchange information, express their views, and reach compromises.
- Advise on the drafting of regulations on the protection of consumer health and safety.
- Advise on federal authority policy to protect consumer health and safety following the placing on the market of products, and on the use of these products.
- Advise the minister whether there is a need to inform the public about the risks and general problems posed by certain products or specific services.
- Organise consultation between producers, distributors, users, public authorities, and specialised bodies.

Product Recall

26. Do rules or regulations specify when a product recall is required or how companies should make decisions regarding product recalls and other corrective actions? Are any criteria specified?

There are two product recall procedures under the *EU Guidelines for Notification of Dangerous Consumer Products to the Competent Authorities by Producers and Distributors*, for market participants that:

- Do not deliver directly to consumers and/or users.
- Deliver directly to consumers and/or users.

(Article 5, General Product Safety Directive.)

These procedures are available in Dutch and French and are drafted by the FPS Economy.

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They state that, for example, if a product presents a high risk, the producer/distributor must immediately:

- Stop the sale of the product.
- Send a customers' list to the FPS Economy with the number of goods sold in the last two years.
- Inform their customers clearly about the risks of the product, with a photo of the product, a detailed description of it, all information on the risks, and so on.

In the case of a serious risk, additional measures must be taken, including:

- The product must be recalled and the producer/distributor must draft a document for the distributors with all necessary information.
- Information must be put on a website or social media.

Regulations and recommendations on how a company should make decisions regarding product recalls and other corrective actions are available in the *Prosafe Corrective Action Guide* (guidelines for businesses to manage product recalls and other corrective actions). These guidelines are not legally binding.

27. Are there mandatory advertising requirements for product recalls? Are there other rules governing how a product recall should be conducted?

The rules set out in Book IX of the Economic Code (implementing the General Product Safety Directive) apply.

The FPS Economy (Central Contact Point) supervises the Belgian market and ensures that all products and services comply with safety requirements.

After receiving information from the Central Contact Point on a dangerous product, the government can impose corrective actions on the producer (Article IX.7, Economic Code).

These corrective actions can consist of warning actions (for example, warning distributors or users of the products) or product recalls.

Informing consumers can be done individually or publicly through campaigns or the media. The warning information provided to the end consumer must clearly mention the words "important safety warning," and contain information on the technical problem, consequences, risks, and dangers of the technical problem. The information must make it possible to identify products affected by this problem (Article IX.8, Economic Code).

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Reporting

28. Is there a mandatory obligation to report dangerous products or safety issues to the regulatory authorities?

Producers and distributors must inform the Central Contact Point immediately as soon as they know or should know that a product or service, brought into the market by them, brings risks for consumers that are incompatible with the general safety obligations (Article IX.8, §4, Economic Code). The producer or distributor must give at least the following information:

- The data on the basis of which the product or product batches can be precisely identified.
- A full description of the risks of the product.
- All information on the basis of which the product can be traced.
- A description of the steps already taken to prevent risks for consumers.

All producers and distributors must take the necessary corrective measures and must not supply products that they know (or should have known) do not comply with the requirements of Book IX of the Economic Code.

Information on the applicable time frames and reporting form is available on the *RAPEX website* and in the *EU Guidelines for Notification of Dangerous Consumer Products to the Competent Authorities by Producers and Distributors*, which are also used by the Central Contact Point in Belgium.

29. Is there a specific requirement to provide progress reports and/or keep the authorities updated about the progress of corrective actions? In practice, do authorities expect periodic update reports?

The recall procedure for market participants that deliver directly to consumers and/or users (see *Question 26*) only requires the distributor to keep certain documents for one year after they stop selling the product, so that FPS Economy can check them if necessary. Specifically, they must keep, among other information:

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- Correspondence with the supplier.
- The number of goods sold in the last two years.
- The goods in stock when the distributor was informed about the recall.

Recent Trends and Reform

30. Are there any recent trends in product liability and safety law? Have there been any recent significant changes or important cases? Are there any legal or procedural issues that are attracting particular interest in your jurisdiction?

A number of recent changes aim to simplify and expedite court proceedings. However, parties still aim to settle at an early stage to avoid costly litigation. In most product liability cases, a court expert is appointed early in the dispute. Filing a court expert report to determine the defect and damages is usually an opportunity for the parties to reach an out-of-court settlement.

31. Are there any proposals for reform and when are they likely to come into force?

The Belgian Civil Code is currently being modernised. The reform concerns, among other things, the rules governing obligations and those governing evidence. The new rules on evidence came into force on 1 November 2020. They mainly codify existing and accepted principles established by case law. They also ease the rules of evidence applicable to consumers. Previously, transactions with a consumer exceeding EUR375 had to be proven by a written contract. The new rules have increased the threshold to EUR3,500. This means that transactions below this amount can now be proven by any type of evidence.

The reform of the law of obligations, which includes a reform of the non-contractual liability regime, came into force on 1 January 2023.

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Recent litigation and transactions

- Representing Lineas Group, the main Belgian rail transport undertaking, in various major derailment matters.
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Publications

- *Lenders, Y, Lysens, T, and Naudts, L, "Expert investigation - General part," in X., Bestendig Permanent Handbook Expert Investigation, II.1-1 - II.5.12, Kluwer, Mechelen, 2013, 33 p.* (originally in Dutch).
- *Lenders, Y, and Roose, F, "From Treaty to Regulation. An overview on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters," A.J.T. 2001-02, liv. 33, 863-872* (originally in Dutch).

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