



Press and Information

Court of Justice of the European Union

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Judgment in Case C-495/10

Centre hospitalier universitaire de Besançon v Thomas Dutrueux, Caisse  
primaire d'assurance maladie du Jura

## **The liability of a public healthcare establishment, in its capacity as a service provider, does not fall within the scope of the Product Liability Directive**

*The directive thus does not prevent the Member States from laying down rules whereby such an establishment must pay compensation, even when it is not at fault, for injury suffered by a patient as a result of a defect in a product used in treating him*

The Product Liability Directive<sup>1</sup> establishes a principle of no-fault liability, whereby a producer is liable for damage caused by a defect in his product. If the producer cannot be identified, each supplier of the product will 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. So far as products imported into the European Union are concerned, the importer is liable in the same way as the producer.

The system of civil liability established by the directive is intended to ensure undistorted competition between economic operators, to facilitate the free movement of goods and to avoid differences in levels of consumer protection.

Moreover, the directive does not affect any rights which an injured person may have under the rules of the law of contractual or non-contractual liability or under a special liability system existing at the time of notification of the directive.

Under French law, the liability of public healthcare establishments towards their patients is governed inter alia by a principle established in a judgment of the Conseil d'État (France), by virtue of which a public hospital must, even if it is not at fault, pay compensation for injury suffered by a patient as a result of a failure of equipment or products used in treating him.

In the present case, Mr Dutrueux, who was 13 years old at the time, suffered burns during surgery carried out in 2000 at the Centre hospitalier universitaire (CHU) (University Hospital), Besançon (France). The burns were caused by a heated mattress on which he had been laid and which had a defective temperature-control mechanism. CHU Besançon was ordered to compensate Mr Dutrueux for the injury thus caused and to pay €9 000 to him and around €5 970 to the Caisse primaire d'assurance maladie du Jura. CHU Besançon brought an appeal before the Conseil d'État arguing that it follows from the directive, as transposed into French law, that only the manufacturer of the mattress – once it has been duly identified – is to be held liable.

The Conseil d'État, hearing this case at last instance, questioned the Court of Justice as to the interpretation of the directive, namely whether the French rules on no-fault liability of public hospitals can exist alongside the system of producer liability established by the directive.

By its judgment delivered today, the Court recalls that the directive covers only the liability of the producer or, as the case may be, that of the importer or the supplier of the defective product. The directive does not seek exhaustively to harmonise the sphere of liability for defective products beyond its own area of application.

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<sup>1</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

Therefore, the liability that may be incurred by a user which, like Besançon CHU, employs, in the course of treating a patient, a product or equipment that it has previously acquired – such as a heated mattress – does not fall within the scope of the directive. Indeed, such a user cannot be considered an operator in the production and marketing chain for the product in question nor be treated as a supplier of that product.

Moreover, the mere fact that the system of producer liability established by the directive coexists with a national body of rules providing for the no-fault liability of a service provider does not undermine either the effectiveness of the system of producer liability or the objectives pursued by the Eu legislature by means of that system.

In that regard, the Court none the less makes clear that the liability of the service provider must not adversely affect the system put in place by the directive. The application of national rules may not impair the effectiveness of the directive. Thus, it must remain possible for the producer's liability to be put in issue when the conditions for such liability to exist are fulfilled. The service provider must therefore also be able to use a legal mechanism – such as that of bringing third-party proceedings as provided for by French legislation – allowing the producer's liability to be put in issue.

Finally, the Court goes on to state that any no-fault liability on the part of service providers, which is additional to producer liability as deriving from the directive, can contribute to enhancing consumer protection.

Consequently, the Court's answer is that the liability of a service provider which, in the course of providing services such as hospital treatment, uses defective equipment or products of which it is not the producer and thereby causes damage to the recipient of the service does not fall within the scope of the directive. The directive does not therefore prevent a Member State from applying rules, such as those at issue in the main proceedings, under which such a service provider is liable for damage thus caused, even when it is not at fault, provided that the injured person and/or the service provider retain the right to put the producer's liability in issue on the basis of the directive.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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