

# **AUSTRIA**

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## **Product Liability for Transport Packaging**

Austrian Supreme Court (OGH) 30.11.2016,  
7 Ob 175/16k

(Public consultation of the EC ends on 26 April 2017)

## **Facts**

- rolls of insulating material, stacked on euro-pallets & wrapped in plastic film
- insufficient fixation  
(loading height: 2.5 meters, 500–800 kg)
- packaging done by the producer
- *innocent bystander* – truck driver was injured in the attempt to unload one of the pallets

## **Decision**

- OGH dismissed the claim
- liability requires defective product
- neither insulating material nor plastic film had a defect
- packaging unit?

## Decision

Did packaging create a new (defect) product?

- standards of common usage,  
*'typical impression of a purchaser'*
- No new product if packaging ...
  - only served distribution purposes and
  - did not interfere with the substance of the product

## **PLD's focus on the manufacturing process**

- manufacturing – distribution
  - distinction is highlighted by the ECJ  
see for example reasoning in C-402/03 *Skov Æg* or C-127/04 *O'Byrne*
  - distribution-related work steps do not create new product
- eg transport packaging in the present case

## Where to draw the line?

- 'Mere packaging does not create a new product. [...] This case must be distinguished from the original packaging provided by the producer, which is part of the finished product.' (*Rabl*)
- Professionals who, for instance, only package or portion finished products are not subject to product liability unless 'the filling or repacking interferes with the substance of the product' (*Kullmann*)
- It is clear that whoever only packages, repackages or portions finished products, as a rule, is not a manufacturer. [...] This can be different [...] It's the customary usage which is decisive. (*Lenz*)

## **Preliminary ruling?**

- no ECJ case law on packaging (and similar issues)
- different opinions in literature
- acte clair?