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In Romania, three main statutes regulate product liability, namely: (i) Law No. 296/2004 on the Consumption Code, as amended (“Consumption Code”); (ii) Law No. 240/2004 on producers’ liability for damages caused by defective products (“Law No.240/2004”); as well as (iii) Government Ordinance No. 21/1992 on consumer protection, as amended (“GO No. 21/1992”). The Consumption Code represents the general statutory framework regulating product liability, while Law No. 240/2004 and GO No.21/1992 provide for more detailed rules regarding the terms and circumstances when product liability is engaged. From a general perspective, the Romanian system of product liability may be regarded as a two-fold regulated system, as it is grounded on both tort liability and contractual liability.

Tort liability

The tort liability of producers for damages caused by defective products, as regulated by Law No. 240/2004, is mainly based on the general tort liability principles set forth by the Romanian Civil Code (the “Romanian Civil Code”). Articles 998 and 999 of the Romanian Civil Code set forth that any person, who by its faulty acts causes damages to another person, shall be obliged to repair such damage. That is to say, tort liability is based on the fault of a person that may stem not only from the commission of an act, but also from omission to perform an act.

A faulty behaviour is assessed in relation to the objective standard of a bonus pater familias, which is the standard of care of a diligent and prudent person. As mentioned, product liability is generally based on the general rules and principles of tort liability. Pursuant to Art. 3 of Law No. 240/2004 “the producer is held liable for the present and the future damages caused by the defects of its product”. However, unlike tort liability under the Romanian Civil Code, which is faultbased, product liability is strict. Thus, Law No. 240/2004 provides that the person incurring the damage caused by a defective product only needs to prove: (i) the damage; (ii) the defect of the product; and (iii) the causal nexus between the damage and the defect of the product. No fault has therefore to be proven by the claimant.

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