



# Module 3

## Consumer Rights and Guarantees

NOVEMBER 2022



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Readers should also remember that EU and national legislation is being continuously updated: any paper version of the modules should be checked against possible updates on the website [www.consumerlawready.eu](http://www.consumerlawready.eu).

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## Table of Contents

Introduction .....	6
Are the rules on consumer rights and guarantees different among the EU Member States? .....	8
Can I exclude the application of the rules on consumer rights and guarantees? .....	8
What is the scope of application of the rules on guarantees? .....	8
Are consumer services also covered? .....	8
What are the different guarantees for the goods sold to the consumer? .....	9
What are the main characteristics of the legal guarantee? .....	9
When are consumer goods considered to be non-conforming? .....	9
What are the main characteristics of the commercial guarantee? .....	11
Can I present the legal guarantee as a commercial guarantee? .....	11
Is there also a legal guarantee for second-hand goods? .....	12
What are the rights of consumers in case of lack of conformity? .....	12
Is there any limit to the consumer's free choice of remedies within the hierarchy? .....	13
Can I ask for any compensation from the consumer? .....	14
How to carry out repair or replacement? .....	14
After the termination of contract, can you as the seller demand any compensation for the usage of goods? .....	14
In which cases will the seller not be liable for the lack of conformity? .....	15
Who should prove the lack of conformity? .....	15
Can I redirect a consumer's complaint to the importer, distributor or producer? .....	17
Can I be compensated by the other person in the supply chain who is liable for the lack of conformity? .....	17
What happens in case the product does not only not conform but is also dangerous? .....	17
What are the consequences of a breach of the rules on consumer rights and guarantees? .....	18
What happens with cross-border sales? .....	18

Specific treatment of sales that you direct to consumers residing in other Member States. ....18

Under which conditions can you be regarded as targeting consumers in another Member States? .....19

What does this mean for you in practice?.....19

The Directive for the supply of digital contents and digital services at a glance .....21

**“Having a guarantee of at least 2 years on the products I buy increases my confidence to buy new items”**

**Consumer**

**"The legal guarantee obliges producers to reach a certain degree of quality and therefore creates more fair competition"**

**Trader**

**"They like it and often my products are chosen because of it"**

**Trader**

## Introduction

Dear entrepreneur,

This Handbook is part of the Consumer Law Ready project addressed specifically to micro, small and medium-sized companies that interact with consumers.

The Consumer Law Ready project is a European-wide project managed by EUROCHAMBRES (the association of European Chambers of Commerce and Industry), in a consortium with BEUC (the European Consumer Organisation) and SMEunited (the Voice of SMEs in Europe). It is funded by the European Union with the support of the European Commission.

The objective of the project is to assist you in complying with the requirements of EU consumer law.

EU consumer law consists of different pieces of legislation adopted by the European Union over the last 25 years and transposed by each EU Member State in their respective national law. In 2017, the European Commission has concluded an evaluation to check whether the rules are still fit for purpose. The result was overall positive<sup>1</sup>. The main finding was that the existing rules need to be better enforced by authorities and better known by businesses and consumers. The Consumer Law Ready project aims to enhance the knowledge of traders, in particular of SMEs, regarding consumer rights and their corresponding legal duties.

The Handbook consists of five modules. Each one deals with one particular topic of EU consumer law:

- Module 1 deals with the rules on pre-contractual information requirements
- Module 2 presents the rules on the consumer right to withdraw from distance and off-premises contracts
- Module 3 concentrates on the remedies which traders must provide when products do not conform with the contract
- Module 4 focuses on unfair commercial practices and unfair contract terms
- Module 5 introduces alternative dispute resolution and the ODR platform, an official website managed by the European Commission dedicated to helping consumers and traders resolve their disputes out-of-court.

This Handbook is just one of the learning materials created within the Consumer Law Ready project. The website [consumerlawready.eu](http://consumerlawready.eu) contains other learning tools, such as videos, quizzes and an 'e-test' through which you can obtain a certificate. You can also connect with experts and other SMEs through a forum.

Module 3 of the Handbook deals with Consumer rights and guarantees when goods do not conform with the contract. It describes what information, how and when you need to provide, and gives you tips to make it easier for you to comply with the law.

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<sup>1</sup> You can find more information about the evaluation, its findings and follow-up actions on the website of the European Commission: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=59332](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332)

The Module is based on the provisions of EU Directive 99/44/EC<sup>2</sup> on the sale of consumer goods and associated guarantees as transposed in the national laws of the EU Member States. For information requirement about the legal guarantee, please consult Module 1.

From 1 January 2022, the Consumer Sales and Guarantee Directive has been repealed and replaced by [Directive \(EU\) 2019/771](#)<sup>3</sup> on certain aspects concerning contracts for the sale of goods. Additionally, [Directive \(EU\) 2019/770](#)<sup>4</sup> on certain aspects concerning contracts for the supply of digital content and digital services cover guarantee rights for digital content and digital services. Consumers have the possibility to have these rights enforced in collective proceedings after the entering into force of [Directive \(EU\) 2020/1828](#)<sup>5</sup> on Representative actions for the protection of the collective interests of consumers ('RAD')<sup>6</sup>. These new changes are presented in this module in separate boxes with the title "New rules from 1 January 2022".

The [Consumer Law Database](#)<sup>7</sup> and the [Your Europe Business Portal](#)<sup>8</sup> can help you find the relevant information or you can contact your business organisation.

We hope that you find the information provided in the Handbook useful.

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<sup>2</sup> Consumer Sales and Guarantees Directive - CSGD

<sup>3</sup> Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC ([https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.136.01.0028.01.ENG&toc=OJ:L:2019:136:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.136.01.0028.01.ENG&toc=OJ:L:2019:136:TOC)).

<sup>4</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770>).

<sup>5</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020L1828>).

<sup>6</sup> See Module 5.

<sup>7</sup> [https://e-justice.europa.eu/content\\_consumer\\_law\\_database-591-en.do](https://e-justice.europa.eu/content_consumer_law_database-591-en.do)

<sup>8</sup> <http://europa.eu/youreurope/business>




## Are the rules on consumer rights and guarantees different among the EU Member States?

The answer to this question is: yes, they are, at least to a certain extent. The objective of the EU Sales and Guarantees Directive is to have a minimum common level of consumer protection across the EU but also to allow the individual EU Member States to set higher standards (so-called 'minimum harmonisation').<sup>9</sup> Please refer to ANNEX 1 to get an overview of the situation in each Member State when it comes to the legal guarantee period, reversal of burden of proof, hierarchy of remedies and other concepts that are addressed in the present module.

## Can I exclude the application of the rules on consumer rights and guarantees?

No, you cannot exclude the application of the rules on consumer rights and guarantees.

The rules on consumer rights and guarantees in the case of products that are not in conformity with the contract are binding and their application can never be excluded by the contractual parties. This applies in particular to the legal guarantee that can never be excluded or limited. Only in the case of second-hand goods, and only if allowed by the national law of the relevant Member State (i.e. Austria, Belgium, Cyprus Republic, the Czech Republic, Germany, Hungary, Italy, Luxembourg, Poland, Portugal, Slovakia, Slovenia, and Spain), the seller and the consumer may agree on a

shorter time period for the legal guarantee period, but not less than 1 year. 

A clause in a consumer contract that would aim to limit or completely exclude the legal guarantee is not legal.

## What is the scope of application of the rules on guarantees?

The rules on guarantees cover any tangible movable items<sup>10</sup> sold to consumers, with the exception of:

- goods sold by way of execution or otherwise by authority of law
- water and gas where they are not put up for sale in a limited volume or set quantity
- electricity.

Moreover, national law of a Member State may exclude the application of the rules on guarantees to second-hand goods sold at a public auction which the consumer can attend in person: Finland, France, Germany, and Hungary have made use of this option. Spain has introduced a more limited exclusion, referring only to "administrative auctions". Denmark, Italy, and Sweden have not made use of this option instead they limit the seller's liability for such goods sold at public auctions.



## Are consumer services also covered?


No, they are not. Consumer services, e.g. plumbing or gardening services, are outside of the scope of this Directive.

2009/22/EC, and repealing Directive 1999/44/EC and, of the Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services, similar rights and rules for digital contents and services will apply.

<sup>9</sup> [http://ec.europa.eu/consumers/consumer\\_rights/rights-contracts/sales-guarantee/index\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/rights-contracts/sales-guarantee/index_en.htm)

<sup>10</sup> From 1 January 2022, with the entry into force of the Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive



However, please note that any lack of conformity resulting from incorrect installation of the product will be considered as equivalent to lack of conformity of the goods if installation forms part of the sales contract and the goods were installed by the seller or under his responsibility. This rule will also apply if the good, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions. Apart from these cases subject to Directive 99/44/EC national laws of Member States define the rights in case of services that are not in conformity with the contract. So, if you provide services, we recommend that you get familiar with the relevant national rules. 

### **New rules as of 1 January 2022**

As of 1 January 2022, digital services (e.g. online music retail stores) and digital contents (e.g. a mobile app) are also covered by rules on consumer rights and guarantees (e.g. minimum legal guarantee period, harmonisation of remedies).

## **What are the different guarantees for the goods sold to the consumer?**

Concerning the sale of consumer goods, one of the most important issues is the legal guarantee of conformity, i.e. the seller's liability for the defects of the goods sold. Under EU law, there is a clear distinction between the legal (or statutory) guarantee and the commercial guarantee.

The legal guarantee is a mandatory guarantee that covers a minimum two years' period for new goods<sup>11</sup>,

and protects consumers against defects which already existed at the time of delivery of the good and become apparent later. The legal guarantee cannot be contractually excluded, and it is valid in all EU countries.

The commercial guarantee is an additional guarantee to the legal guarantee granted by the seller or the producer, either free of charge or against a fee. It can cover also defects other than those existing at the time of delivery of the good and for a longer duration than legal guarantee.

## **What are the main characteristics of the legal guarantee?**

The legal guarantee is a mandatory guarantee. It gives the consumer a number of remedies in case the product does not correspond to what was promised by the seller during two years (or, depending on the EU Member State, during a longer period like in Ireland, Finland, The Netherlands, Sweden as described in annex 1).

It provides the consumer with remedies in case a lack of conformity occurs.

For example, if a hairdryer stops working after some months only and this is due to a non-conformity existing at the time of delivery, the seller has to repair it, replace it, or give the consumer an appropriate reduction of the price or the sales contract can be terminated.

## **When are consumer goods considered to be non-conforming?**

Directive 99/44/EC explains what goods are considered to be in conformity with the consumer sales contract.

<sup>11</sup> See Annexes 1 and 2 for more details about countries applying a longer duration of legal guarantee.

Consumer goods are presumed to be in conformity with the sales contract if they:

- comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;  
**An example:** shoes described and shown to the consumer as being waterproof should indeed be waterproof.



- as a seller, you need to take care that the description of the goods you are selling is always correct. Otherwise, the consumer may hold you liable.
- are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted;  
**An example:** a bicycle which has been said to be fit for biking in the mountains at the moment of its sale must be actually fit for such purpose.



- are fit for the purposes for which goods of the same type are normally used;  
**An example:** a mobile phone that can be used to make phone calls.
- show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.  
**An example:** the label indicating the energy consumption level of a fridge has to correspond to its real energy consumption level.



### New rules from 1 January 2022. 🇪🇺

As of 1 January 2022, with the new directives, the subjective and objective criteria to assess the conformity of goods, digital contents and services are considered on an equal footing.

#### a) Subjective criteria.

In order to be in conformity with the contract, the digital content, digital service, or the goods shall, in particular:

(1) **be of the description**, quantity, and quality, and possess the functionality, compatibility, interoperability, and other features, as required by the contract.

(2) **be fit for any particular purpose for which the consumer requires it** and which the consumer made known to you at the latest at the time of the conclusion of the contract, and in respect of which you have given acceptance;

(3) be supplied with all accessories, instructions, including on installation, and customer assistance **as required by the contract**; and

(4) **be updated as agreed in the contract by the contract**.

#### **b) Objective criteria**

In addition, the digital content, digital service or good fulfills the following list of “*objective*” criteria to be considered as conform:

1) **be fit for the purposes** for which digital content, digital services or the good of the same type would normally be used;

2) **be of the quantity and possess the qualities and performance features, including in relation to functionality, compatibility, accessibility, continuity, and security**, normal for digital content or digital services of the same. To assess these qualities, the nature of the digital content/service and public statements (e.g. advertising, labelling) by you or your supplier/producer will be considered. If you are providing goods to consumers, they must be of quality and correspond to the description and/or sample you provided to the consumer before the conclusion of the contract with her/him;

3) the digital product, services and goods shall be supplied with any accessories and instructions which the consumer may **reasonably expect** to receive;

4) the digital content, service or goods sold to consumers **shall comply with any sample, trial version or preview of the digital content or digital service**, you made available to the consumer before the conclusion of the contract.

**You will need to ensure that consumers are informed and will be supplied with updates** (including security updates) that are necessary to keep the digital content or service in conformity.

## What are the main characteristics of the commercial guarantee?

The commercial guarantee is an additional guarantee, which goes beyond and does not affect the legal guarantee of the seller. It can be provided by the seller or the producer. It can cover a longer period than the (2-year) legal guarantee, cover defects other than those existing at the time of delivery of the good and/or provide other benefits. It can be provided either free of charge or against a fee.

Producers can offer commercial guarantees that enable the consumer to have the good repaired in a number of licensed shops worldwide and not only at the seller’s shop. For example, a portable computer could benefit from such a commercial guarantee allowing the consumer to have it repaired in a number of shops free of charge.


## Can I present the legal guarantee as a commercial guarantee?

No, you cannot present the legal guarantee as a commercial guarantee. If you want to offer a commercial guarantee, it must offer more than what is already covered by the legal guarantee.

Therefore, when you offer a commercial guarantee to the consumer, it is very important that you inform the consumer also about the existence of the legal guarantee. Please keep in mind that informing the consumer of the existence of a legal guarantee is required by law (Consumer Rights Directive 2011/83/EU).

If you present the legal guarantee as a distinctive feature of your particular offer, or if you make the consumer pay for it, you can be found liable for engaging in unfair commercial practices and get sanctioned.

## Is there also a legal guarantee for second-hand goods?

Yes, there is. The rules on legal guarantee also apply for the sale of second hand goods. However, Member States are entitled to adopt rules for second hand goods that allow the seller and the consumer to agree on a shorter time period than the period of two years for the liability of the seller. This period can nevertheless not be less than one year. Here is the list of Member States where consumers and sellers have the option to agree on a shorter guarantee period for second-hand goods: Austria, Belgium, Cyprus Republic, the Czech Republic, Germany, Hungary, Italy, Luxembourg, Poland, Portugal, Slovakia, Slovenia, and Spain. 

Only where the national law provides for such possibility you can agree with consumers on a shorter period of time for the legal guarantee for second hand goods, for instance, a used car.

## What are the rights of consumers in case of lack of conformity?

In the case of a lack of conformity, Directive 1999/44/EC provides for the following remedies in a determined order ('hierarchy' of remedies):

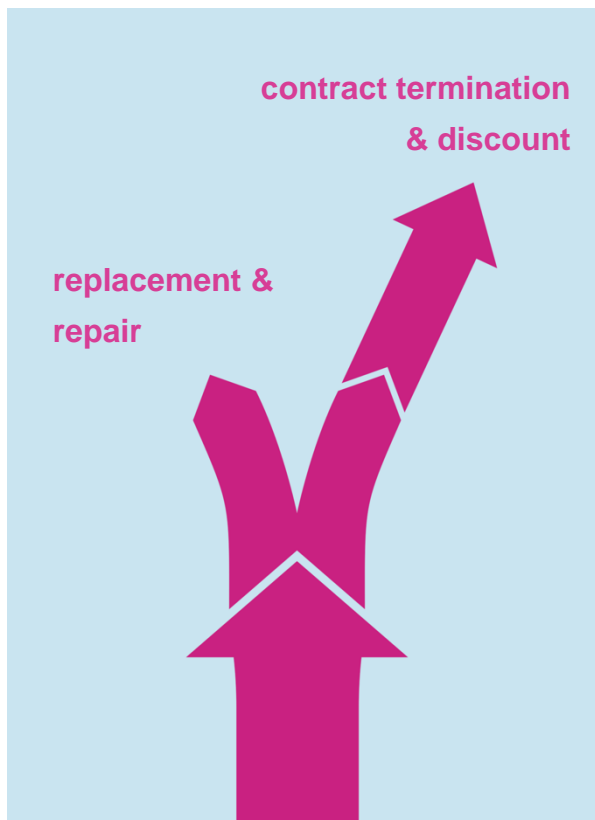
1. **repair or replacement** as 1<sup>st</sup> tier remedies
2. **contract termination or discount** as 2<sup>nd</sup> tier remedies.

Firstly, the consumer can require repair or replacement of the non-conforming good. Consumers may choose amongst the two, unless repair or replacement is impossible or disproportionate in relation to the other remedy. For instance, the consumer can ask to have his broken camera repaired or replaced with another one. However, the trader might be able to provide repair only if the replacement is not proportionate with the repair e.g. if the repair is only about changing a small component of the camera without significant inconvenience for the consumer.

Secondly:

- if the consumer is entitled to neither repair nor replacement, or
- if the seller has not completed the remedy within a reasonable time, or
- if the seller has not completed the remedy without significant inconvenience to the consumer.

Then, the consumer can require the termination of the contract or for a discount of the price paid for the acquired product.



## Is there any limit to the consumer's free choice of remedies within the hierarchy?

The consumers' right to choose in the first phase between repair and replacement and, in a second phase, between contract termination and price reduction is limited.

*First*, the consumer can choose, free of charge, between repair and replacement unless his choice is impossible or disproportionate compared to the alternative remedy. This will be the case if the consumer's choice imposes unreasonable costs on the seller, taking into account:

- 1) the value of the good if it was in conformity with the contract. For example, if the value of that good is smaller than the repair costs;
- 2) the significance of the lack of conformity in each particular case;
- 3) whether the lack of conformity can be fixed by the alternative remedy without significant inconvenience for the consumer.

For example, when the price of repairing a good exceeds the cost of replacing it, the repair may probably not be the right remedy. However, the existence of a disproportionate burden must always be proven by the seller, which is why a case-by-case assessment is necessary.

*Then*, if the repair or the replacement cannot be done without major inconvenience for consumers or if the defect cannot be fixed within reasonable time, your consumers can claim reimbursement of the defective product or a price reduction.

For instance, if the seller offers to repair a broken car only within a few months, the consumer can require the termination of the contract and give back the broken car. Or, if the car can still be used, the consumer could choose to require a sum of money (a part of the car's price) as price reduction whilst keeping the car.

Be aware that, whilst the majority of Member States follow this hierarchy of remedies, in certain countries, (Croatia, Greece, Lithuania, Portugal and Slovenia), consumers enjoy a free choice of remedies. Hence, the hierarchy explained above will not apply (see for more information Annex I).

Ireland offers a short-term right to reject the goods and treat the contract as at an end.



A consumer cannot freely choose between terminating the contract and receiving a price reduction where the defect of the acquired goods is only minor. In that case, the consumer can only demand a price reduction. Whether a defect is considered minor has to be decided on a case-by-case basis.

An example: a car that has a light which does not work properly. Such a defect is minor in comparison to the value of the entire car. In this case, the termination of the contract will not be allowed considering the minor character of the product's defect.

As mentioned above, not all Member States follow a hierarchy of remedies-approach (see Annex I).

### New rules as of 1 January 2022.

The new Directives introduce a **strict and fully harmonised hierarchy of remedies** for consumers in case of non-conformity of a good, a digital content or services.

Consequently, Member States with no hierarchy of remedies need to adapt their national legislation.

For you, this means that the rules on remedies are the same in all countries of the European Union.

## Can I ask for any compensation from the consumer?

The repair and replacement in case of lack of conformity are always to be done free of charge for the consumer. This means that no compensation can be required from the consumer to remedy the lack of conformity of the goods. The seller is not allowed to ask for any payment for the replacement or repair, for example for:

- postage costs for returning the good;
- labour costs;
- costs of materials used to repair goods.


## How to carry out repair or replacement?

Repair or replacement of goods that do not conform always needs to be done within a reasonable period of time, free of charge and without significant inconvenience to the consumer.

In practice, it may happen that the trader insists on repairing the goods as being the only available remedy and claims that their replacement is not possible because he ran out of these goods or cannot acquire them anymore. In these cases, it is up to the seller to prove that replacement is not possible in which case other remedies can be offered to the consumer (price reduction or contract termination).

## After the termination of contract, can you as the seller demand any compensation for the usage of goods?

The seller cannot require compensation for the usage of a faulty good that was replaced by a new one (as it has to be done free of charge). In the case of contract termination, reimbursement payable to the consumer may be reduced depending on the rules of the applicable national law.

Please keep in mind that if you are liable to the consumer because of a lack of conformity that resulted from an act or omission by a previous seller in the chain or the producer, you have the right to pursue remedies against the person(s) liable in the contractual chain (right to redress). The specificities are set out by national law. 

## In which cases will the seller not be liable for the lack of conformity?

In certain cases, a consumer's claim cannot be justified.

First, when the consumer was either aware or if it is not possible that s/he was not aware of the lack of conformity of the product. For example, the consumer who knows that s/he is buying a T-shirt with some defects, for example, a small hole in the back, cannot claim later that the good was faulty.

Likewise, when a consumer buys a book at the shop in a section that is clearly marked as 'damaged books – half price', it is clear that the book might have some defects. If it turns out that some pages are missing in the book, the seller cannot be considered as liable.

In addition, the seller will also not be liable for the goods which have become non-conforming as a result of the material provided to the seller by the consumer. That would be the case, for instance, of a tailor who sews a suit with the material provided by the consumer. If the suit is torn apart after some days without a reason other than the bad quality of the material, the tailor will not be responsible for that.

In such cases, the consumer is not allowed to claim rights linked to non-conforming goods.


However, if the seller claims that his products are in conformity, s/he will be responsible for the lack of conformity irrespectively of whether the defect could have been easily noticed by the consumer. For example, a trader sells a new car that does not work well but claims that it is because no one has been driving it yet. When, after some time of driving the car, the buyer sees that the car still doesn't work well, then the responsibility is on the trader.

On the other hand, the seller will not be liable for the lack of conformity in comparison to the statements made by

other traders about the characteristics of the goods if s/he was not aware or could not be aware of such statements. For example, if a consumer enters a shop where the seller tells her/him that a particular type of shoes are waterproof, and then this consumer goes to another shop and buys the same shoes, although the seller of that shop never claimed that they are waterproof; then the consumer cannot claim that there is a lack of conformity.


The same applies when the trader can demonstrate that he had corrected such statements before the conclusion of a contract. For instance, to use the previous example, the seller could inform the consumer that, despite being advertised as waterproof by the manufacturer, this type of shoes is not actually waterproof, thus ensuring that the consumer is aware of it. The seller is then exempted from this liability, but he still needs to prove that there has been a correction of the statement.

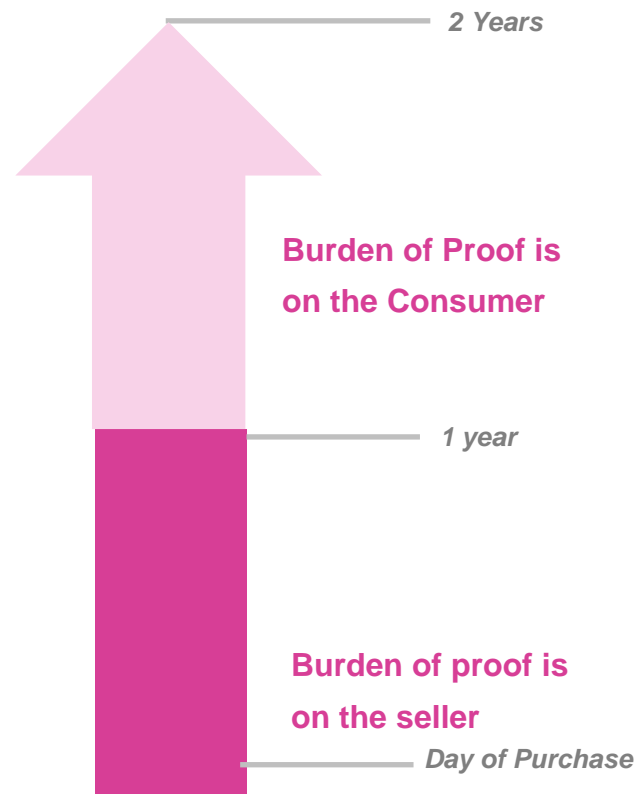
## Who should prove the lack of conformity?

The seller's liability for non-conformity of a new good with the contract lasts at least two years, starting at the moment of delivery of the good to the consumer. The seller is only liable for defects that existed already at the time of delivery and became apparent later. Therefore, the question of when the defect occurred is very important in practice. During the first six months, the presumption is that the lack of conformity with the contract existed already at the time of the delivery. If, for instance, an oven stops working six weeks after its delivery to the consumer's home the defect is presumed to have existed at the time of delivery. 

However, after the expiry of the first six months, the burden of proof shifts to the consumer. This means that he or she needs to demonstrate that the defect of the



acquired product existed at the time of the delivery  . While this is the legal situation, traders can decide to take care of the examination of the goods also after the 6-month period in order to help consumers identify the cause of the defect.



Legal guarantee does not cover defects that did not exist at the moment of delivery but occurred later on. For instance, the seller is not liable for a mobile phone that does not work because it fell into water rather than due to a fabrication default.

In order to deal with this kind of cases, the advice would be to always have a strategy and mechanisms to verify who is actually responsible for the lack of conformity. For instance, if your shop sells mobile phones, a good model would be to have a good cooperation with the manufacturer who would be able to verify why the mobile phone brought back by the consumer does not work, i.e. whether that is related to some manufacturing

problem or to the fact that the consumer dropped it on the floor or in water.

### New rules as of 1 January 2022.

The new Directive on contracts for the sale of goods **extend the above-described burden of proof** period in favour of the consumer (reversal of burden of proof) **from 6 months to 1 year**. Therefore, as of 1 January 2022, if a washing machine stops working 7 months after its delivery to the consumer's home the defect will be presumed to have existed at delivery time.

All Member States have introduced a reversal of the burden of proof for a period of 1 year.

In addition, there are new rules regarding the burden of proof for digital contents and services, introduced by the "Digital Content and Service Directive". Rules differ depending on the type of digital content or service you will supply to consumers:

- If your contract with the consumer concerns **a single act of supply or a series of individual acts of supply**, the burden of proof with regard to whether the supplied digital content or digital service was in conformity at the time of supply will be on you for a lack of conformity which becomes apparent **within a period of one year** from the time when the digital content or digital service was supplied.

- Where the contract provides for continuous supply over a certain period (e.g. 4 years), the burden of proof with regard to whether the digital content or digital service was in conformity will be on you **within the time during which the digital content or digital service is to be supplied under the contract**.

However, the burden of proof may shift to the consumer under certain conditions:

- If you can demonstrate that the consumer's digital environment is not compatible with the technical requirements of the digital content/service you provide

and you have informed the consumers of these requirements in a clear manner before contract conclusion, the burden of the proof will shift on the consumer.

- Finally, consumers shall cooperate to the extent possible, provide technical information to help ascertain the cause and time of lack of conformity. If the consumer fails to cooperate and if you informed them of such requirement in a clear and comprehensible manner before the conclusion of the contract, it will be the consumer who has to prove that the issue existed at the time of supply.

## Can I redirect a consumer's complaint to the importer, distributor or producer?

No, you cannot. If you sold goods to the consumer which turned out not to be in conformity with the sales contract, you as the seller need to deal with that issue in line with the applicable national rules on consumer sales.

The seller is liable for the lack of conformity regardless of fault or negligence. The seller's liability for goods that do not conform cannot be exempted on the ground that someone else is responsible for the lack of conformity such as the producer or importer.

## Can I be compensated by the other person in the supply chain who is liable for the lack of conformity?

Yes, you can. Once you, as a seller, have remedied the lack of conformity, you have the right to ask for compensation from the person in the supply chain who is liable for the lack of conformity. The EU Sales and Guarantees Directive entitles the seller to ask for compensation from the producer, intermediary, or the previous seller.

For example, where you are liable to the consumer because the running shoes you are selling in your shop are faulty as a result of the bad material that the manufacturer had used, you have the right to ask for compensation from the manufacturer.

Similarly, for goods that became non-conforming during their import, the importer could be liable to the seller for compensation.

**The conditions and manner for enforcing these rights of the seller are defined by the national laws of the Member States and the contract concluded with the supplier.**

## Our Advice


In order to be on the safe side, we recommend that you clarify with your own suppliers what their return policy of non-conforming products is and agree on that in the contract you conclude with your supplier. These contracts are however seldom negotiable, and, in practice, you will often have no other option than to accept the suppliers' conditions.

## What happens in case the product does not only not conform but is also dangerous?

This Module deals only with the rules on consumer rights and guarantees in case of products that do not conform e.g. a jacket that is worn out only a week after it was bought. However, be aware that there are specific rules that deal with the products which turn out to be dangerous, for example, an iron that catches fire while ironing a shirt without any external reason.

In such cases, to grant damages by personal injuries or damage to other items than the product that do not conform, another set of rules are applicable which deal with product liability and product safety. On the

European level, the most important pieces of legislation are provided by the Directive 85/374/EEC concerning liability for defective products and the set of general and sector specific rules on product safety.

In certain cases, under some of the national legislations of EU Member States, even the seller may be jointly liable together with the producer or importer for the dangerous products, so please pay attention to this set of rules. 

## What are the consequences of a breach of the rules on consumer rights and guarantees?

When a seller does not comply with the rules on consumer rights and guarantees defined by the Directive 99/44/EC and its national transposition legislations, s/he can face sanctions.

The Directive does not make a distinction whether a breach of its provisions was intended or not.

Where the consumer decides to claim the remedies for the lack of conformity, the seller needs to respect the consumer's choice in accordance with legal requirements and assist her/him to remedy the lack of conformity. The seller is not allowed to create any kind of obstacles that would make the enforcement of the consumer's rights to have the goods repaired or replaced more difficult than necessary.

For example, the seller cannot ask the consumer to come back a week later to the shop to have his laptop replaced because he is not willing to deal with the complaint on that day.

## What happens with cross-border sales?

Since the level of consumer protection may vary among the Member States, there are specific EU rules in place that determine the applicable law if you sell cross-border.

In practice, you should always check the legal situation of the relevant country when you target consumers in another country (e.g. through advertising addressed to these consumers or language-adapted websites).

For example, the legal guarantee period, during which the seller is liable for the defects of the new goods sold, may be longer than the two years provided by the EU Sales Directive. If most EU Member States have decided to keep the two-year period, some of them (Ireland, Finland, the Netherlands, Sweden as described in Annex 1) have longer periods. Similarly, the Member States can envisage different order of the remedies available to the consumer. For example, some Member States have decided that the consumer have a free choice of remedies and therefore can immediately ask for contract termination if the product is not in conformity, without having to ask first for the replacement and repair and only after that for the contract termination<sup>12</sup>.

## Specific treatment of sales that you direct to consumers residing in other Member States.

If you direct your business activities to consumers in EU countries different from your own, the law of the country in which the consumer lives normally applies to your contract with the foreign consumer<sup>13</sup>. You can choose a different law as applicable law, but that choice cannot

<sup>12</sup> Croatia, Greece, Lithuania, Portugal, Slovenia – See Annex 1 for more details.

<sup>13</sup> Notably the so-called "Rome I" Regulation 593/2008.

deprive your foreign consumer of the protection granted by the mandatory provisions of his country of residence.

Therefore, if your website is directed at consumers in another Member State, and more generally, whenever you advertise or offer your goods or services in other Member States, you must respect the standard of consumer law protection of the countries you target.

## Under which conditions can you be regarded as targeting consumers in another Member States?

The Court of Justice of the European Union has laid down a number of non-exhaustive criteria for establishing whether your commercial or professional activities are 'directed' at a specific Member State. Such criteria entail, for example, the use of languages or currencies other than those generally used in the Member State of your company's place of establishment, the mention of telephone numbers with an international code, the use of a top-level domain name other than that of the Member State in which your company is established<sup>14</sup>.

If you are not directing your activities to other EU countries, however, and a consumer from another EU Member State approaches you on his/her own initiative, then your national law applies.

## What does this mean for you in practice?

### What law will be applicable to your cross-border contracts?

At first sight, it might appear complex for a small trader to comply with the law of the country of its different

consumers, in different countries. It might prevent some traders to offer their goods or services across the border. However, in practice:

1. EU legislation harmonises an important part of consumer protection legislation. This means that in principle the same rules apply all over the EU.
2. Even if, on some elements, there are differences left between Member States, this does not mean that you are not allowed to have your contracts with consumers designed under your own legislation: as explained above, you can agree with the consumer that another law should be applicable, in which case you only have to respect the mandatory consumer law of the Member State where the consumer lives.
3. In practice, the mandatory consumer legislation of another Member State will only be relevant if its rules are more protective than those of your legal system or the law you have agreed upon with the consumer. This might be the case where, for example, the legal guarantee period of the consumer's law is longer than the one under your own law.
4. With the help of the Consumer Law Ready training modules, you will be able to know in advance which additional requirements may apply in which other Member State to which you're considering directing your business activities.
5. The question of the applicable law will often be relevant only if there is a disagreement with the consumer. Many misunderstandings can be solved amicably or by using your in-house complaint service.

<sup>14</sup> For more information, see joined cases C 585/08 and C 144/09 Peter Pammer and Hotel Alpenhof GesmbH the Court

## When you have a dispute in such a cross border contract, what court is competent?

If you offer your products or services to consumers in another EU country and happen to have a dispute with a consumer in that EU country, be aware that the competent court to decide over such a dispute will always be, that of the country in which the consumer lives. You cannot sue the consumer before a court of another country and if you stipulate such an option in your terms and conditions, you would risk a severe fine.

The consumer, by contrast, has the option to sue you before your home court as well. For cross border cases, in order to make it easier to solve disputes, the EU has set up an ODR platform that makes it possible to liaise between ADR systems in different Member States<sup>15</sup>.

**Example:** if you are a French trader based in Lille selling your products to consumers in Belgium, you cannot establish in your terms and conditions that,

cannot establish in your terms and conditions that, in case of a dispute, the only competent courts to solve the dispute are the courts in Northern France.

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<sup>15</sup> See Module 5

## The Directive for the supply of digital contents and digital services at a glance

### New rules as of 1 January 2022

#### 1) *The scope:*

Digital contents and services include a wide range of products such as videos, music files, software, live events, chat applications, social media etc.

The new rules protect **consumers in case digital contents and services** are defective or, otherwise do not correspond to what was agreed in the contract, e.g.:

- downloaded music, a mobile application for a streaming platform that does not work on the consumer mobile phone,
- a software suddenly stops working etc.

**In such cases, the consumer has the right to the following remedies:**

- ask you to fix the problem,
- if the problem persists, obtain from you a price reduction, or terminate the contract and obtain a refund.

**Before 2022, this protection has only existed for tangible goods at EU level** via the Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.

In many cases, consumers did not pay to access numerous digital contents or services but provide their personal data instead (e.g. creation of an account on social media). With the new rules, consumers have the right to a remedy in case of faulty digital content or service, **even where they did not pay a price but provided their personal data.**

#### 2) *Same rules across the EU:*

The Directives is fully harmonised:

- the conformity criteria,
- the remedies in case of non-conformity,
- the rules relating to the liability of traders,
- the rules on the burden of proof and the respective obligations of the parties in case of non-conformity, and,
- modification of digital content or digital service.

**Other elements are regulated at national level.**

For more information, please consult the relevant national legislation transposing the Directives. You may find them on the European Commission website.

# Annexes



## ANNEX 1: National transposition of the Consumer Sales and Guarantees Directive

Green shading denotes Member States going beyond minimum standards of Directive 1999/44/EC

Key provisions of the CSG Directive				
Member States	Duration of legal guarantee (years)	Notification obligation on consumers <sup>16</sup>	Reversal of burden of proof period	Hierarchy of remedies
Austria	2	No	6 months	Yes
Belgium	2	Yes <sup>17</sup>	6 months	Yes
Bulgaria	2	Yes <sup>18</sup>	6 months	Yes
Croatia	2	Yes	6 months	Free Choice
Cyprus	2	Yes	6 months	Yes
Czech Republic	2	Yes <sup>19</sup>	6 months	Yes
Denmark	2	Yes	6 months	Yes <sup>20</sup>
Estonia	2	Yes	6 months	Yes <sup>21</sup>
France	2	No	2 years	Yes
Germany	2	No	6 months	Yes
Greece	2	No	6 months	Free choice
Hungary	2	Yes	6 months	Yes
Ireland	6*	No	6 months	Yes + short term right to reject <sup>22</sup>
Italy	2	Yes	6 months	Yes
Latvia	2	Yes	6 months	Yes <sup>23</sup>
Lithuania	2	Yes <sup>24</sup>	6 months	Free choice
Luxembourg	2	Yes <sup>25</sup>	6 months	Yes <sup>26</sup>
Malta	2	Yes	6 months	Yes

<sup>16</sup> On grounds of simplicity the lack of a notification obligation is included in this category, although strictly speaking the Directive does not provide for a notification obligation and rather allows Member States to include a notification obligation.

<sup>17</sup> The trader and the consumer may agree that the lack of conformity has to be notified by the consumer within two months since he became aware of it. Wet betreffende de bescherming van de consumenten bij verkoop van consumptiegoederen/Loi relative à la protection des consommateurs en cas de vente de biens de consommation (2004), see: [http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a.pl?language=nl&caller=list&cn=2004090138&la=n&fromtab=wet&sql=dt=%27wet%27&tri=dd+as+rank&rech=1&numero=1](http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl?language=nl&caller=list&cn=2004090138&la=n&fromtab=wet&sql=dt=%27wet%27&tri=dd+as+rank&rech=1&numero=1)

<sup>18</sup> See Article 126 of the Consumer Protection Act. However the existence of that rule was not formally notified to the European Commission.

<sup>19</sup> The Czech law indicates "the consumer has to contact the trader without undue delay after discovery of the defect ". Act No. 89/2012 Coll., the New Civil Code ("Nový občanský zákoník", and NCC).

<sup>20</sup> In Denmark the consumer may claim a refund if the defect is significant, but not if the seller offers to repair or replace the product – see Article 78 of the Sale of Goods Act (Købelov)

<sup>21</sup> The Estonian rules are based on the idea of a free choice of remedy, giving, however, the seller the possibility to deal with the fault by way of repair or replacement.

<sup>22</sup> S.I. No. 11/2003 - European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003, <http://www.irishstatutebook.ie/eli/2003/si/11/made/en/print>

<sup>23</sup> Since a legislative change in 2015.

<sup>24</sup> Consumer has to notify within a reasonable time, according to Article 6.327 of the Civil Code No. VIII-1864 of 18th July 2000

<sup>25</sup> The consumer has to inform the seller about any non-conformity of the product within a "reasonable period" but since this period is not defined, it effectively means two years after the delivery. Under Art. L. 212-6, subparagraph 2 there is a second two-year time-limit for bringing an action to enforce a guarantee; it runs from when the consumer reported the non-compliance of the goods to the trader.

<sup>26</sup> Remedies should be carried out within one month by the seller. If this is not the case, the consumer can request a replacement and receive a full refund of the product price or keep the product and obtain a partial refund. However, the consumer can obtain further price reductions for damages if the consumer can provide proof that the non-conformity of the faulty good created additional costs or was dangerous to health.

Key provisions of the CSG Directive				
Member States	Duration of legal guarantee (years)	Notification obligation on consumers <sup>16</sup>	Reversal of burden of proof period	Hierarchy of remedies
Poland	2	No	1 year	Yes <sup>27</sup>
Portugal	2	Yes	2 years	Free choice
Romania	2	Yes	6 months	Yes
Slovakia	2	Yes	6 months	Yes
Slovenia	2	Yes	6 months	Free choice
Spain	2	Yes	6 months	Yes
Sweden	3	Yes	6 months	Yes
The Netherlands	No fixed time limit	Yes	6 months	Yes

*\*The seller's liability in these Member States is only limited by the prescription period.*

<sup>27</sup> The Polish rules applicable since December 2014 are based on the idea of a free choice of remedy, giving, however, the seller the possibility to deal with the fault by way of repair or replacement.

## ANNEX 2 - Elements in national legislation that go beyond the Consumer Sales and Guarantees Directive 1999/44/EC (see again green shading).

Member States	Type of guarantee and duration of legal guarantee (years)	Suspension of the legal guarantee during repair/replacement	Exact timeframe in or which to repair or replace the goods	Spare parts -obligation to maintain spare parts	Spare parts -obligation to inform consumers
Austria	Uniform (2 years)	New period	Reasonable timeframe	No	No (reversed) <sup>28</sup>
Belgium	Uniform (2 years)	Yes	Reasonable timeframe	No	No
Bulgaria	Uniform (2 years)	Yes	Within one month	No	No
Croatia	Uniform (2 years)	New period	Reasonable timeframe	No	No
Cyprus	Uniform (2 years)	Yes	Reasonable timeframe	No	No
Czech Republic	Uniform (2 years)	No	30 days	No	No
Denmark	Uniform (2 years)	New period <sup>29</sup>	Reasonable timeframe	No	No
Estonia	Uniform (2 years)	New period	Reasonable timeframe <sup>30</sup>	No	No
Finland	Differentiated	No	Reasonable timeframe	No	No
France	Uniform (2 years)	No	1 month	Yes	Yes
Germany	Uniform (2 years)	No	Reasonable timeframe	No	No
Greece	Uniform (2 years)	New period	Reasonable timeframe	Yes	No
Hungary	Uniform (2 years)	New period <sup>31</sup>	15 days	No	No
Ireland	Limitation period (6 years)	Yes	Reasonable timeframe	No	No

<sup>28</sup> In Austria the seller shall inform the buyer that there are no spare parts when this is important (where a consumer could use that information to choose a product that does have available spare parts).

<sup>29</sup> Two years for replacement, three years for repair.

<sup>30</sup> In Estonia needs to answer to a question or complaint from a consumer within 15 days, but there is no deadline for the remedy itself.

<sup>31</sup> Suspension of the legal guarantee for repair, a new period for replacement.

Member States	Type of guarantee and duration of legal guarantee (years)	Suspension of the legal guarantee during repair/replacement	Exact timeframe in which to Repair or replace the goods	Spare parts -obligation to maintain spare parts	Spare parts -obligation to inform consumers
Italy	Uniform (2 years)	Yes	Reasonable timeframe	No	Partially
Latvia	Uniform (2 years)	Yes	Reasonable timeframe <sup>32</sup>	No	No
Lithuania	Uniform (2 years)	Yes	Reasonable timeframe	No	No
Luxembourg	Uniform (2 years)	Yes	1 month	No	No
Malta	Uniform (2 years)	Yes	Reasonable timeframe	Yes	No
Poland	Uniform (2 years)	New period <sup>33</sup>	Reasonable timeframe	No	No
Portugal	Uniform (2 years)	New period <sup>34</sup>	30 days	Yes	No
Romania	Uniform (2 years)	Yes	15 days	Yes (manufacturers)	No
Slovakia	Uniform (2 years)	New period <sup>35</sup>	30 days	No	No
Slovenia	Uniform (2 years)	New period <sup>36</sup>	8 days	Yes	Yes
Spain	Uniform (2 years)	New period <sup>37</sup>	Reasonable timeframe	Yes	No
Sweden	Uniform (3 years)	No	Reasonable timeframe	Yes (certain cases) <sup>38</sup>	No
The Netherlands	Differentiated	Yes	Reasonable timeframe	No	No

<sup>32</sup> While the reasonable timeframe is generally considered to be 30 days, there is therefore no exact legal timeframe.

<sup>33</sup> Only for replacement, not for repair.

<sup>34</sup> Only for replacement, not for repair.

<sup>35</sup> Only for replacement, not for repair.

<sup>36</sup> Only for replacement or major components of the product.

<sup>37</sup> Suspension of the legal guarantee for repair, a new period for replacement.

<sup>38</sup> If the lack of spare parts or consumables hamper the use of the goods and the consumer, at the time of purchase, had good reason to believe that the product would be usable, the product will be considered defect under the rules on factual defects of the goods found in the Consumer Sales Act (1990:932).

# Consumer Law → READY

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2022