

Module 3

Consumer Rights and Guarantees

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

Consumer

“The competition between companies is more fair as we all need to produce products of quality because of the legal guarantee.”

Trader

“In order to increase consumers’ trust in my products, I offer them a commercial guarantee. They like it and often chose them over others for this reason.”

Consumer

Introduction

Dear entrepreneur,

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

The ConsumerLaw Ready project is a European-wide project managed by BEUC (the European Consumer Organisation) in a consortium with UEAPME (the Voice of SMEs in Europe) and Eurochambres (the association of European Chambers of Commerce and Industry). It is funded by the European Union with the support of the European Parliament and 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 positive¹. The main finding was that the existing rules need to be better enforced by authorities and better known by businesses and consumers. The ConsumerLaw 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 ConsumerLaw Ready project. The website 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.

¹ 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

The Module is based on the provisions of EU Directive on the sale of consumer goods and associated guarantees (“EU Sales and Guarantees Directive” - CSGD) as transposed in the national laws of the EU Member States. For more in-depth information about the provisions of the Consumer Rights Directive, that apply to information requirements regarding legal guarantees, please consult the [Guidance document of the European Commission²](#) that is available in all official languages of the EU.

Besides those horizontal requirements, other, mainly sector-specific, information requirements might apply – independently or combined with the information requirements in the Consumer Rights Directive - depending on the contract type (e.g. consumer credit, package travel, etc.). Those other requirements are outside the scope of this handbook, but we encourage you to get familiar with them as well having regard to your specific business area. The [Consumer Law Database³](#) and the [Your Europe Business Portal⁴](#) can help you find the relevant information.

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

² See http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm

³ <https://e-justice.europa.eu/home.do>

⁴ <http://europa.eu/youreurope/business>

Module 3

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 to allow the individual EU Member States to set higher standards (so called 'minimum harmonisation'). However, some Member States have not made use of their possibility to go beyond the minimum requirements of the EU Sales and Guarantees Directive⁵. Please refer to ANNEX 1 to get an overview about the situation in each Member States 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 do not conform 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 year⁶.

A clause in consumer contracts that would aim to limit or completely exclude the legal guarantee is not legal. Once a lack of conformity is brought to your attention, you may suggest to the consumer an amicable solution different from the Directive. The consumer must be made aware that he can decide whether to accept or reject such a solution and request the legal guarantee.

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

The rules on guarantees cover any tangible movable items 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 the Member States 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, Hungary and the UK 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. This does not apply in Malta's case

⁵ http://ec.europa.eu/consumers/consumer_rights/rights-contracts/sales-guarantee/index_en.htm

⁶ However, please keep in mind that a new European legislation is currently being negotiated: should the Proposal for a Directive on

the Distance Sale of Goods be eventually adopted, new and second-hand good would be treated equally.

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.

However, please note that any lack of conformity resulting from incorrect installation of the product will be considered as equivalent to a product that does not conform if installation forms part of the sales contract and the products was installed by the seller or under his responsibility. This rule will also apply if the product, 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. Moreover, the national laws of Member States still regulate the area of consumer services, so if you provide any services, we recommend that you get familiar with the relevant national rules.

In Malta's case, consumer services are covered by Chapter 378 of the Maltese laws entitled the Consumer Affairs Act⁷.

There are also other public entities besides the Malta Competition and Consumer Affairs Authority (MCCAA) that deal directly with consumer related issues. These include:

- The Malta Tourism Authority (MTA): issues relating to the tourism sector including package holidays and timeshare;
- Regulator for Energy and Water Services (REWS): issues relating to the energy and water services utilities;

- Malta Communications Authority (MCA): telecoms including provision of internet services and postal services;
- Office of the Arbiter for Financial Services: determines complaints against financial services providers;
- Transport Authority: issues relating to the provision of public transport.

What are the possible guarantees for the goods sold to the consumer?

Concerning the sales of consumer goods, one of the most important issues is the one of guarantee, i.e. the existence of the seller's liability for occurrence of any 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, but only in relation to defects which already existed at the time of delivery of the good. There is no exemption from it. It is valid in all EU countries.

The commercial guarantee is the additional guarantee to the legal guarantee granted by the seller or the producer, either free of charge or against a fee, and which can cover, possibly for a period longer than two years, defects others than those existing at the time of delivery of the good.

⁷ <http://www.mccaa.org.mt/en/information>

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, it can last longer like in UK, Ireland, Finland, The Netherlands, Sweden as described in annex 1).

It secures that the consumer has efficient remedies he can use in case a lack of conformity occurs.

For example, thanks to the legal guarantee, 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.

When are consumer goods considered to be non-conforming?

The rules provided by the applicable legislation explain when the goods are considered to be in conformity with the consumer sales contract. Under the law, 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 consumer as being waterproof should indeed turn

out to 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.



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 yourself, it is crucial that the guarantee offers more than what is already covered by the legal guarantee.

Even in cases 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.

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

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

Yes, there is. The rules on legal guarantee also apply for the sale of second hand goods. However, under the EU Sales and Guarantees Directive, Member States are entitled to adopt rules exclusively 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 which have made use of this option: Austria, Belgium, Cyprus Republic, the Czech Republic, Germany, Hungary, Italy, Luxembourg, Poland, Portugal, Slovakia, Slovenia and Spain.

What are the main characteristics of the commercial guarantee?

The commercial guarantee is an additional guarantee to the legal guarantee provided by the seller or the producer (e.g. a longer period of duration of the guarantee: three instead of two years) which can cover defects others than those existing at the time of delivery of the good. It can be provided either free of charge or against a fee.

Producers often offer a paid-for commercial guarantee that enables 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 receive this type of guarantee; the consumer would be able to have it repaired in a number of shops free of charge.

This is the only case where, if the national law provides for it, you can have the possibility to agree on a shorter period of time for the legal guarantee.

That would be the case, for instance, with a used car.

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

In the case of a lack of conformity, the consumer has the possibility to choose between two sets of remedies, in a determined order (hierarchy of remedies). The choice of the remedy is up to the consumer:

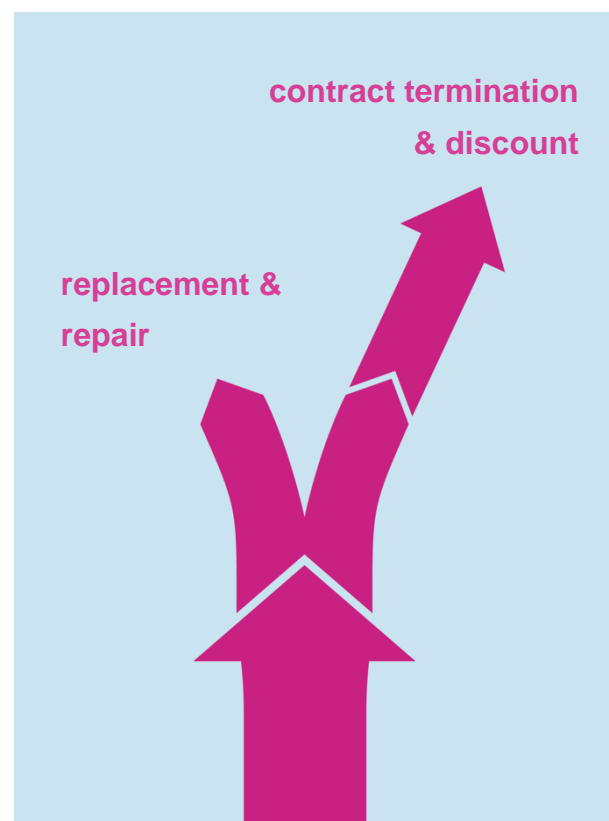
1. **repair or replacement** – the alternative between these first two choices is on the consumer
2. **contract termination or discount** – the alternative between these second two choices is also on the consumer

Firstly, the consumer has the right to ask for the repair or the replacement of non-conforming goods and may choose amongst the two, unless repair/replacement is impossible or disproportionate in relation to the other remedy. For instance, the consumer can ask to have his broken car repaired or replaced with another car of the same characteristics as the malfunctioning one.

Secondly, in case when:

- the repair or replacement is impossible or disproportionate in relation to the other remedies or
- the seller has not completed the remedy within a reasonable time, or
- the seller has completed the remedy but caused significant inconvenience to the consumer,
- the consumer can opt for the termination of the contract or for a discount of the price paid for the acquired product.

- In Malta's case, article 76 of the Consumer Affairs Act states the following:
"(1) The consumer may require an appropriate reduction of the price or have the contract rescinded –
(a) where the consumer cannot obtain either the remedy of repair or of replacement, or
(b) if the trader has not completed the remedy of repair or replacement within a reasonable time, or
(c) if the trader can only provide or complete the remedy of repair or replacement with significant inconvenience to the consumer.
(2) The consumer is not entitled to have the contract rescinded if the lack of conformity is minor or insignificant".



For instance, if the seller offers to repair a broken car only in a few months, the consumer can choose to give back the broken car and to get a full refund of the price. Or, if the car can still be used, he can choose to receive a sum of money (a part of the car's price) as price reduction and keep the car.

Be aware that whilst the majority of Member States follow this hierarchy of remedies, in certain countries, including 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).

The UK & Ireland offer a short-term right to reject the goods (e.g. for UK it's 30 days after delivery or transfer of ownership/possession or after notification of action to consumer) and treat the contract as at an end⁸.

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:

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 repairing 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 product exceeds the price of replacing the product, the repair will 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.

By the same token, a consumer cannot freely choose between terminating the contract and receiving a price reduction: Where the defect of the acquired goods is only minor, the consumer can only demand a price reduction. When a defect is considered minor, a decision needs to be taken on a case by case basis and cannot be generalised.

An example would be 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).

Can I ask for any compensation from the consumer?

No, you cannot. 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

⁸ Consumer Rights Act 2015, Section 20 on the Right to Reject, see <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

ask for the payment of any money 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.

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

Under the European law, the seller cannot require compensation for the usage of a faulty good that was replaced by a new one (free of charge). In the case of contract termination, reimbursement payable to the consumer may be reduced, depending on the arrangements made under national law. The 2015 European Commission's Proposal on the distance sales of goods has suggested new rules, avoiding situations of unfair enrichment. The yardstick would be a "normal-use"-criterion.

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 Malta's case the above is covered by Article 77 of the Consumer Affairs Act in which it is clearly stated that: *"Where the trader as the final seller of goods is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain"*.

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 he was not aware of the lack of conformity of the product. For example, the consumer who knows that 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.

Also, 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 found responsible for that.

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

However, if the seller claims that his products are conform, he will be responsible for the lack of conformity irrespectively of whether they could have been easily noticed by the consumer. For example: a trader sells a 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 with 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 he was not aware or could not be aware of these promises. For example, if a consumer enters a shop where the seller tells 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 corrects advertisements before the conclusion of a contract by saying that (to take the same example), despite being advertised as waterproof, this type of shoes is not waterproof and ensures 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 obligation to guarantee the 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 from the start, which is why the question of when the defect occurred is very important in practice. During the first six months, the presumption is that the product does not conform due to a cause which existed at the time of the product's delivery. If, for instance, six weeks after its delivery to the consumer's home, an oven stops working, the seller is considered to be responsible.

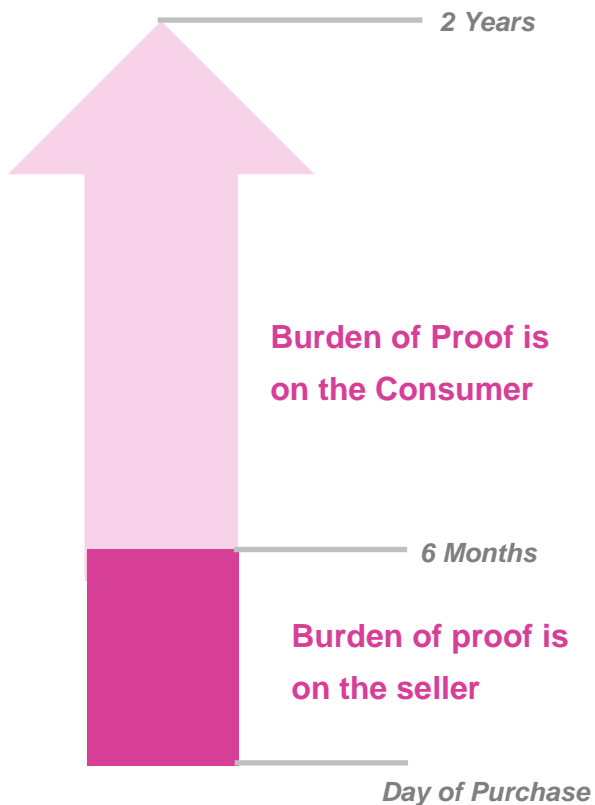
However, after the expiry of the first six months, the burden of proof shifts and the consumer needs to demonstrate that the defect of the acquired product existed at the time of the delivery⁹.

In the case of Malta, the two instances mentioned above are covered in the Consumer Affairs Act under *PART IX entitled Sale of goods to consumers*¹⁰

⁹ Under the 2015 Commission's Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods, the burden of proof lies with the seller throughout the 2 years of the guarantee period. Regarding digital content products, the 2015 Commission's Proposal for a Directive on Contracts for the Supply of Digital Content set out that the burden to

demonstrate that there is no lack of conformity is on the supplier, unless the consumer's digital environment is not compatible with the digital content. This presumption is not limited in time as digital content is not subject to wear and tear.

¹⁰ Consumer Affairs Act – see Articles 72 - 82



Accordingly, what the seller needs to prove is that a lack of conformity or its cause did not exist at the moment of delivery, but that it has occurred later on. For instance, the seller needs to prove that if the mobile phone does not work, it is because it fell into water, and not because of its original fabrication.

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.

Also, in order to prevent complaints, make sure that if the consumer indicates special requests, you always write them down in the contract, so that what the consumer wants is very clear.

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 have, as a seller, 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 which became non-conforming during their import, the importer could be liable to the seller for compensation.

However, the conditions and manners for enforcing these rights of the seller are left to be defined by the national laws of the Member States and the contracts concluded with the supplier.

Simple Solution – 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.

What happens in the case that 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, please be aware that there are specific rules which deal with the products which turn out to be dangerous, for example, an iron that catches fire while ironing a shirt.

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 legislation of the 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.

In Malta's case, Article 59 of the Consumer Affairs Act - PART VIII entitled Liability for defective products stipulates that:

(1) The supplier of the product shall be treated as the producer if -

(a) the producer cannot be identified and the injured party has asked the supplier to provide the identity and full address of the producer or of the person who supplied the supplier with the product, or

(b) in the case of an imported product where the importer cannot be identified even if the name of the producer is indicated and the injured party has asked the supplier to provide the identity and full address of

the importer or of the person who supplied the supplier with the product, and the supplier fails do so within thirty days from when the request was made to him.

(2) A request under subarticle (1) shall –

(a) be in writing and sent by registered mail or official letter to the place of trade or business of the supplier; and (b) indicate the product that caused the damage, the place from where and, if possible the approximate date, when it was acquired.

(3) The supplier has the burden of proving that he provided the injured party with the information required under subarticle (1) within the period therein indicated.”

What are the consequences of a breach of the rules on consumer rights and guarantees in case of products that do not conform?

When a seller does not comply with the rules on consumer rights and guarantees in case of products that do not conform, that seller can face different sanctions.

It is enough that the trader omits to inform the consumer about his statutory guarantee while offering his commercial one for the seller to breach these provisions of consumer legislation. Also, such a liability of trader is does not depend on whether he intentionally or negligently failed to correctly present the existence of statutory guarantee to the consumer and to compare their contents.

Moreover, if the consumer decides to use any of the remedies that concerns the lack of conformity, the seller needs to fully follow the consumer's choice and assist him to remedy the lack of conformity. The seller is not allowed to create any kind of obstacle which 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 decide on the applicable law if you sell cross-border. We detail them in the paragraphs below.

In practice, this means that you should always check the legal situation of the relevant country when you sell products to consumers in another country.

For example, the guarantee period, during which the seller is liable for the defects of the new goods sold, may be longer than the two years envisaged by the EU Sales Directive. If most EU Member States have decided to keep the two-year period, some of them (UK, Ireland, Finland, the Netherlands, Sweden as described in Annex 1) have decided to grant more. 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 can immediately ask for contract termination if the product is not in conformity, without having to first ask for the replacement and repair and only after that for the contract termination.

In December 2015, the European Commission has adopted two legislative proposals which aim at fully harmonising the rules in this area, one on contract rules for the supply of digital content and one on contract rules for the distance sale of goods. Based on full harmonisation, the proposals provide the same set of rules in all Member States.

The Commission's proposal for a Directive on Contracts for the Supply of Digital Content addresses the problem that there are no EU-wide rules for faulty digital content. If adopted as law, the rules would protect consumers when they buy digital content products, such as eBooks, films and music or when they subscribe to digital services. The Proposal on the Distance Sale of Goods addresses the disparities of legal guarantee rules between the Member States and aims at achieving a genuine digital single market.

In Malta's case, digital content and distance sale of goods are covered by the Consumer Rights Regulation¹¹ - Legal Notice 439 of 2013.

Specific treatment of sales that you direct explicitly to foreign consumers

Under EU law¹², if you direct your business activities to consumers in EU countries different from your own, it is usually the law of the country in which the consumer lives that applies to your contract with the foreign consumer. If you have both chosen a different law, that choice cannot deprive your foreign consumer of the protection granted by the mandatory provisions of his country of residence.

Therefore, if, for example, your website is directed at the consumers in a Member State that has imposed language requirements under Article 6(7) of the Consumer Rights Directive, you must provide the consumer with contractual information in the language required by that Member State. 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.

When are you considered to direct explicitly your business activity to foreign consumers?

The Court of Justice of the European Union has laid down a number of non-exhaustive criteria for establishing whether your marketing 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 established¹³.

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

1. EU legislation provides, as we describe under the Consumer Law Ready modules, for an important

¹¹ Consumer Rights Regulation - <http://www.mccaa.org.mt/en/information>

¹² Notably the so called "Rome I" Regulation 593/2008.

¹³ For more information, see joined cases C 585/08 and C 144/09 Peter Pammer and Hotel Alpenhof GesmbH the Court

amount of harmonized provisions of consumer protection. These 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 State where the consumer lives.
3. In practice, the mandatory consumer legislation of another 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. Also thanks to the ConsumerLawReady 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 to direct 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.

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 other EU countries and happen to have a dispute with one of your consumers from another EU country, be aware that the competent court to decide over such a dispute will always be, under EU law, 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 States¹⁴.

If you are a French trader based in Lille selling your products to Belgian consumers, you 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 Lille.

¹⁴ See Module 5 of this handbook

Annexes

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

Green shading denotes Member States going beyond minimum standards of Directive 199/44/EC

Key provisions of the CSG Directive				
Member States	Duration of legal guarantee (years)	Notification obligation on consumers ¹⁵	Reversal of burden of proof period	Hierarchy of remedies
Austria	2	No	6 months	Yes
Belgium	2	Yes ¹⁶	6 months	Yes
Bulgaria	2	Yes ¹⁷	6 months	Yes
Croatia	2	Yes	6 months	Free Choice
Cyprus	2	Yes	6 months	Yes
Czech Republic	2	Yes ¹⁸	6 months	Yes

¹⁵ 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.

¹⁶ 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

¹⁷ See Article 126 of the Consumer Protection Act. However the existence of that rule was not formally notified to the European Commission.

¹⁸ 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).

Key provisions of the CSG Directive				
Member States	Duration of legal guarantee (years)	Notification obligation on consumers	Reversal of burden of proof period	Hierarchy of remedies
Denmark	2	Yes	6 months	Yes ¹⁶
Estonia	2	Yes	6 months	Yes ¹⁷
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 ¹⁸
Italy	2	Yes	6 months	Yes
Latvia	2	Yes	6 months	Yes ¹⁹
Lithuania	2	Yes ²⁰	6 months	Free choice
Luxembourg	2	Yes ²¹	6 months	Yes ²³
Malta	2	Yes	6 months	Yes
Poland	2	No	1 year	Yes ²⁴
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

¹⁶ 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)

¹⁷ 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.

¹⁸ 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>

¹⁹ Since a legislative change in 2015.

²⁰ Consumer has to notify within a reasonable time, according to Article 6.327 of the Civil Code No. VIII-1864 of 18th July 2000

²¹ 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.

²² 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.

²³ 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.

Key provisions of the CSG Directive				
Member States	Duration of legal guarantee (years)	Notification obligation on consumers	Reversal of burden of proof period	Hierarchy of remedies
The Netherlands	No fixed time limit	Yes	6 months	Yes
United Kingdom	6 (5 in Scotland)*	No	6 months	Yes+short term right to reject

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

ANNEX 2 - Elements in national legislation that go above 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 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) ²²
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 ²³	Reasonable timeframe	No	No
Estonia	Uniform (2 years)	New period	Reasonable timeframe ²⁴	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 ²⁵	15 days	No	No
Ireland	Limitation period (6 years)	Yes	Reasonable timeframe	No	No

²² 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).

²³ Two years for replacement, three years for repair.

²⁴ 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.

²⁵ 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 ²⁶	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 ²⁷	Reasonable timeframe	No	No
Portugal	Uniform (2 years)	New period ²⁸	30 days	Yes	No
Romania	Uniform (2 years)	Yes	15 days	Yes (manufacturers)	No
Slovakia	Uniform (2 years)	New period ²⁹	30 days	No	No
Slovenia	Uniform (2 years)	New period ³⁰	8 days	Yes	Yes
Spain	Uniform (2 years)	New period ³¹	Reasonable timeframe	Yes	No
Sweden	Uniform (3 years)	No	Reasonable timeframe	Yes (certain cases) ³²	No
the	Differentiate	Yes	Reasonable	No	No

²⁶ While the reasonable timeframe is generally considered to be 30 days, there is therefore no exact legal timeframe.

²⁷ Only for replacement, not for repair.

²⁸ Only for replacement, not for repair.

²⁹ Only for replacement, not for repair.

³⁰ Only for replacement or major components of the product.

³¹ Suspension of the legal guarantee for repair, a new period for replacement.

³² 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).

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
Netherlands	d		timeframe		
United Kingdom	Limitation period (6 years, 5 in Scotland)	No	Reasonable timeframe	No	No

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